

THE HIGH COURT**2007 4662 P****BETWEEN****ANN HEGARTY****PLAINTIFF****AND****CORAS IOMPAIR ÉIREANN AND THOMAS ROCHE****DEFENDANTS****JUDGMENT of Mr. Justice Herbert delivered on the 11th day of November 2009**

The plaintiff is a married lady with six adult children, only one of whom now resides in the family home. For the past fifteen years she has been employed as a Special Needs Assistant at St. Mary's on the Hill School. She works between the hours of 08.50 and 14.30, Monday to Friday. She provides for the special needs of children suffering from Attention Deficit Disorder. She told the court, and I have no reason to doubt her evidence in this regard, that she loves her work and it is an important part of her life.

On the 29th November, 2003, she was travelling on a long distance bus, the property of the first named defendant. As this bus entered the town of Fermoy the driver, Mr. Denis O'Sullivan was obliged, in his own words to the Court "to hit the brakes", when a motor car crossed in front of the bus. This car struck the structure of the bus a glancing blow and dislodged a fibreglass panel on the front of the bus. It then continued across the junction colliding ultimately with a Garda car. I am satisfied on the evidence of the plaintiff, which was not disputed by Mr. O'Sullivan, that she was sitting in the front seat of the bus on the opposite side of the aisle from him. She was sitting nearest to the aisle and another male passenger was sitting in the same seat next to the window. Her sister and her sister's young daughter were sitting on the opposite side of the aisle immediately behind the driver's seat. On the evidence of the plaintiff and Mr. O'Sullivan, I find that there were about 20 to 26 other passengers on the bus at the time of the accident. I am satisfied on the evidence and I so find, that the plaintiff was pitched forward in her seat and then thrown back into that seat. In cross examination she stated that she was not sure whether she struck a metal bar which was in front of her seat. I accept her evidence that she was not and, never claimed to have been "thrown violently from her seat to the ground", as pleaded in the Indorsement of Claim.

I am satisfied that the plaintiff received a considerable fright and was considerably shaken by these events. I accept her evidence that she was further frightened by the thought that her sister or her sister's child might have suffered injury and, by the very aggressive behaviour of a passenger who sometime after the incident started to remonstrate with the bus driver and began kicking the bus. Though shaken the plaintiff continued on her journey when a replacement bus arrived from Cork after an hour or so. She told the Court that on arrival at her destination she had to lie down for an hour. That evening she said her neck became sore on the left side.

On the 1st December, 2003, the plaintiff attended Dr. George O'Mahony who had been her general medical practitioner since 1995. Dr. O'Mahony told the Court that the plaintiff on that occasion complained of a great deal of pain in the left side of her neck and of headaches. The plaintiff's recollection, on the other hand, was that she did not get headaches for about one month after the incident and that this was because her neck was sore. On clinical examination Dr. O'Mahony found that the plaintiff was tender over the left side of the trapezius muscle and had a 50% restriction of all movements in her neck. He concluded that she had suffered a soft tissue type injury to her neck. He prescribed non steroidal anti-inflammatory medication and analgesics. He recommended that she should return for review in a few weeks.

The plaintiff was seen by Dr. O'Mahony on the 14th January, 2004. He told the court that on that occasion she complained of pain in the left side of her neck and in the left side of her rib cage. On palpation, Dr. O'Mahony noted that the plaintiff was tender over the trapezius muscle on the left side and over the left side of her rib cage. Even though the plaintiff admitted in evidence that she was not sure whether she had struck the metal bar in front of her seat, I find that this pain in the left side of her rib cage would be caused by such an impact. The plaintiff was not wearing a seat belt and there was no evidence that she had suffered any other injury between the 29th November, 2003 and the 14th January, 2004. On the balance of probabilities I am satisfied that there is a direct causal connection between the events of 29th November, 2003 and this pain in the left side of the plaintiff's ribcage. Dr. O'Mahony noted a significant reduction in movement in the left side of her neck which he found to be only 25% of normal. He noted that she did not complain of headaches on this occasion. He advised her to take painkilling medication as required.

When Dr. O'Mahony next saw the plaintiff in the 20th February, 2004, she told him that she had no headaches and that the pain in the left side of her ribcage was gone. However, she now complained of low back pain, together with continuing pain on the left side of her neck. On clinical examination Dr. O'Mahony noted that movements of the left side of her neck continued to be limited to 25% of normal but that now cervical flexion was reduced to 25% of normal and lumbar flexion was reduced to 30% of normal.

