

THE HIGH COURT

[2014 No. 9861 P.]

BETWEEN

RACHEL PRIOR

PLAINTIFF

AND

DUNNES STORES

DEFENDANT

JUDGMENT of Mr. Justice Barr delivered on the 30th day of June, 2016**Introduction**

1. This action arises out of accident which occurred 6th December 2008, when the plaintiff was on the shop premises owned by the defendant at Henry Street, Limerick. It is alleged that while walking in the vicinity of the dairy fridge, the plaintiff was caused to slip and fall to the ground, when her foot came in contact with a white liquid on the floor surface. The plaintiff alleges that as a result of the accident she has suffered injury to her neck, lower back and an injury leading to urinary incontinence. The defence filed on behalf of the defendant puts all matters in issue between the parties.

Liability

2. The plaintiff stated that at approximately 18.30 hours on 6th December 2008, she had entered the defendant shop premises at Henry Street, Limerick, in the company of her mother. Her father was also in the shop at the time, but was in a different area. The plaintiff states that while walking down the aisle where the dairy produce was on display, and while in the area adjacent to the display of chocolate bars as shown in Mr. Flynn's photographs, she was caused to slip and fall to the ground, when her foot came in contact with a white substance on the floor surface. She stated that her feet shot out from under her and she fell forcefully onto her back.

3. The plaintiff stated that an employee, who was wearing a white coat, came over and asked her if she was all right. She immediately got up, as she felt somewhat embarrassed. She stated that her mother had been walking some short distance in front of her, but did not see her fall.

4. The plaintiff stated that after the accident she saw a white substance on the floor and she could see a slip mark in it. She stated that this was probably milk or cream. The plaintiff stated that she was wearing flat shoes at the time.

5. The plaintiff stated that she suffered immediate pain in her lower back. She was also limping when she walked. The plaintiff and her mother went to the customer service desk, where the plaintiff's sister, who is employed by the defendant, was on duty. The plaintiff stated that they reported the accident to her.

6. The plaintiff stated that her sister then called for a store manager. After some short time, a manager appeared. She stated that he was tall with dark hair and wore a suit. The plaintiff stated that the manager brought a book in which there was a form, on which he filled in the particulars of the accident. She stated that the manager signed the form and then she did likewise. She could not remember if there was any printed material on the form itself.

7. This evidence is of some relevance as the defendant has put all matters in issue, including whether the plaintiff was even in the shop premises, as they say that they have no record whatsoever of the occurrence of the accident.

8. The plaintiff stated that having reported the matter, she then left the store with her mother. It appears that the plaintiff consulted with her solicitor very shortly after the accident, because a letter of claim in the usual form was sent by her solicitor to the head office of the defendant company on 11th December, 2008.

9. The plaintiff received an authorisation from PIAB to commence proceedings on 11th November, 2009. Proceedings were initially commenced in the Circuit Court by personal injury summons issued on 9th April, 2010. In her replies to the defendant's notice for particulars, the plaintiff indicated as follows in relation to the reporting of the incident:-

"7. The plaintiff's sister, an employee, was working at the customer service desk. The plaintiff went to the customer service desk and the plaintiff's sister called the manager. The manager arrived and the matter was reported to him."

10. Thus it would appear that the defendant was first put on notice of the plaintiff's accident within a matter of days of the occurrence of the accident. In the replies which were delivered on 10th December, 2010, the defendant was put on notice that the plaintiff alleged that the matter had been reported to her sister, who continued to be an employee of the defendant, who was at the customer service desk on the day of the accident. The defendant was also put on notice that the plaintiff alleged that the accident had been reported to a manager, who was on duty at approximately 18.30 hours on 6th December, 2008. They were also put on notice that the plaintiff alleged that an accident report form had been filled in and had been signed by both the manager and the plaintiff. In these circumstances, the defendant had ample opportunity to fully investigate the accident and the circumstances surrounding the reporting of it.

11. A curious feature of the case is that, notwithstanding the dispute as to whether or not the accident was reported to the defendant, neither the plaintiff's mother or her sister, were called by either of the parties to give evidence at the trial of the action.

12. The only other evidence called in relation to liability, was the evidence of Mr. Michael Flynn, consulting engineer, on behalf of the plaintiff. He carried out an inspection of the locus on 6th July, 2012. He took a number of photographs of the locus. Photographs, numbers 1, 2 and 3 show the aisle in question. This aisle is approximately nine feet wide. The plaintiff was walking opposite the dairy section and was some twelve to sixteen inches out from the chocolate display area, as shown in the left of photograph numbers 1 and 2. She stated to the engineer that she slipped on a pool of white liquid about the size of the palm of ones hand, which he interpreted to mean some three inches in diameter. Given the dimensions of the aisle, this pool of liquid would have been some seven feet away from the refrigerators containing milk.

