

BETWEEN

JACQUELINE WHELAN

PLAINTIFF

AND

CASTLE LESLIE EQUESTRIAN HOLIDAYS LIMITED

DEFENDANT

JUDGMENT of Mr. Justice Barr delivered on the 13th day of March, 2018

1. This action arises out of an accident which occurred on 13th February, 2016 when the plaintiff was attending at the defendant's hotel premises and participating in a horse riding exercise. In the course of such exercise, she was caused to be thrown from a horse when it became startled by the arrival of a dog onto the path on which it was travelling. The horse reared up causing the plaintiff to be thrown to the ground. Liability for the accident is not in issue in these proceedings.

2. The plaintiff is 45 years of age having been born on 31st March, 1972. At the time of the accident, she and her husband had been undergoing IVF treatment. She had had six courses of treatment and had gone with her husband to the defendant's hotel for a short break before starting the seventh course of treatment.

3. Immediately after falling to the ground, the plaintiff was knocked unconscious for a short period. She was taken to the office in the hotel, where she was attended to. On the following day, she attended at the Emergency Department at the Hermitage Medical Clinic in Dublin. She complained of pain in her neck and lower back. She had a left buttock hematoma. She was advised to rest and then to actively mobilise as her symptoms permitted. She was advised to take Panadol.

4. X-rays had revealed that there was no bony injury to the neck or back. She then attended with her gynaecologist for a scheduled appointment. He was apparently very concerned when he saw the extent of the bruising to the plaintiff's lower back. He advised her to go to the A&E Department. The plaintiff then went to Tallaght Hospital, where further X-rays were taken, which again revealed no fractures. By this time, the plaintiff had pain in her lower back area and all around the left buttock. She had extensive bruising and swelling in the left buttock and back area. The court has been provided with a number of photographs taken by the plaintiff of her left buttock area in the days and weeks after the accident.

5. The plaintiff re-attended the Emergency Department at the Hermitage Clinic on 21st February, 2016, where she was found to have a large swelling over the left buttock and was tender over the lumbar spine and sacroiliac joints. MRI evaluation showed no bony injury, but did confirm a large haematoma over the left buttock. On 23rd February, 2016, the plaintiff was seen by Dr. David Foley, a consultant in emergency medicine at the Hermitage Clinic, who assured her that they would keep an eye on the haematoma and that hopefully it would settle down over the following six to eight weeks. The plaintiff re-attended at the clinic on the same day, as she was worried about a blister over the site of the buttock haematoma. Dr. Foley was concerned about the possibility of infection and accordingly placed the plaintiff on an antibiotic. She was next reviewed on 29th February, 2016, when the blister was still present and the buttock abscess had not changed in size.

6. The plaintiff was referred by her G.P. to Mr. Fergal McGoldrick, consultant orthopaedic surgeon, on 11th March, 2016. He noted that there was a large resolving subcutaneous swelling tracking from the left mid-lumbosacral junction across to her left iliac buttock area. There was an area of ulceration with necrotic skin, centred over her proximal buttock posterior lower iliac crest. It measured 2 x 1cm. He referred the plaintiff on for evaluation by Mr. David O'Donovan, consultant plastic surgeon.

7. Mr. O'Donovan first saw the plaintiff on 14th March 2016. There was a 2cm x 3cm area of superficial skin necrosis on the upper lateral aspect of her left buttock and underlying large fluctuant haematoma extending for at least an area of 15cm across the entire upper left buttock. The plaintiff was in a lot of discomfort, especially while trying to sit down. Mr. O'Donovan drained the haematoma and removed 270mls of old blood. The plaintiff returned on 1st April, 2016, when the swelling had significantly reduced in her buttock. Mr. O'Donovan again aspirated 125mls of liquid which was purely serous looking. The blistered area had formed a surface eschar for which gel dressings were prescribed.

8. On 15th April, 2016, Mr. O'Donovan performed a further drainage of serous fluid from the left buttock that had now reduced to 55mls in total. The eschar had lifted from the upper lateral buttock wound showing a clean healing granulating bed underneath for which he recommended continued conservative management. When the plaintiff returned to see him on 29th April, 2016, he could no longer palpate any fluid collection that required drainage. The surface buttock wound had reduced in size to a raw area measuring 1cm x 1.5cm in total. The plaintiff was managing that with a simple dry dressing.

9. The plaintiff was seen for final review on 27th June, 2016, at which time the left buttock wound had completely healed and the buttock swelling had almost completely resolved with no evidence of any further seroma collection that required treatment. The plaintiff was discharged from his care at that time.

