

THE HIGH COURT
PERSONAL INJURIES

[2014 No. 1640P]

BETWEEN:**JASON FLYNN****PLAINTIFF****-AND-****SOUTH TIPPERARY COUNTY COUNCIL****DEFENDANT****EX TEMPORE JUDGMENT of Mr. Justice Twomey delivered on 29th June, 2017.**

1. This case concerns an accident which occurred when the plaintiff lost control of his car coming around a bend on the Fethard to Killenaule road. It is alleged this accident is the legal responsibility of South Tipperary County Council due to an excess of loose chippings on the road in the course of road repair works and the absence of warning signs.
2. The accident occurred at about 5 p.m. on the 21st June, 2013. The plaintiff's car sustained damage on the driver's side and came to rest in the ditch facing the opposite direction from which it had come some distance from the apex of the bend in the road.
3. The plaintiff claims that he had geared down into 4th gear and that he was travelling at no more than 50 kilometres per hour into the bend.
4. He claims that there were no visible signs warning of loose chippings, men at work or signs indicating that the safe speed to travel was 35 kilometres per hour.
5. The plaintiff was cross-examined about a car accident that occurred on the 26th October, 2012, just eight months prior to the accident in question in which the medical notes record that the car in which he was a passenger came into contact with another vehicle and crashed into a wall and then ended up in ditch and the car ended up as not being drivable. Consequent to this accident he attended his doctor complaining of left shoulder pain.
6. It is relevant to note that in the present proceedings against South Tipperary County Council, the plaintiff claims in his Personal Injury Summons that he has reduced movement in his shoulder as a result of the accident and in his evidence before this Court, he confirmed that the shoulder in question is his left shoulder, the same one that was injured in the previous car accident.
7. It is relevant to note therefore that in his Replies to Particulars requesting details of any injuries relevant to these proceedings suffered in any accident, the plaintiff made no reference to the 26th October, 2012 car crash which occurred only a matter of months before this accident.
8. It is also relevant to note that when he was cross examined about having been involved in any previous car accidents, he denied having been involved in any previous accidents.
9. When challenged on this denial he stated that counsel's question had suggested that he was driving the car in question, when he was a passenger, that the question referred to a brand of car that he had never owned and that the question referred to an accident that happened on 1st of November 2012, rather than on the 26th October 2012 (some few days previously) and this is why he denied being involved in such an accident.
10. This Court found the answer by the plaintiff to the question about this accident and the subsequent justification for that denial to be disingenuous, to say the least. Of more significance is the fact that the plaintiff in his answers to counsel expressly stated that he had not been involved in any previous accidents, since he stated "*the only accident that I had was on the Fethard-Killenaule road.*" This statement to the Court was patently not true. It has also been noted that his answer to the Replies to Particulars was also untrue. For these reasons, this Court treats with caution the plaintiff's claim that he was only travelling at 50 kph when he came into the bend in question.
11. This Court found Mr. Jimmy Horan, the road overseer, to be a convincing witness. He gave evidence that warning signs had been put in place on the 6th June, 2013 every 120 metres prior to the locus of the accident and that these signs indicated that men were at work, that there were loose chippings and that the appropriate speed limit was 35 kph. He also gave evidence that he had checked that those signs were in place on the Wednesday afternoon of the 19th June, 2013, two days before the accident.
12. Evidence was also produced on behalf of the plaintiff from Mr. Trevor McNamara, who was a mechanic who removed the plaintiff's car from the scene. The report from the plaintiff's engineer states that Mr. McNamara believed that there were two speed signs on the road at the time of the accident, *albeit* that he believed that more signs were put up after the accident.
13. In contrast, it is the plaintiff's evidence that there were no visible signs whatsoever on the road, whether of speed, men at work or loose chippings. In addition, he accepted in his cross examination that if he had seen a 35 kilometre hour sign, he would have travelled at that speed and he would not have had the accident.
14. It is also relevant to note that the plaintiff's engineer estimated that the plaintiff's car came to rest at a distance of 60 to 70 metres from the bend, while the defendant's engineer estimated that it came to rest at a distance of 90 metres from the bend. One is dealing therefore with the plaintiff's car travelling a considerable distance of perhaps 70-80 metres after braking, since the plaintiff's evidence is that he braked once his car began slipping on the loose chippings in the bend.
15. Having considered carefully all the evidence, it is this Court's view that on the balance of probabilities the cause of this accident was the fact that the plaintiff was travelling at an unsafe speed of 50 kilometres or more, per hour coming into the bend and this is the reason why he ended up in the ditch some considerable distance from the bend, and that if he had taken sufficient care he would

have observed the warning signs and would have slowed his speed to 35 kilometres per hour and there would have been no accident. When accidents happen, they are not always someone else's fault and it is this Court's view that this is such an accident. Accordingly, the plaintiff's claim is dismissed.