

THE HIGH COURT

[2013 No. 12008 P.]

BETWEEN

SHARON KELLY

PLAINTIFF

AND

LACKABEG LIMITED T/A THE ARC

DEFENDANT

JUDGMENT of Mr. Justice Barr delivered on the 29th day of January, 2016**Introduction**

1. The plaintiff is a married woman and is forty-four years of age, having been born on 5th July, 1971. The defendant is the owner of a large public house premises, which contains a number of bars, a restaurant and a nightclub, known as the Arc Café Bar, Liffey Valley, Fonthill Road, Dublin.

2. The plaintiff alleges that at approximately 01.17hrs on 29th May, 2011, she was in the defendant's premises attending a birthday party for her sister-in-law, when she decided to go to the toilet. She states that while traversing a wooden floor area in the Lobby Bar, she was caused to slip and fall to the ground, due to the presence of liquid on the floor surface.

3. It is alleged that as a result of falling to the floor, the plaintiff suffered injury to her right thumb, which was dislocated, and an injury to the muscles and ligaments in her neck.

4. The defendant denies that there was any water or other liquid on the floor surface. The defendant maintains that it had a comprehensive cleaning system in operation on the night in question. Accordingly, it is denied that the defendant company is liable for the injuries suffered by the plaintiff.

Liability

5. The Arc Café Bar is a large premises covering some 20,000 square feet. It has a number of bars, a restaurant, and a nightclub spread over four floors. It is licensed to hold seven hundred and twenty patrons. There was a bar in the basement area known as the Garden Bar. The plaintiff was attending a party in that area on the night in question. The main bar was situated on the ground floor level and was known as the Lobby Bar. This included an area of seating which was used as a restaurant. There was a smaller Public Bar just off the Lobby Bar. It was not in operation on the night in question. Above the lobby bar there was a mezzanine area, which did not have any bar, it merely contained a seating area. On the next floor up there was a nightclub/disco bar. This was in use on the night in question. There was also what was referred to as a rooftop garden bar which was used as an exterior smoking area. The bars, nightclub and restaurant area are all under the same roof and could be accessed by means of internal stairs.

6. On the night of 28th/29th May, 2011, the Champions League Final was being shown on a television screen in the Lobby Bar and also on a much larger drop down screen in the disco bar. On the night, the defendant was holding a drinks promotion, whereby patrons could get two drinks for the price of one in the disco bar for the duration of the match, to include the pre-match and post-match analysis. In addition to the regular patrons on the premises, the plaintiff's sister-in-law was having her 30th birthday party in the Garden Bar area.

7. The plaintiff arrived on the premises circa 19.30hrs and was watching the match with her husband in the Lobby Bar. When the match ended, the plaintiff joined the birthday party in the Garden Bar. She stated that she had consumed five bottles of Budweiser in the course of the night. At approximately, 01.15hrs, she decided to go to the toilet. She ascended a small flight of stairs leading from the Garden Bar to the Lobby Bar. She then traversed an area on which there was wooden parquet flooring, as shown in photograph No. 6 of the plaintiff's engineer's booklet of photographs. The plaintiff was walking across this area going towards the Public Bar, when she slipped and fell forwards onto her hands and knees.

8. The plaintiff stated that when she fell onto the ground, her hands and the knee area of her jeans were wet. She was very clear in her evidence that the floor surface was wet. She states that she stood up immediately as she felt somewhat embarrassed. The plaintiff's fall was captured on CCTV. The court was shown this CCTV recording and also had the benefit of still photographs taken from the recording.

9. The plaintiff states that a security man came to her aid some short time after the accident. She moved with him into the public bar area, which was just adjacent to the Lobby Bar. This area was quiet as the bar was closed. Some short while later, the manager of the premises, Mr. Tom Reilly, came over to ask the plaintiff how she was. According to Mr. Reilly, the plaintiff held out her right hand and it was clear that her thumb had been dislocated. According to the manager, the plaintiff asked him to pop the thumb back into place and said that she had sufficient drink taken to allow this to be done. However, Mr. Reilly said that he would not be able to do any such treatment. He stated that an ambulance had been called. The plaintiff's husband then arrived on the scene and the plaintiff told him that she had slipped on a wet floor. An ambulance was called and the plaintiff was taken to hospital.

10. The plaintiff stated that on the evening in question, she had been wearing shoes with four inch heels on them. She was also wearing bootleg jeans.

11. Evidence was given by Ms. Elaine Ritchie, who stated that the plaintiff was related to her sister through marriage. It was her sister's thirtieth birthday party which was being held on the premises that evening. Ms. Ritchie stated that she arrived at the bar at approximately 20.00hrs. Some short while later, she went to the disabled toilet as she has a slight physical disability. She stated that the toilet bowl in the disabled toilet was full and for this reason she went to the ladies' toilet next door. She found that there was water on the floor of the ladies' toilet. On her way back to the party, she complained about the condition of the toilet to staff at the

main bar.

12. Ms. Ritchie stated that at approximately 21.30/22.00hrs, she went to the toilet again, this time accompanied by Ms. Mandy McAuley, who was the lady whose birthday was being celebrated that evening. Ms. Ritchie stated that the toilets were still in a bad condition. There was still water on the floor. She stated that the water may have been transferred into the public bar area by being brought in on the soles of patrons' feet. She stated that she made another complaint to the bar staff about the condition of the toilet.