10. The plaintiff was reviewed for medico-legal purposes by Mr. O'Donovan on 16th January, 2018. At that time, she complained of intermittent stinging pain in the left buttock area, which was uncomfortable when sitting. She had intermittent "pins and needles" sensation going from the left buttock down the left leg. There was a palpable hard tender lump in the medial aspect of the left buttock. She was somewhat distressed by the cosmetic appearance of the scar and indentation on her left buttock. She also had coccydynia, in which she described a lot of tenderness in the area of her coccyx since the accident.

11. Examination revealed a clearly visible 3.2cm x 2.5cm area of pale pink scarring with a shiny appearance. There was also a 6cm x 3cm concave contour deformity on the left buttock just below and lateral to the aforementioned scar. This indentation was easily palpable, but also visible when examined closely and especially from certain angles. The third noticeable feature on examination of the left buttock was a palpable 9cm x 4cm area of subcutaneous fullness. This was an ill-defined firmness of the underlying soft tissues rather than a discrete mass. Mr. O'Donovan was of opinion that the lateral indentation and the more medial fullness was in keeping with the *sequelae* of a resolving area of fat necrosis and haematoma drainage seen following blunt trauma as sustained by the plaintiff in the accident. There was diffuse tenderness on deep palpation throughout the left buttock area, particularly in the medial area of

subcutaneous firmness which appeared quite hypersensitive. However, there was no focal area of hypersensitivity to touch, which would suggest an underlying neuroma formation. The rest of the examination was normal.

12. Mr. O'Donovan noted that he had had to drain the haematoma on three occasions. During this period, the plaintiff had to dress the wound herself for a period of almost three months until it was fully healed. The plaintiff obviously experienced a lot of pain and discomfort in the buttock during this time and especially before the haematoma was drained. As a result of the accident, the plaintiff has been left with three adverse soft tissue *sequelae* in her left buttock. Firstly, an area of 3.2cm x 2.5cm of surface scarring in the upper lateral buttock. Mr. O'Donovan is of the view that this scar will be permanent in nature and is unlikely to significantly improve in appearance in the future. It was reasonably obvious on close inspection, but not so obvious from a distance. He noted that it was in an area of the body that was not frequently exposed, which would reduce its cosmetic impact. The second sequela was an area of soft tissue indentation lower down on the left lateral buttock measuring 6cm x 3cm. He was of the view that this most likely resulted from an area of focal fat necrosis that was a very common outcome from blunt trauma of this nature to an area with a large amount of deep subcutaneous fat. This feature was more obvious on closer inspection rather than at a distance. However, it did produce a mild asymmetry with the opposite buttock. The final soft tissue consequence of the injury was a palpable larger area measuring 9cm x 4cm of firm subcutaneous tissue more medially in the plaintiff's left buttock. This area was the tenderest part of her buttock and had remained quite hypersensitive since the injury. He believed this was caused by scarring, that resulted from the haematoma collection site that required the multiple drainage procedures. This feature was not very visible externally, but could be found easily on palpation. Accordingly, it did not produce an added significant cosmetic asymmetry with the opposite buttock.

13. Mr. O'Donovan is of the view that the surface scar on the lateral indented area on the plaintiff's left buttock is not likely to improve to any degree spontaneously in the future. It is possible that the firm tender medial area may well slowly improve further with time. He stated that it was quite possible, however, that she may always have some degree of discomfort on deep palpation of the area, or when sitting down for a prolonged period of time. He does not believe that there was any potential for further improvement as a result of surgical treatment. Accordingly, the plaintiff's present appearance should be considered permanent in nature. The tender area of subcutaneous scarring on the more medial buttock, possibly could be improved by physiotherapy and ultrasound treatment, but it may well just slowly improve itself with time and regular massage.

14. Mr. O'Donovan was of the view that the plaintiff's symptoms of coccygeal irritation and intermittent paraesthesia emanating from her buttock down her left leg were more likely musculoskeletal and soft tissue in origin. Accordingly, he suggested that an opinion be obtained from an orthopaedic surgeon. From a plastic surgery point of view, the plaintiff, as a result of the injury, has been left with a permanent surface scar, a lateral area of contour indentation and a central area of deep tender scarring in her left buttock. None of these would be likely to benefit from or require any further surgical intervention in the future.

