

THE HIGH COURT**[2013 No. 8102 P.]****BETWEEN****CAROLINE HAMILL****PLAINTIFF****AND****SIOBHAN O'CALLAGHAN****DEFENDANT****JUDGMENT of Mr. Justice Michael White delivered on the 30th July 2015.**

1. The plaintiff issued proceedings on 31st July, 2013, seeking damages for personal injury arising from a road traffic accident on 23rd February, 2012, when the plaintiff's vehicle was stationary in the forecourt of Murphy's Petrol Station, Carrickasticken Road, Forkhill, Co. Armagh. The proceedings were heard in Dundalk on 15th, 16th and 19th June, 2015, and judgment was reserved.

2. The undisputed evidence was that the plaintiff drove into the forecourt of the petrol station on the afternoon of 23rd February, 2012, and parked her car an Opel Astra. She was accompanied by her daughter. She removed her seatbelt to get out but before exiting a VW Jetta driven by the defendant reversed into her car. The defendant was parked at the petrol pumps, and as her path ahead was restricted she reversed. There was some distance between the two vehicles, perhaps 3 to 4 car lengths. As a result of the impact there were some scratches on the Volkswagen Jetta bumper. There was damage to the number plate, a bracket and the paintwork above the number plate of the plaintiff's vehicle. The defendant accepted there was an incline to her rear and she did not see the plaintiff's vehicle.

3. The severity of the impact is in dispute. The plaintiff stated that her vehicle was hit hard and she was jolted. The defendant stated that she reversed at low speed and tipped the car and did not feel the impact.

4. The plaintiff alleges significant injuries as a result of this impact. The defendant alleges that due to the nature of the impact, the plaintiff could not have suffered any injuries.

Expert Evidence on the Collision

5. The plaintiff and the defendant both called experts on the significance of the impact, Colin Glynn, an engineer from Denis Woods and Associates with twelve years experience called on behalf of the Plaintiff, stated that some time later on 28th October, 2014, he examined the plaintiff's vehicle for the purpose of forensic examination. He removed the bumper from the vehicle and was of the opinion that there was some structural damage to the front metal bumper bar which showed minor bowing indicating a rear deformation to the centre of the bumper bar and damage to the top flange of the flat face bumper bar. He was of the opinion that modern bumper construction with a smooth flexible bumper cover is such that relatively severe bumper to bumper impacts can occur where visible exterior damage is either absent or minor. Based on his examination and his expertise, he formed the opinion that it was a significant impact although accepting it was a low speed impact and that the impact absorbers would spread the load of the impact. Mr. Glynn accepted that he had not examined the defendant's vehicle. He accepted that the force applied to a driver or a passenger in a vehicle hit from the rear is greater than the force suffered by a driver or passenger who is engaged in a frontal impact but did not accept that it was twice the level of force. While he accepted the occurrence of injury in any collision, is ultimately a matter for a medical expert, he was of the opinion the collision speed between the vehicles was enough to cause injury to the plaintiff.

6. Martin McGrath, a motor engineer and assessor of Assess Ireland, gave evidence on behalf of the defendant. He stated that he examined the plaintiff's vehicle on 25th April, 2012, and noted damage on the centre front number plate area. He examined the defendant's vehicle on 20th June, 2012, and there was no damage apart from a small fracture to the paint lacquer. He formed the opinion that the impact between the vehicles was minor.

7. Simon Farrell, Mechanical Engineer and Forensic Collision Investigator, gave evidence on behalf of the defendant. He had prepared a report of 13th February, 2014, and an addendum of 11th June 2015 in response to the report prepared by Denis Wood Consulting Engineers of 3rd November, 2014. He gave evidence in accordance with those reports. Mr. Farrell did not inspect the vehicles but based his conclusions on photographs. He noted that the vehicles sustained marks to their bumpers. Based on other crash tests which he referred to in his report, he concluded that the damage sustained in the collision under review corresponded to a change in velocity of the plaintiff's vehicle of less than three miles per hour. He noted that the movement experienced by an occupant of the vehicle in a frontal impact is not as severe as an occupant hit from the rear.

8. He formed the opinion that the movement experienced by the occupants of the Opel would have been similar to everyday activities and that due to the dynamics of the collision, the occupant of the Volkswagen would be more likely to experience an unusual level of movement during the collision. He took issue with the evidence of Colin Glynn on his findings.