13. Ms. Ritchie stated that she went to the toilet again shortly after the plaintiff's fall. She had a brief conversation with the plaintiff while on her way to the toilet. She stated that the toilets were still in a bad condition. She stated that the premises was very busy and the bars and nightclub were open. She left the premises at 02.30hrs. She stated that she did not see any staff cleaning up, nor did she any improvement in the state of the ladies' toilet in the course of the evening.

14. In cross examination, she stated that the disabled toilet bowl had been almost overflowing. She stated that there was water and toilet rolls on the floor of the ladies' toilet. She stated that her sister, Caroline, had been with her at the time of her first visit to the ladies' toilet. She accepted that it was unusual for the toilet to be in such a bad condition that early in the night. She stated that they complained about the condition of the toilet at the main bar on the way back to the party.

15. She felt that due to the condition of the floor in the ladies' toilet, patrons may have brought water into the main bar on the soles of their feet. She stated that she did not complain to the barman on the third occasion on which she had gone to the toilet as she had made previous complaints in the course of the night.

16. Evidence was given by Ms. Mandy McAuley whose birthday party had been taking place at the premises on the night in question. She stated that she had arrived at approximately 20.30hrs and had been stopped at the door by security staff who said that the place was very busy. She stated that when she told them that it was her birthday party which was being held in the premises, she was allowed in.

17. She stated that during the course of the early part of the evening, her sister Elaine told her that she had complained about the condition of the ladies' toilet. At 22.00hrs she went to the ladies' toilet and found that it was in a bad condition. There was water all over the floor and there was toilet paper strewn across the floor. She stated that the general hygiene of the area seemed very bad. On this account, on her way back to the party, she made a complaint about the condition of the toilets at the main bar.

18. Ms. McAuley stated that at approximately midnight, she made a complaint to a female employee about the condition of the floor at the top of the stairs shown in photograph No. 6. She said that this floor area was wet. She stated that she felt unsteady on her feet due to the condition of the floor in this area. This was the area where the plaintiff subsequently met with her accident.

19. In cross examination, the witness said that the premises was very busy when they arrived and it got even busier after 23.30hrs. She stated that up to midnight, she had just made one complaint about the condition of the ladies' toilet. When she went to the toilet at midnight, she made a complaint about the area at the top of the stairs, leading from the garden bar to the Lobby Bar. She stated that she made that complaint and then proceeded to the toilet. She thought that she may have mentioned to her sister, Elaine, about the state of the floor in the ladies' toilet. She did not say anything to the plaintiff about this toilet, as the plaintiff was sitting far away from her.

20. She stated that the floor area in the Lobby Bar was so wet that she made complaint to an employee of the defendant. She stated that this area was in a bad condition at midnight. She stated that she did not see anyone clean up the area. The employee said that they would see to it.

21. In the course of cross examination, a toilet cleaning checklist was put to the witness. This checklist was in a format that is commonly seen in toilets in hotels, bars and other public premises. It was divided into a number of columns. In the first column, it was divided into one hour slots up to 7pm and thereafter was divided into slots of thirty minutes. Opposite each time period, there were a number of rows dealing with items in the toilet area, such as: floor, mirror, cubicles, urinal, wall, paper, and soap. The second last column was headed "*corrective action*" and the final column provided a space for the signature of the person who carried out the inspection. The particular checklist only began at 20.00hrs, as that was the time when these particular toilets were opened for public use. In the particular checklist, there were ticks against most of the relevant items. There were also a small number of "x's" against some areas where corrective action had been needed. Each of the relevant inspections had been carried out by an employee called "*Deirdre*" whose name appeared in the column on the right hand side.

22. It was put to the witness that according to this cleaning schedule, the defendant had carried out regular periodic inspections of the ladies' toilet throughout the night. The checklist showed that on most of these occasions, the toilet area was in good condition and did not need any corrective action being taken. Where there were a number of small items needing corrective action, this was taken by the person who made the inspection. Ms. Mandy McAuley did not agree that the checklist painted a picture of the ladies' toilet having been in a good condition. She said that when she went to the toilet again at 02.20hrs, she found that it was in such a bad condition that she decided to wait until she went home to go to the toilet.

23. Evidence was given on behalf of the defendant by Mr. Tom Reilly, the bar manager. He stated that on the night in question there were eight bar staff working in the various bars in the premises. There were three people working behind the bar in the Lobby Bar and he would also work behind the bar when it was particularly busy. He stated that there were a number of staff employed in the restaurant area. There was also six lounge staff, made up of four staff members out on the floor and two people working behind the bar, cleaning glasses and restocking shelves. The lounge staff who were working out on the floor were responsible for picking up empty glasses, bringing orders from the bar to patrons sitting at tables and also making sure that the area was kept clean. In addition to this staff, there were also five security personnel.

24. According to Mr. Reilly, the night in question, while being a busy night, was not particularly busy. In support of this, he stated that the security staff were told that they should "*click*" people into the premises. This meant that as a patron arrived, the security man at the door would click a counter, which kept a record of the number of people entering onto the premises. He stated that on this particular evening, there had been four hundred and twenty-five patrons on the premises. This was considerably short of the maximum number allowed on the premises, which was seven hundred and twenty. He also referred to a Sales Journal which gave a breakdown of the hourly takings from each of the bars on the night in question. He said that from a perusal of this document, it was evident that while the bars were doing a reasonable trade, it was not an extremely busy night.

