

THE HIGH COURT

[2014 No. 7216 P.]

BETWEEN

LIGIA POP

PLAINTIFF

AND

C. MORTON AND SONS LIMITED

DEFENDANT

JUDGMENT of Mr. Justice Barr delivered on the 27th day of October, 2016**Introduction**

1. This action arises out of an accident which occurred on 9th August, 2012, when the plaintiff, who was employed as a manager at the defendant's shop premises in Ranelagh, suffered injury to her left knee, while pushing a trolley with goods in it past a sink, where she was caused to slip due to the presence of water on the floor surface. Her left leg shot forward when her foot came in contact with the water. Her leg did not strike against any object and she did not fall to the ground.

2. Liability has been conceded by the defendant and there is no plea of contributory negligence made against the plaintiff.

3. Special damages have been agreed in the sum of €2,200.

The Plaintiff's Evidence

4. The plaintiff is a Romanian national and was born on 24th November, 1986. She started employment with the defendant in or about August or September 2008. At first, she had been employed as a shop assistant, but by the time of the accident, she had risen to the position of store manager. She is a married lady and has one son, aged two years and eight months.

5. On 9th August, 2012, the plaintiff was pushing a trolley with some goods in it past a sink in the shop premises, when her foot was caused to slip due to the presence of water on the floor surface. As already stated, her foot shot forward, but she did not strike her leg against anything and she did not fall, due to the fact that she had the trolley to hold onto.

6. In her evidence, the plaintiff stated that she felt immediate pain in her left knee. Her knee became quite swollen. Initially, she put ice on the knee for 15/20 minutes. She then went to see a local physiotherapist. He gave her treatment and also showed her exercises to do at home. He stated that if improvement was not made, it would be necessary for her to go to a doctor. In the initial period after the accident, she used crutches and also took analgesics and anti-inflammatory medication.

7. When her knee pain did not settle in the weeks and months following the accident, she came under the care of Mr. Gary C. O'Toole, Consultant Orthopaedic Surgeon, on 1st November, 2012. She went to see him privately, but when it transpired that she did not have medical insurance, he transferred her to his public list in St. Vincent's University Hospital. She was seen there on 8th November, 2012. Mr. O'Toole decided that the plaintiff required an arthroscopic examination and an arthroscopy was carried out on 19th November, 2012. At this operation, she was found to have suffered a tear in her medial meniscus and a partial tear of her anterior cruciate ligament. The plaintiff stated that after the arthroscopy, she had physiotherapy treatment in St. Vincent's Hospital on two or three occasions. She also took anti-inflammatory medication.

8. The plaintiff was reviewed in the out patients' clinic on 13th November, 2012. At that time, she was reassured that everything should settle down with time and she was discharged from further follow up.

9. On 20th December, 2012, the plaintiff and her husband returned to Romania. This was not due to the injuries sustained in the accident, but was something which they had been thinking about for a considerable period. The plaintiff stated that she continued to have further physiotherapy treatment in Romania where she had approximately eight sessions of physiotherapy and her GP also gave her some physiotherapy treatment. She stated that while this treatment helped in reducing her pain, she still experienced pain on a constant basis, and it was particularly severe if she wore high heels or engaged in any long walking. The plaintiff had intended looking for work as a manager of a supermarket, doing work similar to that which she had done in Ireland, but she did not take up any such employment, due to the fact that she felt that she would not be able to manage standing for up to nine hours per day. Instead, she took up employment as a secretary in a taxi company.

10. The plaintiff became pregnant in March 2013. She stated that her leg continued to be painful and her knee became swollen during the pregnancy. She stated that she continued to receive physiotherapy treatment during 2013. After the birth of her son on 20th January, 2014, she was on maternity leave for approximately two years. She stated that she had difficulty looking after her son due to the pain in her knee. In particular, when her son became mobile and was able to walk and run, she was unable to run after him. Her knee became more painful at this time.

