

THE HIGH COURT

[2011 No. 232P]

BETWEEN:

ANASTAZJA MISKIEWICZ

PLAINTIFF

-AND-

DUNNES STORES

DEFENDANT

JUDGMENT of Mr. Justice Twomey delivered on 14th day of April, 2016.

1. The plaintiff alleges that she developed pain in her neck and upper back while lifting boxes on the 26th January, 2010, while working for the defendant.
2. This Court must consider whether this pain was caused as a result of this incident at work and if so, whether this arose from an act or omission of the defendant.
3. Since the incident, the plaintiff has had the misfortune of suffering from bi-polar disorder and has been hospitalised on two occasions for this condition, on both occasion for 3 months. She has also been diagnosed with ovarian cancer, as well as suffering from a heart complaint.

The plaintiff's injuries

4. As regards the plaintiff's injuries, based on the report dated 19th May, 2011, of Mr. John Curtin, consultant orthopaedic surgeon for the defendants, X-rays of the plaintiff taken on the 19th February, 2010, showed narrowing of C5/C6, C6/C7 and in the dorsal spine and some narrowing of the intervertebral disc spaces in the lower dorsal spine.
5. According to Mr. Curtin's report, these changes predated the accident. He concludes that these changes would be considered normal for the plaintiff's age and would not have been caused by the accident.
6. On his examination of the plaintiff on the 17th May, 2011, Mr. Curtin recorded that the plaintiff advised him that she was much better and was off all medication, that movement in her cervical spine and shoulder was full and pain free, that movement in her dorsal spine was full and pain free and movement in her lumbar spine was full and pain free.
7. Mr. Curtin described the injury in his 2011 report as a soft tissue injury and he concluded that she had made a full recovery and did not recommend any further MRI X-rays.

Evidence of the plaintiff

8. When this Court comes to consider the evidence of the plaintiff, her evidence is inconsistent with Mr. Curtin's report since her position is that she is still in pain and on medication for her back pain.
9. The plaintiff seeks compensation from the defendants for the back injury which she alleges she suffered on the 26th January, 2010.
10. This Court has to consider whether the soft tissue back injury for which the plaintiff now seeks compensation, which Mr. Curtin recorded had completely recovered in 2011, but which the plaintiff says continues to trouble her, was caused by an incident on 26th January, 2010.
11. In deciding on this causation issue, the Court attaches significance to the fact that;

- During the course of the hearing, the evidence of the plaintiff was at times inconsistent. For example, during her cross-examination, the plaintiff stated that she had received manual handling training about 2 years before the incident. However, when it was put to her that she had signed an attendance form and answered detailed questions at a manual handling training course two months before the accident, she accepted that her claim that it was 2 years before the accident was incorrect.
- Equally some of her evidence was difficult to reconcile. For example, during her examination in chief, the plaintiff stated that she felt severe pain in the back and neck on the day of the accident on 26th January, 2010, when it occurred at between 5 and 6 pm. Yet she continued to work until 9 pm.
- Similarly, she said that she was in pain that evening and went to see her GP, Dr. Daly, the following day, yet she accepted in her cross examination that he did not prescribe any pain relief. When questioned, she accepted that if she had been in severe pain he would have prescribed pain relief.
- Of significance is the fact that she admitted under cross examination that when she went to see Dr. Daly on the 27th January, 2010, she *"just complained generally to Dr. Daly"* and that Dr. Daly had concerns about her general health and he decided to send her for blood tests and he recommended rest.
- Also of significance is the fact that she admitted under cross examination that she only mentioned the incident at work to Dr. Daly after coming back from Poland after she went for various tests.

Chronology of medical issues

12. Other evidence that this Court must consider is the documentary evidence, particularly the documents that were generated closest to the time of the alleged accident and also the general chronology of the medical issues which befell the plaintiff.
13. A medical certificate was issued by Dr. Daly in this case, which is dated 17th February, 2010, for one week until 24th February,

2010. As the plaintiff went to Dr. Daly for the first time on the 27th January, 2010, this may not have been the first medical certificate that was issued by the plaintiff's doctor, Dr. Daly, but it is the earliest medical certificate which the defendant or the plaintiff has produced to the court.

