

Research on Compensation Liability for Wrongful Birth Tort

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Abstract: *In recent years, the concept of eugenic gradually became popular in our country while medical technology developed rapidly. The increasing prevalence of prenatal testing has been accompanied by an increase in the number of wrongful birth cases. Wrongful birth mainly refers to the birth of disabled children due to the negligence of doctors who fail to diagnose the potential birth defects of the fetus or fail to properly inform the parents. Wrongful birth damage liability is a concurrence of breach of contract liability and tort liability. From the perspective of protecting parents of defective children, the choice of tort liability relief path is more advantageous. The constitution of compensation liability includes the illegality of medical behavior, the fact that the child's parents have damage, the causal relationship between the illegality of medical behavior and the loss of the child's parents, and the fault of the medical institution. The body responsible for compensation should be the medical institution rather than the medical staff in charge of prenatal examination at that time. The scope of compensation should not include general maintenance costs, but support should be given to special maintenance costs and compensation for emotional distress. The reasons for exemption and exemption of liability of medical institutions include three kinds: limited medical treatment level, consent of fetal parents and fault of fetal parents.*

Keywords: *Wrongful Birth; Tort Liability; Compensation for Damages*

1. Introduction

Since the 21st century, with the rapid development of gene technology and the continuous improvement of the level of medical technology, it has become possible for parents to judge the health status of the fetus through prenatal technical examination. However, it is also based on the continuous development of prenatal examination technology and people's increasingly enhanced concept of eugenics that a special medical damage dispute case appears and becomes more frequent. Generally, such case is called wrongful birth case, which means that in the process of prenatal technical examination, medical personnel fail to find certain defects in the fetus due to their negligence. Or the couple is not informed about the physical condition of the unborn child, allowing them to decide to have a defective child based on false information. Children with defects or their parents often file lawsuits in court seeking compensation from medical institutions. In the lawsuit, both on the grounds of breach of contract and tort. In the case of infringement, there are different claims of infringed rights, including infringement of the right to have a healthy and healthy child, infringement of the right to know, and general infringement of civil rights and interests. In the main body of litigation, both parents as the plaintiff litigation, also have children as the plaintiff litigation. In the range of compensation proposed, both claim property damage compensation, and some claim spiritual compensation. However, due to the current legislation has not made a perfect provision for the wrongful birth damage compensation system, the academic views are also different, once the problem of wrongful birth appears, from the qualitative, legal liability identification, compensation scope, compensation calculation method and a series of specific issues are difficult to determine. As a result, there are often many differences in judicial practice. Judicial adjudication has no basis to rely on, different judges have different standards of discretion, and the results of similar cases are also far from each other. "The same case and different results" appear, which makes justice difficult to achieve and also damages judicial authority.

2. Choice of Compensation Method for Wrongful Birth

2.1. Compensation for Breach of Contract

In the case of wrongful birth, the contract shall be the medical service contract. The contract shall be an anonymous contract, and the provisions of the most similar contract shall be applied in accordance with Article 467 of the Civil Code of the People's Republic of China (hereinafter referred to as the Civil Code). Objectively, there are obvious differences in medical level and medical ability between Chinese medical institutions. The existing medical level can not find out all abnormal information of fetuses in prenatal examination, so we should refer to the relevant provisions of applicable commissioning contract. That is, Article 929 of the Civil Code stipulates that if the compensated trustee causes losses to the client due to gross negligence, the client may claim damages from him. Therefore, we believe that in the wrongful birth case, when claiming damages based on breach of contract, in addition to the existence of valid contract, the medical institution is also required to have subjective fault. The fault can be summarized into the following three categories: first, the medical institution has detected that the fetus may have a disability, but the party firmly believes that such a defect will not cause the pregnant woman to give up childbirth, namely, the fault of overconfidence; Second, according to the medical level of the hospital, the congenital diseases of the fetus should be detected, but the defects of the fetus are not found due to the fault of the doctor, so that the husband and wife mistakenly think that they are pregnant with a healthy fetus to give birth to, that is, negligence; Third, the medical provider did not adequately remind the limitations of pregnancy screening or recommend referral obligations.