11. In cross examination, it was put to the plaintiff that when she saw the defendant's expert, Mr. Hurson, in January 2014, she had only complained of intermittent pain. The plaintiff did not agree with this assertion and stated that at that time she was suffering from daily pain. However, some days would be worse than others. She stated that some of her symptoms became more severe as her pregnancy went on.

12. The plaintiff stated that in or about June 2014, she made an attempt to return to running. She stated that she had cleared this first with her GP, who had stated that it would be alright for her to do some running, but that she should not go on any long runs. The plaintiff stated that she had managed to do some short running on four days between Monday and Thursday, but that by the end of the fourth day, her knee was giving her considerable pain, such that she was not able to go running on the Friday.

13. After this attempt at returning to activity, the plaintiff then consulted two doctors in Romania. The first doctor advised that she should adopt conservative treatment, while another doctor stated that she needed a second arthroscopy of the left knee. The plaintiff also had an MRI scan taken at that time. This scan was taken on 10th June, 2014. It showed a partial tear of the anterior cruciate ligament and a small horizontal tear in the posterior horn of the medial meniscus.

14. It was put to the plaintiff in cross examination that when she saw Mr. Hurson again in March 2015, she had stated that she had no symptoms of knee pain on less active days. The plaintiff stated that this was not accurate, she stated that she had, in fact, said that the pain was much reduced on less active days.

15. It was further put to the plaintiff that on examination on that occasion, her knee had been found to be stable, without any swelling. It was put to her that she only complained of intermittent knee pain. Mr. Hurson was of opinion that the findings on the MRI scan were not caused by the accident. The plaintiff stated that all she could say was that before the accident she had never had any problems with her knee. The left knee pain only came on after the accident.

16. It was put to the plaintiff that in October 2015, she had told Mr. Hurson that on some weeks her knee was symptom free. The plaintiff did not agree that this was accurate. She stated that there was always some knee pain present, although on some weeks it was not that severe. It was put to her that on examination on that occasion, she had full movement of the knee and it was stable. Mr. Hurson was of opinion that she had recovered from the injuries to her knee which had been caused by the accident. He was further of the opinion that the plaintiff could have become symptomatic in her knee even without the accident. The plaintiff reiterated that all she could say was that she had never had any problems with her knee before the accident and she only had a problem with her left knee.

17. The plaintiff was reviewed by Mr. O'Toole on 13th October, 2015. At that time, she complained of pain in her left knee, which was exacerbated by going upstairs, but was tolerated coming downstairs. There was no history of the knee locking or giving way, although the plaintiff did say that the knee could feel loose at times. She was able to sleep at night, provided she used a pillow in between her legs to prevent it from any forced valgus stressing. If she twisted on the knee, she would feel pain medially. Her left knee pain was exacerbated by her pregnancy and associated with swelling within her knee. She felt that if she did any kind of exercise, the knee would swell up and become painful, this pain radiated behind the anterior aspect of her knee and could radiate laterally. If she stood for long periods of time, she would start to feel pain in the anterior aspect of her knee. Prolonged driving would cause the knee to become painful and swollen. Mr. O'Toole noted that the plaintiff had tried to get back to active pursuits, but that after three consecutive days of walking, she had found that the swelling was too much and had to refrain from continuing this activity. It should be noted that in her evidence, the plaintiff had stated that she had tried to get back to short running on the days in question.

18. On clinical examination, the plaintiff had a full range of motion in the knee. The knee joint felt stable to clinical examination, with a good end point to her anterior drawer test. She had some residual tenderness over the medial joint line. There was no effusion of the knee present at that time. She had stability of the knee in the coronal plain, but admitted to some pain over the medial aspect of the knee with forced varus stressing. She had an excellent range of motion of her hip and a good posterior tibial pulse. She walked with a normal gait.