13. Mr. Flynn stated that the floor at the locus was a vinyl type tiled floor, with a smooth polished surface. It is shown in close up in photographs numbers 6 and 7. He stated that by reference to the photographs, it was clear that the floor was highly polished and there was quite a lot of reflection of the lighting in the area on the surface of the floor. In these circumstances, it was his opinion that such a small pool of liquid may not have been visible to the plaintiff. It was dangerous and a trap or hazard to the plaintiff. There was no evidence of an adequate cleaning system at the locus.

14. Mr. Flynn stated that the flooring at the locus was quite smooth and as with all vinyl flooring, was perfectly safe when dry; however, when wet, it becomes dangerous under foot. He stated that when wet, the floor surface had a poor slip resistance.

15. The engineer was not cross examined on behalf of the defendant. The defendant did not call any evidence on liability.

Conclusions on liability

16. Having observed the plaintiff give her evidence, both in relation to liability and quantum, I am satisfied that, while she was not great at giving detail in relation to her injuries, she has nevertheless given a truthful account as to what occurred at the defendant's shop premises on 6th December 2008. I accept her account that she attended at the shop premises on that date and that while walking down the aisle which contained the dairy produce on the right hand side, she was caused to slip when her foot came in contact with a white substance on the floor surface.

17. I accept that when she was sitting on the floor after the fall, a male employee in a white coat came over to see if he could be of assistance. I further accept her account that she got up quickly, as she was quite embarrassed about what had happened.

18. I accept the plaintiff's account that she went with her mother to the customer service desk and there reported the incident to her sister, who was working at the customer service desk. Her account of having to wait for a manager to come and then of having given an account of her accident, which the manager wrote into the accident report book and that she then signed the report, as did the manager, is believable. The defendants were put on notice of this accident, literally days after it had occurred. If they seriously wished to contest whether the accident happened at all, or whether it was reported, it would have been easy for them to contact all the relevant staff, who were working in the grocery area and at the customer service area on the day of the accident. Furthermore, they could have interviewed all the relevant managers to ascertain if the matter was reported. It is noteworthy that the defendant did not call any evidence along these lines.

19. The evidence of Mr. Flynn was unchallenged that the floor surface was a vinyl type flooring with a polished surface. He stated that it was quite smooth and that when dry it was perfectly safe, but when wet, it was very slippery. When wet, the floor covering had a poor slip resistance. This evidence was not challenged by the defendant. I accept that the floor surface was perfectly safe when dry, but was dangerous when wet.

20. This accident occurred in the vicinity of the dairy display cabinet. Given that this contained a lot of liquid containers, it was incumbent upon the store owners to maintain a regular system of inspection and cleaning of the area. I accept the plaintiff's evidence that there was a pool of white liquid on the floor surface and that it was this which caused her to slip and fall. In these circumstances I am satisfied that she has established negligence as against the defendant in relation to the maintenance of this area of the shop premises. The defendant has not called any evidence that it had any system of cleaning in operation at the locus on the day of the accident. Accordingly, the plaintiff has established liability as against the defendant. In view of the fact that the floor surface is shiny, I accept the evidence of Mr. Flynn that in these circumstances, the spillage would not have been readily visible to a person walking down the aisle. Accordingly, I make no finding of contributory negligence against the plaintiff.

Quantum

21. The plaintiff was 32 years of age, having been born on 1st January, 1984. Heretofore, she has had a number of different of jobs and has pursued a number of different courses. However, her passion is music and, in particular, performing as a singer. In recent years she has devoted her time to pursuing her musical career. She has recently been accepted to do a Bachelor of Arts degree in commercial modern music at the Dublin Institute of Technology.

22. The plaintiff stated that at the time of the accident, she suffered pain in her lower back. She also walked with a limp. It was for this reason that she went with her mother to the customer service desk to report the accident. It would appear that in the days following the accident, she first consulted with her solicitor, who issued a letter of claim on 11th December 2008. It appears from the medical report furnished by Dr. T.P. Casey, the plaintiff's G.P. that she first consulted with him on 12th December 2008. It does not appear that he recommended any specific treatment at that time.

23. It appears that the plaintiff next consulted with Dr. Casey on 2nd May 2009. At the time of the accident, she had been working on a three month contract with Currys Department store from November 2008 until January 2009. It appears that she was unfit for work within one week after the accident. She had not had any physiotherapy treatment, or any other treatment, when she returned to Dr. Casey in May 2009. She had taken difene medication during that period.

24. In May 2009, the plaintiff complained of lower back pain which was intermittent in nature. She stated that the pain was precipitated by walking and relieved by rest and analgesic gels. She also stated that she got neck pain approximately twice weekly since the accident. That pain could come on out of blue. On examination, power and reflexes were equal in both upper and lower limbs. Right shoulder examination was normal. Spinal extension and rotation in both directions, precipitated lumbar sacral pain. She was tender in her lumbar sacral junction. Straight leg raising tests were normal. Extremes of flexion and extension of the neck were painful. She was tender in the left para cervical area on palpation.

