THE HIGH COURT

[2017/2863 P.]

BETWEEN

CELINE DOYLE

PLAINTIFF

AND

TESCO IRELAND LIMITED

DEFENDANT

JUDGMENT of Ms. Justice O'Hanlon delivered on the 20th day of April, 2018

1. Ms. Doyle is an employee of the defendant and works at its business premises situated at Dundrum Town Centre, Dundrum, Dublin 16.

2. It is common case that Ms. Doyle suffered an injury at work on or about the 18th August, 2015, when she was in the toilet/cloakroom in the defendant's aforesaid premises and a heavy door fell on top of her. Liability was an issue in the case until earlier in 2018, but it is now agreed that the role of the Court is to assess the damages suffered by Ms. Doyle. Ms. Doyle swore an affidavit of verification dated the 29th March, 2017. This Court found Ms. Doyle to be a very credible witness who presented her evidence in an honest fashion.

Evidence of Dr. Maureen Boyd General Practitioner called on behalf of Ms. Doyle

3. This expert witness (hereafter "Dr. Boyd") referred to her report of the 4th February, 2016, where she referred Ms. Doyle for physiotherapy in relation to the accident of August 2015. She noted Ms. Doyle had ongoing pain in her lower back into the left buttock/hip area and that there was discomfort with turning or moving. Ms. Doyle was unable to lie on her usual side in bed: the left side. She noted that Ms. Doyle had the attitude that she should "work through this" and had taken Diclac occasionally because of the pain. The pain had improved in the previous two months, but Ms. Doyle was then more conscious of pain in the hip and leg than before. Dr. Boyd noted that Ms. Doyle's workload was heavy and that she was aware of her injury most of the time. By way of objective findings, she found that there was no tenderness in the neck but that there was limited abduction and extension related to the accident in the left arm, with some tenderness posteriorly. She noted that there was no tenderness in the back and that movement was normal in spite of stiffness. She also noted tenderness over the greater trochanter left hip with limited abduction from left to right, and found that Ms. Doyle's reflexes were normal. Dr. Boyd indicated that she had recommended physiotherapy for the shoulder and hip and that there was a need for Ms. Doyle to exercise and stretch.

4. Dr. Boyd then referred to her medical legal report dated 11th February, 2016. When Ms. Doyle had attended the accident and emergency department she was told that the difficulty was muscular and was advised to take tylex for pain relief. Ms. Doyle then attended Dr. Boyd as she began to experience abdominal pain after taking the medication. She indicated to Dr. Boyd that the pain was very bad and was preventing her from sleeping. During a physical examination on 20th August, 2015, Dr. Boyd found Ms. Doyle to be in obvious discomfort with a very limited range of movement of the neck in all directions, where she was very tender in the trapezius muscular area. This was more marked on the left than on the right, and she was also tender at the base of her skull.

5. On examination Dr. Boyd found Ms. Doyle to be very stiff on flexion of her upper thoracic spine. Ms. Doyle had limited of movement of her left shoulder, was unable to externally rotate her arm and was tender over her lower ribs anteriorly. Ms. Doyle had elevated blood pressure at 159/100 which reduced to a still elevated reading of 154/98 at the end of the consultation. Dr. Boyd found that Ms. Doyle had a soft tissue injury with marked spasm and recommended rest with medications for pain, reduction of muscle spasm and anti-inflammatories. She provided a medical certificate.

6. Dr. Boyd told the Court that Ms. Doyle had gone to one physiotherapist but felt that it had made her condition worse, and on her recommendation Ms. Doyle attended a different physiotherapist for eight sessions and found that beneficial. She found Ms. Doyle to be anxious and in low mood. She described herself as having pain in her left hip area and left lower back which was relieved by changing from sitting to standing. Ms. Doyle was out of work for five weeks after this accident. As of the 1st of September, 2015, she still had tenderness in the area of the left trapezius with a marked reduction in her range of movement in rotation and latter reflection to the left. Ms. Doyle was found to have tenderness over the left sacroiliac joint in her back and very tight paravertebral muscles in the left lumbar region. Straight leg raising, power, flexes and sensation were within the normal limits but she was tender in the left groin area with some reduction in abduction of the left hip. This witness noted that Ms. Doyle's blood pressure was still elevated at 155/85. To counteract this, this required an increase in blood pressure medication. Ms. Doyle was referred for an x-ray of the back and hip and was put on a different anti-inflammatory medication and was also referred for further physiotherapy and remained on leave from work as advised.