Dr. O'Mahony told the Court that the plaintiff had informed him that the pain in the left side of her neck was worse when she was at work. She said that the pain in her low back was intermittent, occurring every few weeks and seemed to be brought on by housework. This situation continued until July 2006, when the plaintiff began to complain of pain radiating into her left arm and with prolonged episodes of paresthesia in her left hand and a loss of sensation in her left little finger. Dr. O'Mahony became concerned that the plaintiff's symptoms may have been due to a cervical disk problem and he referred her to Mr. Kaar, a Consultant Neuro-Surgeon who saw her on the 26th July, 2006.

At the request of Mr. Kaar an MRI Scan was taken of the plaintiff's cervical spine on the 5th December, 2006. Dr. Liam Spence, a Consultant Radiologist at University Hospital Cork, told the Court that this MRI Scan showed degenerative changes at the C5/C6 level causing some deformity of the cervical cord and narrowing of the neural foramen at the site of exiting nerve roots. He stated that it was his expert opinion that the plaintiff was likely to have ongoing intermittent neck pain as result of these degenerative changes. An Imaging Report dated the 26th March, 2004, obtained from the Radiology Department of the Mercy Hospital Cork, following an ordinary

X-ray of the plaintiff's cervical and lumbo-sacral spine areas, states that while C7 is not shown on the radiograph, the remainder of the cervical vertebrae appeared normal but that degenerative narrowing was seen at L1-L2 with associated osteophyte formation. In cross-examination Dr. Spence said that it was not possible to state that the accident which had occurred almost three years earlier had caused the degenerative changes seen on the MRI Scan at the C5/C6 level. In his opinion the accident to some extent had exacerbated a pre-existing degenerative condition at this level and had made it painful.

Mr. Kaar told the court that in his opinion the changes shown on the MRI Scan would have taken a number of years to develop. He considered that in March 2004, the plaintiff had disk changes at the C5/C6 level but without boney changes. In his opinion the accident probably caused the disk to protrude further and quickened the development of osteophytes. This he said had resulted in the left sided neck pain radiating intermittently into the plaintiff's left arm, the pins and needles sensation in her left hand and the numbness in her left little finger. Mr. Kaar said that he had reviewed the plaintiff on the 1st November, 2007. On that occasion he found a diminished range of movement in her left shoulder and diminished extension and rotation in her cervical spine. He told the Court that these were mechanical and referred problems consistent with the degenerative changes seen on the MRI Scan. He found no evidence of nerve root compression and therefore surgery was not indicated. In his opinion the degenerative disease was progressing, resulting in the symptoms of which the plaintiff was then complaining. He considered that work strain added to the problem.

Mr. Kaar gave evidence that he next examined the plaintiff on the 16th February, 2009. On that occasion she informed him that the pain on the left side of her neck had lessened and that she did not need to take pain killing medication. She complained that she had still some restriction of neck movements, though on examination, Mr. Kaar found a full range of movements. The plaintiff, he said, told him that when travelling in a car if the car went over sudden bump, she got a jolt of pain in her neck. Mr. Kaar told the court that this was typical of degenerative changes in the cervical spine. He considered that the plaintiff's condition had stabilised and that any ongoing numbness in her left little finger was not related to the problems at the C5/C6 level. He stated that he was of the opinion that the accident had caused a pre-existing degenerative condition to deteriorate and become symptomatic. In his opinion the plaintiff could and should continue to work, but that she should take more care of her neck. Overall he considered the plaintiff was likely to remain stable, though she would continue to get symptoms intermittently into the future. Walking which caused a sudden jerking of her neck, would cause pain or carrying a haversack weighing more than 10kg. He felt that she would need to take analgesics from time to time to deal with pain.

In cross-examination, Mr. Kaar accepted that hill walking and walking over rough terrain would in time have resulted in pain in the plaintiff's neck even if the accident had never occurred. On the 16th February, 2009, he considered that the plaintiff's symptoms were improving. Pain was no longer radiating into her left arm and she had a good range of neck movements, though with some slight restriction on left rotation. He considered that the ongoing litigation was a factor in her recovery. He considered that there was no objective reason for any worsening of the plaintiff's neck condition and in his opinion her condition had stabilised. On that occasion he found no evidence of muscle spasm or any serious restriction of neck movement. He felt that her symptoms would continue to reduce with time but that she would have intermittent episodes of pain and discomfort over the long term.