19. In his medical report, Mr. O'Toole noted that the plaintiff was suffering ongoing sequelae in her left knee as a result of the accident on 9th August, 2012. She had undergone surgical intervention in Dublin for the injury. At the time of the arthroscopy, it was found that she had a tear of the posterior horn of the medial meniscus, as well as a small partial intra substance tear of her anterior cruciate ligament. The medial meniscus tear was debrided. The most recent MRI scan revealed evidence of a residual tear in this medial meniscus in the horizontal plain, as well as referring to the previously alluded intra substance tear of her anterior cruciate ligament. He noted that it was almost three years since the accident and the plaintiff was failing to achieve her pre-morbid status. Mr. O'Toole stated that unfortunately it would appear that the small horizontal tear, which normally would be relatively insignificant from a clinical point of view, was causing her some distress and blocking her ability to achieve the functional status that she desired. He felt that the current status of the knee pain would persist without further arthroscopic evaluation, he did not expect this pain to be alleviated via conservative measures.

20. In April 2016, the plaintiff had a further arthroscopy operation carried out in Romania. She stated that this had made her knee much better. Following this she had had physiotherapy treatment until the end of May or beginning of June 2016. She had required medication for approximately two weeks post-surgery. She stated that at the present time, her left knee is much better and she did not have any continuing problems with it. She confirmed that in or about June 2016, she and her husband had opened a coffee shop in her home town in Romania. She stated that she was able to cope with the demands of working in the coffee shop.

21. Evidence was given on behalf of the plaintiff by Mr. Gary O'Toole, Consultant Orthopaedic Surgeon. The essence of his findings from the examinations carried out in November 2012 and October 2015 have been set out above and will not be repeated here. In relation to the plaintiff returning to running on four consecutive days in June 2014, he stated that he would not normally advocate that a patient should go running four days in a row. He thought that that was a bit excessive. However, he stated that if a patient felt able for that level of activity, he would not prevent them doing so. He stated that the running would bring any pathology that remained in the knee to clinical attention. He stated that when he saw her in October 2015, she had said that after three days walking she had developed pain. He agreed that running would be more intrusive.

22. He stated that the MRI scan revealed the partial tear of the ACL, that they had seen at the time of the first arthroscopy. It was not something new. However, there was also a small horizontal tear of the horn of the medial meniscus. This was new, as they had treated a vertical tear in the meniscus at the time of the previous operation. He stated that there was no horizontal tear in the meniscus at the time that he had carried out his operation. He stated that if there had been a horizontal tear present in 2012, he would probably have left it alone. He stated that this horizontal tear could have been caused by attrition. It could have developed after the surgery and may not be related to the accident. However, there was degeneration evident on the MRI scans. It was put to the witness that Mr. Hurson was of opinion that the chondromalacia in the knee joint was unrelated to the injury in the accident. Mr. O'Toole stated that he agreed with Mr. Hurson that people can have chondromalacia in the patella, without being involved in an accident. To that extent he agreed with Mr. Hurson. However, Mr. O'Toole stated that while the trauma in the accident may not have caused the chondromalacia, it may have made something which was previously quiescent, into something symptomatic. In this regard, the witness pointed to the fact that the plaintiff had stated that prior to the accident in 2012, when she was 25 years of age, her knee had been pain free. The pain only related to her left knee and had only come on after the accident in 2012. Mr. O'Toole noted that Mr. Hurson shared his view that the accident may have rendered the chondromalacia symptomatic.

23. He stated that while he had not advised the plaintiff to have the second arthroscopic procedure, this was due to the fact that he was not her treating doctor by that time. However, in October 2015, he agreed with the proposal from the doctor in Romania that the plaintiff should have a second arthroscopy. He stated that when such surgery is carried out for chondromalacia patella, the results can be unpredictable. In this case, as the plaintiff appeared to have achieved a good outcome as a result of the surgery. Mr. O'Toole stated that when he saw her in September 2016, she was doing well after the second arthroscopy. Her symptoms had resolved and her knee was comfortable and had a full range of movement. This was a good outcome from the plaintiff's point of view.

