THE HIGH COURT

[2016 No. 5036 P]

BETWEEN

SINEAD MALONEY

PLAINTIFF

AND

DUNNES STORES (NEWBRIDGE) LIMITED

DEFENDANT

JUDGMENT of Mr. Justice Bernard J. Barton delivered on the 24th day of February, 2017.

1. These proceedings arise as a result of an accident which occurred on the 16th of May 2012, in the course of the Plaintiff's employment by the Defendant at its supermarket premises, Newbridge, County Kildare.

2. The Plaintiff was born on 25th February, 1981. She is married with two children aged 6 and 9 and resides at 22 Castlebawn, Kilmeague, Naas, Co. Kildare. She is a long term employee of the Defendant having been employed as a sales assistant for approximately 17 years; following a period of recuperation she returned to work in May, 2015.

3. The occurrence of the accident is not in controversy between the parties. The Plaintiff was sitting at checkout number 10. She got up from her stool and as she turned to exit the checkout operator's position her right foot caught a loose cable causing her to fall and injure her right knee. In Reply to Particulars the Plaintiff stated that the accident occurred when she was leaving the checkout to go on a tea break, however, she subsequently told her engineer, Mr. Kirwan Brown, that a customer needed assistance with lifting shopping into a trolley from the bagging area of the checkout. This apparent contradiction was explored at trial. In evidence the Plaintiff was a little uncertain in her explanation for what she did; to the best of her recollection it involved assisting a customer who was present at the checkout.

4. The dimensions of the checkout and checkout stool are such that in order to allow the checkout operator to exit the checkout till position, it was necessary to push the checkout stool backwards to create sufficient space between the stool and the checkout to pass. The checkout dimensions were given in the report of her engineer which was admitted as an aid memoire which also included photographs of the checkout area of the store and of checkout number 10.

5. The Plaintiff's evidence was that having pushed her stool back and having stood up, she turned to her left and having done so her right foot got caught in some loose cabling which was located under the checkout as a result of which she fell forward, striking her right knee heavily against the vertical upright of the checkout counter as seen close up in photographs 9 and 10.

6. The accident was recorded on CCTV, however, the footage was subsequently mislaid. Nothing of significance turns on that fact since the Defendant accepts that an accident involving the Plaintiff occurred at the checkout as described.

7. She gave evidence that prior to the date of the accident there had been safety at work meetings at which the problem of loose cabling under checkouts in general had been raised as an issue though she herself had not attended any of those meetings. In 2010, while she was on maternity leave, the Plaintiff recalled that a colleague had phoned her to say that she had been involved in an accident in what transpired to be similar circumstances to those involving the Plaintiff.

8. Although she was aware of that accident and had also been aware that the issue of loose cabling had been raised at safety meetings, the Plaintiff's evidence was that she had become accustomed to the presence of the loose cabling to the point that she was no longer particularly conscious of it; she did not tidy it away herself nor did she ask anyone else to do so. As far as she was concerned complaints had been made and she left it at that, it was an issue to be addressed by the Defendant.

9. Under cross examination it was put to the Plaintiff that when she got up from her stool and pushed it back that she would have been able to see the cabling had she been looking down. Shortly after the accident, a colleague took a photograph of checkout number 10 which showed the loose cabling on which the Plaintiff had tripped.

10. Although the Plaintiff may well have been able to see the cabling had she been looking down at her feet as she stood up, her evidence was that she was concentrating on leaving the checkout and was most likely looking at the customer whom she was assisting at the time. Subsequent to the accident the loose cabling was gathered up and secured in the manner shown in the photographs taken by Mr. Kirwan Brown.

11. His evidence was that loose cabling in or about floors and desks or tables in the workplace are a known hazard and that that was particularly so in the circumstances of this case. The hazard created by the loose cabling should have been and could have been easily eliminated by gathering it up and tidying it away as it had been after the accident.

Conclusion on liability.

12. I observed the Plaintiff during the trial. She impressed me as a witness on whom the Court could rely and I am satisfied that she gave truthful evidence, which I accept, in relation to the circumstances of the accident, to her injuries and in respect of her return to work. I make the same observation and finding in relation to the evidence of Mr. Kirwan Brown. His was the only expert engineering evidence available to assist the Court. No other liability evidence was led.

Conclusion on the liability of the Defendant.

13. I am satisfied that the accident occurred in the way, manner and circumstances as described by the Plaintiff in her evidence and that as a result she sustained an injury to her right knee. The Defendant owed the Plaintiff a duty of care at common law and under statute. That this is so is not in dispute, rather the question is whether the Defendant was in breach of those duties. Although it had been pleaded in the Defence it was not suggested to the Plaintiff that the Defendant was unaware of the presence of the loose cabling or that she had not brought the loose cabling to its attention prior to the accident.