25. At that time Dr. Casey did not feel that any further investigations were required. He felt that a full recovery was to be expected. He was of the opinion that the plaintiff had sustained a soft tissue injury to her cervical and lumbar sacral spine. He recommended that she have physiotherapy treatment. He was hopeful that she would benefit from such treatment.

26. The plaintiff was reviewed by Dr. Casey on 15th June 2010. In that report he noted that the plaintiff had not had any physiotherapy sessions. The plaintiff complained of intermittent low back pain precipitated by walking or sitting for long periods or standing. She had no neck pain at the time. She complained of pain down her right upper limb, which was intermittent in nature.

27. Clinical examination on that date revealed that flexion of her neck and her right lateral flexion of her neck precipitated pain in her cervical area. She was tender to palpate over her cervical spine. Examination of her right shoulder revealed crepitus. Spinal flexion precipitated lumbar pain. She was tender to palpate over her lumbar spine. Power and reflexes were equal in both upper limbs. She was tender to palpate over the lateral ligament of her right ankle. Dr. Casey was of opinion that the plaintiff's injuries were consistent with the accident. He did not recommend further investigations at that time. A full recovery was expected. However he recommended that a specialist report should be obtained from an orthopaedic consultant. In his report he just concluded that the plaintiff had sustained a soft tissue injury to her neck and lumbar sacral spine as a result of her accident.

28. The plaintiff was reviewed by Dr. Casey on 16th June, 2014, some three years and four months post – accident. She still complained of intermittent low back pain since the accident, which was precipitated by walking, sitting or standing for too long. She stated that the severity of her pain was unaltered since the accident. She got some transient relief from physiotherapy treatment. In her evidence, the plaintiff stated that she had four sessions of physiotherapy in 2011 with two different physiotherapists. She stated that she continues to do the exercises which the physiotherapists had shown her. The plaintiff also complained of pain in the front of her right thigh recurring for at least a year. The pain may or may not occur with her lower back pain. The plaintiff also complained of neck pain intermittently since the accident. This was precipitated by moving her head forwards and backwards.

29. On examination it was found that extremes of spinal flexion and extension precipitated lumbar pain. She was tender to palpate over the lumbar spine. Extremes of neck flexion and extension precipitated pain in her cervical area. She was tender to palpate over her cervical spine. Dr. Casey noted that the plaintiff sustained a soft tissue injury to her neck and her lumbar spine as a result of her fall. The plaintiff stated that the severity of her pain was unaltered since her accident. He recommended that a specialist opinion should be sought.

30. The plaintiff came under the care of Mr. Michael Gilmore, consultant orthopaedic surgeon, who examined her on 10th April, 2012, some three years and four months post-accident. The plaintiff told him that she had had four sessions of physiotherapy in Killaloe, which she did not find very helpful. However she had further physiotherapy in the Abbey Centre, which she found to be very good. She had been doing a home exercise programme as shown to her by the physiotherapist. She also took occasional Nurofen tablets as required.

31. At that examination she complained of lower back pain, especially on the right side, with occasional pain radiating down to the front of her right thigh. She got occasional spasms in her right foot. She was unsure when this started, or how long after the fall that it exhibited itself. She had negative impulse pain. She got occasional pins and needles in the tourits of her right foot and occasional cramps in her right leg. She had no numbness, no weakness and no bladder or bowel symptoms. She got pain on the right side of her neck, with no referral or radiation of the pain from there. This was helped by the home exercise programme. She had difficulty sitting, or standing for long periods. She was unsure as to whether she would be capable of doing any of the work involved in working at the Currys shop, where there was a lot of standing or sitting involved. She was off work for one week after the accident, and was unemployed at the time of this examination.

32. Examination of the cervical spine showed a full range of movement with pain at the extremes of flexion and extension and also rotation to the left and lateral flexion to the left. She was tender on the right more so than the left trapezius. There was no neurological deficit in either upper limb. In relation to her lumbar spine, she was able to stand tall and straight. Forward flexion was to her lower shin, with pain in the lower back. Lateral flexion and extension were normal. Straight leg raising was tight on the left, more so than on the right at 90°, but there was no neurological deficit in either lower limb.

33. For some reason, which is not clear, the examination and report seems to be dated 10th April, 2012, while the opinion section of the report given by Mr. Gilmore is dated 28th November, 2012. In any event he stated that the plaintiff sustained a variety of soft tissue injuries to her neck and back in the accident. He had not had sight of her x-rays. However presuming that there was no bone injury, he was of the opinion that she therefore sustained soft tissue injuries to the neck and back. She continued to have significant ongoing complaints. Clinical examination showed her to have a full range of movement in the cervical spine, with some pain at the extremes. He stated that realistically the most that could be said was that she had sustained soft tissue injuries and unfortunately continued to complain of ongoing difficulty. At that stage, almost three and half years post-accident, he felt the likelihood was that she would continue to have ongoing difficulties in her cervical spine.

