

## THE HIGH COURT

[2010 No. 4368 P]

BETWEEN

FRANCESCA DE CATALDO

PLAINTIFF

AND

PETRO GAS GROUP LIMITED, PETRO GAS RETAIL LIMITED AND DESDALE LIMITED

DEFENDANTS

**JUDGMENT of O'Neill J. delivered on the 30th day of November, 2012**

1. The plaintiff, who was born in 1976, in these proceedings claims damages for injuries she claims she sustained in a slipping incident that occurred on 24th January 2007, at the defendants' petrol station known as Apple Green in Ballybrack, County Dublin.
2. On the occasion in question, the plaintiff had parked her Jeep at the diesel pump, had put diesel into her Jeep, had gone into the shop to pay and was returning to her Jeep. She exited through the door from the shop and a short distance outside the door and to the left of it as one leaves, she claims that her left foot slipped and went from under her, causing her to fall heavily to the ground, the impact occurring mainly on her left side. She attributes her fall to a patch of oil on the ground which, from her description of it, appeared to have a diameter or width of about 2 ft. She said her clothes and her hair were contaminated with oil after the fall.
3. Her evidence was that when she exited from the shop, it was not raining, but it began to rain about five to six minutes later as she lay on the ground. She said that because of the pain in her left hip and buttock area, she was unable to get up. She complained that her plight was ignored by the staff of the defendants, insofar as the person who came to attend upon her would not call an ambulance until he got the permission of the manager. She said a number of her personal possessions were stolen from her as she lay on the ground, including her mobile phone, but she said these were restored to her as a result of the intervention of other members of the public. She said she complained of all of this to the staff of the station. Her evidence was that a member of the staff told her they had a problem that day with an oil spillage.
4. In due course, an ambulance was called and quickly arrived on the scene. The plaintiff intimated to the ambulance man who gave evidence, Mr. Michael Corduff, that she was unable to get up and so she was appropriately assisted into the ambulance and taken to Loughlinstown Hospital. The evidence of Mr. Corduff was that he had to kneel beside the plaintiff, and in so doing, soiled the knee of his trousers. Later, when he laundered these trousers, he had to do it twice to remove a stain on the knee of the trousers. He was unable to say what the cause or the nature of the stain was.
5. In Loughlinstown Hospital, the plaintiff was X-rayed. No bony injury was detected and the plaintiff was discharged.
6. Approximately three weeks later, an MRI scan demonstrated bruising of the sacrum, namely, micro-fracturing of the cancellous bone.
7. As a result of this incident, the plaintiff in these proceedings claims she suffered a serious injury to her left pelvis, hip and sacrum area which had the effect of disabling the plaintiff for a prolonged period of time from a variety of normal activities, namely, work for about three months, and a host of domestic activities for upwards of three years. In respect of this latter claim, *i.e.* her inability to do a variety of domestic chores, she claimed that she required the assistance of a carer or nursing assistant for three years, and she submitted, in these proceedings, a claim for over €73,000 for the cost of employing three carer/nurse assistants sequentially over the time involved. Indeed, she updated that claim by the provision of further particulars to include the third carer, raising the claim from approximately €69,000 to €73,490.
8. When the proceedings came on for hearing, this claim was abandoned, as also was the claim for €10,175 for a variety of oils and other preparations.
9. The claim for the carer/nurse assistant was documented originally in a letter dated 12th July, 2010, furnished as part of the updating of particulars of special damages under the cover of a letter dated 2nd March, 2011, by the plaintiff's then solicitors, Messrs. John Synnott & Company.
10. By a further updating of particulars on 30th May, 2011, also done by John Synnott & Company, the same letter from the plaintiff's accountants was furnished but altered to include the third carer or nursing assistant, Martha Taylor, bringing the claim in this respect up to €73,490.
11. When challenged on the making of this claim, now abandoned, in cross-examination, the plaintiff's explanation was that this claim was put in by her solicitor contrary to her instructions. In response to this evidence, Mr. Burns S.C. for the defendants, put to the plaintiff the affidavit of Mr. John Synnott and the exhibit therein, grounding an application by Mr. John Synnott to come off record for the plaintiff.
12. This affidavit and the letter exhibited paint an entirely different picture. Mr. Synnott applied to come off record because he was unwilling to continue acting for the plaintiff because of what he deposed to as the exaggeration by the plaintiff of her claims and, specifically, her claim for €73,490 for nursing assistants, and indeed, other incidences where Mr. Synnott felt he had been misled by the plaintiff.
13. The plaintiff's evidence in this regard was wholly unbelievable and her attempt to avoid responsibility for what was patently a false claim by insisting that her solicitor generated this claim is not just totally wanting in credibility, but is a reprehensible attack on the integrity of her solicitor made with the benefit of absolute privilege. I have no hesitation in rejecting as wholly untruthful the