Mr. J.C. Marks, a Consultant Neuro-Surgeon at University Hospital Cork, gave evidence in the case for the defendants. For logistical reasons he gave evidence a day prior to Mr. Kaar. He told the court that he was satisfied that the degenerative changes in the plaintiff's cervical spine at the C5/C6 level were not caused by the events of the 29th November, 2003. In cross examination he stated that it was his opinion that these events had worsened a pre-existing condition a bit, as well as making it painful. In this regard he told the Court that the degree of trauma was very important and as the impact in the instant case appeared to have been quite minor, he considered that the degree of exacerbation was not large. On examining the plaintiff on the 15th November, 2007, he found that her neck movements were only marginally restricted, that tendons and reflexes were all normal and that she had no sensory loss in either limb. On that occasion she had complained of some intermittent low back pain, but he did not believe that this was a major concern at that time. On the 1st of November, 2007, the plaintiff had complained to Mr. Kaar of episodes of low back pain. On the 16th February, 2009, she complained of some pain in the left lumbar region. Neither Mr. Kaar nor Mr. Marks addressed the aetiology of this alleged low back pain. In these circumstances, I accept the opinion of Dr. F. Matthews, a general medical practitioner who gave evidence in the case for the defendants, that the episodes of alleged low back pain were not related to the incident of 29th November, 2003. Dr. Matthews stated that low back pain is a very common complaint and as the plaintiff had made no complaint of low back until 20th February, 2004, it was unlikely to be trauma related as such injuries almost invariably cause pain within 48 hours of the trauma. It was also this witness's opinion that the incident on the 29th November, 2003, did not cause the degenerative changes in the plaintiff's cervical spine, but probably did exacerbate a pre-existing condition to some degree and rendered it symptomatic. Dr. Matthews gave evidence after Mr. Marks, but before Mr. Kaar. In his opinion, because the trauma was not significant, it did not worsen the plaintiff's condition much, though it may have made it painful.

Dr. Matthews told the Court that he had examined the plaintiff on the 21st July, 2006. On that occasion she made no complaint of suffering headaches, or nightmares or of any sleep disturbance or deprivation. She did not complain of depression. She did complain of left neck pain. He told the Court that he had expressly asked her if she had any other problems. He found that the plaintiff had a very good range of pain free movement in her lower back and was able to bend to mid shin level at which point she complained of pain. He stated that he had examined her again on the 14th December, 2006. On that occasion she complained of extreme tenderness in the area of her lumbar spine and refused to move when standing as she claimed that this was too painful. However, when on the examining couch, she was able to raise both legs to 80 degrees. This Dr. Matthews said demonstrated that she had little or no back pain, - she had done indirectly what she claimed she could not do directly because of the pain. In his opinion the plaintiff was exaggerating as regards low back pain. Dr. Matthews told the court that he next saw the plaintiff on the 12th March, 2009. On this occasion she claimed that she was only able to rotate her neck 10 degrees to the right and was unable to rotate her neck to the left at all. She claimed to be unable to extend her neck at all. She was able to flex her chin to touch her neck. The plaintiff told him that she was unable to raise her left arm above the horizontal because of pain. She stated that she could only forward flex to mid thigh level. She made no complaint whatever of any psychological problems. Dr. Matthews told the court that when lying on the examination couch, the plaintiff was able get herself to a seated position and to touch her ankles with her hands. This is he said was the movement she had claimed she could not do because of pain. Dr. Matthews told the court that when not being observed the plaintiff demonstrated a level of at least 50% of normal range of neck movements and, on leaving his rooms had looked over her left shoulder without any indication of pain. He was amazed to learn that on the 13th March, 2009, the day following this examination, the plaintiff had presented to Dr. O'Mahony, her own general medical practitioner, complaining of various psychological problems, - being tearful, upset and depressed. In cross examination Dr. Matthews told the Court that Dr. O'Mahony had been present for most of his examination of the plaintiff on the 12th March, 2009. It was Dr. Matthews's firm opinion that the plaintiff was exaggerating her symptoms.

Mr. Kaar in cross-examination had expressed an opinion that patients in stressful situations do not always behave normally and emotional distress can cause persons to exaggerate.