25. In relation to the procedure for dealing with spillages which might occur in the course of the night, Mr. Reilly stated that the

standard operating procedure was that if an employee came across a spillage in the course of his work, he then "owned" the spillage until it was cleared up. The person was supposed to remain standing at the spillage and to signal to some other member of staff to obtain the necessary equipment to clean the area and dry the floor surface. He stated that this procedure was well known to all the employees and formed part of the induction training that they received on commencing employment with the company. In addition, there was a notice which outlined the procedure which should be used in dealing with spillages, affixed to the notice board in the staff room.

26. Mr. Reilly thought that the criticisms made by the plaintiff's witnesses about the complaints that they had made to the bar staff going unheeded were unfair. He stated that if a complaint had been made to a member of staff, they would have ensured that the ladies' toilet was properly cleaned.

27. Mr. Reilly did not see the plaintiff fall on the premises. However, he came over to her when the accident was brought to his attention. She was in the public bar area at this time. He overheard her telling her husband that she had slipped on a wet floor. He then checked the floor area and noted that it was dry.

28. Mr. Reilly outlined how there were toilets in the Public Bar which was on the ground floor. These toilets only opened at 20.00hrs. There were also toilets in the Lobby Bar which were beside the restaurant area. There were five toilets in total on the premises.

29. Mr. Reilly stated that Deirdre Duffy worked behind the bar in the Lobby Bar area and was in charge of the lounge staff and also had responsibility for monitoring the ladies' toilet in the course of the evening. She would check the toilets every thirty minutes and record this on a check sheet which was kept on the rear of the toilet door. As far as he was concerned, the ladies' toilets were properly cleaned during the course of the evening. He reiterated that if a complaint had been made about the condition of the toilets, a member of bar staff would have cleaned it up. They would not have come to him about the complaint.

30. Mr. Reilly conceded that while he had given evidence that it was not a particularly busy Saturday night, he had stated in a statement made to the defendant's insurers that it was "a very busy night".

31. The plaintiff and her witnesses disputed the assertion that it was not a busy night. They stated that there were a large number of people who had come to the bar to watch the Champions League Final at that venue due to the two for the price of one drinks promotion. There was also the birthday party celebration going on in the Garden Bar area at which Mr. Keogh, a barman, estimated seventy to eighty people were in attendance. In addition, the plaintiff and her witnesses stated that a large number of people had come into the bar after 23.30hrs, who had been attending a Robbie Williams concert in Slane. There were also a number of patrons who came onto the premises to attend the nightclub.

32. Evidence was also given by Ms. Deirdre Duffy, who had been employed as a barmaid at the time. She no longer worked with the defendant and was now working as a teacher. On the night in question, she was working behind the bar in the Lobby Bar. She was also responsible for the lounge staff in the lounge and mezzanine areas. She was also responsible for checking the ladies' toilet in the public bar. She stated that these checks were carried out every thirty minutes. She had no specific recollection of this particular night. She had no specific recollection of inspecting the toilets, but was relying on the check sheet which had been filled out by her. This showed that she had checked the area at thirty minute intervals from 20.00hrs onwards. She stated that she had signed the check sheet each time she did an inspection.

33. She was asked why there was a tick under the column headed "urinal" on the check sheet for the ladies' toilet. She stated that it was just easier to place a tick in that box rather than leave it out.

34. Ms. Duffy did not accept the evidence of the plaintiff and her witnesses that the toilets were in a very bad condition that evening. If the floor in the ladies' toilet had been wet, she would have marked this on the sheet and taken action to correct the situation.

35. She stated that if there had been a complaint in relation to the condition of the toilets, other staff would have told her to check the toilets. She did not recall any complaints being made that evening. She accepted that she had a number of areas of responsibility that evening.

36. It was put to the witness that if she was working hard behind the bar, on a busy night, she would not have been able to carry out all these checks of the ladies' toilet. She stated that there was always sufficient staff available to allow her to carry out the check of the toilets. She did not recall any woman making a complaint about the condition of the floor in the Lobby Bar.

37. Evidence was also given by Mr. Ken Keogh, who was working as a barman in the Lobby Bar at the time of the accident. He stated that there were three bar staff working behind the bar at that time. He stated that it was a normal Saturday night. He did not think it was that busy. He accepted that it got busier later on in the night when the nightclub opened and when the concert was over. He was not aware that the plaintiff had fallen.

38. Mr. Keogh stated that in the induction training which he had received, he was instructed in relation to the procedure which should be used in the event of a spillage being discovered. They were taught that if they saw a spillage, then they "owned it" until it was cleaned up.

39. Evidence was also given by the owner of the premises, Mr. Frank Towey. He stated that the bar had been newly built, thirteen years ago. He stated that they had a good cleaning system in place in the bar. All staff were trained in relation to the clearing up of spillages. There was a notice on the notice board in the staff room dealing with the procedure which should be followed. This set out in detail the procedure which had been outlined by the previous witnesses. He stated that the staff were also trained to maintain the toilets at all times. He stated that they had never had any claim of a slip and fall accident in any of their toilets. He was not present on the night of the plaintiff's accident.

40. Evidence was also given by Mr. Serin Chebac, who was employed as a security man on the premises on the night of the accident. He stated that he had been on duty at the front door, when he was told of the accident by a customer. He went in and found the plaintiff standing in the public bar area as shown in photograph No. 4 of the plaintiff's engineer's photographs. She had injured her right thumb. She said she had slipped. He stated that he left the plaintiff and got the bar manager, Mr. Reilly. He stated that he looked at the floor in the Public Bar as shown in photograph No. 4 and it was fine. There was no problem with it at all.