9. He formed the opinion that the damage to the Opel bumper lattice was not caused in the original accident and noted that it would be unusual for the garage that carried out the repairs not to have removed the front bumper and have carried out an inspection. He was of the opinion that the paint damage to the bumper above the number plate was caused by contact with a rough surface such as masonry rather than with the bumper of another vehicle. Mr. Farrell considered that this was a very light impact accident, and that the velocity of the impact was less than three miles per hour which would be no more than daily activity which could not result in injury to the plaintiff.

10. The evidence before the court was further complicated by a challenge to the defendant, Siobhan O'Callaghan, on a collateral

matter. Ms. O'Callaghan gave evidence that the plaintiff was very aggressive to her after the impact and that another person, Edel Gartland had witnessed the plaintiff's behaviour. Ms. O'Callaghan denied in cross examination that she was a good friend of Edel Gartland. When Edel Gartland gave evidence in direct examination she maintained that she was not a good friend of the defendant, but on cross examination she accepted when certain photographic evidence was put to her she was a good friend. The evidence of the defendant has been undermined albeit on a collateral issue but the court, as a result, cannot rely on her evidence on the nature of the impact.

The Injuries Complained of by the Plaintiff

11. The court had the benefit of the evidence of Eoin Barry; Consultant Orthopaedic Surgeon, and the Plaintiff's general practitioner, Dr. Michael Kiernan. The defendant had the plaintiff examined by a Consultant in Emergency Medicine, Mr. Robert F. McQuillan, who gave evidence also.

12. A number of medical reports were furnished to the court, upon which the medical witnesses relied when giving evidence. The court has considered three reports from Mr. Eoin Barry of 6th June, 2012, 3rd September, 2013 and 10th September, 2014, and a report from Dr. Michael Kiernan of 18th June, 2015 and a report from Robert F. McQuillan of 13th March, 2014. The court also had the benefit of written comments by Mr. Barry on an MRI scan of the plaintiff's cervical and lumbar spine on 15th September, 2012 and a further report on the plaintiff's MRI scan on her cervical and lumbar spine carried out on 20th September, 2014. The court also received the written notes from the plaintiff's attendance at the Health Service Executive North East Minor Injury Unit on 25th February, 2012 and also her medical notes over a number of years from her GP.

13. The medical notes noted that she had been involved in a road traffic accident previously, and suffered back and neck pain.

14. Mr. Barry noted in his report of 6th June, 2012, that the plaintiff complained of pain in her neck following the accident up to about three to four weeks post accident when it appeared to improve. She experienced night discomfort in her neck which would tend to wake her in the early hours but did not suffer from radicular arm pain. He stated that when she did computer work it tended to aggravate her neck pain. In respect of her lumbar spine, she complained of ongoing pain in her lower back area. She had early morning stiffness and her symptoms were aggravated by domestic activities involving stooping and lifting. She developed pain down her left thigh which came on about two to three weeks after the accident which radiated to the knee with paraesthesiae in the lower part of her knee. He noted that her lower back and left leg were causing her most difficulty at that time. Mr. Barry's opinion was that the plaintiff had sustained injuries to her neck and her back as a result of her road traffic accident in the forecourt of the petrol station in Forkhill on 23rd February, 2012. She had experienced some neck and back symptoms following an earlier road traffic accident that occurred in August 2004 but these symptoms had settled fully for her at the time this accident happened.

15. He noted that as of 6th June, 2012, she complained of ongoing symptoms in her neck which he felt had improved by about 40% but continued to cause her significant difficulty. She complained of ongoing pain in her lower back area and in her left leg. This appeared to be in the S1 root dermatome on the left hand side. She clinically had an S1 root radiculitis. He recommended doing an MRI scan of her lumbar region.

16. The MRI scan carried out on 15th September, 2012, revealed that she had degenerative change in the lower four lumbar discs with a small disc protrusion at L4/5 and a slight disc bulge at L5/S1. At L2/3 and L3/4, there was some minor encroachment of the nerve root foramen. At L4/5 and L5/S1 there was moderate bilateral neural foraminal stenosis mainly on the right hand side and also mild to moderate left sided foraminal stenosis at the L5/S1 level. Mr. Barry was of the opinion that the changes noted in the scan were of a degenerative wear and tear nature and likely to be of long standing. In respect of her cervical spine, it showed some mild degenerative change with a disc bulge at C4/5 and C5/6 with some loss of water content in the discs in this area but no evidence of cord compression. He noted that the road traffic accident in August 2004 may have had a bearing to some extent on her scan changes which he found to be of a mild degree and likely to be of long standing.