7. At a subsequent consultation with this witness's colleague on 30th September, 2015, she said her sleep had improved but that she still had neck and back pain and examination showed a good range of movement of the neck but still stiffness in the left side of the neck and left hip. Blood pressure was under control. Ms. Doyle was certified fit to return to work but advised to avoid any heavy lifting. Ms. Doyle's x-ray showed mild degenerative changes in her hips and L5/S1.

8. On the 28th January, 2016, Ms. Doyle was again seen by Dr. Boyd complaining of ongoing pain in her back and hip radiating to her buttock, which she had felt affected her gait. The pain could be present sitting or standing and could radiate down her left leg. Ms. Doyle had pain in her lower abdomen which caused a pressured feeling at her symphysis pubis. She required solpadine for this and had been suffering from this pain since the previous September.

9. Ms. Doyle was further examined on 28th January, 2016, and had tenderness over the left hip area with reduced abduction and flexion. On the 4th February, 2016, Ms. Doyle still had pain in the lower back into the left buttock and hip area and was conscious of it when turning or moving and could still not lie on her left side in bed. Ms. Doyle at this stage was taking occasional anti-inflammatories and the lower back and neck pain had improved, but she was more aware of the hip and leg pain. Clinical examination on the 4th February, 2016, showed a full range of movement, much improvement in the neck and no tenderness. Ms. Doyle had left arm/shoulder limitation of abduction and extension which she was unaware of before this examination. Ms. Doyle's back was generally stiff but she had a good range of movement straight leg raising was normal. Ms. Doyle had tenderness over the greater trochanter of the left hip with limitation of abduction of her left hip more than her right and Ms. Doyle's blood pressure was adequately controlled.

Ms. Doyle remained out of work until the 6th October, 2016, when she returned to lighter duties. Ms. Doyle was still suffering at that stage as a result of these injuries and reported to Dr. Boyd upset and anger at the lack of contact/concern from her employers.

10. Dr. Boyd referred to her subsequent report of the 30th November, 2016, concerning this accident.

11. On the 10th May, 2016, Ms. Doyle was found to have pain in the left side of her back radiating to her leg with stiffness in the left side of the lumbar area and her doctor recommended that she continue her physiotherapy and medication.

12. On the 8th July, 2016, Ms. Doyle was very upset and emotional by virtue of her continuing lower back pain and the constant pull from her buttock to her thigh, and it was severe if she was standing a lot or trying to walk up a hill. Upper back pain had improved but Ms. Doyle was found to have a positive "slump" test indicating probable nerve root impingement. Ms. Doyle was anxious and had a low mood, particularly in July. Ms. Doyle attended a Mr. Moore, an orthopaedic surgeon, and the MRI carried out by him showed some nerve root compression on her left side at L4/5.

13. On the 22nd November, 2016, Dr. Boyd reviewed this patient and noted that she had received injections in her back in early September for the pain, which had improved considerably. Ms. Doyle still intermittently had very severe pain in her buttock and her left leg. The pain was worse at the end of the day and her work situation improved in that she was moved to a checkout. Ms. Doyle expressed her frustration in not being able to carry out small tasks including not being able to go upstairs carrying any item, and needing to hold the bannister of stairs with both hands. Ms. Doyle had great difficulty lying on a beach on holiday and could not get up unaided. Clinical findings in November, 2016, showed tenderness at the C2/3 with marked stiffness on rotation to the left and lower back pain with tenderness at the lumber-sacral area and limitation of extension. Ms. Doyle was also then found to be generally stiff. Her straight left raised test was at 75%, which is reduced, and gave a pulling sensation up her legs. Power and reflexes were normal. Her blood pressure was elevated and needed to be reviewed in two months. Ms. Doyle accepted that she did have family bereavements during the year which added to her mood difficulties and that she was also going through the menopause.

14. Mr. David Moore, a consultant orthopaedic surgeon (hereafter "Mr. Moore") filed a report dated the 12th August, 2016. This first report of Mr. Moore shows that the MRI carried out on the 10th August, 2016, showed some degenerative changes in Ms. Doyle's lower lumbar spine with both mild discology and facet joint pain. Ms. Doyle was found under examination to have 80% of anticipated lumbar spinal motion with full and unrestricted hip movements and straight leg raising at 90º degrees to the right side, but 60º degrees to the left side with evidence of sciatic nerve irritation. Ms. Doyle had reduced power in her extensor hallisus longus tibialus anterior muscles on the left side.