15. The plaintiff was most recently reviewed by Mr. Fergal McGoldrick, consultant orthopaedic surgeon, on 27th November, 2017, at which time she had normal spinal flexion and extension. In the supine position, she had full straight leg raise. There was no evidence of nerve tension. Her lower limb power and reflexes were normal. She could sit forward to reach her toes. He noted that she currently complained of postpartum coccydynia. This was generally treated conservatively. He cautioned against any steroidal injection, given her history of sustaining a significant soft tissue haematoma and ulceration. Her clinical examination was otherwise benign.

16. The court also had the benefit of two medical reports from the defendant. The first of these was a report dated 2nd December, 2016 furnished by Mr. Peter Keogh, consultant orthopaedic surgeon to the Personal Injuries Assessment Board (PIAB). He noted that the plaintiff injured her lower back when she had fallen from the horse on 13th February, 2016. She was rendered unconscious and had no recollection of the event. She sustained a haematoma to the subcutaneous tissues in the lumbar area. Fortunately, there had been no spinal column or spinal cord injury. He noted that she required repeated attendance with the plastic surgical service in the Hermitage Medical Clinic for aspiration of the haematoma/seroma. There was a small area which blistered, ulcerated and scarred. She will have a small permanent scar in the region of the left buttock. No other long term *sequelae* should ensue.

17. The plaintiff was also reviewed by Mr. Matt McHugh on behalf of PIAB on 6th December, 2016. He noted that the plaintiff had sustained a rather large haematoma in her left buttock and this had to be drained on numerous occasions. This had resolved, but she was left with a scar which was obvious and visible from conversation distance. She was not overly concerned about it on account of where it was, but she said, in her own words, that she would "prefer not to have it". He felt that it was too soon to give an opinion at that time as to what the outcome was likely to be. It would be at least 18 months to two years from the date of the accident before everything would have resolved fully. By that stage, things should have resolved fully and he did not envisage the necessity for any further surgical treatment. However, he stated that he would prefer to make a final decision on the matter at that time.

18. The court has also had the benefit of a number of photographs taken both by the plaintiff herself and by Mr. O'Donovan showing the haematoma, the swelling and the blistering to her left buttock area. The court also had the opportunity of visually inspecting the affected area during the hearing of the action.

19. It is clear that this plaintiff suffered a nasty injury as a result of falling from the horse on 13th February, 2016. She had a period of unconsciousness and also had pain in her lower back area. Thankfully, there were no fractures to her spine. The main area of concern for her was the extensive area of bruising, which became very swollen with blood and other fluid, which had to be aspirated on three separate occasions. The bruising itself became infected and developed a blister. This required the extensive treatment, as outlined in Mr. O'Donovan's report, which continued until 27th June, 2016. I accept the plaintiff's evidence and the opinion given by Mr. O'Donovan that the plaintiff experienced considerable pain and discomfort during this period.

20. Also of significance is the fact that the plaintiff was undergoing IVF treatment at that time. This treatment had to be postponed due to the injuries sustained in the accident. Thankfully, when the treatment was recommenced, it was successful and the plaintiff became pregnant and went on to deliver a healthy baby girl. Nevertheless, she would have experienced some frustration and disappointment during the period when her IVF treatment had to be postponed.

21. In terms of the future, the plaintiff has been left with the three areas of blemishes in the form of scarring, thickening and indentation as outlined in Mr. O'Donovan's report. While one could not state that these are serious cosmetic blemishes, they are, nevertheless, cosmetic *sequelae* which the plaintiff will have to live with for the rest of her life.

22. In reaching an assessment of the appropriate level of general damages in this case, the court has been greatly assisted by the guidelines set down by the Court of Appeal in *Nolan v. Wirenski* [2016] IECA 56, and *Shannon v. O'Sullivan* [2016] IECA 93 and in particular to the criteria set down by Irvine J. at paras. 43 and 44 thereof. The court has also had regard to the dicta of the Court of Appeal in the case of *Fogarty v. Cox* [2017] IECA 309. In the light of these judgments, this Court has had to somewhat recalibrate its approach to the assessment of general damages in personal injury cases.

23. Having considered all of the matters outlined above as contained in the plaintiff's evidence, which I unreservedly accept, and as set out in the medical reports which have been handed into court and based on the court's own viewing of the scarring, I award the plaintiff the sum of €50,000 for General Damages in respect of her pain and suffering to date and in respect of the cosmetic aspects of her injuries into the future. To this must be added the sum for Special Damages of €2,122, giving a total award of €52,122.