34. He was of the opinion that in the lumbar spine, where she had slight restriction in the range of movement, and no significant abnormality noted neurologically, or in the straight leg raised test, he was of the opinion that the soft tissue injuries, would probably, at that stage, continue to give her some ongoing difficulty into the future.

35. In a follow up letter dated 15th March, 2012, Mr. Gilmore noted that x-rays taken of her right foot and right shoulder showed no abnormality. Sight of the x-rays, did not change the opinion as given in his initial medical report dated 28th November, 2012. On 22nd August, 2012, a report was furnished by Mr. Alexander J. Stafford, consultant radiologist, who stated that having reviewed the x-rays of the plaintiff's right foot and right shoulder, he was satisfied that no bone injury or dislocation was identified in the shoulder x-ray. X-ray of the right foot did not demonstrate any bone abnormality.

36. The plaintiff was reviewed by Mr. Gilmore on 30th June, 2014, some five years and six months post-accident. She still complained of lower back pain and pain in her cervical spine. She was also getting pain in her right thigh. In the proceeding months she had had some random urinary incontinence. In relation to work, she had just finished an internship in community enterprise in May 2014 in Tait House, Limerick. She had applied to do a DJ Techniques and music production course in Limerick College of Further Education.

37. Examination of the cervical spine showed a full range of movement, but pain was felt at the end of the range. She was tender on the right and left trapezius, but there was no neurological deficit in either upper limb. As regards her lumbar spine, she was able to stand tall and straight. Forward flexion was to the mid/lower shin with pain. Lateral flexion and extension were both decreased and sore. She was tender centrally at lumbar 3/4/5. Straight leg raising was normal bilaterally. There was no obvious neurological deficit in either lower limb.

38. Mr. Gilmore noted that the plaintiff continued to have ongoing difficulties in her lower back, as a result of the injury sustained in

the accident in December 2008. As it was five and half years since the accident, the likelihood of any further improvement was minimal. He felt that she would be left with ongoing discomfort in both her neck and back. She would have to adapt her lifestyle accordingly in order to minimise the discomfort she would experience in both of these areas. He stated that any work which would involve prolonged standing, stooping, lifting, dragging or indeed sitting in one position for any prolonged period of time, would be contra indicated for her and therefore her career options must be guided accordingly. He did not foresee any change ongoing into the future in her level of the symptoms.

39. The plaintiff came under the care of Mr. John Drumm, consultant urologist, in relation to her urological problems. When seen on 16th December, 2015, she stated that for the past twelve or eighteen months she had experienced urinary frequency particularly at night, when she was up two to three times. She could manage a few hours during the day. She also had episodes of urgency and occasionally urge incontinence. She denied any stress incontinence or any enuresis (bed wetting). She did not wear protective pads and had no history of urinary tract infections. Abdominal examination was normal. There was no neurological deficit and a post void ultrasound confirmed that she was emptying her bladder satisfactorily.

40. Mr. Drumm noted that the plaintiff had sustained musculo-skeletal and soft tissue injuries, when she fell on her buttock and back in 2008. She had ongoing back pain. However, over the last twelve to eighteen months, she had developed quite significant urinary symptoms particularly nocturia, urgency and occasional urge incontinence. These symptoms were all consistent with detrusor dyssynergia or bladder instability. He stated that one could develop these symptoms *de novo*, but it was likely that the plaintiff's symptoms had been precipitated by her ongoing musculo-skeletal pain. He stated that ideally she should have a urodynamic pressure study performed on her bladder to confirm or exclude a diagnosis of bladder instability.

41. In relation to a prognosis, he noted that in severe cases this condition was managed by oral medication. He was of the opinion that the plaintiff would benefit from this treatment at that time. If her back pain resolved and as a result she had less stress in her life, he felt that this would significantly improve her urinary symptoms.

42. Finally, the plaintiff was examined by Mr. Gilmore on 10th June 2016, some seven years and six months post-accident. He noted that an MRI scan had been carried out of her lower back at the Limerick Clinic through her GP on 25th November 2014. However, it does not appear that Mr. Gilmore had sight of this scan. At the time of the examination, she was taking occasional Buprex or Nurofen and used Ibugel.

43. She stated that her neck had settled completely and was now asymptomatic. However, she still had low back pain. She told the doctor that she had done two "gigs" over the weekend, singing as a solo artist and as a member of a gospel choir, which involved a lot of standing and moving and this had led to an increase in her lower back pain. She would also get an increase in her lower back pain if she was sitting for too long. She had been on a course in a college in Limerick and had missed one more day than she was entitled to, she was allowed two days, but missed a third day because of her lower back pain, and she was then thrown off the course. She was waiting to have a urodynamics study carried out.

44. On examination she stood straight. Forward flexion was to her mid shin with pain in her lower back. Lateral flexion and extension were sore and decreased. Straight leg raising however was normal bilaterally. There was no obvious neurological deficit in either lower limb.

