

THE HIGH COURT

[2010 No. 6007 P.]

BETWEEN

MARGARET MCGARR

DUBLIN BUS/BUS ATHA CLIATH

PLAINTIFF

DEFENDANT

JUDGMENT delivered by Mr. Justice Michael White on the 28th day of April 2015

1. This is an action for personal injuries taken by the Plaintiff alleging negligence on the part of the Defendant's when she fell backwards climbing the stairs of a double decker bus on the 3rd October, 2008 at 8.46 p.m. It was the Number 19 route from Benevin into the City and the bus stop was in a residential area close to a t junction. The bus was a modern vehicle, whose condition is not subject to criticism. The Plaintiff suffered a nasty fall.

2. The Plaintiff stated she lost her balance due to a sudden jerk of the bus, which she described as an acute movement. Good quality CCTV was installed in the bus and the Court has been able to view footage from different cameras which has been helpful in determining liability.

3. When the Plaintiff got on the bus and bought a ticket, she kept hold of it in her left hand and also had a shoulder bag over her left shoulder. The Plaintiff appeared to be a fit lady who was walking normally.

4. On the way up she did not use her left hand to hold onto the rail on the left hand side of the stairs. When she reached the third step from the top, she removed her hand from the right rail, and attempted to put her hand on the cross rail at the top of the stairs. When she lost her balance she was not holding onto any rail.

5. There is a conflict of evidence about the movement of the bus. The Plaintiff fell when the bus started to move off. The Plaintiff and an independent witness on the bus Eamon McEntee gave evidence of a sudden jerked movement. Mr. McEntee stated the bus jerked violently. The Defendant relies on the CCTV evidence and the evidence of the bus driver Kenneth Martin.

6. The Plaintiff relies on the expert opinion evidence of Peter Johnson, engineer and the Defendant relies on the expertise of a forensic accident investigator David Land.

7. Peter Johnson gave evidence that because the bus stop was near a t junction the bus would have had to pull out to the right and then drive straight ahead giving an explanation for the sudden jerk.

8. Mr. Land stated that because of the engine configuration of the bus there was an interval of .16 to .3 of a second from the time the bus started to move to the passenger falling. He could determine this, from the design of the engine of the bus and from the CCTV footage from the start of the movement of the bus to the fall of the passenger.

9. The Court's preferred evidence is the CCTV footage from the top of the double decker bus when the Plaintiff was emerging at the top of the stairs. At the exact time the Plaintiff was losing her balance a passenger at the front of the upper tier was drinking from a can and in the process of putting the can to his lips. If the movement of the bus was violent the Court would have expected the can to move or liquid to spill. This did not occur. The Court finds as a matter of fact while there was sudden movement when the bus moved off it was not violent movement.

The Standard of Care

10. The Plaintiff relies on the direction given to bus drivers by the Defendant in written form in the driver safety handbook. Under the heading "Moving off from Bus Stop" the direction states "never move off until customers secure themselves". The Plaintiff contends that the driver should not have moved off while the Plaintiff was still clearing the stairs to get to her seat. The driver has a screen to monitor the top deck which is visible in front of him in his cab. He does not have a screen to monitor the stairs.

Law – The Standard of Care

11. This is dealt with comprehensively in the *Law of Torts* (4th Edition) McMahon & Binchy defining the reasonable person Gavin Duffy J & Kirby v. *Burke* [1944] I.R. 207 at 214 stated:-

"... the foundation of liability at common law for tort is blameworthiness as determined by the existing average standards of the community; a man fails at his peril to conform to these standards. Therefore, while loss from accident generally lies where it falls, a defendant cannot plead accident if, treated as a man of ordinary intelligence and foresight, he ought to have foreseen the danger which caused injury to his plaintiff."

12. Kingsmill Moore J., speaking of contributory negligence, observed in *Byrne v McDonald* (Unreported, Supreme Court, 7th February, 1957) at page 10:-

"The act or omission must be judged in the light of the knowledge, actual or imputed, which the plaintiff has, for if there is, or should be, no knowledge that the act or omission involved danger then the plaintiff cannot be convicted of failing to take reasonable care. To every adult is imputed the knowledge of risks which the normal reasonable person may be assumed to have..."

13. At part 5 of Chapter 7 McMahon & Binchy deals with the specific factors in assessing whether conduct is negligent and at paragraph 7.27 states:-

"Whilst the standard of the reasonable person gives some substance to the concept of negligence, a number of more

specific indicators have been identified in an effort to elaborate more particularly what is or is not reasonable in particular circumstances. Four factors in particular have been discussed in the decisions and among the commentaries on negligence. These are:-

- (a) the probability of an accident;
- (b) the gravity of the threatened injury;
- (c) the social utility of the defendant's conduct; and
- (d) the cost of eliminating the risk.

The relevant specific factors which the Court considers in this accident are:

- (a) the probability of an accident
- (b) the social utility of the defendant's conduct."

14. At paragraph 7.29 on *The Probability of an Accident* McMahon & Binchy states:-

"The greater the likelihood of harm to the plaintiff, the more probable it is that the court will regard it as unreasonable for the defendant to engage in the risky conduct or to fail to take steps to avert the threatened injury. "

15. At paragraph 7.40 dealing with *The Social Utility of the Defendant's Conduct* the text states:-

"Regard must be had to the object of the defendant's conduct. Where it has a high social utility it will be regarded with more indulgence than where it has little or none. "

16. It is a fact of life that buses move and stop all the time in urban spaces. In a double decker bus there is regular movement between the upper and lower deck. Buses are manned by one driver. It is too high a standard of care to impose on the Defendant that a driver having regard to his duty "to never move off until customers secure themselves" has to ensure that a passenger is seated in the upper deck and has cleared the stairs before moving off.

17. The Court finds that any sudden movement could have caused the Plaintiff to fall as she was not holding on. There were a number of ways she could have ensured her safety as the configurations of the rails on the stairs were very safe.

18. The Court does not find negligence against the Defendant and dismisses the Plaintiff's action.