41. Finally, evidence was given by Mr. Murphy, a consulting engineer, on behalf of the plaintiff. Evidence was given by Mr. Rowan, a consulting engineer, on behalf of the defendant. They agreed that the parquet wood flooring in the Lobby Bar was in good condition.

When dry, it presented as a low risk of slipping. However, when wet, it represented a medium risk of slipping.

42. At the engineering inspection held on 20th September, 2011, the plaintiff was asked to point out the exact area where she slipped. She pointed to an area in the Public Bar when she had come through the double doors leading from the Lobby Bar. This was the area where she had had her conversation with Mr. Chebac and Mr. Reilly.

43. When the formal part of the engineering inspection had concluded and the plaintiff had left the premises, the plaintiff's engineer was given the opportunity of viewing the CCTV footage of the plaintiff falling. From this, it was clear that she had slipped on the parquet flooring in the Lobby Bar, as shown in photograph No. 6 of the plaintiff's engineer's photographs.

44. It was put to the plaintiff that but for the CCTV footage, she would have made the case that she had slipped on the terrazzo flooring in the Public Bar, which surface was much more slippery and dangerous when wet. The plaintiff denied this and stated that she simply made an error of a couple of feet, as the bars looked much different when she had returned to the bar on the morning of the engineering inspection.

45. It was submitted on behalf of the plaintiff that she had identified the correct area to her solicitor and that this was evident from the content of a letter sent by the plaintiff's solicitor to the defendant's insurers dated 22nd July, 2011, which was in the following terms:-

"Our client's sister had previously complained to the bar staff about the ladies' toilet and the floor being wet. The area outside of the toilets where our client fell was wet."

"Our client was going upstairs to go to the toilet. Just before the entrance into the room leading into the toilets, our client was caused to slip and fall forward. There was a wall in front of her and she went down on her knees. She struck her right hand off the wall. She got up and then went into the bathroom. A member of the security staff then came over to our client and asked her if she was ok. He asked her what had happened. Our client told him that she had slipped on the wet floor. He asked 'where'. Our client pointed out to him where she had fallen. When our client got up, her hands and jeans were wet. Our client's husband then came to her assistance and the security staff called an ambulance."

Conclusions on Liability

46. Firstly, in relation to the plaintiff pointing out the wrong locus at the engineering inspection, I accept the plaintiff's explanation that she made a simple error of a couple of feet when pointing out the locus. This was reasonable having regard to the fact that she had had conversations with Mr. Chebac, Mr. Reilly and her husband at this location. It is clear from her solicitor's letter of 22nd July, 2011, that she had instructed him as to the correct locus of the accident. In the circumstances, this error on the part of the plaintiff does not impact greatly on her credibility.

47. Secondly, insofar as there is a dispute between the parties in relation to whether the premises was busy that night, I prefer the evidence of the plaintiff and her witnesses. While the defendant maintained that only four hundred and twenty-five people had been recorded as entering the premises, this was only an assertion made by the defendant's bar manager. There was no actual record made of the number of patrons on the premises that night. Furthermore, I note that in a statement made by Mr. Reilly to the defendant's insurers dated 24th June, 2011, he stated:-

"It was a very busy night due to the Champions League Final."

48. I have also been supplied with a record of the takings per hour for the relevant bars on the night in question. These indicate that the bars did substantial business that night, particularly when one has regard to the two drinks for the price of one promotion which was in operation for a significant portion of the evening. In addition, the CCTV footage taken of the Lobby Bar at the time of the plaintiff's accident, shows that this bar was doing a brisk trade at the time of the plaintiff's fall at 01.17hrs.

49. I am satisfied that the bars and the nightclub in the premises were doing a substantial trade on this particular Saturday night. While the premises may not have been absolutely jam packed, it was nevertheless very busy on the night in question.

50. In relation to the condition of the ladies' toilet I accept the evidence of Ms. Elaine Ritchie and her sister, Ms. Mandy McAuley, that the toilets in the public bar had been in a poor condition that night. I further accept that they made complaints to the bar staff in relation to the condition of the toilets.

51. I also accept the evidence of Mandy McAuley that at about midnight, she made complaint to a female employee about the condition of the floor at the top of the stairs, as shown in photograph No. 6 in the Lobby Bar. I also accept her evidence that when she went to the toilet at 02.20hrs, she found the toilets to be in such a bad condition, she decided to hold off going to the toilet until she got home.

52. I also accept the evidence of the plaintiff that when she fell onto the floor, her hands and the knees of her jeans, were wet.

53. I am satisfied that this was a very busy night for the bars, the restaurant and the nightclub on the premises. It is clear from the CCTV footage that the plaintiff actually slipped. This is evident from the fact that she fell down vertically in one sudden movement, which is indicative of a slip rather than a trip. Given the findings as to the level of business going on at the time and the mechanism of the plaintiff's fall, I am satisfied that on the balance of probabilities there was liquid on the parquet flooring at the area where the plaintiff slipped. This may have come from the wet floor in the ladies' toilet, or it may have been due to patrons spilling their drinks when coming from the bar. This area should have been monitored carefully throughout the evening and corrective action taken when drinks were spilt onto the floor.

54. While the defendant had in place a system for dealing with spillages, I am not satisfied that this system was properly implemented on the night in question. I am not persuaded that the check sheet on the back of the door in the ladies' toilets, gives an accurate picture of the state of those toilets during that night. I prefer the evidence of Ms Ritchie and Ms McAuley that those toilets were in a poor condition that night.

