**THE HIGH COURT**

**PERSONAL INJURIES**

**[2013 No. 14257P]**

**BETWEEN:**

**DWAINE O'DONNELL**

**PLAINTIFF**

**-AND-**

**SOUTH TIPPERARY COUNTY COUNCIL**

**AND**

**CLONMEL BOROUGH COUNCIL**

**DEFENDANTS**

**EX TEMPORE JUDGMENT of Mr. Justice Twomey delivered on the 15th day of November, 2017.**

1. The plaintiff, is a 29 year old man who lives at Cooleens Close, Clonmel, Co. Tipperary, although he is currently in custody for a criminal offence which is not connected with these civil proceedings. He claims that he fell off his bicycle at Cooleens Close on the afternoon of the 12th July, 2013, as a result of the negligent repair by the defendant of a hole in the road. The plaintiff sustained concussion as a result of injuries to his head as a result of the fall. The hole is very significant in size, it is 1'9" in length, 1'3" wide and 3½" deep.

2. Three weeks prior to the alleged accident in this case, the plaintiff suffered concussion and head injuries as a result of a fall down steps which he claimed was also the responsibility of the defendant. He instituted a claim (though in a different name to the one he uses in this case) against the defendants before the Personal Injuries Assessment Board for that concussion and head injury but he subsequently withdrew that claim.

3. In this Court's view it would be impossible for anyone cycling down this road not to see a hole of this size in view of the photographic evidence provided to the Court and in view of the fact that the hole is in the middle of the road. Indeed, it is hard to avoid the conclusion that the hole is so obvious that a cyclist would have to be consciously looking the other direction to miss the hole.

4. Accordingly, it is this Court's view that if the plaintiff cycled into the hole, as he alleged, it was entirely his responsibility for the alleged injury caused to him.

5. This Court would add that even if the plaintiff was looking where he was going this Court did not find him to be a credible witness regarding how the injuries were incurred. For example, to support his claim for damages, he alleged that he was deformed as a result of the accident and so would not go to the pub anymore, yet this Court could not see the scars to which he was referring, when the plaintiff pointed them out. He also alleged that the accident had put a stop to his sports career, yet within a week or so of the alleged accident and for several months afterwards he was playing for his local soccer team.

6. Furthermore, in relation to the plaintiff's credibility, while not a determinative factor in the case, the Court cannot ignore the fact that the plaintiff is asking this Court to believe his version of events, yet:

- he has been convicted of an offence which itself involved dishonesty, namely theft;
- he has been found guilty of drug dealing;
- he is currently charged with assault;
- he has two names, Dwaine O'Donnell and Dwaine Burns for no apparent good reason and has been convicted under the latter name.

7. In summary, the only evidence of the alleged accident is that of Mr. O'Donnell himself and for the foregoing reasons this Court concludes that he has failed to discharge the onus of proving on the balance of probabilities that the accident occurred as alleged.

8. This Court would add that it is bound to follow the law on both liability and quantum, not as laid down by the High Court, but as laid down by the Court of Appeal.

9. As regards liability, the Court of Appeal case of *Byrne v. Ardenheath* [2017] IECA 293 at paragraph 32 establishes that in straight forward 'trip and fall' type accidents such as this one, the High Court should bring "*ordinary common sense to bear on their assessment of what should amount to reasonable care"* which this Court has done in its assessment of the accident in this case. In a similar vein in *O'Flynn v. Cherry Hill Inns Ltd*. [2017] IECA 211, the Court of Appeal stated that "*adult members of society are obliged to take care for their own safety and cannot divest themselves of responsibility for their actions*" and applying this principle also supports the Court's conclusion in this case.

10. As regards quantum, Court of Appeal cases such as *Gore v. Walsh* [2017] IECA 278 also make clear that straight forward personal injury cases such as this one should not be making their way to the High Court. This is because the Court of Appeal has made it clear that personal injury awards must be proportionate to previous awards made by the courts and in particular they should be proportionate to awards for life changing catastrophic injuries, which result in general damages in the region of €450,000. Applying the principles laid down by the Court of Appeal means that many straight forward personal injury claims such as this one which, according to the Book of Quantum (to which this Court is obliged to have regard), fall below the High Court jurisdiction, should be heard in the Circuit Court.

11. The only positive note regarding this case is that although the case was listed for two days, it lasted less than one day in total and so did not waste the Court's resources as much as initially anticipated. Indeed, it is noteworthy that although a lot of the cases that appear in the list for High Court sittings in provincial venues tend to be 'trip and fall' accidents and therefore relatively straight forward claims, nonetheless most of them were set down for 2 days. This is despite the fact that it is this Court's view that these types of cases should be capable of being dealt with within a day. This is relevant of course because if all of these types of cases were heard within a day, this could lead to a dramatic improvement in the waiting time for cases to be heard.