

THE HIGH COURT

[2013 No. 13639 P.]

BETWEEN

MARIA FLOOD

PLAINTIFF

AND

MOJISOLA OGUNSOLA

DEFENDANT

JUDGMENT of Mr. Justice Barr delivered on the 3rd day of March, 2015**Introduction**

1. The plaintiff in this action is a single lady, who was born on 17th May, 1955. She works as a secretary in the University of Maynooth. She was involved in a road traffic accident on 5th December, 2011, when her car came into collision with the defendant's vehicle at a junction in the town of Maynooth. Liability has been agreed between the parties, with 65% thereof in favour of the plaintiff.

2. The case is, therefore, one for assessment of damages in favour of the plaintiff.

The Plaintiff's Injuries

3. The plaintiff stated that she did not feel any immediate pain after the collision. Once the insurance details were exchanged between the parties, she proceeded home. However, four days later, she awoke with severe neck and shoulder pain. She rang the physiotherapist, who had been treating her in relation to an unrelated lower back problem. She had an appointment with him straightaway. The physiotherapist called in the plaintiff's general practitioner, who administered a painkilling injection. He also gave the plaintiff a prescription for anti-inflammatory medication and for analgesia. The plaintiff stated that she went to work that day, but only for a few hours as she was in considerable pain.

4. She stated that on that weekend, she could not do anything. After a few days, the pain started radiating from her neck into her right shoulder. She returned to her GP, who advised that she should go to see Mr. Nagaria, Consultant Neurosurgeon, who was treating her in relation to her lower back complaint. Mr. Nagaria stated that he would give the plaintiff an injection to ease her pain. However, he could not do this until he had first given an implant into the lower back area. In the meantime, the plaintiff visited her GP who gave her injection treatment. In 2012, Mr. Nagaria gave the plaintiff injections on four occasions. However, these were of no great benefit to her.

5. Mr. Nagaria referred the plaintiff on to Dr. Joseph Fitzgerald, a Consultant Pain Specialist, at the Hermitage Medical Clinic. At the time of her initial assessment by Dr. Fitzgerald on 21st May, 2013, the plaintiff's main complaint was of right sided pain radiating to the shoulder. She described it as quite severe. She was taking Tramadol and Pregabalin. She had some soft tissue injections performed by Dr. Wilson with some relief. She also underwent a course of physiotherapy. On examination, she was tender over the middle and lower cervical facets on the right hand side. She had a full range of movement of the cervical spine and shoulders. Dr. Fitzgerald concluded that she had facet-mediated pain and arranged for her to be admitted for cervical facet injections which were performed on 28th May, 2013.

6. The plaintiff received some benefit from the injection treatment and a further such treatment was administered on 19th July, 2013.

7. In October 2013, the plaintiff underwent a lumbar fusion performed by Mr. Nagaria. This was in relation to a lower back problem which was not related to the accident. The plaintiff returned to see Dr. Fitzgerald on 7th February, 2014. She reported improvement in her pre-existing back pain. Her neck pain had, however, persisted. Dr. Fitzgerald arranged for her to be admitted for right cervical rhizotomy, which was performed on 28th February, 2014.

8. The plaintiff was reviewed again on 2nd May, 2014. She reported improvement in her neck symptoms with reduced cramping and pins and needles and numbness in her hand. She continued to have a constant ache. She took Tramadol for pain. On examination, she had a good range of movement of the cervical spine. She had some trigger points within the trapezius muscle on the right side. Shoulder examination was normal. Upper extremity neurological examination was normal.

9. Dr. Fitzgerald was of the opinion that generally the prognosis for whiplash injuries is good, with the majority of injuries settling within the first two years. A smaller group of approximately 20% have more persistent symptoms. Most of this group, as in this case, have a reasonable level of function and can work, although with some modifications. His view was that the treatment for whiplash injuries is conservative. Early medication management and physiotherapy referrals seem helpful. For those that fail, more aggressive medication management and injection treatment can help. Some, as in this case, have persistent soft tissue symptoms which can be addressed with medications and Botox injections. He believes that the plaintiff would get further improvement with the treatment outlined above. She may, however, have some persistent symptoms which may be refractory to therapy.