14. I find as a fact on the evidence that the presence of the loose cabling under the checkout constituted a hazard to any employee, including the Plaintiff, working at the checkout and that this was a state of affairs the known to the Defendant, accordingly, the

Court finds that the Defendant was in breach of s. 8 of the Safety, Health and Welfare at Work Act, 2005 (the 2005 Act) as well as being in breach of its common law duty of care to the Plaintiff in failing to provide her with a safe place of work and egress from that place.

Contributory negligence.
15. The Plaintiff fairly accepted that she was aware of the loose cabling. That this constituted a hazard which ought to have been apparent to her not only by reason of the fact that it had been raised as an issue in previous safety meetings but also by reason of the occurrence of an accident to a co-employee in similar circumstances in 2010 is self evident. The Defendant pleaded that the Plaintiff was guilty of negligence, including contributory negligence, and was in breach of statutory duty. I have taken the latter to be a plea that the Plaintiff was in breach of her statutory duties as an employee under s. 13 of the 2005 Act although that was not specifically pleaded nor was that plea argued.

16. Particulars of these pleas included an allegation that the Plaintiff failed to look at what she was doing, that her injuries arose by reason of her own inadvertence, that she failed to have regard for her surroundings and that she failed to bring the fact of any loose cabling to the attention of the Defendant; she was otherwise the author of her own misfortune.

17. Having regard to the findings already made I am satisfied that there is no basis to the plea that there had been a failure to bring the loose cabling to the attention of the Defendant; she was aware that that matter had been raised as an issue at safety meetings. Nor could there be any basis to the allegation that the Plaintiff was the author of her own misfortune in circumstances where the hazard, of which it was aware, had been created by the Defendant. Any inadvertence or inattention on her part goes to the plea that she failed to look at what she was doing or failed to have sufficient regard for her surroundings.

18. The question which arises is whether a reasonably careful employee would likely have acted any differently to the Plaintiff, particularly in the circumstances where her attention was focused on assisting a customer and as such was about her employer's business. On my view of the evidence, and having regard to the knowledge which she undoubtedly possessed concerning the loose cabling, the way and manner in which she got up from the checkout stool and turned to exit the checkout amounted to inadvertence or inattention. That being so, the next question is whether that amounts to contributory negligence on her part.

19. It is clear from authority that findings of carelessness, inattention or inadvertence on the part of an employee can amount to contributory negligence in an action for negligence at common law, however, it has long since been settled that in an action for breach of statutory duty against an employer, the carelessness, inattention or inadvertence of an employee will not amount to contributory negligence where a breach of the statutory duty by the employer is the effective cause of the accident. See *Steward v. Killeen Paper Mills Ltd* [1959] I.R. 436, *Higgins v. South of Ireland Asphalt Co. Ltd* [1967] 101 I.L.T.R. 168 and *Kennedy v. East Cork Foods Ltd* [1973] I.R. 244.

20. This state of affairs must be distinguished from circumstances where the employee engages in a deliberate or conscious act of carelessness in the discharge of work duties; in those circumstances there may properly be a finding of both contributory negligence and breach of statutory duty on the part of the employee. See *McSweeney v. McCarthy* (Supreme Court, unreported, 28th January, 2000).

Conclusion.
21. There is nothing on my view of the evidence which would warrant a finding by the Court that the Plaintiff consciously or deliberately conducted herself in a way or manner which exposed her to a risk of injury, on the contrary, had the Defendant complied with the provisions of s. 8 of the 2005 Act by taking the remedial measures which were subsequently taken to eliminate the hazard that would most likely have avoided the occurrence of the accident altogether.

22. Having due regard for case authority and having determined that the Defendant was in breach of a causative statutory duty, the Court finds that the inadvertence or inattention of the Plaintiff in the circumstances does not amount to contributory negligence on her part notwithstanding that it may have done so at common law.

23. If it were otherwise, in an action where the proceedings involved a claim brought for common law negligence and for breach of statutory duty where the employer was found to be in breach of causative statutory duty, the doctrine of contributory negligence could be used in defence of that claim to dilute the consequences and frustrate the policy of protection for employees intended by the legislature as found in the 2005 Act and the Regulations made there under; absent a breach of causative statutory duty, different considerations would arise.

Quantum.
24. The nature and extent of the Plaintiff's injuries and the period of time that she was out of work attributable to the injuries was in issue between the parties. The Plaintiff has been examined and reported upon by a number of treating physicians, including Mr. Joe Sparks, Consultant Orthopaedic Surgeon. On behalf of the Defendant she had been examined by Mr. Fergal McGoldrick, Consultant Orthopaedic and Hand Surgeon. The reports prepared by the medical experts intended to be called by the parties were agreed and admitted into evidence; these have been read and considered by the Court. Given the nature of the issue it is considered appropriate that an analysis of the salient medical evidence contained in the reports be undertaken.

