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UPenn Hospital Owes \$2M For Baby's Birth Injury, Court Says

By **Carolina Bolado**

Law360, New York (October 05, 2012, 8:24 PM ET) -- A Pennsylvania appeals court on Friday affirmed a \$2.2 million jury award against the Hospital of the University of Pennsylvania for allegedly causing a baby's cerebral palsy during delivery, ruling the plaintiffs had presented sufficient evidence to warrant the award.

The Superior Court of Pennsylvania found that the family of Hyseem Jacobs, who died at 17 months old from complications associated with cerebral palsy, had presented enough evidence to lead a reasonable jury to conclude that the hospital and physician Peter Chen were professionally negligent and to award the monetary damages.

In their appeal, the hospital and the doctor argued that the trial court erred in allowing the jury to award damages under the Wrongful Death Act to the baby's family for the monetary value of Hyseem's companionship, society and comfort had he lived because of the inherent uncertainty involved in the determination, according to the opinion.

But the appeals court said that Pennsylvania's highest court has not limited damages because of uncertainty and added that a jury is "permitted to utilize the common inheritance of intelligent human beings" when determining the value of the infant's life.

"The type and amount of evidence available to establish damages due to the death of an infant is necessarily extremely limited," the appeals court said. "Acknowledging the constraints that flow from a case such as this, we cannot conclude that an award of \$1.5 million for noneconomic damages bears no reasonable relation to the loss of a child's life."

Hyseem's parents, Kyra Hatwood and David Jacobs, sued the hospital and Dr. Chen after the baby's death in August 2007. The family alleged that the hospital and physicians negligently delayed delivery via cesarean section despite seeing signs of a placental abruption, which ended up leaving the baby without enough oxygen for 15-20 minutes before delivery, according to the plaintiffs.

In February 2011, after a two-week trial, a jury awarded the family \$2,154,583 in damages, according to the opinion. The trial court judge denied the hospital's bid for a judgment notwithstanding the verdict.

In its opinion Friday, the appeals court refused to reverse the judge's decision to not overturn the damages award, saying there was no evidence the trial court had abused its discretion or erred in the law.

Representatives for the parties could not immediately be reached for comment Friday.

Judges Correale F. Stevens, Susan Peikes Gantman and Jack A. Panella sat for the Superior Court.

Hyseem's family is represented by Richard J. Heleniak of Messa & Associates PC.

Counsel information for the hospital was unavailable.

The case is Hatwood et al. v. Hospital of the University of Pennsylvania et al., case number 3242 EDA 2011, in the Superior Court of Pennsylvania.

--Editing by Rebecca Flanagan.

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