

# Doctor, nurse fail in appeal over brain damaged baby

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VANCOUVER SUN

A doctor and nurse at Surrey Memorial Hospital found negligent in the delivery of a baby who suffered profound cerebral palsy have had their appeal rejected by the B.C. Court of Appeal.

Dr. Jodi Lock O'Brien and nurse Charito Hermogenes were involved in the delivery of Mirella Steinebach in March

31, 2005.

B.C. Supreme Court Justice Ian Pitfield ruled in June last year that the baby would likely not have suffered brain damage from oxygen deprivation had she been delivered less than half an hour earlier.

Her injuries were described as catastrophic. Mirella cannot speak or swallow and needs to be fed through a gastrostomy tube.

She will never be able to walk, and the court found that there

was no way of knowing if she is in pain, or would experience pain during her lifetime.

The Fraser Health Authority, O'Brien and Hermogenes appealed the finding and the amount of damages Pitfield awarded.

But in a decision released Wednesday, the appeal court refused to overturn the decision of negligence. It did, however, amend damages awarded to Mirella for potential loss of earnings had she led a normal

life, reducing it from about \$271,000 to about \$228,000. (The child's potential income was based on the calculation that her life expectancy from birth would only be 20 years.)

The appeal court found that Pitfield had erred in his estimation of how much she would have earned because he had calculated that by the time she would be in the workforce, the income difference between men and women would almost be eliminated.

Appeal Court Justice Kenneth Mackenzie, who wrote the decision, found that it was erroneous to make that conclusion given that today there is a 40-per-cent gap between what males and females earn.

The appeal court refused to reduce the amount of non-pecuniary damages from the maximum of \$321,000 to \$200,000 as sought in the appeal.

Burnaby lawyer Donald Renaud, who represented

Mirella, said the total damages awarded by the courts will be in excess of \$2.5 million.

Renaud described such cases as "difficult" to litigate.

"Three baby cases have gone to trial in the last six years. The Court of Appeal has overturned verdicts in two of them. Thankfully, they didn't in this case," he said.

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