The Defendant's Evidence

24. The evidence on behalf of the defendant, were the medical reports furnished by Mr. Brian J. Hurson, Consultant Orthopaedic Surgeon, which were handed into the court by agreement of the parties.

25. It is only necessary to summarise these reports very briefly, as the salient parts thereof were put to the plaintiff in the course of cross examination. When first seen by Mr. Hurson on 30th January, 2014, he noted that the plaintiff complained of intermittent aching pain on both sides of her knee cap after prolonged walking or standing. She was unable to return to the gym. She had a home exercise programme, which she performed regularly. Massage also helped her knee symptoms. The plaintiff had told him that she had had more severe symptoms in her left knee when she was pregnant. Examination revealed that she had two well healed arthroscopy scars. She had a normal range of knee movement. Forced movements were not painful. Her knee was stable in all directions.

26. Mr. Hurson was of opinion that the plaintiff had suffered a hyperextension injury to the left knee in the accident in August 2012, following which she complained of considerable pain and swelling. Her symptoms had persisted. She had had an arthroscopy carried out in November 2012. He was of opinion that she had made a very good recovery from her injury and her surgery. She had residual symptoms as outlined in the report. Examination was normal. He expected her symptoms to gradually resolve over the next six months. Thereafter, he anticipated that she would make a full recovery.

27. When reviewed on 12th March, 2015, Mr. Hurson noted that the plaintiff complained of intermittent aching in the anterolateral and anteromedial aspect of her left knee. She experienced these symptoms if she was doing a lot of stooping, bending or lifting of her one year old baby. He noted that she had no symptoms during a less active day. It should be noted that the plaintiff did not agree with the accuracy of this assertion. The plaintiff had told him that she had had an episode of severe symptoms in July 2014. Examination of the knee on that occasion was normal.

28. An MRI scan performed in March 2015, was reported to show that the plaintiff had a previous partial medial menisectomy and some signal abnormality in her anterior cruciate ligament, which was deemed to be stable. It was also reported that she had "*femoral/patella dysplasia*" with lateral tilting of her kneecap and a high riding kneecap with grade one chondromalacia of the lateral facet of her kneecap. It was noted that the Romanian doctor had recommended further arthroscopic surgery.

29. Mr. Hurson noted that the plaintiff complained of intermittent anteromedial and anterolateral knee pain when she was very active, particularly with activities which required stooping, bending and lifting her one year old child. He noted that when she was inactive, she was asymptomatic. Examination of her knee was normal. Examination of the kneecap showed that it was clinically normal i.e. it rides normally in her patella/femoral joint. Compression of the kneecap was not painful. Her MRI study was reported to show a high riding kneecap and some wear of the lateral aspect of her patella.

30. Mr. Hurson stated that her symptoms were consistent with a person with wear in her patella/femoral joint/chondromalacia. The high riding kneecap was not caused by the accident. It was also unlikely that the wear in her kneecap was caused by the accident. It was more likely that her natural patella/femoral configuration had led to her patella wear.

31. In a letter dated 8th June, 2015, Mr. Hurson stated that essentially the plaintiff had sustained a partial tear of her anterior cruciate ligament and a small tear of the posterior medial meniscus in the accident in August 2012. These injuries were consistent with the nature of the accident. She had made a very good recovery from these injuries. He stated that the ongoing intermittent aching in her knee, was nonspecific. Specifically, her knee was stable. She was not likely to suffer any adverse sequelae such as arthritis or instability as a result of her accident. He stated that she may have some on-going mild intermittent aching in her knee.

32. Mr. Hurson noted that she had no evidence of clinical patella/femoral instability. The high riding kneecap reported to be seen on her MRI scan was not caused by the accident. It was congenital. The mild patella/femoral chondromalacia would not have been caused by the accident. Any surgery to her kneecap that was proposed, was not considered to have resulted from her accident of August 2012. He stated that, as an aside, he was not sure what the indication for that surgery was.