17. In his report of 3rd September, 2013, fifteen months after the first report, he noted the plaintiff's complaints that if she had been driving for a period of time or working on a laptop or computer, she experienced neck pain and on occasion had early morning neck pain and stiffness and that her activities were aggravated by reading and watching television. She had no radiation of pain into her arms. Carrying shopping aggravated her neck. She stated her neck had improved to some extent but she got intermittent spasms of pain. She was taking medication and used a heated beanbag and that physiotherapy was beneficial but short lived. In respect of her lumbar spine, she said it was causing her the most trouble and she experienced episodes of spasm from time to time and severe pain in the lower back on the right hand side. She found that heavy domestic activity such as hoovering aggravated her back pain and that the pain radiated into the buttock area on her right hand side. She stated her right leg pain had come on over the past three months and prior to this she had suffered from left sided lower back pain. On the left hand side she experienced paraesthesiae radiating as far as her knee which originated in her lower back area and on the right hand she had more recent episodes of pain and currently felt that her right was more symptomatic than her left. She stated that she had extensive physiotherapy to the right hand side of her lower back and buttock over the previous few months. Mr. Barry's opinion was that she sustained soft tissue injuries to her neck and lower back and that the changes noted in the MRI scan were long standing. He noted she was significantly overweight. He recommended continuing physiotherapy and review by a pain specialist. He advised swimming and weight reduction to improve spinal mobility.

18. In his final report of 10th September, 2014, one year after his second report. He noted that the complaints of the plaintiff were that she had an acute episode of pain in the neck in October 2013, which occurred spontaneously without any obvious cause. She felt that some increased driving on holidays exacerbated her symptoms which required physiotherapy. When she changed her job in February 2014, she had increased symptoms in her neck due to a lot of activities. He noted there had been some gradual improvement in her symptoms. In respect of her lumbar spine, she complained of ongoing pain in her lower back area which caused her the most difficulty and she felt that there had not been a lot of improvement in her back symptoms. She noted some improvement in her lower back pain during the summer months when not working but this returned when she commenced work again. Mr. Barry's opinion was that the plaintiff had the same injuries to her neck and back. He noted that she had been referred to see Dr. Frank Chambers, a pain specialist who had given a steroid epidural injection which she did not find helpful. He noted that she continued to complain of ongoing pain in her neck and her lower back. He noted that in view of the plaintiff's ongoing symptoms in her neck and her back that there is only about a 10% improvement in her symptoms to date. He felt it prudent to repeat the MRI scan.

19. The MRI scan of 20th September, 2014, noted there had been no change from the previous assessment carried out on 15th September, 2012, and he noted that as there was no significant change from her previous assessment that it was a good prognostic sign from the plaintiff's point of view.

20. Her GP, Dr. Michael Kiernan when giving evidence, relied on a written report which noted that the plaintiff was seen by him six days post accident. She complained of headaches and a sore neck. She also complained of lower back pain which on a subsequent visit on 11th April, 2012, was radiating into her left lateral thigh. He noted her present complaints as of 18th June, 2015, as intermittent pain in her lower back more so than her neck especially when sitting for a long time and also when driving. He noted progress since the accident that she made a 60% overall improvement especially with her neck pain which was almost resolved. He noted she could only drive certain distances and sit for certain lengths of time. She was prevented from comfortably carrying out her work and when working she gets an exacerbation of her back and neck pain. His opinion was that the soft tissue injury she experienced to her neck and lower back continued severely into late 2014 and that it was now beginning to settle.

21. Mr. McQuillan again gave evidence in accordance with his report and noted various complaints made by the plaintiff between March 2009 to February 2012, to her general practitioner. He noted that her present complaints were that she had intermittent neck pain related to activity and that these occurred on three occasions in the previous months and would last for two to three hours. He noted she had low back pain which related to work. It was recorded on three or four occasions in the last month lasting up to a few days at a time and that she would take medication for this. He noted that the plaintiff had a satisfactory range of movement in her cervical and lumbar spine with discomfort at extremes of movement in the neck and back. He noted that she had multiple symptoms prior to her road traffic accident. He noted she was involved in a minor frontal impact.