2.2. Compensation for Tort

The negligent behavior of medical personnel in the process of birth inspection infringes upon the legitimate rights and interests of the parents of the child protected by the Civil Code. Medical institutions should bear tort liability for the damage caused by the negligent behavior of medical personnel in the process of birth inspection.^[1] The premise of whether the plaintiff's lawsuit based on infringement can be affirmed is that the defendant's behavior infringes on the plaintiff's rights and interests protected by the Civil Code and causes damage accordingly. Wrongful birth infringes on the parents' right to choose to bear an informed birth. Moreover, in our country, medical institutions taking the liability of compensation for wrongful birth infringement does not depreciate the life value of defective children, nor is it restricted by legal norms and social policies. The property loss and mental loss caused by the infringement of the informed choice of birth of the parents of the defective children are precisely caused by the negligent behavior of the medical personnel in the course of birth examination, and there is a causal relationship between the two. According to China's Civil Code, medical institutions should bear tort liability for the damage caused by the negligence of medical personnel during prenatal examination, which infringes on the informed choice of the parents of the defective child.

2.3. The Advantage of Compensation for Tort

In short, the negligent behavior of medical personnel in the process of prenatal examination not only violates the provisions of the contract of the Civil Code, but also meets the requirements for the doer to bear the liability for breach of contract. At the same time, the act also violates the provisions of the tort liability of the Civil Code, in line with the requirements for the establishment of tort liability. According to the provisions of Article 186 of the Civil Code and the relevant judicial interpretation, our country takes the following position when liability for breach of contract and tort occurs concurrence. Firstly, liability for breach of contract and liability for tort exist independently, and the parties should choose one of them for litigation. Second, the law of our country clearly stipulates that after the occurrence of the race between breach of contract liability and tort liability, the parties' wishes should be respected, so that the parties can carry out meaning autonomy and give the parties the choice of the basis of the claim right, and the parties can choose according to their own wishes. Third, after the parties have chosen the basis of the right to claim according to Article 186 of the Civil Code, the people's court should allow the parties to change their claims before the first instance is held, even if they have entered the litigation stage. Therefore, in the case of wrongful birth, the parents of the defective child can request the medical institution to bear the damages for wrongful birth based on the liability for breach of contract or the liability for tort.^[2] Wrongful birth tort liability and breach of contract liability are different in many aspects, such as the establishment requirements of liability, the subject exercising the right of claim, the scope of compensation, the effect of exemption clause and so on. By comparing the differences between the two, from the perspective of protecting the interests of the victim, the parents of the defective children

choose the tort compensation has certain advantages over the contract breach compensation.

First of all, from the aspect of the subject exercising the right of claim, parents of defective children choose the path of tort liability relief to protect the legitimate rights and interests of the father of defective children. Improper birth not only infringes the legitimate rights and interests of the mother of the defective child, but also infringes the legitimate rights and interests of the father of the defective child. When a defective child is born, the father also suffers the same property loss and mental pain as the mother. If the damages caused by wrongful birth are remedied through the path of breach of contract, only the mother of the defective child can bring an action for wrongful birth breach of contract based on the relativity of the contractual legal relationship. Then, when the mother of the defective child is not willing to pursue the responsibility of the medical institution and does not file a lawsuit for breach of contract, or in some cases it is impossible to file a lawsuit, such as death due to childbirth or other physical reasons, the legal rights and interests of the father of the defective child are not protected. Therefore, the path of tort liability for wrongful birth damage can better protect the legitimate rights and interests of the father of the defective child.