33. The plaintiff was next examined by Mr. Hurson on 15th October, 2015. She continued to complain of intermittent aching in the distal anterior aspect of her kneecap tendon. This might also have been associated with aching pain behind her kneecap. She stated that she was fine in the morning. She may experience symptoms of pain after a long day's activity. She stated that her knee would swell and become stiff at times. Her symptoms varied in intensity. Mr. Hurson stated that some weeks she was symptom free. It should be noted that the plaintiff did not agree with this assertion when giving her evidence.

34. Examination on that occasion was normal. She walked normally. There was no swelling in the knee. She had a full painless range of knee movement. Her knee was stable in all directions. She had a negative anterior draw sign. She had a negative Lachman test. She had normal strength in her quadriceps muscles. Her quadriceps muscle bulk was the same on both sides. There was some mild pain behind the kneecap on active extension against resistance.

35. Mr. Hurson stated that his opinion was the same as in previous reports. Essentially, the plaintiff had recovered from her partial anterior cruciate ligament injury and medial meniscus tear. Her knee was stable and was likely to remain so. She was not likely to suffer any long term problems as a result of a partial tear of her medial meniscus. The MRI scan had been reported to show that she had mild "*grade one chondromalacia of her lateral patella with femoral/patella dysplasia*". Mr. Hurson stated that her symptoms were consistent with somebody with such dysplasia and chondromalacia. He stated that in all likelihood, she would have become symptomatic with this condition independent of whether or not she had an accident. Certainly, there was no indication for surgery. He stated that whether or not the accident brought forward these symptoms was moot.

36. Mr. Hurson's final examination was on 29th September, 2016. He stated that the plaintiff had stated that since her second arthroscopy in April 2016, her symptoms had resolved entirely. She had some physiotherapy treatment following the surgery. Prior to that operation, she had been complaining of pain in the front of her knee and swelling after running. She also felt that her knee was unstable. Examination of the knee on that occasion was entirely normal. At that time, she was working in her coffee shop in Romania.

37. Medical records furnished from Romania recorded that she had had an arthroscopy on 11th April, 2016, which revealed "*an injury to her internal meniscus, partial fracture of the cross ligament...femoral patella in congruence with lateralisation of the kneecap*". The record further stated that she had "*sectioning of the lateral knee cap wing, trimming, lavage*". She was prescribed the patella centering knee orthosis.

38. Mr. Hurson was of opinion that the plaintiff had sustained a hyperextension injury to her knee in the accident of 2012. She was subsequently found to have sustained a minor injury to her anterior cruciate ligament and "*small tear*" of her medial meniscus. The symptoms related to these injuries fully resolved. When last reviewed, she had symptoms consistent with her documented chondromalacia patella i.e. some mild wear at the back of her kneecap, which was not likely to have been caused by the accident.

However he was of the opinion that, the accident may have rendered it symptomatic. Since then her surgery had successfully addressed her patella problem. She was currently symptom free. In his opinion, the plaintiff had made a full recovery from her hyperextension injury.

Conclusions

39. At the time of this accident on 9th August, 2012, the plaintiff was a young lady of 25 years of age. She suffered an injury to her left knee, when her foot shot forward as a result of coming into contact with water on the floor surface. She did not fall to the ground, nor did she strike her leg against anything, nevertheless she suffered an injury to her left knee. Initially, this was treated conservatively with the application of an icepack followed by physiotherapy treatment. She was unfit for work for a period of two weeks. Thereafter, she returned to work whilst still on crutches and while still experiencing pain in her knee.

40. The plaintiff came under the care of Mr. Gary O'Toole, FRCS, who carried out an arthroscopy on 19th November, 2012. This revealed a tear in the medial meniscus and a partial tear of the anterior cruciate ligament. After the operation the plaintiff had physiotherapy treatment, at first in St. Vincent's Hospital and thereafter, in Romania, when she returned there in December 2012.