plaintiff's evidence on this aspect of her claim. It is crystal clear that the plaintiff, by using her accountant, generated this information underpinning this claim, and not her solicitor. It is equally apparent that the claim was, in the first instance, completely without merit or justification. To suggest that a young, healthy person who had an injury of the kind sustained by the plaintiff in this fall, would need nursing assistance over three years is obviously absurd, and no doubt, the reason why this claim was abandoned late in the day.

14. Much the same could be said concerning the claim for €10,175 for a variety of oils and preparations, also abandoned late in the proceedings.

15. Returning to the circumstances of the accident itself, I am quite satisfied that the plaintiff was not caused to slip on oil spilled at the location in question. It is interesting to note that in her evidence, the plaintiff pinpointed the location of her fall at a different place to where she pointed it out to her engineer and where the defendants' manager, Mr. Nerijus Ceida, found her. The plaintiff, in her evidence, moved herself several feet to the left as one looks out from the shop, and onto the far side of the drain, quite close to where there is a manhole cover with staining on the ground as shown in Mr. Bergin's photographs. I have no doubt that the plaintiff could not resist, when asked to point out, on Mr. Bergin's photographs, where she fell, getting herself close to that staining.

16. I am quite satisfied that the plaintiff fell on the other side of the drain, namely, nearer the door of the shop where Mr. Bergin said she pointed out the location to him and where Mr. Ceida said she was located.

17. I find the plaintiff's account of her fall and the aftermath of it wholly unconvincing and unreliable. I simply do not believe that a number of her personal possessions were stolen and then miraculously returned to her. I do not believe she was left lying in the rain without any covering being provided by the staff of the defendants, nor do I believe that her requests for an ambulance were dealt with in the manner she alleges.

18. I find it hard to credit that a young, healthy person who suffered the injury she sustained in this fall was rendered incapable of getting off the ground herself or was unable to accept assistance to help her get up, which I am quite satisfied was offered, particularly bearing in mind the weather conditions prevailing.

19. I do not accept that there was any oil spilled in this location. The photographs taken by Mr. Ceida immediately after the plaintiff was removed to hospital clearly do not demonstrate any such spillage, and it was extremely unlikely that any such spillage from a bottle of oil would occur in that location which was not near where customers would have been opening bottles of oil to pour the same into their vehicles. It was also extremely unlikely that a bottle of oil, if dropped on the ground there or anywhere else, would burst, causing spillage.

20. I find the plaintiff's evidence as to what happened in this incident as completely unreliable. I accept the evidence of Mr. Ceida and I am satisfied that there was no oil on the ground on this occasion, that there was a system in place for dealing with oil spillage with which all the staff were familiar, that no complaint of any spillage had been made and that there had not been any spillage that morning. I am also satisfied that the plaintiff was dealt with in an appropriate manner by the staff of the defendants and was covered by Mr. Ceida with a jacket and two umbrellas, and that the ambulance was called in a timely fashion.

21. In her evidence, the plaintiff claimed that as a result of the fall and the injury to her left pelvic area, she developed a serious condition in her left foot which now causes her pain and inhibits her walking ability. She attributes the development of this condition to the tilting of her pelvis resulting from the injury sustained in the fall. It is quite clear from all of the medical reports put in evidence that there is no support at all for this theory. It is interesting to note the history given by the plaintiff to Mr. Flavin, the surgeon treating the plaintiff's foot condition, in his report of 15th October 2012. It would appear the plaintiff told Mr. Flavin:-

*"She explains that her left foot twisted under her and what resulted from that was severe left-foot pain since."*

22. It is apparent from all the other medical reports, that this history was patently untrue.

23. I am quite satisfied that the plaintiff's fall was not caused by any negligence on the part of the defendants.

24. Accordingly, the plaintiff's action must be dismissed.