22. He was of the opinion that as a general rule on a frontal impact, twice the forces are required to induce injury as a rear end impact and it was extremely unlikely that sufficient forces were transmitted in the impact in this accident and he was of the opinion, at most, the accident could have aggravated pre-existing symptoms and the increased symptoms would, at most, have lasted for a few months and that there was no possibility that the plaintiff had ongoing symptoms at this stage related to the road traffic accident in February 2012.

23. He disagreed with Mr. Barry's evidence that the opinion as to her injuries could be based on objective findings. Mr. McQuillan was strongly of the view that there were no objective findings but the extent of the injuries and prognosis could only be based on the subjective information communicated by the plaintiff to her doctors.

24. The court cannot rely on the evidence of the inspection of the Plaintiff's vehicle on the 28th October 2014 as it is too remote from the accident date.

25. I am satisfied on the balance of probabilities, that the impact to the plaintiff's vehicle could have exceeded the threshold of velocity which could result in the plaintiff suffering soft tissue injuries. I base my findings on the evidence of the plaintiff, the fact there was some distance between the defendant's car which was reversing and the plaintiff's vehicle which was stationary and that the defendant was reversing down a slight incline. I accept the evidence of Colin Glynn that an impact can occur with minor damage to vehicles which can cause injury to an occupant of a vehicle. Construction of bumpers with smooth flexible covers is such that relatively severe bumper to bumper impacts can occur where no visible exterior damage is evident. I also accept the evidence of Simon Farrell and the opinion of Mr. Robert McQuillan that the forces at work on a frontal impact are much less than those for occupants who suffer injuries when they are hit from behind. The fact that the Plaintiff was not wearing a seat belt at the time of the accident could have had a bearing on the injuries suffered. Having found that the plaintiff could have been injured, the court is nevertheless of the opinion that the collision between the defendant's moving vehicle and the stationary vehicle of the plaintiff was a very minor one.

26. In those circumstances, the court finds as a matter of fact, that the continuing complaints of the plaintiff as to her injuries could not have been caused as a result of the road traffic accident. There are some inconsistencies in her accounts to the medical practitioners.

27. The MRI scans of 15/09/2012 and 20/09/2014 show no change between the two, which led the court to conclude that this was not a case where there was a major activation of pre-existing degenerative change which can happen in serious soft tissue injury.

28. In respect of the medical evidence, the court prefers the evidence of Robert McQuillan and is satisfied that the plaintiff suffered some soft tissue injuries as a result of this road traffic accident and the impact of the injuries suffered would have cleared up within twelve months. The difficulties that the plaintiff has encountered with her back and neck subsequently in the courts opinion have no connection with the minor impact on 23rd February, 2012. The fact that it was a frontal impact on the Plaintiff would also indicate to the court that the effects of the accident on her would not be of long standing.

29. The defendant has asked the court to apply the provisions of s. 26 of the Civil Liability and Courts Act 2004, which states:-

"(1) If, after the commencement of this section, a plaintiff in a personal injuries action gives or adduces, or dishonestly causes to be given or adduced, evidence that -

(a) is false or misleading, in any material respect, and

(b) he or she knows to be false or misleading,

the court shall dismiss the plaintiff's action unless, for reasons that the court shall state in its decision, the dismissal of the action would result in injustice being done.

30. The defendant carries the onus of proof on the balance of probabilities to establish that s. 26 applies.

31. The court adopts the phrase of Feeney J. referred to in the Supreme Court decision of *Ahern v. Bus Éireann* delivered on 2nd December, 2011, [2011] IESC 40, when he stated:-

"If the respondent was failing to give a detached medical assessment of which continuing symptom or symptoms are due to the accident, and could objectively be said to have overstated the connection, it can be no more than an understandable exaggeration of the respondent's subjective belief."

32. In those circumstances, the court will not apply the provisions of s. 26 of the 2004 Act, nevertheless the Plaintiff damaged her credibility by attributing symptoms to the road traffic accident which in my opinion had nothing to do with it.

33. These proceedings should never have been initiated in the High Court as the appropriate level of damages, does not exceed the

jurisdiction of the Circuit Court.

34. The court finds no future loss and in respect of the historic personal injuries assesses damages of €8,000. In addition, the court will allow special damages which will be required to be clarified for the court's benefit.