55. In relation to the operation of the general cleaning system on the premises, I think it likely that the staff were so busy serving drinks and collecting empty glasses from the Lobby Bar and mezzanine area, that they were not able to take sufficient care to keep the floor dry and clean. Having regard to the fact that complaints had been made about the condition of the ladies' toilet and the

parquet floor in the Lobby Bar prior to the time of the plaintiff's fall, I am satisfied that there was a failure on the part of the defendant to take reasonable care for the safety of the plaintiff while on the premises.

56. I do not find any contributory negligence on the part of the plaintiff. She had had a moderate amount to drink over more than five hours. People cannot be expected to look at the floor when walking across a bar. The plaintiff was entitled to expect that the floor was dry and that it was safe for her to walk across it. In the circumstances, liability for the plaintiff's injuries must rest with the defendant.

Quantum

57. The plaintiff suffered a dislocation of the thumb on her right dominant hand. This was reduced in hospital under sedation. The hand was put into a plaster of Paris cast. However, the plaintiff had an allergic reaction to the plaster of Paris, so that it had to be removed.

58. The plaintiff also stated that she experienced dreadful neck pain on the day after the accident. It appears that she has suffered a significant soft tissue injury to the muscles and ligaments of her neck.

59. She was very disabled in the weeks and months after the incident. Her father had to move in with to her help with the daily chores and driving. She had some physiotherapy treatment in July 2011. However, she only had four sessions as it was too painful for her to continue.

60. The plaintiff came under the care of Mr. Rice, Consultant Orthopaedic Surgeon, in July 2011. Examination at that time revealed that she had tenderness and swelling in the region of the MCP joint of her right hand. She had limitation of adduction and flexion of her right thumb. Her thumb joint felt clinically stable. In particular, there was no instability in relation to the ulnar or radial collateral ligaments of the MCP joint. The plaintiff had good power and pinch grip. Her pinch grip on the right side was slightly less than her non-dominant left side. This lady had reduced superficial sensation in relation to the skin on the ulnar aspect of the distal phalanx of her right thumb. She had normal deep sensation, however, in this region.

61. The plaintiff had deep tenderness in relation to the paraspinal soft tissues in the posterior aspect of her neck on the right side. She had a normal range of movement of her neck and her pain was reproduced at the end range of lateral flexion and rotation to the left side. Examination of the plaintiff's upper limbs did not reveal any evidence of nerve root tension and she had normal deep tendon reflexes.

62. Mr. Rice was of opinion that the plaintiff had sustained a dislocation of the MCP joint of her dominant right thumb. There did not appear to be any residual instability of the joint. She had swelling of the joint and weakness, however, Mr. Rice expected this would improve over the forthcoming six to twelve months. The plaintiff also appeared to have a traction injury to the digital nerve in her right thumb at the time of her dislocation. She had a reduced superficial sensation but normal deep sensation. Mr. Rice expected that this aspect of her injury would improve over the forthcoming months without any specific treatment.

63. Mr. Rice stated that the plaintiff also appeared to have sustained a soft tissue injury to her neck in the accident. She was making progress with physiotherapy. He advised her on a home exercise programme and he hoped that this aspect of her injury would settle in the next six months.

64. When reviewed on 25th March, 2013, the plaintiff reported recurring episodes of pain in relation to her neck. She would awake in the morning with her neck feeling stiff and sore. On occasions, she was awoken from sleep with significant neck pain. This flare up of neck pain occurred for no apparent reason and occurred about two to three times per month. The plaintiff was taking anti-inflammatory medication (Difene) for these flare-ups of neck pain. The plaintiff also reported a recurring weak sensation in relation to her thumb. She found difficulty grasping objects. This was a problem for her carrying out household work and looking after her three children. She had difficulty lifting heavy saucepans or shopping. She had to modify her activity due to lack of power/pinch grip in her dominant right hand. On examination, she did not have any significant tenderness in relation to the soft tissues in her neck. She had a normal painless range of movement of her neck. She had deep tenderness in the ulnar collateral ligament of the metacarpophalangeal joint of her right thumb. She had a normal range of movement of her thumb and clinically her MCP joint appeared to be quite stable. She had a reduced grip strength in terms of pinch grip on her dominant right side when compared to her left side.

65. Mr. Rice stated that in his opinion, this lady sustained a significant soft tissue injury to her cervical region and a dislocation of the MCP joint of her dominant right thumb, with injury to the ulnar collateral ligament of this joint. At this time, the plaintiff reported recurring mechanical symptoms in relation to her cervical region. Mr. Rice had referred her for an MRI scan. In relation to the thumb, he noted that she had a degree of dysfunction in relation to the ulnar collateral ligament. The joint was stable and on this basis, he did not believe that surgical intervention was indicated. However, he was of opinion that the plaintiff will have long term loss of pinch grip in relation to her right hand as a result of the injuries sustained in May 2011.

66. The plaintiff had an MRI scan done of her neck on 12th April, 2013. The scan showed degenerative changes with osteophyte formation at her lower inter-vertebral area. There was no significant compression of the adjacent neurological structures. Mr. Rice was of opinion that the plaintiff's degenerative disease in her neck pre-dated her fall in May 2011, even though they were not symptomatic. He believed that the plaintiff's current symptoms represented soft tissue injuries which were superimposed on a pre-existing but asymptomatic degenerative disorder in her cervical region. He was of opinion that the way forward lay with exercises to rehabilitate the soft tissues in her cervical region, rather than any surgical intervention. He recommended that the plaintiff continue with her exercises to help cope better with her symptoms. However, he believed that the plaintiff would have long term symptoms as a result of the soft tissue injury that was superimposed on the pre-existing but asymptomatic degenerative disease of her cervical spine. Given the long duration of her symptoms, he believed that these would be a life-long problem for the plaintiff. He advised her to continue with rehabilitation to help her cope with her long term recurring neck symptoms.

