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Lavinia Doyle and Luca Chiussi at the High Court in Dublin yesterday. Photograph: Garrett White/Collins

Couple win case against HSE over death of baby

A couple who argued that the right to life of the unborn amendment to the Constitution supported their claim of entitlement to damages for wrongful death of their stillborn baby son have settled their High Court action for a substantial sum and with an admission of liability by the HSE.

Lavinia Doyle (36) and her partner, Luca Chiussi (35), Burnmount, Co Waterford, had sued the Health Service Executive after their baby, Ethan, was stillborn in Waterford Regional Hospital in July 2003. Their first child, Matteo, had died three days after his birth in the same hospital just a year earlier.

The case centred on the treatment Ms Doyle received while in hospital and on whether there was provision under law for damages

for the death of an unborn child.

When the case was due to resume at the High Court yesterday, Denis McCullough SC, for the couple, said it had been settled. Liability had been admitted by the HSE, and the couple were to receive "an agreed sum".

Mr Justice Paul Butler was also told that the Attorney General, who had been joined in the action because the couple claimed their right to seek damages for an unborn child had to be interpreted in accordance with Article 40.3.3 of the Constitution, vindicating the right to life of the unborn, would pay his own costs.

The settlement means the question whether there is an entitlement under the Civil Liability Act 1961 to damages for a stillborn child remains undecided.

Ms Doyle has since had another child, Mattia (2), who was born in Italy because, Ms Doyle said, she had not been happy with the treatment she received here.

The court had heard that Ms

Doyle and Mr Chiussi, her partner of 10 years, returned to Ireland in 2001 to start a family. In 2002, during her first pregnancy, she went into eclamptic shock. Matteo was delivered by Caesarean section but died from complications.

Ms Doyle became pregnant again later that year. In her 29th week, her legs became swollen and she was admitted to Waterford Regional. She was discharged but readmitted five days later.

It was claimed she suffered an early separation of the placenta from the wall of the uterus (placental abruption) and that she sought to have the baby delivered by Caesarean section but was told that was not necessary. Ethan was delivered stillborn.

The couple claimed the HSE failed to detect or to respond appropriately to the onset of constant abdominal pain and caused or permitted the baby to die by failing to deliver him in time or at all.

They also claimed the hospital failed to inform Ms Doyle of the

delivery options and did not adhere to approved medical practices applicable in the circumstances. As a result of Ethan's death, they continued to suffer mental distress, loss, damage and expense, it was claimed.

The HSE argued there was no provision under the law under which the couple sought damages for a claim in respect of an unborn baby; the baby was not a person within the meaning of the 1961 Civil Liability Act, which allows one to sue for wrongful death.

The couple's lawyers contended the 1961 Act had to be interpreted in accordance with Article 40.3.3 and also pleaded that if they were not covered by the current law, then the 1961 Act was unconstitutional and also incompatible with the European Convention on Human Rights Act.

The HSE had also denied its servants or agents were guilty of any negligence or breach of duty or that they occasioned or caused the death of Ethan.