45. Mr. Gilmore noted that the plaintiff continued to have ongoing difficulties with her lower back. He was of the opinion that these issues would continue. The plaintiff would have to do her best to adapt her lifestyle in order to minimise the discomfort she would experience. She would also have to adopt a proper back care routine and do her home exercise programme. He noted that she may have an increase in symptoms if she becomes pregnant and also during the post-partum period, when she is minding a baby. He stated that realistically, she will continue to have ongoing problems, given the length of time since her accident.

46. The plaintiff was examined by Dr. Brian J. Spillane, sports and orthopaedic physician, on behalf of the defendant. She was first seen on 10th August, 2010, at which time she complained of recurring central lower back pain. This was precipitated by standing for too long, or walking any distance. She was unable to go for a long walk and she found sitting for too long uncomfortable. Her back was also painful in bed and her sleep was disturbed. She avoided any repetitive bending or heavy lifting. She said that she did not go out to socialise with her friends. She said however that if sitting for too long, she had to stand up and when standing, she has to sit down, to provide relief of her back pain. She had no leg radiation of her symptoms. She stated that when her back pain was more severe, it radiated up into her neck and right shoulder.

47. While the plaintiff had initially ceased taking anti-inflammatory medication, due to the fact that it was upsetting her stomach, she had returned to taking the medication in the recent past. She had attended for three sessions of physiotherapy prior to that time. She stated that she had seen her GP on a few occasions. She was referred for x-rays of her right shoulder and these were normal. She had not had any scans.

48. Examination of the right shoulder revealed that she had a full range of movement with pain at the limit of full abduction. Examination of the cervical spine showed that all movements were limited by the last 20-30° and were uncomfortable at the extreme of motion. Palpation revealed subjective tenderness over her mid cervical facet joints and over her right mid trapezius musculature. There was no neurological deficit present in either upper limb. In relation to her lumbar spine, flexion was to her knees and extension was limited. Both of these were uncomfortable at the extremes of movement. Palpation revealed subjective tenderness over her lower lumbar segments and over her right para-lumbar musculature. Straight leg raising was to 90° on both sides and there was no neurological deficit present in either lower limb.

49. Dr. Spillane noted that the plaintiff fell injuring her lower back in the accident. She said herself that she had only been suffering with neck and shoulder pain over the past few months, but it would appear from Dr. Casey's report, that her neck symptoms came on shortly after the accident. She held herself quite stiffly and seemed in quite a lot of discomfort when sitting during the assessment. He felt that she was genuine in her complaints. He noted that it was eighteen months since the accident and her progress had been slow to that time. He felt that an MRI scan would probably be worthwhile, in order to confirm or rule out the presence of disc pathology. She had only recently commenced physiotherapy treatment and he was of the opinion that this might produce some benefit. However, the prognosis remained guarded.

50. The plaintiff was reviewed by Dr. Spillane on 23rd May 2011. At that time she stated that she had disimproved over the past nine months. She said that she always had to be careful. Any excessive standing, walking or sitting, would aggravate her back. She also avoided any heavy lifting. When aggravated, she suffered with central lower back pain, which radiated down the front of her right

thigh. The above pain had been almost constant for the two weeks prior to the examination. She also complained of recurring right sided neck pain, radiating over towards her right shoulder. She had no arm or hand radiation of her symptoms. Her neck affected her less often than her back. It tended to be uncomfortable in bed and would awaken her regularly.

51. The plaintiff stated that she had seen her GP on multiple occasions. She had been referred to Mr. Conor Meehan, Consultant Orthopaedic Surgeon, by her solicitor. He had referred her for an x-ray of her right shoulder. She did not have any MRI scan performed. She had attended for approximately five sessions of physiotherapy treatment in all. She took anti-inflammatory and paracetamol medications as required.

52. Physical examination of her neck revealed that she had a full range of movement, with discomfort on the extremes of rotation. Palpation revealed subjective tenderness over her right mid cervical facet joints and over her right mid trapezius musculature. There was no neurological deficit present in either upper limb. Examination of the lumbar spine revealed that she had a full range of movement, but had discomfort at the extremes of flexion and extension. Palpation revealed subjective tenderness over her lower lumbar segments and over her right sacro-iliac joint. Stressing this joint caused discomfort. Straight leg raising was restricted to 70° on the right side, but was to 90° on the left side. There was no neurological deficit present in either lower limb.

53. Dr. Spillane noted that the plaintiff continued to complain of significant right sided neck and lower back pain. He found nothing to suggest the presence of cervical disc pathology and he was satisfied that her neck injury was soft tissue in nature. In relation to her lower back, she remained quite tender over her right sacral joint and this was painful when stressed. He felt that she had sustained a lower lumbar soft tissue injury, combined with a strain type injury to her right sacral joint. She had not had any MRI scans and Dr. Spillane felt that this would have been helpful, in that it could have excluded the possibility of any lumbar disc pathology.