67. The plaintiff was reviewed on 28th April, 2014. Since the previous evaluation in September 2012, the plaintiff reported that she had had fluctuating pain in relation to her neck, with ongoing weakness in relation to her right thumb. She had been through periods when her neck was not bad. She reported that at the start of February 2014, she had a significant flare up of pain in her right upper limb. She attended the accident department of the hospital in Tullamore and was given an injection and opiate type analgesic medication. Her GP, Dr. Barry Boland, referred the plaintiff for an MRI scan of her cervical spine and right shoulder. The MRI scan of the right shoulder showed early degenerative disease in relation to her acromioclavicular joint. MRI of her cervical spine showed a significant protrusion at the C6/7 intervertebral disc, as well as bulging of the C5/6 intervertebral disc. The plaintiff was treated with opiate analgesia and neurotrophic medication. She reported that for six weeks following this flare up, she was virtually house bound as she was "dopey" from the medication and could not drive. She reported a slow but sure improvement in relation to her right upper limb pain.

68. Examination revealed that the plaintiff did not have significant tenderness in relation to the bony or soft tissue structures in her cervical region. Stretching the nerves, coming from her neck on the right side, by turning her head and neck towards the left while extending her right shoulder, reproduced pain in her right forearm, indicating a degree of nerve root lesion in relation to her right brachial plexus. She had blunting of superficial and deep sensation in relation to the tip of her thumb, index and middle finger on the right hand. She had normal movements of all muscles of her hand, however, she had a demonstrable weakness Grade 4/5 in relation to her right trapezius muscle and her right triceps reflex was absent. The supinator reflex, however, was normal and she had good strength of elbow flexion comparable to her non-dominant left side.

69. In relation to her thumb, the plaintiff had deep tenderness in the ulnar collateral ligament of her right thumb. Her ligament felt stable however her pinch grip in her dominant right hand was demonstrably weaker than the pinch grip on the left side, indicating a degree of insufficiency of the ulnar collateral ligament of the MCP joint of her right thumb.

70. Mr. Rice was of opinion that the plaintiff had sustained significant soft tissue injury to her cervical spine, as well as a rupture of the ulnar collateral ligament of the MCP joint of her right thumb. She had recently developed a prolapse of intervertebral disc in her lower cervical region, that caused right upper limb pain. Mr. Rice was of the opinion that this disc prolapse likely resulted from the injury to her cervical region in the fall in May 2011. By the time of that examination, the plaintiff's right upper limb pain was settling. She had demonstrable partial loss of function of her C7 nerve root. However, he expected her pain and nerve function would improve over the forthcoming months. If this did not occur, he was of opinion that surgery in the form of cervical discectomy should be considered. In overall terms, he expected that the plaintiff's right upper limb symptoms would settle. However, she did have an increased risk of developing degenerative arthritis of her cervical spine as a result of her disc prolapse.

71. In relation to the plaintiff's right thumb, he believed that she injured the MCP joint of her thumb and has weakness of pinch grip on this side ever since. He did not think that surgical intervention was indicated considering her degree of impairment, however, he believed that her symptoms would continue in relation to her weak pinch grip.

72. The plaintiff was reviewed on 18th August, 2014. She reported that she had been carrying out her home exercise programme. Overall, she reported that there had been improvement in relation to her neck and upper limb symptoms. She continued to have a degree of numbness in relation to the tip of her right thumb and index finger with a reduction in grip strength in her right hand, that had not improved since the last examination. Examination at that time revealed full movement of the neck. The acute flare up of neck pain in February 2014, had largely settled.

73. The plaintiff also reported the onset of significant lumbar pain. However, this was not thought to be referable to the accident in May 2011.

74. Mr. Rice noted that the plaintiff had suffered a significant injury to her cervical spine and right thumb in a fall in May 2011. He believed that the injury to her cervical spine provoked the prolapse with radiculopathy affecting her right upper limb. Her acute neck pain and neurotic symptoms and right upper limb pain had improved by the time of that examination, but the plaintiff continued to have established residual symptoms. The plaintiff also had residual weakness, particularly in relation to pinch grip in her right hand and had a deficit of superficial sensation at the tip of her index and thumb with no carpal tunnel compression signs, nor did she give a history of waking at night with pins and needles in her right hand. He did not believe that any further investigation or surgical intervention was indicated.

75. Mr. Rice expected that the plaintiff would continue to experience long term impairment in relation to her sensation and gripping in her dominant right hand, as a result of the disc prolapse. He was also of opinion that as there was a disc prolapse in the cervical spine, she had a risk of developing degenerative arthritis in her neck. He advised the plaintiff to continue with her daily exercise programme. He noted that the plaintiff's right thumb symptoms appeared to have resolved fully at that stage.

76. Finally, in a letter dated 30th November, 2014, Mr. Rice indicated he believed that the plaintiff would have a long-term impairment, with reduced sensation in relation to her right hand and reduction of pinch grip due to MCP pain in her right thumb. Given that she had structural disruption of the intervertebral discs in her cervical spine and degenerative disease of the acromioclavicular joint, he believed that there was a significant long term risk of developing recurring mechanical pain in relation to her right upper limb and cervical region.