Secondly, from the perspective of the scope of damages, parents of defective children choose the path of tort liability to relieve their mental pain. The reason why both husband and wife choose prenatal examination is to avoid giving birth to children with disabilities. Normal and rational parents have expectations for their children. When they know that their children have congenital disabilities, it is inevitable to have sadness, disappointment and other mental pain, which is caused by the fault of medical staff in the case of improper birth. If parents of defective children Sue for damages based on breach of contract, they will not be able to recover for emotional distress. The scope of compensation for breach of contract is usually limited to the compensation for property losses, and the compensation for mental damage does not belong to the scope of compensation for breach of contract. Therefore, compared with the action of damages for breach of contract, the relief path of tort liability has greater protection. The relief path of tort liability is to comfort the mental pain of parents of defective children. The relief path of tort liability for wrongful birth damage can realize the function that the relief path of breach of contract cannot achieve.

Finally, in terms of the validity of the exemption clause, the medical service contract between the pregnant woman undergoing the pregnancy test and the medical institution responsible for the pregnancy test may contain a clause similar to "medical personnel cannot ensure 100% accuracy of the results of the pregnancy test", because the pregnant woman may lack relevant medical and legal knowledge. Then the loss of the parents of the defective child will be difficult to fill. Because the Civil Code respects the autonomy of the parties and allows the parties to agree on the exemption and limitation of liability for breach of contract, it is difficult for the parents of the defective children to claim compensation from the medical institution for the corresponding loss. However, if the parents of the defective child claim the medical institution to compensate for the loss based on tort liability, the agreement between the two parties should not be taken into account, which will not affect the defendant to bear tort liability. As long as the medical staff is at fault in the process of birth examination, the parents of the defective child have the fact of damage, and there is a causal relationship between the fact of damage and the negligent behavior of the medical staff, then the wrongful birth tort liability is established, and the medical institution should compensate the parents of the defective child.

3. The Constitution of Compensation Liability for Wrongful Birth Tort

3.1. Illegality of Medical Practice

Article 3 of the Civil Code of our country stipulates that the legal rights of civil subjects are not infringed. The violation of rights violates the obligation prescribed by law, so it is illegal. In the case of wrongful birth, the court should first examine and ascertain what statutory obligation the medical negligence of the medical institution has violated in this type of case, thus making the act illegal. In order to ensure the health of mother and baby and improve the quality of born population, the legal obligations of medical institutions and medical personnel have been clarified through the enactment of relevant laws and regulations in the whole process of birth inspection. In addition, the relevant diagnosis, treatment and nursing standards also stipulate the legal obligations of medical institutions and their medical personnel during the course of childbirth examination.^[3] According to article 17 of the Measures for the Management of Prenatal Diagnostic Techniques, medical personnel are obliged to recommend prenatal diagnosis during the prenatal examination. Secondly, the informing duty of medical personnel in prenatal examination and prenatal diagnosis mainly includes the following situations. First, pregnant women and

their families should be informed of the risks of prenatal tests and prenatal diagnosis results. The second is when, after prenatal diagnosis, the medical personnel find that the fetus is carrying a serious genetic disease or defect, or that the continuation of the pregnancy may threaten the health of the pregnant woman. Third, limited to the current level of medical technology is difficult to diagnose the situation.

Finally, in accordance with article 17 of the Maternal and Child Health Measures, medical personnel, in addition to the obligation to inform the husband and wife of the abnormal condition of the fetus carried by the pregnant woman, are also obliged to give a medical opinion, which in this case mainly refers to whether the pregnancy should be terminated. Of course, as long as medical advice and advice is given to the couple, it is entirely up to the couple to decide whether or not to terminate the pregnancy. However, medical personnel should be extremely cautious when giving medical advice on termination of pregnancy, because the average pregnant woman does not know the relevant medical knowledge of childbirth, and the medical advice given by medical personnel is often enough to influence the decision of the couple. If medical personnel violate the above statutory obligations in the process of birth examination and fail to perform the required behavior in accordance with laws or relevant provisions of medical industry norms, it indicates that they have negligent behavior in the process of birth examination, that is, the behavior is illegal.

