

THE HIGH COURT

Record Number: 2003 No. 7251P

BETWEEN

JUAN VEGA

PLAINTIFF

AND
KIERAN CULLEN

DEFENDANT

Judgment of Mr Justice Peart delivered on the 9th day of November 2005

1. I will not set out in detail all the evidence which I have heard, since my conclusions are easily reached and understood.
2. I am satisfied that the plaintiff was present on the defendant's property as a social guest. As such he owed him what is sometimes described as a common duty of care. That duty is to take reasonable care to ensure that the plaintiff did not suffer injury on his premises.
3. In addition he was under a statutory duty to take such care as is reasonable in all the circumstances to ensure that the visitor to his premises does not suffer injury or damage by reason of any danger thereon.
4. There is no meaningful distinction to be drawn between the common law duty of care and the statutory duty of care under the Occupiers' Liability Act, 1995.
5. The defendant was carrying out some repairs to a roof on his house and for that purpose had, for access purposes to the roof, left a ladder leaning against the wall of the building in question, but at an angle of 45 degrees, which an expert has opined was an excessive angle from a safety point of view.
6. In addition this ladder was standing unevenly on the ground, in as much as one foot of the ladder was on a concrete surface at the side of the house and the other leg was on a gravel and earth surface which was slightly lower than the concrete surface. This created some instability, and Mr Baynes, the plaintiff's engineer has stated that this ladder was unstable as a result of these two features.
7. Without going into the evidence in any further detail I am satisfied that this ladder as it stood against the wall of the house in question was dangerous if any person was to climb it. As it happens the plaintiff, an adult man of about 55 years of age at the time, ascended the ladder in order to have a conversation with the defendant who was on his roof. As he began to descend the ladder he says that the ladder moved to the right causing the plaintiff to fall to the ground. Mr Baynes said he was satisfied that the angle at which the ladder was leaning against the wall and the unstable way in which the feet of the ladder were on the ground could lead to the ladder moving to the right or to the left. I am satisfied therefore that the plaintiff's fall was caused by him losing his balance due to the movement of the ladder to the right as described by the plaintiff, and that he injured himself as a result of this fall to the ground. This resulted from the negligence of the defendant in leaving the ladder so positioned and in the particular circumstances of this case, by failing to warn the plaintiff not to ascend the ladder.
8. I am satisfied also however that the plaintiff failed in his duty to take care for his own safety. This is not the case of a child, or other person under some disability, who could not be expected to anticipate that the ladder might not be safe to ascend and descend. This is a middle aged man who must be expected to conduct himself as a reasonably careful adult man would. The forty five degree angle at which the ladder was leaning was something clearly visible to the plaintiff, and it is also the case in my view that it ought to have been obvious to the plaintiff that the left foot of the ladder was on a gravel and earth surface which was somewhat lower than the right leg on the concrete surface. He ought to have foreseen some instability and risk attaching to his ascent and descent of the ladder. He must therefore be found guilty of some element of contributory negligence. I measure the extent of that contributory negligence to be 30%.
9. The injuries suffered by the plaintiff are principally a fracture to the right elbow at the head of the radius. This fracture was slightly displaced. His right shoulder was also injured in the fall but no fracture occurred. A plaster cast was applied to the fracture of the elbow, and he received some medication for his shoulder pain. There is also some low back pain noted in the aftermath of the accident but this seems to have cleared up. The plaintiff also suffered shock. His shoulder and neck were stiff for some period after the accident also. He suffered some difficulties with sleep.
10. I have been told that he is from Cuba where he has a tobacco farm. The injury to his arm has impacted negatively on his ability to carry out some of his farming activities, as well as some cooking duties in the home. Curiously and unusually he has suffered a further consequence, namely an inability to now roll a cigar! He used to roll a certain number of cigars from a small portion of the tobacco harvest that he was not obliged to sell to the State, and he would sell those. He now sells that small portion of his tobacco crop instead of rolling cigars from it. There is no calculation of this loss. Neither has any financial loss occasioned by his reduced ability to carry out farming tasks been quantified. I have on the other hand been invited to make some allowance for these matters when assessing general damages. I will do so.
11. I have had regard to the Book of Quantum.
12. In respect of past pain and suffering I assess general damages in the sum of €40,000 taking account of the fracture to his elbow, the shoulder injury, and the consequential pain and stiffness to his neck and shoulder area, and some back pain generally. I am satisfied that he will continue to experience some adverse symptoms into the future and I assess future pain and suffering in the sum of €10,000. To these sums I add a sum of €5000 in respect of the inability to perform some farming functions and any losses resulting from not being able to roll his own cigars and sell them. This results in a total sum for general damages in the sum of €55,000. To this I add the agreed sum of €400 for special damages, making a sum of €55,400. Having made the necessary deduction of 30% for contributory negligence, I give judgment in favour of the plaintiff in the sum of €38,780.