54. He noted that unfortunately the plaintiff had made little or no progress over the preceding twelve months. She had only had five sessions of physiotherapy treatment. He felt that she would probably benefit from a number of further sessions combined with a home exercise programme and possibly regular swimming. He stated that with the above measures, he would expect a gradual improvement in her condition over the next one to two years. He was of the opinion however that at this stage, she was likely to be left with some long term weakness in her lower back. He expected her neck to fully recover within the next twelve to eighteen months.

55. The plaintiff was reviewed by Dr. Spillane on 12th September 2012. The plaintiff stated that she still suffered with recurring discomfort on the right side of her neck. She said that this tightened up if she was standing for too long. She noticed the neck pain when singing in the choir. It also affected her if she is in town shopping for too long. She complained that she had discomfort sitting in the same position for too long and had to keep moving around. She had to watch her posture and not allow herself to slouch. She had no arm or hand radiation of her symptoms.

56. The plaintiff also complained of recurring central and right sided lower back pain. She had no leg radiation of her symptoms. She said that this affected her after similar activities, such as standing or sitting for too long. She was not however restricted in her activities. She had to rest regularly when out shopping.

57. She had attended for eight to ten sessions of physiotherapy treatment. She was also doing exercises at home. She took brufen for pain relief occasionally. She had not seen her GP, as she did not like taking pain-killing tablets. She had not been referred for any scans. Dr. Spillane noted that she was not working at that time. She had done a sixteen week evening course in event management from October 2011 until February 2012.

58. Examination of her neck revealed that all movements were limited by the last 10° and caused her discomfort on the right side of her neck. Palpation revealed subjective tenderness over her right para-cervical and mid right trapezius musculature. There was no neurological deficit present in either upper limb. Examination of the lumbar spine revealed that flexion was to her mid shin and extension was restricted. These were both uncomfortable at the extremes of motion. Palpation revealed subjective tenderness over her lower lumbar segments and over her right para-lumbar musculature. Straight leg raising was normal on both sides and there was no neurological deficit present in the either lower limb.

59. Dr. Spillane stated that the plaintiff had sustained soft tissue injuries to her neck, lower back and right sacro-iliac joint regions in the accident. She seemed to be improving gradually with time, but still had discomfort related to particular postures and activities. She had had physiotherapy treatment, which she found helpful and was able to attend a sixteen week evening course without undue difficulty. Dr. Spillane felt that she was fit for secondary work, were it available to her. He would expect any remaining accident related symptoms to fully resolve within the next six to twelve months. He did not anticipate any long term sequela resulting from this accident.

60. In her evidence, the plaintiff stated that since the accident she had suffered intermittent low back pain, which was brought on by excessive movement, or prolonged standing. She stated that if she did anything too energetic, this would cause pain. As to her present condition, she stated that on the weekend prior to the hearing i.e. in June 2016, she had done two engagements. The first was at a confirmation party. She did singing and movement at that event. She stated that she had a microphone and would move around among the party. This celebration was held at a person's house. She stated that on the following day, the Sunday, it had been Green Ribbon Day and she had performed at the Milk Market in Limerick. She performed on stage as a solo artist from 1 to 2 pm and performed with the choir from 2.30 to 3pm. She stated that she would have to do the movements which were required with these performances. She stated that she was too tired after these performances to perform with the choir at the mass which was held afterwards.

61. In relation to her urological problems, she stated that in the years after the accident she developed urinary problems, when she would get urinary urges without warning. On occasions she would leak urine. This was intermittent and was unpredictable. She had had the last episode of this some two weeks prior to the hearing. She stated that she had to carry wipes and pads with her when she went out. She had been referred to Mr. Drumm in relation to these problems and she was due to have a urodynamics test.

62. The plaintiff stated that she was somewhat stressed as a result of her injuries, however, she did not want them to hinder her music career. She stated that as a performer she had to keep fit. She used to go to the gym, but was taking on too much. Her doctor advised her to ease off on the exercises. She stated that she did stretching exercises at home. She stated that she was able to walk, but was not able for long distances. Similarly, if she was sitting for too long a period, this would bring on pain.

63. In cross examination the plaintiff accepted that were promotional videos of her on You Tube and that she also had her own website. This was to promote her singing career. She accepted that the videos showed her doing an energetic dance routine. She accepted that some of these videos were taken from relatively soon after the accident. She stated that she had had to turn down some work due to her injuries.

64. The plaintiff accepted that given the date on her solicitor's initial letter and the date given for her first attendance with the GP in his report, it would appear that she had gone to her solicitor, prior to consulting with her GP after the accident. She was also questioned as to whether she had seen her GP between 12th December, 2008, and 2nd May 2009. She stated that if the medical report stated that she had only been on the one occasion since the accident, that that was probably correct. She stated that she was taking medication at home and doing exercises. She accepted that she did not have physiotherapy treatment until 2011. She stated that she had a medical card.

65. It was put to the plaintiff that, from her medical records, it appeared that she had been a regular attendee with her GP in the years prior to the accident. It was put to her that, in these circumstances, there was no reason why she could not have seen her GP between December 2008 and May 2009. The plaintiff stated that she just tried to get on with her life at that time.