15. A nerve root injection was given to the L4/5 on the left side.

16. In his report of the 3rd August, 2017, in the form of a letter to. Dr. Boyd, Mr. Moore indicated that it is well recognised that between 80% and 90% of people complain of back pain in the general population at some stage and that the commonest cause is degenerative change in the lumbar spine. Mr. Moore's clinical view was that her scan showed degenerative change and he felt that she would have approximately 80% to 90% chance of complaining of back pain at some stage in the future regardless of the accident.

17. Mr. Brian Hurson, a consultant orthopaedic surgeon (hereafter "Mr. Hurson") provided a report on behalf of the Personal Injuries Assessment Board (hereafter "PIAB") dated 8th February, 2017. When examined by Mr. Hurson on the 21st July, 2016, Ms. Doyle complained of cramping sensations in her lower lumbar spine and in her left posterior thigh region and she also experienced intermittent decreased sensation in her left big toe. Examination showed that she had normal range of back movements. Neurological assessment showed no obvious nerve root tension signs and he understood that she had established degenerative changes in the lower lumbar spine. The anticipation of having the injection is noted in this report and this report indicates that within twelve to eighteen months of the accident the symptoms ought gradually to resolve with the passage of time.

18. A report of the 11th January, 2018, was provided by Mr. Hurson. Ms. Doyle described herself as being no worse or no better but that she had learned to live with her symptoms. She complained of soreness in the left upper lumbar spine, left buttock and left upper posteriorly thigh regions when she "overdoes it". Ms. Doyle described experiencing difficulty using a vacuum cleaner and walking up and down hills. Mr. Hurson found that Ms. Doyle had a very good range of back movements and that she had well established degenerative changes and that her neurological assessment was normal. He describes the impact of the accident as temporary.

19. The court has heard the submissions of counsel in respect of the Book of Quantum and has had regard to those and to the Book of Quantum itself.

20. It is clear from the evidence of Dr. Boyd that Ms. Doyle had not had systematic lower back pain prior to this accident, but that this sequela required that a nerve block injection be administered to the lower back. Ms. Doyle suffered from substantial problems for up on three years post-accident regarding shooting pains from the buttock down the left leg.

21. The G.P. described that in 2016 Ms. Doyle suffered from low mood and problems of insipidus panic and had chronic pain and chronic sleep disturbance, although it is accepted that other factors including bereavement impinged on Ms. Doyle at that time. Ms. Doyle was obliged to seek a reduction in her hours and now works four instead of five days per week, being at a financial loss as a result (although she is not seeking loss of earnings as part of her claim before this Court). Ms. Doyle described in her own evidence how the accident actually occurred: that she was getting changed for her shift in a large disabled lavatory when she went to walk through the exit and the door came down on her back. She then fell down and a colleague who was heavily pregnant came to her assistance and tried to lift the door to release her. Causation is not disputed. The time of the accident was 1.40pm on the 18th August, 2015, Ms. Doyle described herself as "very shaken" by the accident and shewas due to commence her shift at 2.00pm. Notwithstanding that she was shaken and upset and had her neck stinging she went to the pharmacy to try and get something such as a heat patch. The pharmacist did not give it to her and advised her, that it was safer not to put anything on it but to have an x-ray. Ms. Doyle then went to St. Vincent's Hospital where she was treated for pain to the side and arm and had some whiplash. She described herself as very stiff and very sore around the side of her back and into the buttock area.

22. Ms. Doyle tried to go back to her previous lifestyle which included hill walking after this accident. She had also gone as a pilgrim to Medjugorje on occasion, but she has not been able to engage in these activities since the accident.

23. It is clear from the evidence that Ms. Doyle cannot carry a hoover downstairs and her husband does the upstairs hoovering. She described herself as enjoying gardening prior to the accident, an activity which she cannot now undertake. In addition, Ms. Doyle suffered and continues to suffer from tiredness and frustration and one year post-accident found that she had reasonable improvement in the neck area.

24. The evidence was that the nerve root injection gives significant benefit at the time and it worked almost immediately, but between eight and ten weeks after the administration of that injection Ms. Doyle felt the pain returning. In February, 2017. Ms. Doyle sought a reduction in her work duties because of the difficulties she faced as a result of this accident, and she is now working at the checkout where she is able to sit or stand. She has been doing this since the end of 2016.

25. Ms. Doyle describes herself now as having some good and some bad days.

26. Dr. Boyd made it clear in her oral evidence that she is a general practitioner with thirty years' experience and has treated the patient for between twenty and twenty-five years. She described how she sent Ms. Doyle for physiotherapy but that Ms. Doyle felt that the first physiotherapist was making the situation worse. She later had eight sessions with a second physiotherapist and found that beneficial. This doctor explained the necessity for the post slump test and she said that if one were to lift one leg and there was nerve root impingement there would be pain and limitation of movement. That is what she found in the left leg of Ms. Doyle.