10. The plaintiff was also seen by Mr. Turlough O'Donnell, FRSCI, Consultant Orthopaedic Surgeon. He noted that the plaintiff had undergone an exhaustive regime of physiotherapy, imaging and multiple injections (intramuscular, trigger point, facet joint and rhizotomies). These had only limited and short-term benefit.

11. He noted that the MRI findings, especially of the shoulder, were consistent with the plaintiff's symptoms. However, given that there was multiple pathology with degenerative joint disease, most likely of the ACJ, narrowing of the subacromial space and tendinopathy of the rotator cuff, these were not likely to represent an acute injury and were commonly seen findings in MRI scans of people over the age of 40 years.

12. He went on to give the opinion that it was very possible, indeed likely, that the nature of the accident was such as to exacerbate a pre-existing asymptomatic or mildly symptomatic condition and the plaintiff's current symptoms were very typical of a patient with pain emanating from the ACJ. This would be supported by her failure to significantly improve following the multiple paracervical injections or subacromial injection.

13. The MRI of cervical spine demonstrated mild disc degeneration and prolapse, uncovertebral osteophytosis and mild exit foraminal stenosis. He was of opinion that it was highly unlikely that the accident caused these changes, which were well recognised age related findings on MRI scanning and the doctor did not believe they were severe enough in any case to be causing the plaintiff's current symptoms.

14. Mr. O'Donnell gave the following opinion in the matter:-

"Her symptoms, given the chronicity and MRI findings, in my professional opinion are unlikely to settle and indeed deteriorate. I would advise that she undergo a diagnostic fluoroscopically-guided injection of the ACJ under sedation as a day case, to determine whether this is the level of pathology. If this proves to be the correct diagnosis, then Ms. Flood will require an excision arthroplasty and stabilisation of the ACJ in conjunction with a subacromial decompression to alleviate her symptoms. Overall rehabilitation following such surgery takes six – twelve months, but I would expect her to make a full functional recovery in the absence of complications."

15. The plaintiff was examined by Mr. Robert F. McQuillan, FRCS Ed., Consultant Orthopaedic Surgeon on behalf of the defendant. On examination on 18th March, 2014, he noted that the cervical spine contour was normal. There was tenderness to the right of the lower neck above the right shoulder blade and anterior to the right shoulder joint. The shoulder joint showed active forward flexion at 90 degrees in both shoulders, passive is full with discomfort. There was no mid arch catch. The cervical spine showed flexion and extension to 90 degrees being about 75% of expected. There was satisfactory left rotation. There was slight reduced right rotation. Lateral flexion was satisfactory. Neurology in the arms was normal.

16. Mr. McQuillan gave the following opinion in relation to her injuries:-

"It is possible she sustained a right shoulder injury from her seatbelt. Sudden braking would not induce a neck injury. I am not sure of the severity of the impact. It is not clear from the description if this was severe enough to produce sufficient deceleration to induce a neck injury. Generally, her neck complaints are well in excess of what one would expect following a frontal impact. She now attends a pain clinic and has had multiple injections to her neck and has a recent facet rhizotomy carried out. I am sure there is some indication for all of these injections but further treatment should be undertaken with caution. I do not have any evidence that a serious injury has been sustained. I would be happy to comment further if the results of the MRI scan of her cervical spine become available."