77. He believes that it would be in the plaintiff's best interests if she sought a career that did not involve manual lifting or handling activities as he believed that this would make her pain worse. He was of the view that in the interest of controlling her pain better in the long term, she should consider a sedentary type occupation.

78. The plaintiff was seen by Mr. Gary C.C. Fenlon, FRSCI, on behalf of the defendant on 10th April, 2013. She stated that she still had ongoing intermittent stiffness and soreness in her neck, which might occur two to three times a month and would last for two to three days. This could come on for no apparent reason, but was also aggravated by exercise and housework. The plaintiff stated that she had given up attending a boot camp as the exercises were too extreme, but she continued to do exercises at home and was able to go jogging, which did not affect her neck. The plaintiff also complained of soreness in her right thumb, which was aggravated by certain heavy housework, especially opening jars. She complained of slight numbness at the very tip of her right thumb, but did admit that this numbness had generally improved.

79. On examination, the plaintiff had a good range of pain free movement of her neck, with no local tenderness or muscle spasm. Examination of the right thumb confirmed that the first metacarpophalangeal joint of the thumb was stable and there was no pain on stressing the ulnar or radial collateral ligaments. Her grip strength was also good and she had good pinch grip. There was no swelling of any of the joints in the thumb. There was altered sensation at the very tip of the thumb.

80. Mr. Fenlon noted that the plaintiff had sustained a dislocation of her right thumb and a traction injury to one of the nerves of this digit when she fell in May 2011. The thumb was reduced under sedation and the joint was stable. The patient had no long term problems with respect to her thumb. The numbness, which was improving, would fully resolve in time. He noted that she also jarred her neck and had intermittent discomfort in her neck. He thought that this would settle in time. There were no signs of root entrapment. There was no need for surgical intervention regarding her neck. Her ongoing symptoms were intermittent in nature and were improving.

81. When reviewed on 30th October, 2014, the plaintiff stated that she had had intermittent neck pain and then in February 2014, she had got up one morning and was aware of a sudden severe pain at the back of her neck, radiating across the right superior shoulder area. She attended Tullamore Hospital and then returned to see Mr. Rice. He ordered a second MRI scan and advised her to continue with her home exercise programme.

82. When reviewed on that occasion, the plaintiff stated that the severe pain in her neck, which radiated down her right arm, lasted for some six weeks or so, and then gradually settled, but she continued from that time to complain of a numbness or tingling sensation in the tips of her index and middle fingers. The neck pain, as before, would occur every few weeks and occasionally she might be symptom free for a month, but the pain would then return and last some days. She continued to have tingling in the tips of her index and middle fingers of her right hand. With respect to her right thumb, she still had a throbbing pain on occasions over the dorsal aspect of the MCP joint and she felt that her grip strength was weak. She still had a very small area of numbness at the tip of the thumb.

83. On examination, the plaintiff had a good range of neck movement, with no local tenderness or muscle spasm. Mr. Fenlon could elicit no neurological deficit in her upper limbs, except for the small area of numbness at the tip of her right thumb. Her grip strength was good and equal to the left side. Examination of her right thumb again confirmed no abnormality, with no swelling and the thumb was stable.

84. Mr. Fenlon noted that the MRI report of the scan done in April 2013, confirmed degenerative changes at C5/6 and C6/7, where there was some osteophyte formation posteriorly and on the left side at C6/7 there was moderate to severe narrowing due to a combination of disc and osteophytes. The more recent MRI scan from 22nd February, 2014, again noted the narrowing and degeneration at C5/6 and C6/7. However, the axial imaging revealed a large right sided disc extrusion at C6/7 and according to the report occupies all of the right exit foramen impinging on the existing nerve root. The conclusion from this report was that the patient had developed this large disc extrusion at C6/7 in the interval between April 2013 and February 2014.

85. Mr. Fenlon gave the following opinion in his medical report dated 30th October, 2014:-

"Ms. Sharon Kelly now aged 42 sustained a dislocation of her right thumb at the metacarpophalangeal joint in this fall in May 2011. The thumb is stable with no swelling and her grip strength is good and whatever residual complaint she has will settle further and there should be no long term problems with respect to this thumb. This lady developed acute onset of severe neck pain earlier this year which lasted six weeks or so and she was seen by Mr. Rice and sent for a second MRI scan, but no surgery was indicated. From a clinical point of view, on review today, there is indeed no indication to consider a disc decompression as there are no obvious clinical signs seen on examining her today. She does have this tingling still in the index and middle fingers of her right hand, but not enough symptoms to suggest disc decompression. It is my view that the disc protrusion developed probably early in February 2014, resulting in her severe symptoms, but these symptoms have largely settled now and there are no specific signs here to suggest nerve damage. I feel that it is reasonable to suggest that her neck symptoms resulted from the fall in the pub but the development of an acute disc prolapse nearly three years later cannot be blamed on the fall in the pub. Disc prolapses either in the lumbar spine or the neck can occur spontaneously and some of these require urgent decompression. This was not necessary apparently according to Mr. Rice, who saw the patient shortly after the development of the pain and again when the MRI scan was undertaken."