14. It has been stated on behalf of the plaintiff that she provided medical certificates to the defendant prior to the medical certificate dated 17th February, 2010. However, no evidence has been produced to support a contention that the defendant has deliberately held back such medical certificates.

15. This medical certificate of the 17th February, 2010, states that the plaintiff was suffering from stress. Thus, another piece of evidence that the Court must consider in deciding on the causation issue is the fact that the closest medical certificate to the alleged incident which is before this court refers to the plaintiff suffering from stress.

16. During this period of sick leave between 17th and 24th February, 2010, which was the period when her absence was certified to be stress-related, the plaintiff returned to Poland as she stated that she felt more comfortable having medical tests done in her own country.

17. She saw a cardiologist on the 17th February, 2010, and was prescribed Micardis for her heart condition.

18. Two days after seeing the cardiologist, on the 19th February, 2010, she had X-rays which showed that she had age related back problems.

19. On the 4th March, 2010, she had an MRI which showed that she had an ovarian abnormality, which her own consultant Professor Molloy, regarded as serious enough to describe in his report as *"an ovarian abnormality which resulted in her eventually having a gynaecological examination, surgery and chemotherapy for ovarian cancer"*.

20. When giving evidence Professor Molloy felt that even if this ovarian abnormality was not the one which became cancerous, this scan result of March 2010 necessitated further tests and scans which should, or would, have been undertaken at that time.

21. The plaintiff also stated under cross examination that she saw a neurologist and she felt that seeing a neurologist, a cardiologist and an orthopaedic specialist during this time was natural in light of her concerns about her health as she wanted to discover what kind of problem she had.

22. It is relevant to note that after all of these tests were completed, Dr. Daly wrote to Dunnes on the 22nd March, 2010. In that letter, Dr. Daly states that the plaintiff:-

"has degenerative spinal disease, scoliosis, disc herniation in the cervical and thoracic spine, confirmed by x-rays and MRI scans".

23. This letter is also significant in deciding on the causation issue. In this letter, which is the closest letter to the date of the alleged incident, there is no reference to a soft tissue injury or indeed to an accident at work, just a reference to the degenerative spinal disease which had been highlighted by the X-ray of 19th February, 2010, in Poland.

24. In Dr. Daly's next letter dated 23rd April 2010, he refers to the plaintiff suffering from back injury, but again it does not refer to that having been caused as a result of an incident in work.

25. In Dr. Daly's final letter of 30th June, 2010, to Dunnes, he states that the plaintiff is out of work since January with *"occupational back pain"*, again without any reference to a specific incident at work.

26. The final piece of the chronology of the medical issues is that the plaintiff was admitted for treatment of bi-polar disorder in 2011 for a period of three months and subsequently for a similar time-period.

Non-medical evidence

27. As regards other non-medical evidence that might assist the Court in deciding on this causation issue, there is the fact that no accident report was completed by the plaintiff at the time of the incident or thereafter, even though Ms. Jasmine Murphy, on behalf of Dunnes, gave evidence that this is required of all employees who have been injured at work.

28. It is also worth noting that there were no eye witnesses to the alleged incident.

Conclusion

29. This Court concludes, in light of all of this evidence and the inconsistent testimony of the plaintiff herself, that on the balance of probabilities, the plaintiff has become confused about the cause of her extensive medical difficulties over the past 6 years.

30. Indeed, this confusion about the precise cause of her medical difficulties is perhaps understandable in light of all the medical issues that have happened to the plaintiff and the fact that it is over six years since the 26th January, 2010.

31. In this regard, the plaintiff accepted that she could not remember certain details when under cross-examination, which is completely understandable in light of the time-lag.

32. This Court finds that the plaintiff has failed to convince the court that on the balance of probabilities her medical difficulties, and in particular her back and neck issues and stress and depression which resulted from these issues, were caused by an incident that occurred at the defendant's premises on the 26th January, 2010.

33. Therefore in all the circumstances, this Court makes no order against the defendant in this case.