41. The plaintiff stated that in early 2013, she had wanted to get back to work in a managerial role in a supermarket, but felt that she was unable to do so due to continuing pain in her knee. She felt that she would not be able for a long day standing on her feet. Accordingly, she took up employment as a secretary in a taxi company.

42. The plaintiff stated in evidence that she continued to experience constant and, at times, severe pain in her left knee. This was evident if she wore high heels, or if she should walk long distances. She continued to receive physiotherapy treatment.

43. She became pregnant in March 2013, and stated that she had further pain and swelling in her knee during the pregnancy. After the birth of her son in January 2014, she stated that she had difficulty minding her son and, in particular, she had difficulty stooping to pick up her child. In this regard, the court only had the evidence of the plaintiff. However, having observed the plaintiff give her evidence, I am satisfied that she is a truthful witness, who has not attempted to overstate her injuries either to the court, or to the doctors who treated or reported on her. In this regard, the plaintiff volunteered to the court that she had in June 2014, attempted to go back running. To this end, she had gone on short runs on four consecutive days. However, she was obliged to desist from this activity due to the onset of severe pain on the fourth day. The court is entirely satisfied that the plaintiff has given an honest account of this attempt to get back to activity. The court is satisfied that the plaintiff was motivated by a genuine desire to try to get better from her injuries.

44. The plaintiff's symptoms continued during 2015, in the manner already outlined earlier in this judgment. In April 2016, the plaintiff had a further arthroscopy carried out in Romania. Fortunately, this treatment has brought about considerable improvement in her condition. Indeed, the plaintiff very candidly stated that as a result of this second operation, she has gone on to make a full recovery. She did not have any complaints in relation to her knee at the time this matter came on for hearing in October 2016. She freely admitted that she was capable of dealing with the demands of her work as the owner of a coffee shop.

45. There does not appear to be any great dispute between the medical experts as to the initial injury sustained as a result of the accident. That was a tear of the medial meniscus and a partial tear of the ACL. The issue which this Court has to determine is whether the plaintiff's continued symptoms until the second arthroscopy in April 2016, were due to the accident in August 2012. Both doctors accept the findings as shown on the MRI scan, to the effect that the plaintiff continued to have the tear of the ACL, which had been seen on the previous arthroscopy, but had gone on to develop a second horizontal tear of the medial meniscus and also had evidence of chondromalacia in the patella. Both Mr. O'Toole and Mr. Hurson were in agreement that the chondromalacia was probably not caused by the accident, but was simply evidence of wear and tear in the knee joint. However, both doctors were of the view that this condition, which may have pre-dated the accident, and which was asymptomatic prior to that time, was probably rendered symptomatic as a result of the accident. At the end of his final report, Mr. Hurson stated that the documented chondromalacia patella was not likely to have been caused by the accident and went on to say "*However, the accident may have rendered it symptomatic*". Mr. O'Toole agreed with this assessment and stated in evidence that the trauma of the accident may not have caused the chondromalacia, but may have rendered something which had been quiescent into something symptomatic. This would appear to be the case, as I accept the plaintiff's evidence that she had not experienced any pain in her left knee prior to the accident.

46. In these circumstances, it seems to me that it is reasonable to conclude that the symptoms which the plaintiff experienced in her left knee from the time of the accident up until the date of the second arthroscopy in April 2016, were attributable to the injury sustained in the accident.

47. In arriving at the sum which I award for general damages, I have had regard to the guidelines laid down by the Court of Appeal in *Payne v. Nugent* [2015] IECA 268; *Nolan v. Wirenski* [2016] IECA 56; and *Shannon v. O'Sullivan* [2016] IECA 93. I have also had regard to the general guidelines as set out in the second edition of the Book of Quantum published by the Injuries Board. I award the plaintiff the sum of €45,000, as general damages for the injuries sustained in the accident. To this must be added the sum of €2,200 as agreed special damages giving an overall award of €47,200.