86. The plaintiff was also examined by Dr. Pat O'Neill, Sports and Orthopaedic Medicine, at the Mater Private Hospital in Dublin. He saw the plaintiff on 24th June, 2015. He noted that the two previous MRI scans taken on 12th April, 2013 and 22nd February, 2014, both revealed degenerative changes in the plaintiff's neck. At the time of his examination, the plaintiff complained of intermittent soreness and stiffness in the neck, which was aggravated by doing housework. She also complained of a loss of sensation in two fingers in her right hand and she complained of occasional soreness and weakness in the right thumb and numbness in the tip of the thumb. On examination, she was noted to have a good range of movement in her neck, although with some discomfort. Dr. O'Neill stated that he examined her shoulder along with her neck and as there was no comment in her medical report in relation to the shoulder, it must have been symptom free when he examined her. He was of opinion that the plaintiff had suffered mild to moderate soft tissue injuries to her neck and shoulder. This had given rise to some exacerbation of pre-existing degenerative changes in her neck.

87. In relation to the acute episode in February 2014, he was of opinion that given the time lapse since the accident, this acute episode was not caused by the fall in May 2011. He was of opinion that the MRI scan before and after February 2014, showed no material difference. He did not agree with Mr. Rice's opinion that the episode in February 2014, was caused by the accident in 2011. If there had been an acute aggravation of pre-existing degenerative changes, or if there was a disc problem, he would have expected the onset of symptoms within 24/48hrs. The onset of symptoms some three years after the accident, did not fit in with this timescale. Given her progress from 2011, to 2014, this fitted with a diagnosis of a mild to moderate soft tissue injury superimposed on underlying degenerative changes, which were rendered symptomatic. However, the onset of severe symptoms in February 2014, was not, in his view, connected to the accident. In his experience, symptoms usually resolved from such injuries within twelve to eighteen months.

88. In cross examination, it was put to the witness that in the earlier MRI scan in 2013, there had been no disc protrusion evident, but the plaintiff did have a moderate amount of degenerative changes in her neck. The witness agreed that that was correct and that she had had degenerative changes at two levels which were moderate/severe. It was put to the witness that after the acute episode in February 2014, a subsequent MRI scan had shown a disc protrusion in the plaintiff's neck. The witness agreed that there was a protrusion at the C6/7 disc since the time of the first MRI scan. He accepted that the accident did exacerbate the plaintiff's underlying degenerative changes in her neck.

89. Dr. O'Neill stated that he did not associate the disc protrusion in 2014 with the accident, due to its late onset and the absence of symptoms relative to the disc protrusion in the immediate aftermath of the accident. There were no neck symptoms or cervical findings to suggest a disc protrusion in the immediate aftermath of the injury. There were no supporting medical findings, in terms of symptoms, presenting complaints or clinical findings, to suggest an acute disc injury.

90. Dr. O'Neill stated that the plaintiff had weakness of pinch grip in the right hand. There was also tenderness in the trapezius muscles on the right side. He accepted that the plaintiff's symptoms were genuine. He accepted her complaint of loss of sensation. In relation to his prognosis, he stated that based on the examination in 2015, he would expect the plaintiff to have some symptoms in the future depending on the progression of the degenerative changes in her neck.

Conclusions on Quantum

91. I am satisfied on the medical evidence before me, that the plaintiff suffered a dislocation of her right thumb. This has gone on to settle reasonably well, although she has been left with a diminution in sensation in the tip of the thumb and a reduced pinch grip between the thumb and forefinger.

92. Perhaps of more concern to the plaintiff, is the soft tissue injury that she suffered to her neck. The doctors for both sides agree

that this soft tissue injury was superimposed on pre-existing, but asymptomatic degenerative changes. These were rendered symptomatic by the injuries sustained in the accident. The main point of disagreement between the doctors is in relation to whether the acute exacerbation of her neck pain in February 2014, which was caused by a disc protrusion at the C6/7 level as well as bulging at the C5/6 intervertebral disc, is referable to the accident.

93. Mr. Rice on behalf of the plaintiff, is of opinion that this acute episode was referable to the injury to the plaintiff's neck in the fall in May 2011. The defendant's doctors are of the opinion that, given the time lapse between the accident and the sudden onset of severe symptoms in February 2014, that there is no connection between the two. They think it more likely that the plaintiff had a spontaneous disc prolapse in 2014, which was unrelated to the previous neck injury in the accident.

94. I prefer the evidence of Mr. Rice in this regard. It was reasonable to hold that as the plaintiff had intermittent, but frequent neck pain since the accident, which was caused by the soft tissue injury rendering pre-existing degenerative changes symptomatic, that the disc prolapse in February 2014, was related to the initial injury. In addition, the altered sensation in her thumb and fingers and the lack of grip strength between the thumb and forefinger, suggests that the effects of the neck injury are ongoing.

95. Mr. Rice is of the opinion that given that the plaintiff has structural disruption of the intervertebral discs in her cervical spine and degenerative disease of the acromioclavicular joint, he believes that she has a significant long term risk of developing recurring mechanical pain in relation to her right upper limb and cervical region.

96. The doctor is also of opinion that if the plaintiff were to seek employment, he believes that in the interest of controlling her pain better in the long term, she should consider a sedentary type occupation.

97. In assessing damages, the court must take account of the fact that this plaintiff is a relatively young woman of forty-four years of age, who has had pre-existing degenerative changes in her neck. These have been rendered symptomatic as a result of the fall in May 2011. The prognosis for the future is somewhat guarded. In addition, she is entitled to be compensated for loss of opportunity on the job market, due to the fact that post-accident, she has been recommended to confine herself to sedentary type occupations.

98. In the circumstances, I award general damages for pain and suffering to date of €60,000.00; together with general damages for future pain and suffering, €30,000.00; and special damages of €588.00 giving a total award of €90,588.00.