3.2. Fact of Harm

In the case of wrongful birth, due to the physiological development of the fetus, the doctor fails to provide accurate diagnostic information and medical advice to the parents due to his negligence, which violates the duty of care and notification required by the doctor's profession. The parents make the choice to continue the pregnancy based on the wrong diagnostic information out of the trust of the doctor's professional level and the results of the birth examination. In this process, The doctor's negligence greatly damages the parents' rights and interests.^[4] The establishment of tort requires that there must be actual damage. If there is no damage, there is no infringement at all. In fact, many courts hold that even if a child has a birth defect, it cannot be regarded as a kind of damage to bring a tort action, so they deny the legitimacy of wrongful birth damage relief through tort liability law. Although some courts have upheld wrongful birth claims, courts have supported the parents' tort claims by identifying the defective child as a result of the damages.^[5] But this approach is not reasonable, although the defective children have congenital disability or mental retardation, but it should not be regarded as a kind of damage.

In wrongful birth cases, the parents of the defective child do not Sue for infringement based on the fact that the child is defective, so the parents do not regard the defective child as an injury. A series of losses caused by the infringement of parents' rights and interests are real and undeniable. The damage fact in the tort liability compilation of the Civil Code refers to the objective fact that the doer's behavior infringes the victim's rights and interests protected by the Civil Code, thus causing the victim's property and non-property losses. Therefore, to judge whether there is damage in the case of improper birth, the first thing to be clear is what kind of rights and interests of the parents of the defective child have been damaged. In order to avoid giving birth to a child with defects, the parents of the defective child went to a medical institution for the purpose of obtaining the information about the fetus carried by the pregnant woman. However, the medical staff did not fulfill their obligations during the prenatal examination, resulting in the failure of the parents to obtain the correct information about the fetus, so that they made the decision to give birth without knowing it. Based on the wrong information, she made a judgment and chose to give birth to the child. Therefore, it can be seen that the negligence of the medical staff during the birth examination violated the informed choice of the parents.^[6]

Secondly, for the parents of defective children, raising a child with congenital defects is bound to cost a lot of economic expenses, such as medical expenses, special education expenses and nursing expenses, disability AIDS and so on. This is the improper birth situation, the objective performance of the loss of parents' property interests. Moreover, in addition to the specific loss of property interests, the birth of the defective child will also bring a huge mental blow to the parents, because the purpose of the birth examination is to avoid the birth of the defective child, but due to the negligence of the medical staff led to the birth of the defective child, the parents will inevitably have disappointment.^[7] Parents who give birth to a child with a birth defect, and in the process of raising this child, must suffer unimaginable mental pain and stress, and put more energy into it. Thus, it can be seen that the negligent behavior of medical personnel in the course of birth examination not only causes damage to the property interests of parents, but also causes damage to the spiritual interests of parents.

3.3. Causal Relationship Exists

How to determine causality is a major point of dispute in wrongful birth cases. Due to the negligence of doctors, the birth defects of the fetus were not detected when the development degree of modern medical conditions allowed, or the parents of the baby were not informed when the birth defects were detected, which resulted in the birth of the disabled baby, and the harm caused by the negligence of doctors led to the occurrence of the damage. That is, the infringed lost the material and spiritual benefits of obtaining a healthy baby, which has a considerable causal relationship.^[8] In China's judicial practice, the judgment of the vast majority of cases depends on the opinion of the expert body, and many expert opinions believe that the birth defects of infants already exist objectively before the prenatal examination, and are not caused by the doctor's diagnosis and treatment behavior, so there is no causal relationship. Judicial appraisal institutions often believe that doctors' behavior is somewhat negligent, but the malformation of children is caused by their own growth and development. Even if there is no negligent behavior of doctors, their defects are doomed to exist, and there is no causal relationship with the negligent behavior of doctors. In fact, such an opinion is so one-sided that the court should not adopt it outright.^[9] It is precisely because the infant's defect is not caused by the doctor's diagnosis and treatment behavior that it is different from medical malpractice and is a new kind of medical tort. The establishment of the liability for medical damage itself does not need to take the occurrence of medical malpractice as the premise. Therefore, when dealing with cases of improper birth, the court should realize that the object of damage is not the birth defect of the baby, let alone the birth itself of the baby, but the infringement of the right to know the birth of the parents, which ultimately leads to their mental and material damage. We should objectively judge whether causality is established or not from the Angle of legal liability.

