**THE HIGH COURT**

**PERSONAL INJURIES**

**[2014 No. 2818P]**

**BETWEEN:**

**SEAMUS COMERFORD**

**PLAINTIFF**

**-AND-**

**CARLOW COUNTY COUNCIL**

**DEFENDANT**

**EX TEMPORE JUDGMENT of Mr. Justice Twomey delivered on the 24th day of November, 2017.**

**Summary**

1. This case involves a claim for personal injuries as a result of a *'trip and fall'* on pedestrianised cobble lock. In considering this claim, this Court is obliged to follow the law on personal injuries in relation to liability and quantum as laid down by the Court of Appeal.

2. In *Byrne v. Ardenheath* [2017] IECA 293, the Court of Appeal noted that expert evidence, in this case by an engineer, is frequently compromised by the fact that all too often the opinions appear to correspond too favourably with the interests of the party that is paying the expert. The Court of Appeal went on to state that in straight forward matters, such as a trip and fall as in this case, the High Court when faced with expert evidence alleging negligence was obliged to "*bring ordinary common sense to bear on their assessment of what should amount to reasonable care*". In applying those principles to this case, this Court concludes that the plaintiff's claim should be dismissed.

**Factual background**

3. The plaintiff is a 38 year old man who was a student at the time of the accident. He claims that he fell in a hole in cobble lock paving attached to a footpath near his home in Shroughan Close, Tullow, County Carlow on the 2nd March, 2013, at approximately 7.30 pm. He fractured his nose as a result of the fall and he claims that his nose tilts to the right as a result of the accident. The hole in the cobble lock is within a few inches of the base of a lamppost. There were some blocks missing in the cobble lock and part of the cobble lock had been replaced with concrete that was uneven and was protruding over the level of the cobble lock. It was with this uneven concrete that he says his face and nose came into contact. In this regard, it was conceded by the defendant that the repair work was shoddy and defective.

4. However, this Court did not find that the plaintiff's recollection, of the details of the alleged accident which happened over 4 years ago, was convincing because:

- He said his foot went into a hole and then he fell forward and his face hit the ground on some rough concrete some 30 inches from his foot. The plaintiff is 5 ft 6 inches tall and in this Court's view the plaintiff's account of how he fell is improbable when one considers that he did not have any injuries to his knees or his hands and yet landed on his face only 30 inches from his foot.

- He conceded under cross examination that he told Dr. Nair that he fell outside his house, which was recorded in Dr. Nair's letter of 10th June, 2013. However, the hole into which he alleges he fell is in fact some 200 metres from his home. During his cross examination, he sought to say both versions of the accident were correct, namely that the hole which is 200 metres from his house is 'outside his house'.

- He also conceded during his cross examination that he told Dr. Nair that he fell into a pothole. The hole into which he told this Court he fell, could not in this Court's view be described as a pothole but a hole in a pedestrianised section of block paving.

- He also said in his evidence that he was coming from his home on the footpath and was walking to a field some 30 metres away. If this was the case, the obvious route for him was to stay on the footpath and avoid the hole in the cobble lock, or to take the most direct route over the cobble lock to the field and this would have avoided the hole by some 10 metres. The direction he says he took to that field, which took him into the hole, would not therefore have been the logical route to take to his destination and it also would have involved him walking within inches of a lamp post which would be an unusual manoeuvre.

5. It is also relevant to note that the plaintiff was advised by a specialist that he saw within days of the accident, that he should return to have his nose rebroken and reset within a 10 day window after the accident. He failed to do so and is now claiming that the plastic surgery to have his nose rectified, at a cost of approx. €10,000, should be paid for by Carlow County Council as a result of his failure to follow medical advice.

6. The most significant factor in this case however is that the section of missing and defective cobble lock is very significant in size, since it is at least 30 inches in length and approximately 25 inches wide. In this regard, this Court is obliged to follow the law on personal injuries as laid down by the Court of Appeal. Again, this Court would reiterate the principle expressed by the Court of Appeal in *Byrne v. Ardenheath* [2017] IECA 293, that it is obliged to "*bring ordinary common sense to bear on their assessment of what should amount to reasonable care*". Applying this principle it is difficult to see how the plaintiff did not see the hole of this size and simply avoid it, particularly as it is directly under a lamppost and there was no suggestion that the lamppost was not working at the time of the accident.

7. It might also be noted that this Court would be obliged to have regard to the Book of Quantum in relation to personal injuries if the plaintiff had established that the defendant was liable for his injuries. As the plaintiff's nose fracture has fully recovered the level of damages would have been in the €18,000 - €22,100 range in the Book of Quantum (and thus comfortably within the jurisdiction of the Circuit Court). This is particularly so since it was the plaintiff's own decision not to have his nose re-broken and straightened within the 10 day period after the accident, which would have obviated the need for an extra €10,000 in cosmetic surgery.

8. For all of these reasons, this Court finds that the plaintiff has not established on the balance of probabilities that the accident occurred as alleged and even if it did, it would have been entirely the responsibility of the plaintiff.

9. On this basis, the claim is dismissed.