Dr. David Dunne, a Consultant Psychiatrist and psychotherapist gave evidence in the case for the plaintiff. He told the court that he saw the plaintiff for three hours on the 23rd March, 2009, and on no other occasion. He told the court that she had informed him on that occasion that because of neck problems she was no longer able to go hill walking with her husband or to take her customary daily walk of about five miles in the locality of her home. She stated that her weight had increased from 9st to 11st and 11lbs and that this had caused her distress. She stated that she was comfort eating. She told him that the litigation intruded constantly on her thoughts except when she was engaged in teaching. She informed him that she was unable to use City Buses and had to sit in the front seat of any other bus, even if this meant queuing for 45 minutes. She stated that she had dreams about the bus during which her sister and her sister's child disappeared and she had another form of nightmare in which she dreamed of a Garda with his hand out. She had these dreams every few months and on these occasions she would wake up frightened and crying. When she woke up she would be unable to go back to sleep. She avoided watching any television Series which involved any form of accidents. She told him that she had had been depressed and fed up at home for the previous five weeks. She had taken one tablet for depression but it had made her sick and gave her a headache. She had to take a tablet about twice a week for headaches. She was unable to take ibuprofen as it made her chesty.

Dr. Dunne told the court that in his opinion the plaintiff was suffering from either an Adjustment Disorder or from Post Traumatic Stress Disorder due to the accident. He considered that she would improve in time once the litigation was over and he considered that she would do pretty well thereafter, though he was unable to say whether she would make a 100% recovery. He considered that the exaggeration pointed to by Dr. Matthews could well be a reaction to Adjustment Disorder or Post Traumatic Stress Disorder.

In cross examination Dr. Dunne accepted that it had been a very long time from the date of the accidents before the plaintiff had started to complain of psychological problems, - on the 13th March, 2009, the accident having occurred on the 29th November, 2003. He accepted that on the evidence there was no life threatening trauma, horror, occasion of fear or high stress involved in the incident on the 29th November, 2003. He accepted that it was unusual for person to have Adjustment Disorder or Post Traumatic Stress Disorder following a minor collision. He accepted on the evidence that the plaintiff's niece had not been hurt in the incident and was in fact asleep. Dr. Dunne stated that the plaintiff claimed that she had been frightened by the behaviour of a passenger who some considerable time after the occurrence had started kicking the bus. He accepted that this had nothing whatever to do with the defendants. Dr. Dunne accepted that he had seen the plaintiff on the one occasion only. He accepted that what had occurred on the 29th November, 2003, ranked low on the scale of causative factors for a psychological type injury. He did not accept that the fact that the plaintiff had made no complaint of psychological problems until the 13th March, 2009, indicated that she did not suffer from an Adjustment Disorder or from Post Traumatic Stress Disorder. Though there was no evidence at all in this regard from the plaintiff herself, Dr. Dunne considered that she might have been ashamed or had seen it as an indication of weakness in herself to complain of these matters. He said it was not uncommon for persons not to complain of such problems. He felt that once the legal case was over the plaintiff would improve considerably and as a matter of probability would make a full recovery.

Senior Counsel for the defendants informed the Court that in the light of this evidence given by Dr. Dunne, the defendants would not call the psychiatrist retained on behalf of the defendants.

I find on the evidence that the plaintiff suffered a very minor whiplash type trauma affecting the left side of her trapezius muscle. In normal circumstances she should have made a full recovery from such an injury within a period of between six to eighteen months after the event. However, despite the very minor nature of the trauma, - and it is significant that none of the other passengers on the bus on the occasion complained of having suffered any injury whatsoever, - I am satisfied on the medical evidence and, I so find, that the plaintiff suffered some, - probably minor, - exacerbation of a pre-existing degenerative condition at the C5/C6 level of her cervical spine. More significantly, I find on the evidence that the plaintiff had no pain or limitation of movement in her neck prior to the 29th November, 2003, and, that the very minor trauma suffered by her on that occasion was nevertheless sufficient to render a previously asymptomatic condition painful and limiting. I find on the evidence that by the 1st November, 2007, (about four years after the accident) the pain and diminished range of movement in the plaintiff's left shoulder and cervical spine was then referable solely to a natural worsening of the degenerative changes in her cervical spine and was no longer attributable to the incident on the 29th November, 2003. By the 16th February, 2009, I am satisfied that this condition had become stabilised. At that time Mr. Kaar found on clinical examination that the plaintiff had a full range of movement in her neck and cervical spine with no evidence of any muscle spasm. He was satisfied at that time that any pain caused by a car passing over a bump in the road, or by a sudden jerking of her neck when walking over rough ground or by carrying a weight greater than 10kg on her back, was caused by the degenerative changes in her cervical spine. He considered that these changes though stabilised would cause symptoms intermittently into the future, but he was satisfied that any future pain could be dealt with by analgesics. Mr. Kaar considered that the ongoing litigation was a factor delaying the plaintiff's recovery. He considered that she could and indeed should continue to work.