Although the malformation of the child has nothing to do with the doctor's negligence, the injury suffered by the pregnant woman in the wrongful birth lawsuit is not the birth of the disabled baby at all, but the loss of the benefits of abortion. Therefore, the causal relationship that the court will determine is whether there is a causal relationship between the doctor's negligence and the loss of abortion opportunity for the pregnant woman, not whether there is a causal relationship between the doctor's negligence and the child's deformity as stated in the forensic report. For example, in an appeal case of a liability dispute for medical damage in Guilin City, the appraisal body concluded that there was no causal relationship between the baby's birth defects and the treatment behavior of the defendant hospital.^[10] Under this premise, the court still requires the defendant hospital to bear 70% of the responsibility. The reason is that couples who go to medical institutions for multiple prenatal examinations want to know the health of the fetus, and medical institutions should be aware of the importance of the health of the child to the couple. Doctors as experts, master a lot of professional knowledge, patients in a passive position, high trust in medical staff. Whether the husband and wife know the health degree of the fetus or not is the premise to make whether it is necessary to carry the fetus. Although the defendant's treatment behavior does not constitute medical malpractice, it infringes the legitimate rights and interests of the couple. Such judgment is to judge the causality in the wrongful birth action from the perspective of tort liability constitution, and realize that wrongful birth is a special type of medical tort case, so as to determine that there is a considerable causal relationship between the doctor's negligence and the interest damage suffered by the parents.

3.4. Medical Institutions Are at Fault

In cases of wrongful birth, medical institutions failed to fulfill their duty of careful care in prenatal examination and failed to detect the birth defects of the fetus under the condition of the medical technology at that time, thus failing to fulfill their duty of informing the parents, which eventually resulted in damaging consequences. In wrongful birth cases, the subjective fault judgment of medical institutions includes duty of care standard and medical standard limited at that time. The first is the duty of care standard. Medical personnel in medical institutions have professional knowledge and belong to professional and technical personnel, so the standard of their duty of care is higher than that of ordinary people, at least to meet the standard that ordinary medical personnel should have in the same situation.^[11] In the case of wrongful birth, traditional Chinese medicine doctors should not only meet the duty of care in the general medical treatment process, but also bear the special duty of care in the prenatal examination of pregnant women. It is mainly manifested as the obligation of prenatal examination and diagnosis, the obligation of informing, and the obligation of proposing termination of pregnancy. The sources of medical institutions' duty of care include the contract agreement and some medical practices as well as the provisions of laws and regulations. Specifically, the prenatal examination mainly includes the provisions of laws and regulations such as the Law on Maternal and Infant Health Care and the Measures for the Management of Maternal and Infant Health care, as well as the duty of care in local documents.