66. She accepted that the GP's report stated that her back pain was intermittent. She stated that she would experience pain if she did too much of anything, for example walking. She stated that this continued to the present time.

67. It was put to the plaintiff that in August 2015, particulars had been furnished which stated that she had persistent neck pain and back pain. She stated that her neck pain had started after the accident, but she was not sure when it exactly it came on. She thought that it was soon after the accident. She confirmed that she did not have neck pain at present. All she could say was that the neck pain came on after the accident, it was reasonably close after the fall. She could not say when it went away. She accepted that it may have gone away a year or two afterwards. She was unsure of the dates. She stated that she could not state for how long the neck pain has lasted. She could not say when it cleared. She stated that the neck pain was gone by the time of the hearing and she accepted that it could have been gone a long time. She stated that she could not give the exact dates when she had neck pain. All she could say was that she had tried to get up and get on with her life. She stated that it was possible that the neck pain was gone by 2010, 2011 or 2012, she was unsure of the exact dates.

68. The plaintiff stated that she did tell her doctors that the neck pain had gone. It was put to her that in August 2015 particulars, which had been served on her behalf, stated that she suffered back pain and neck pain and that she would have neck pain in the future; it was put to her that she did not have neck pain in 2014 or 2015. The plaintiff stated that that was correct. She could not explain why it was pleaded in that manner.

69. It was put to the plaintiff that she had sworn an affidavit for the purpose of the application to transfer her action into the High Court, wherein she had complained that she would have neck and back pain for the rest of her life. The plaintiff stated that her doctor told her that he was unsure if the neck pain would clear up.

70. The plaintiff accepted that she had told Dr. Casey that her back pain was intermittent. It would come on now and again depending on what she did. Her neck pain had resolved. The back pain would come on out of the blue, depending on what she was doing. It was put to the plaintiff that in Dr. Casey's report, from an examination in June 2010, the plaintiff had complained of lower back pain, but no neck pain at that time. She stated that she thought she had no neck pain at that visit. She stated that she did have arm pain in the early stages after the accident, but she could not say when.

71. It was put to the plaintiff that in his second report, Dr. Casey had said that there was tenderness in her right foot, but this was not in the first report. The plaintiff stated that she had been limping after the accident. When it was put to her that this was not in the first report, she stated that she had mentioned it at the time of her examination. The plaintiff went on to state that in 2014 she had neck pain, it came and went. She also had persistent back pain. She accepted that Dr. Casey had referred her to the specialist, Mr. Meehan in 2010. He had said that he had expected her back to clear up, but it did not. She stated that in 2011 she had had four sessions of physiotherapy treatment with two different physiotherapists. She stated that she continued to do the exercises which they had shown her.

72. In terms of work, the plaintiff stated that she had been working in Currys at the time of the accident and that she had missed one weekend from work after the accident. She left that job in December 2008. She did a nine month internship with Tait House Community Enterprise, for whom she did PR and Marketing. She did this in 2013/2014. She stated that she had not had a regular job since then, but had done some volunteering work and was also working on her music career. She stated that she had taken music seriously in the last two years.

73. It was put to the plaintiff that Mr. Gilmore had stated that the plaintiff had suffered an injury to her neck and back. She was asked as to whether she had told Mr. Gilmore that her neck had recovered. She stated that she may have told him this. She was unsure when her neck pain stopped. She stated that she had done light exercises in the gym, but had to give it up due to pain. She had applied for a DJ technical course in Limerick, but had missed too much time due to pain and was thrown off the course. She stated that in the last two years, she had pursued her music career, but she experienced pain after activity. She accepted that her performance was what might be termed "high energy". It demands a lot of activity on stage while singing.

74. It was put to the plaintiff that she was able to go ten pin bowling. She accepted that that was correct. A picture was put to her, which had apparently been taken from her Facebook page, showing her holding two bowling balls, one in either hand. The plaintiff stated that she had chosen the lightest bowling balls which were available. She accepted that the pictures on her Facebook page showed her being active. She stated that she could do an amount of activity, but if she did so, she would suffer for days afterwards.

75. The defendant also put to her a picture of her punching a virtual reality boxing machine, while wearing what appeared to be electronic boxing gloves. The plaintiff accepted that she did punch the machine with the electronic boxing glove while at her friends' gig. She stated that she used her right hand. She could not recall when she had done this. She stated that it did not take a lot of effort. She stated that she tried to get on with her life and pursue the normal activities that a young person would do. She could not recall when these photos were taken, but she accepted that it was well before 2014/2015. She reiterated that she could do these activities, but would suffer pain afterwards. She could not remember if she had any problems after the bowling. She stated that, at present, she would get pain after performing her routine on stage. She stated that she had suffered from depression before the accident and that on occasions her ongoing disability can get her down somewhat.

