



50/50

Andrew Lyle

A baby suffered brain damage and developed cerebral palsy when her heart rate dropped during her delivery at hospital.

The evidence was that two actions could have caused the injury, namely pressure from the negligent use of forceps by the obstetrician and an overdose of a drug administered to the mother by a nurse.

The New South Wales Court of Appeal thought that one cause did not overcome the other, but that both were causes of the injuries.

The interesting feature of the decision is that the Court decided that where it is not possible to attribute a precise degree of fault between two wrongdoers, the fault should be apportioned 50/50. The Court apportioned responsibility 50/50 between the hospital (for the nurse's negligence) and the obstetrician.

This is a useful, sensible decision. Often defendants haggle over, for example, 70/30 and 60/40 apportionments, when in reality both are more or less equally to blame: *Diamond v Simpson*.