I am fully satisfied that on the 14th December, 2006, and again on the 12th March, 2009, this plaintiff seriously exaggerated her physical symptoms to Dr. Matthews. This was a very serious matter as it presented an image of the plaintiff's symptoms getting progressively and seriously worse with the passage of time since the 29th November, 2003. Fortunately, by reason of his medical skills and his experience Dr. Matthews saw through the deception. I was both disturbed and surprised by this evidence from Dr. Matthews. I had not formed the opinion that the plaintiff in the course of her own evidence was exaggerating her symptoms or seeking to mislead the court.

The evidence of Dr. Dunne, Consultant Psychiatrist, came as much a surprise to me as it clearly did to Dr. Matthews. Dr. Matthews had examined the plaintiff on the 12th March, 2009, in the presence of Dr. O'Mahony, her own general medical practitioner, on which occasion she made no mention at all of having nightmares, disturbed sleep, anxiety, tearfulness, upset, and depression, together with difficulties with motor cars and public transport, either since the 29th November, 2003, or in the preceding weeks. I accept the evidence of Dr. Matthews that Dr. O'Mahony was present throughout most of the examination. I accept the evidence of Dr. Matthews that on the 21st July, 2006, the plaintiff had made no complaint to him of headaches, nightmares, sleep disturbance or depression, even though he had expressly asked her did she have any other problems. It seems extraordinary that on the very next day following her examination by Dr. Matthews, in the presence of her own general medical practitioner and, almost five and a half years after suffering a very minor trauma, the plaintiff should present Dr. O'Mahony with such a list of symptoms involving stress, anxiety, depression and other psychological problems that he took immediate urgent steps to have her seen by a consultant psychiatrist.

I find it impossible to accept the suggestion that this plaintiff would have been too nervous or too embarrassed to mention such widespread and disturbing symptoms even to Dr. O'Mahony who had been her general medical practitioner since 1995. I find it very difficult to understand how this lady who drew timely attention on 20th February, 2004, to the fact that her work as a Special Needs Assistant, dealing with disruptive and highly active children, occasionally worsened her neck pain, would meanwhile carry on with such challenging work while suffering all these alleged significant non physical injuries in silence for five and a half years. No independent evidence whatever was called to corroborate these psychological type complaints.

Mr. Kaar told the court that persons in stressful situations do not always behave normally and emotional distress can cause persons

to exaggerate. Dr. Dunne considered that if the plaintiff had exaggerated her symptoms to Dr. Matthews, this could well have been a reaction to an Adjustment Disorder or to Post Traumatic Stress Disorder. I am quite unable to accept that this plaintiff suffered any Post Traumatic Stress Disorder arising from the incident on the 29th November, 2003. I find on the evidence that neither the nature of that incident nor her progress since the 29th November, 2003, would permit of such a conclusion. I find it most significant that the evidence of Dr. Dunne, given on cross examination that it would be his expert opinion that once this legal case was over the plaintiff would improve gradually and as a matter of probability would make a full recovery. I find that these alleged psychological type injuries of which complaint was made for the first time on the 13th March, 2009, were part of a pattern of exaggerating her symptoms by the plaintiff which had commenced on the 14th December, 2006.

Having regard to the above recorded opinion of Mr. Kaar and, in particular, to the evidence of Dr. Dunne I have with considerable hesitation come to the conclusion that this plaintiff became stressed and anxious because of the ongoing problems with her neck and weight, (then entirely unrelated to the incident of 29th November, 2003), and because of incessant worrying about the litigation. This litigation commenced sometime prior to the 28th April, 2004, when an Ordinary Civil Bill was issued on behalf of the plaintiff. I find that these factors and not the incident on the 29th November, 2003, probably caused her some emotional and adjustment difficulties which on the medical evidence may have led her to exaggerate her symptoms to the medical professionals. As is quite common in these type of cases, most the plaintiff's complaints are recalled, not by the plaintiff, but by the expert witnesses called in the course of the trial who, of course, have the advantage of contemporaneous notes or can refer to medical reports admitted into evidence.

For her pain and suffering and inconvenience to date, the court will award this plaintiff damages in the sum of €35,000. The court is satisfied that any future pain or difficulties which the plaintiff may suffer in her neck are not referable to the incident which occurred on 29th November, 2003.