On the one hand, the medical provider's duty of care during prenatal examination is the most common medical process of prenatal examination. This part of examination has been stipulated in the current prenatal examination as a normal procedure step, which is required for every pregnant woman to undergo prenatal examination. Therefore, the infringed only needs to basically prove that the medical provider failed to fulfill its duty of care. On the other hand, in the prenatal examination stage, if the medical team finds or suspects that the pregnant woman or the fetus has abnormal conditions, it shall immediately inform and explain, and in serious cases, it is further recommended to carry out prenatal diagnosis. If it is confirmed that the medical team fails to fulfill or fully fulfill the above obligations, it is also required to identify the fault of the medical institution.^[12]

The second is limited to the standard of medical treatment at that time. Article 1221 of the Civil Code stipulates that medical institutions shall be liable for compensation if medical personnel fail to fulfill the obligation of diagnosis and treatment in accordance with the medical treatment level at that time and cause damage to patients. In addition, Article 16 of the Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law to the Trial of Disputes over liability for Medical Damage stipulates: The fault of a medical institution or its medical personnel shall be determined in accordance with laws, administrative regulations, rules and other relevant norms for diagnosis and treatment, taking into account such factors as the urgency of the patient's condition, individual differences of the patient, local medical level, and qualifications of the medical institution and medical personnel. It can be seen that the judgment of doctors' negligence in wrongful birth cases should also be based on the standard of medical treatment at that time, and the judgment of medical treatment at that time also needs to take into account the location of the medical institution, whether it has the qualification, the medical conditions it has and the professional level of medical personnel. Although the medical technology of prenatal examination has been developed and popularized in our country, there are differences in the level of medical treatment in various places and various periods due to the finiteness of medical resources. In fact, under the current medical conditions, the birth defects of the fetus can not be detected 100% through the technical means of prenatal examination.^[13] In addition, due to the long period of pregnancy and perinatal period, there is often a time separation between the damage and the medical behavior, so when judging the fault of the medical institution, the technical level of the medical institution at the time of prenatal examination should prevail. When the court judges whether a medical institution is subjectively at fault, it should not only refer to the entire technical level elements within the industry, but also examine the qualifications and technical conditions of medical personnel within the region and medical institutions.

4. The Undertake of Compensation Liability for Wrongful Birth Tort

4.1. Subject of Responsibility

In the tort liability Series of the Civil Code, Article 1218 and the second item of Article 1219 both point out that if the medical institution or its medical personnel cause damage to others, the medical institution shall be liable for compensation. Article 1191 of the Civil Code states that a unit should be held responsible for injury caused by an act of duty. In our country, the relationship between the medical personnel and the medical institution because a labor contract is signed between the TWO, and between the two is actually a kind of relationship of employment and employment. The act of providing prenatal examination and diagnosis to pregnant women by the medical staff is carried out under the authorization of the medical institution and is not the individual act of the doctor, so it is in fact a professional act. In the wrongful birth lawsuit, if the doctor fails to perform the relevant obligations in the process of prenatal examination and is at fault in the process of performing his duties, the medical institution as the employing unit shall bear the liability for damages to the parents of the defective child for the fault of the doctor.

4.2. Scope of Indemnity

In the scope of damages, general maintenance should first be excluded. General maintenance is the cost of raising a healthy child, including the child's living expenses, education expenses, medical expenses, etc. The purpose of damages is to compensate for the loss of the victim. For the pregnant parents, the costs of raising a healthy child are foreseeable in their pre-existing expectations, and this foreseeable obligation cannot be shifted just because the child is born defective. Parents have the obligation to bring up and educate minor children according to law, which cannot be separated from the legal obligation of parents and borne by medical institutions, so the request for general maintenance

should not be supported. Secondly, the special maintenance should be supported. This includes the expenses incurred in the course of testing to identify fetal defects, the expenses incurred in the diagnosis and treatment of defective premises, the expenses incurred in the course of special care, and the cost of disability assistive devices required subsequently. Victims in cases of wrongful birth need to pay more for the maintenance of children than children in normal health conditions.^[14] Such special maintenance costs have a causal relationship with the negligence of medical institutions and should be supported.