17. In relation to the plaintiff's current position, she stated that she continues to suffer neck and shoulder pain predominantly in the mornings. Her neck will awaken her due to pain at night a few times each week. It has made life difficult for her. She has difficulty working with a computer for a prolonged period. She is painful in the neck and shoulder after a day's work. This pain will settle a little at the weekend when she is not working at a computer. She finds driving in traffic causes pain and on this account she goes to work early and leaves early so as to shorten her travel time to and from work. She stated that shopping was difficult and that she was not able to carry heavy bags. The staff at the supermarket were very helpful to her in this regard. She stated that she rests at the weekend so that she will be able to do her work during the week. She stated that she loved work and did not want to miss time as a result of her injuries. She also stated that she had difficulty doing her housework and had to employ someone to come in once a week to help with the cleaning.

18. The plaintiff also stated that she was restricted in doing her hobby of gardening. She was not able for heavy gardening and in particular, due to the fact that she was right hand dominant, she would have to use her right arm more than her left arm. She employed a person to come in and help with the gardening.

19. In cross examination, the plaintiff accepted that she had had previous incidents where she had injured her neck and shoulder. In November 2007, she tripped at home and hit a wall, jolting her neck. However, this was a short-lived injury and cleared up within one or two weeks. In April 2008, she was hit by a cyclist and injured her neck and shoulder. Again, she said that this cleared up with physiotherapy treatment in a number of weeks. In 2011, she injured her shoulder pulling a weed in her garden. She attended her physiotherapist, who sorted her problem in a week or two.

20. It was put to her that in August 2010, she tripped and fell and that this was related to her lower back. She stated that she did not remember it specifically and if it happened it cleared up quickly. It was put to her that in a note from the GP dated 18th June, 2010, the plaintiff had complained of constant right sided pain since the previous night and pain in the right ring finger. The plaintiff said that she did not recall any such conversation with her GP. It was put to her that there was a note in April 2011, which stated that she complained of right shoulder pain in the garden. She attended with the GP and had symptoms for approximately two weeks. There was a note that on 20th October, 2011, the plaintiff had shoulder pain and wanted an increase in her patch medication. She said that she did not remember seeing her GP at that time.

21. It was put to the plaintiff that in a note dated 5th November, 2007, it was noted that she had been in a "rear ending RTA 10/7 ago" in Maynooth and that she had attended because a chair in work had collapsed or slipped beneath her, causing her to suffer injuries on the right side. The plaintiff stated that she did not recall this incident at all. She stated that she was rear ended in an RTA, but that it was not in 2007. She did not have any recollection of a chair slipping from beneath her at work. The plaintiff stated that she did not recall these events which were put to her. She only recalled the incidents that she had indicated in evidence. She stated that she did have an RTA several years back, but it was not ten weeks prior to the physiotherapy note on 5th November, 2007, as recounted by the physiotherapist.

22. The plaintiff has received extensive physiotherapy treatment. In total she had 27 sessions of physiotherapy and 31 visits to her GP. In all, she had paid the sum of €12,724.53 in respect of physiotherapy, GP visits and injection treatment.

Conclusions

23. This unfortunate woman was involved in an RTA on 5th December, 2011. She suffered injuries to her neck, right shoulder and right arm. She has received extensive treatment in the form of injections and rhizolysis to her neck and shoulder. I accept the plaintiff's evidence that she continues to suffer neck and shoulder pain on a constant basis. I accept that she is disabled in the work aspects of her life in that she can experience pain with prolonged work at a computer. She is also disabled in the ordinary aspects of her life and requires the help of staff at the supermarket to help with carrying her shopping bags. She has had to employ a person to come

into the house and help with the household cleaning. She is also disabled in the recreational aspects of her life; in particular, she cannot do gardening to the extent that she had done prior to the accident, and has had to pay someone to come in and help with the gardening.

24. On the basis of Mr. O'Donnell's medical report, it would appear that the plaintiff will require significant treatment into the future.

25. In these circumstances, the appropriate amount for general damages to date at full value is €150,000.00. The amount for pain and suffering into the future is €75,000.00. Special damages amount to €12,724.53. This gives an overall award of €237,724.53. It has been agreed that the plaintiff is entitled to 65% thereof, giving a net award in favour of the plaintiff of €154,520.94.