



BETWEEN

MAEVE TROY (AN INFANT) SUING BY HER MOTHER
AND NEXT FRIEND MARY TROY

PLAINTIFF

AND

SEAN TROY

DEFENDANT

Judgment of Mr. Justice Lynch delivered the 18th day of April
1988.

The Plaintiff was born on the 19th January 1980. She was injured in an accident on her father's farm on the 13th August 1981 when she was just one year and seven months old. Her father (the Defendant) ran over her with his tractor in his own farmyard.

This was not a road traffic accident in respect of which insurance would be compulsory. There was no obligation on the Defendant to insure the tractor when being used on his own

lands - i.e. when being used other than in a public place. Therefore the purported exclusion of the right to free maintenance, treatment and specialist services under the Health Acts by Article 6 of the Health Services Regulations 1971 never applied to the Plaintiff and in any event that regulation was found ultra vires and therefore null and void at all times relevant to this matter by the Supreme Court Judgment in Cooke .v. Walsh (1984) I.R. 710. The Health (Amendment) Act 1986, which restored the law to what it was thought was the position prior to Cooke .v. Walsh came into operation in June 1986 and applies only to maintenance, treatment and specialist services afforded since then and therefore has no bearing on this matter.

I am asked to pay out of the infant's funds in Court fees claimed by Medical Specialists in respect of treatment of the Plaintiff. In fact the Defendant's tractor was insured, but the test as to whether fees are payable or not, is whether they would be payable if the treatment had been necessitated by a mere illness without any question of negligence on the part of anyone. If in those circumstances, the Plaintiff would have been entitled to free hospital maintenance, treatment and specialist services, then she is and was so entitled in respect of the maintenance, treatment and services for the injuries sustained by her in this accident, even though it is clear that the Defendant was negligent and that he is in fact insured against his liability to the Plaintiff.

Prima facie, it would appear that the Plaintiff would be so entitled. The matter has, however, been greatly confused and complicated in the correspondence by a misconception on the part of the Plaintiff's Solicitors. They seem to think that the medical fees in question, if not payable by the infant or

