

**Yepremian et al. v. Scarborough General Hospital
et al. (No. 2)**

31 O.R. (2d) 384

120 D.L.R. (3d) 341

ONTARIO
HIGH COURT OF JUSTICE

R. E. HOLLAND J.

22ND JANUARY 1981.

Actions -- Settlement -- Personal injuries -- Structured settlement -- Advantages.

Damages -- Personal injuries -- Structured settlement -- Advantages.

APPLICATION for approval of a settlement. Following the judgment of the Ontario Court of Appeal in *Yepremian et al. v. Scarborough General Hospital et al.*, 28 O.R. (2d) 494, 110 D.L.R. (3d) 513, 13 C.C.L.T. 105, leave to appeal to the Supreme Court of Canada was granted but the action was settled and the appeal was discontinued. An application was then brought to the trial Judge for approval of the settlement, and the following judgment approving the settlement was delivered by

R. J. Sommers, Q.C., for plaintiffs.

D. K. Laidlaw, Q.C., for defendants.

R. E. HOLLAND J.:-- This is an application for approval of a settlement.

The action was against a doctor and a hospital for damages for medical malpractice. Tony Yepremian suffered cardiac arrest with resultant brain damage at the Scarborough General Hospital following the commencement of treatment for a diagnosed diabetic condition. I was the trial Judge

and made a finding that although Dr. Goldbach was negligent, the effective cause of the cardiac arrest was negligence on the part of Dr. Rosen who had not been sued. I found the hospital liable on the basis that in the circumstances of the case the hospital undertook towards Tony a duty of care that could not be delegated and was therefore responsible in law for the negligence of Dr. Rosen. I assessed the total damages at \$390,262.11.

My decision was appealed. The appeal was heard by five Judges and the Court of Appeal, three to two, reversed the finding of liability against the hospital. The Court of Appeal was, however, unanimously of the opinion that the damages should be increased to a total of \$462,122.11. Leave was granted to the plaintiffs to appeal to the Supreme Court of Canada and I have been advised that this appeal has been discontinued in view of the settlement. The minutes of settlement read as follows:

MINUTES OF SETTLEMENT

The parties, by their solicitors, hereby agree to settlement as follows:--

1. The Defendants shall pay to the Plaintiff Mary Yepremian for Tony's expenses, the sum of \$100,000.00.
2. The Defendants shall pay to Mary Yepremian in trust for the use and benefit of Tony Yepremian monthly payments commencing the 1st day of February, 1981 in the amount of \$2,033.47 guaranteed for forty (40) years and payable thereafter as long as the said Tony Yepremian remains alive; PROVIDED that the said damage payments shall be indexed and increased by three (3) per centum per annum compounded annually. The said monthly payments shall be as set out in the attached Schedule marked "SCHEDULE A" to these Minutes of Settlement. It is further provided that in the event of the death of Mary Yepremian, the said monthly payments shall be paid to Jack and Joseph Yepremian jointly, or to the survivor of them, in trust for the use and benefit of the said Tony Yepremian.
3. The Defendants shall pay to the Plaintiff's solicitors, Messrs. Sommers & Roth, party and party costs in the sum of \$100,000.00.
4. Upon payment by the Defendants of the sums provided for in paragraphs 1 and 3 of these Minutes of Settlement and upon the purchase of the non-assignable, non-commutable annuity issued by The Manufacturers Life Insurance Company to make the payments set out in paragraph 2 of these Minutes of Settlement, the Plaintiffs shall abandon their pending appeal in the within action to the Supreme Court of Canada.

DATED at Toronto this

12th day of January, 1981. "PATCH 81-169"

It is to be noted that the settlement for Tony has been structured and by its terms Tony or his estate will receive a guaranteed minimum payment of \$1,839,095.28.

Since structured settlement is a relatively new method of settling personal injury cases it is appropriate for me to make certain comments on the system of structured settlements and on this particular settlement. Structured settlements are a means whereby all or part of the damages are paid to a claimant by means of periodic payments rather than by means of a lump sum. Perhaps the prime advantage of a structured settlement is that payments are received tax free in the hands of the plaintiff whereas if the plaintiff had used the lump sum to purchase an annuity the interest portion of the annuity payment would be subject to income tax.

It apparently has been the experience of many solicitors that lump-sum payments, even in the case of substantial payments resulting from serious personal injury or death, are often dissipated within months or a few years of the payment being received.

The structured settlement proposed in this case is particularly suitable to the circumstances of the case because Tony, as a result of brain injury sustained in the hospital, is not mentally competent to manage his own affairs. Tony will receive a guaranteed income for life indexed at 3% and tax free. He is better looked after, in my view, under the terms of the settlement than he would have been under my judgment at trial or even under the increased award of the Court of Appeal.

In these circumstances I have no hesitation in approving the settlement.

---- End of Request ----

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