

腰椎管狹窄症手術過失 判賠約8,900萬日圓

Lumbar Spinal Stenosis Surgery Malpractice Ruled
to Pay Approximately 89 Million Japanese Yen

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摘要

原告A被告醫院接受被告C醫師主刀之腰椎後方減壓手術，因馬尾神經遭被告C切斷，留下重度後遺障礙，住院期間又在病房內跌倒造成右脛腓骨骨折等，遂原告A及B向被告C及醫院提起損害賠償訴訟。法院認為，被告C於出血及視野不良情況下，未即時止血即使用鋼鑽高速削骨，屬於高度危險操作，其結果導致原告A留下終生無法自行行走、常時需要看護之嚴重後遺症，注意義務違反程度「極為重大」。然而被告C於短期間內涉及多起醫療事故，雖可作為評價其技術成熟度不足之參考，但仍不足已認定本件手術本身具有顯著惡質性，而為慰撫金大幅加重之理由。法院雖未將醫師

關鍵詞：侵權行為 (tort)、故意 (intention)、重大過失 (gross negligence)、慰撫金 (solatium)、醫療過失 (medical negligence)

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之過失評價為與故意相當，否定慰撫金應該因為侵權行為的惡質性而增加，然而考量到患者的後遺障礙程度重大且伴隨難以計算的痛苦，及醫院在事故後的說明、調查及資訊揭露遲滯等，實際上確有對被害者造成額外的精神痛苦，因此認定了3300萬日圓的高額慰撫金

The plaintiff, A, underwent posterior lumbar decompression surgery, performed by the defendant, C, at the defendant hospital. It is evident that due to the actions of the Defendant C, which resulted in the severing of the cauda equina nerves, the Plaintiff A sustained severe and permanent disabilities. Furthermore, it is documented that the first plaintiff sustained a fracture to the right tibia and fibula after falling within the ward during the period of their hospitalisation. Consequently, the plaintiffs, A and B, initiated legal proceedings against the defendant, C, and the hospital. The court ruled that the use of a high-speed bone drill by the Defendant C to remove bone without first controlling bleeding under conditions of haemorrhage and poor visibility constituted a procedure that was highly dangerous. Consequently, the plaintiff, A, has been left with severe and permanent sequelae, including a perpetual incapacity to function independently and an unrelenting requirement for nursing care. The breach of duty of care was deemed “extremely gross.” However, while the fact that Defendant C was involved in multiple medical incidents within a short period could indicate insufficient technical proficiency, it was insufficient to establish that the surgery itself was significantly egregious, thereby justifying a substantial increase in consolation damages. The court did not equate the physician’s negligence with intent, and thus rejected the argument that consolation damages

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should be increased on account of the egregious nature of the tort. In consideration of the patient's severe residual disabilities, which were accompanied by immeasurable suffering, in addition to the hospital's delayed explanations, investigations, and information disclosure following the incident – which in fact caused additional mental anguish to the victim – the court awarded substantial consolation damages of 33 million Japanese yen.

壹、事實概要

一、事件概要

原告A（當時75歲女性）在日本兵庫縣赤穂市（被告市）設立經營之赤穂市民醫院接受腦神經外科醫師C（被告C）主刀之腰椎後方減壓手術，因馬尾神經遭切斷，留下重度後遺障礙（本件醫療事故），住院期間又在病房內跌倒造成右脛腓骨骨折等（本件跌倒事故）。原告A及其子原告B主張，關於本件醫療事故，被告C在手術過程存在惡質之手技上過失，應負不法行為責任（民法第709條），被告市應負使用者責任（同法第715條）或債務不履行責任（同法第415條）；關於本件跌倒事故，醫院未能履行對採取必要措施以防止其跌倒的義務，例如派遣護理師進行陪護與監視等，被告市應負使用者責任（同法第715條）或債務不履行責任（同法第415條），依上述兩件請求損害賠償。主要爭點在精神慰撫金，原告方請求將慰撫金定為日本「自賠法」中第1級障礙之賠償上限4,000萬日圓。事實經過如下。

原告A因腰痛前往本件醫院檢查，經被告C告知患有重度腰椎管狹窄症，建議儘速進行腰椎減壓手術。2020年1月22日，原告A接受由被告C主刀之手術，D醫師為助手，預定進

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