Finally, compensation for mental damage should also be recognized. According to Article 1183 of the Civil Code, if serious mental damage is caused to the personal rights and interests of a natural person, the infringed shall have the right to claim compensation for mental damage. In the wrongful birth suit, the parents expect to have a healthy child, but due to the negligence of the medical institution, they unexpectedly produce a defective fetus, which not only severely damages the parents' expectations for the child, but also causes immeasurable mental pain, which is fully eligible for mental damage compensation. In addition to compensating the victim, the mental damage compensation can not be ignored as a warning to the party causing the damage. Children with congenital defects also have the right to pursue a normal life and cannot be taken for granted as a burden on the society. To give their parents a certain degree of relief is conducive to relieving their parents' great mental pain and is also a material guarantee to ensure the basic living conditions of children with defects. It is not beyond the scope of reasonable relief for medical institutions to bear the compensation for mental damage, which warns some medical institutions with serious lack of sense of responsibility, which can effectively reduce the occurrence of similar tragedies.

4.3. Defense of Medical Institution

The first is the limited quality of care. When judging whether the medical level at that time is met, the medical development level of the area where the medical institution for prenatal examination is located, whether the medical institution has relevant qualifications for prenatal health care services and whether the medical personnel engaged in relevant services have professional qualifications and levels should be considered. Therefore, it is considered that genetic or external defects that are difficult to be detected by prenatal testing under the current medical level should be considered as one of the reasons for medical providers to reduce liability.

The second is parental consent. In the case of a parent with a congenital disability, during the course of the pregnancy examination, the medical personnel inform the child of the genetic possibility of such a disability, but the parents express consent to continue the pregnancy. This kind of situation belongs to the consent of the parents of the fetus, that is, the parents of the fetus voluntarily give up their rights and interests, knowing that they will suffer great mental damage and the burden of supporting the child, but still give birth to the child. The doctor has fulfilled the obligation of informing and suggesting the prenatal examination in the process, so the medical institution does not bear the tort liability in this case.

Finally, the parents are at fault. Article 1173 of the Civil Code stipulates the principle of offsetting negligence. If the infringed is at fault, part of the liability of the infringed can be mitigated accordingly. In the case of wrongful birth, the fault of fetal parents mainly includes two situations. The first is that the parents miss the best time for diagnosis for reasons of their own, either too early or too late, which could affect the results.^[15] The second is to misinform or deliberately conceal their own family genetic history, the presence of alcohol, drugs, drugs and other conditions during pregnancy prone to fetal malformation, the marriage of close relatives of the couple, gestational age and the number of pregnancies and other information related to the judgment of fetal health. In the case of wrongful birth, if the parents have the above fault, the court should consider it as the reason for the medical side to reduce the liability.

5. Conclusion

Under the background of the rapid development of science and technology and the basic national policy of good birth and good birth, the development of technology, especially the appearance of relevant diagnosis and treatment means, has created realistic conditions for the occurrence of wrongful birth cases. It has become an inevitable choice for pregnant women to carry out prenatal examination, and the number of disputes caused by this has been on the rise. In wrongful birth cases, the litigation of tort and the litigation of breach of contract are matched, the parties can exercise their right to claim, but choosing the litigation of tort can protect their interests better and suit the actual needs in our country. Medical institutions in wrongful birth violate the statutory duty of diagnosis and treatment and the duty of notification, and infringe upon the rights and interests of the parties concerned. Medical institutions, as

employers of medical personnel, should be liable for compensation, including special maintenance fees and compensation for mental damage in addition to general maintenance expenses. At the same time, medical institutions also have the corresponding defense reasons, so as not to be overly harsh. In dealing with such cases, the court should not only apply the current law effectively and reasonably, but also deal with it appropriately and flexibly. Thus effectively protect the legitimate rights and interests of the parties, promote the harmonious relationship between doctors and patients, maintain social stability.

Acknowledgements

Supported by: “Postgraduate Scientific Research and Innovation Fund Project of Anhui University of Finance and Economics”, Project Title: “Research on Compensation Liability for Wrongful Birth Tort” (Project approval number: ACYC2022329).

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