27. Dr. Boyd described a significant impingement on the quality of life of Ms. Doyle with ongoing pain and difficulties regarding the back injury. Ms. Was also going through the menopause and she also had a benign cyst which had to be investigated. Dr. Boyd. reiterated the effect of this accident on Ms. Doyle who indicated that on the history she took from Ms. Doyle, Ms. Doyle had to hold both sides while going up or down stairs, needs help if she were to sit on a low sofa and would need to be lifted up if she were sitting or lying on a beach. Ms. Doyle's evidence bore this out. Dr. Boyd. also noted that with regard to x-rays one treats the patient, not the x-ray, and that Ms. Doyle had no prior back or beck problems. Dr. Boyd conceded that over the course of the last three years Ms. Doyle had improved, but more in terms of the neck injury than the back injury. It was put to her that this witness only suffered from depression or anxiety for two month period and she said that chronic pain feeds into anxiety and mood. Dr. Boyd did accept that Ms. Doyle had other issues in her life during 2016, including a bereavement. This witness disagrees with the view of Mr. Hurson that the symptomatic degenerative charges were well-established and under re-examination this witness confirmed that the shooting pains from the buttock into the left leg were probably related to the accident. She said spasm moves often from the neck downwards and she described the sesequelea as reasonably significant. The parties were asked by the Court to advise on quantum.

28. Counsel for Ms. Doyle submitted that the court must take into account the injuries to the neck, back and lower limb. It was submitted that the evidence was that the door which fell on this Ms. Doyle initially injured her neck and the back of her shoulder, and two days later she developed pain in the lower back. It is expected that she will fully recover in respect of her neck pain.

29. Her back injury is described by her counsel as moderately severe and she had had this ongoing pain and stiffness for three years. It exacerbated prior a symptomatic degenerative condition and counsel stresses that in twenty-five years of treating this patient, Dr. Boyd had not had back complaint or symptom of same prior to this incident.

30. In Mr. Moore's first report dated 12th August, 2016, the sciatic nerve is referred to with shooting pain down the left leg. He describes the leg involvement as a consequence of nerve root irritations.

31. The psychiatric sequelea are not covered by the PIAB report. Dr. Boyd described Ms. Doyle suffering from adverse effects on her mood twelve months post-accident, but said some of these were caused by factors other than the incident. It is pointed out that it was to Ms. Doyle's credit that she was back in work five weeks after the accident and had worked for many many years with the same company.

32. The defence submissions stress Dr. Boyd's evidence to suggest that the neck injury is minor and that recovery is expected. The defence stress that Ms. Doyle was back at work after five weeks and that at its height she had a moderate back injury for two years and nine months and that she no longer has limitation of movement. They also stress that she has pain on some activities not on all activities. The defence argues that the mood disturbance is limited to a two month period and that there were other features causing that.

Conclusion

33. Having considered all of the medical reports and the evidence very carefully, having considered the book of quantum and having exercised my discretion in relation to this matter, I conclude that Ms. Doyle is a thoroughly honest witness and certainly did not overstate her injuries. Great credit is due to her that she took the minimum time of work and she gave evidence that she was afraid that she would be deemed unfit for work. She got on with her job despite the difficulties she had suffered as a result of this accident. I do not consider for one moment that she has in anyway exaggerated her injuries.

34. This Court takes the view that Ms. Doyle's neck injury was more properly in the moderate category. Ms. Doyle suffered from fairly significant pain and discomfort for a considerable period of time

35. The Court has considered the nature of this injury, the intensity of the pain, the extent of the symptoms and additional symptoms in her back, buttock and leg, on her own evidence as supported by the medical evidence given on Ms. Doyle's behalf by Dr. Boyd. This provided clarity on the ways in which this impacted on her life as well as the treatment she received for same. This accident caused an acceleration of a pre-existing degeneration condition.

36. The back injury suffered by Ms. Doyle seems to this Court to fall into the moderate/severe category, in particular because they have accelerated and/or exacerbated a pre-existing condition over a prolonged period of time, even though we are only now two years and nine months post-accident. Ms. Doyle has had very considerable difficulty and pain as a result of this accident.

37. In particular, the Court notes the pain into the buttock going down Ms. Doyle's left leg which required quite extensive treatment. In all the circumstances, the court awards the sum of €1,290.00 by way of special damages which are agreed and the sum of €50,000.00 for pain and suffering as a result of this accident, having taken a global view of the injuries.