Conclusions on quantum

76. Initially after the accident, it did not appear that the plaintiff had suffered a significant injury. In the five months after the accident, she had only seen her GP on one occasion, on 12th December, 2008. She did not return to her GP until May 2009. She had been taking difene to deal with her pain. She did not have any physiotherapy treatment at that time. Not unreasonably, Dr. Casey was of the opinion that she had suffered a soft tissue strain, which would go on to make an uneventful recovery.

77. However, as time progressed, it appeared that the plaintiff's symptoms did not settle. Dr. Casey thought it prudent to refer her on

to Mr. Gilmore. He saw her on three occasions over the following years. She continued to complain of neck and lower back pain, which did not seem to settle over time. By the time of the most recent examination on 8th June, 2016, the plaintiff's neck complaints had settled. The plaintiff gave contradictory evidence as to when the neck pain had settled. However, I am satisfied that these contradictions were not due to any attempt on her part to mislead the court, but were due to the fact that a prolonged period of time had elapsed since the accident and it was difficult in these circumstances for her to recall exactly when the neck pain had subsided. She was unsure of her dates and seemed ready to agree with counsel for the defendant in relation to whatever was suggested to her concerning when the neck pain may have resolved.

78. As stated earlier in the judgment, I am satisfied that while the plaintiff may not be the best historian in relation to her symptoms and their progress down to the present time, I am satisfied that she is essentially a truthful witness, who has not attempted to overstate her injuries or disability. In this regard, I note that Dr. Spillane was of the opinion, in his first medical report dated 10th August, 2010, that the plaintiff was genuine in her complaints. He does not appear to have resiled from this opinion in his subsequent medical reports.

79. It was put to the plaintiff that the photographs posted on her Facebook page of her holding two bowling balls and punching a virtual reality boxing machine, showed that she was not suffering from any significant disability. The plaintiff stated that, as a young person, she had tried to get on with her life. She accepted that she would do activities, but that she would suffer for these in subsequent days. It was put to the plaintiff that the videos posted on YouTube indicated that her singing and dance routine, was "high energy" and that this indicated that she had no real level of disability. The plaintiff accepted that she was able to engage in an energetic dance routines, but reiterated that she would pay for it in the days after a gig. While reference was made to these videos, none were shown to the court. I have deliberately not looked at these videos on the internet, as it would be inappropriate to decide the case on material that was not put in evidence at the hearing of the action. Accordingly, I am left in the dark as to what exact level of activity is involved in her musical performances.

80. In summary therefore, it would appear that this 32-year-old woman suffered soft tissue injuries to her neck and her lower back as a result of the accident. It is not clear exactly when her neck symptoms finally resolved. The plaintiff complained of neck pain when she saw Dr. Spillane in August 2010, May 2011 and September 2012. She had similar complaints when she saw Mr. Gilmore in April 2012, and June 2014. Notwithstanding her somewhat contradictory evidence, I think that on balance her neck symptoms probably resolved sometime in the second half of 2014.

81. The plaintiff has been left with ongoing difficulties with her lower back. There is a difference of opinion between Dr. Spillane and Mr. Gilmore as to whether these symptoms will settle. I prefer the evidence of Mr. Gilmore, who has been the plaintiff's treating doctor since April 2012. I note that the plaintiff was sent by her GP for an MRI scan of her lower back in 2014. This shows that she had reasonably serious complaints in relation to her lower back at that time. I accept that the plaintiff's account of her back pain as given to Mr. Gilmore at the examination on 8th June, 2016, which was seven and half years post-accident, is a truthful account of her current back symptoms. In these circumstances, I think that Mr. Gilmore is correct when he says that given this lapse of time, it is likely that the plaintiff will continue to have problems with her lower back into the future. She will have to adapt her lifestyle to take account of her back condition. Having said that, it appears that she is able to pursue a singing career, which involves energetic dance moves. The postings on her Facebook page indicate that she is able to pursue fairly active sporting and recreational activities. Also, having observed her in the witness box, it is clear that she is a fit young lady. I have also had regard to the fact that the plaintiff has only seen Mr. Gilmore at two yearly intervals since 2012. This is not indicative of serious ongoing problems.

82. Finally, the uncontroverted medical evidence from Mr. John Drumm is that the plaintiff's urological problems have been precipitated by her ongoing musculo-skeletal pain. He is of the opinion that with medication and hopefully a resolution of her back pain, that her urological symptoms would be significantly improved.

83. Thus, one is dealing with a situation where the plaintiff suffered soft tissue injuries to her neck and lower back, when she was 25 years of age. These injuries did not resolve within a short period, as had been expected when she initially came under the care of her GP. She was referred on for specialist opinion to Mr. Gilmore. The neck pain was intermittent and it eventually resolved in or about 2014. At present, some seven and a half years after the accident, she continues to have lower back pain as described above. She also has the urological problems as described by Mr. Drumm.

84. Taking all of these matters into consideration, and having regard to the helpful guidelines set 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 award the plaintiff general damages to date of €42,500 and damages for pain and suffering and disability into the future €20,000, together with special damages of €1,800, making a total award of €64,300.