Summary of the salient medical evidence.
25. The Plaintiff's right knee was subjected to a significant impact as a result of the accident. She did not fall to the ground but the momentum in the fall was taken by her right knee when it struck the edge of the checkout frame. The impact caused soft tissue injuries which were superimposed on a pre-existing but asymptomatic chondromalacia, a condition also present in the uninjured left knee. The injuries gave rise to painful symptoms which deteriorated over a number of days and as a result of which the Plaintiff attended her GP, Dr. McDonnell on 21st May, 2012.

26. Dr. McDonnell has been consulted by the Plaintiff on numerous times in respect of her injuries over the last four years. He prepared a number of medical reports for these proceedings which detail the Plaintiff's attendances, her complaints, the results of his examinations, his diagnosis and prognosis.

27. At the time of the first medical examination, the Plaintiff's complaints were of pain in her right knee accompanied by a constant feeling of pins and needles for which she re-attended her GP on 5th June, 2012, at which time she was still significantly symptomatic. In his report of 10th September, 2012, Dr. McDonnell records being advised by the Plaintiff that her work involved sitting at a checkout for 7.5 hours a day, five days a week and that her right knee was particularly painful if sitting with it bent or when she tried to straighten it, there was also an element of locking.

28. Clinical examination disclosed that she had a good range of right knee movement but there was tenderness over the infra patella tendon; she was referred for physiotherapy, prescribed pain killing medication and an anti-inflammatory. The Plaintiff attended and received treatment from Orla Doyle, Physiotherapist and underwent a course of acupuncture.

29. However, her evidence was that this treatment did not help to any material extent and that she continued to have pain in her right knee which she experienced principally on bending, straightening, kneeling, squatting, ascending or descending stairs, and on sitting for long periods. She returned to her GP on 29th June, 2012, with ongoing symptomology; she was referred for an MRI scan of her right knee which was carried out on 16th July, 2012. Due to the persisting sequelae the Plaintiff was also referred to Mr. Sparks.

30. In a report dated 13th September, 2012, Mr. Sparks stated that the MRI scan disclosed a tear in the anterior horn of the lateral meniscus (cartilage) of the right knee. He carried out a physical examination which was reported as being essentially normal; however, he noted pain in the posterior aspect of the knee on full extension. He recorded the complaints made to him. In his opinion the clinical symptoms and examination findings were consistent with a meniscus tear and he advised the Plaintiff to have an arthroscopy which he carried out on 26th April, 2013. The results of the arthroscopy are set out in his medical report of 3rd July, 2013.

31. It is apparent from this report that although the MRI scan had only described the lateral meniscal tearing, at arthroscopy a small amount of partial tearing of the anterior cruciate ligament was also found. Critically and of significance in relation to the issue between the parties, it appears that in September, 2012 Mr. Sparks was not aware of the chondromalacia either clinically or as a result of the MRI scan report.

32. Following the arthroscopy the Plaintiff had further physiotherapy and acupuncture. She did not experience post-operative symptomatic relief; her symptoms worsened and when she was re-examined by Mr. Sparks for the report of 3rd July, 2013, he noted crepitus in both the right and left knees for the first time though he did not comment on the significance of that finding one way or the other. He noted well healed scarring of the right knee consistent with the previous arthroscopy about which the Plaintiff, to her credit, makes little or nothing; nevertheless it is a consequence of the injury.

33. On clinical examination in July, 2013 the Plaintiff complained of marked tenderness around her knee, however, Mr Sparks did not consider her complaints to be commensurate with the objective clinical, radiological and surgical findings; accordingly, he was unable to offer any explanation as to why the Plaintiff continued to have such severe symptoms. On his suggestion she was referred, privately, to Mr. Jackson, Consultant Orthopaedic Surgeon, whom she did not attend for cost reasons, however, she was seen by Dr. Brendan O'Shea, Occupational Health Specialist, in April, 2014 for a vocational medical assessment in relation to her ability to return to work. I pause to observe that the Plaintiff has a high body mass index which pre-disposes her to the development of bilateral chondromalacia.

34. Although no reference was made by Mr. Sparks to clinical signs of that condition in his report of September, 2012, he did note it in his subsequent report of 3rd July, 2013, which is particularly relevant having regard to the prognosis in the report of 13th September, 2012, that the Plaintiff would go on to make a full pain free recovery, a prognosis which appears to have been based on the presumption that there was no other significant pathology within the knee.

35. Notwithstanding that clinical signs of the condition were recorded in the report of July, 2013; Mr. Sparks makes no reference to chondromalacia when giving his opinion and prognosis either in that report or in subsequent reports. The significance of this omission is further highlighted by the opinions of Dr. McDonnell and Mr. Fergal McGoldrick that the chondromalacia patella in the right knee was rendered symptomatic by the accident.

36. Mr. McGoldrick examined the Plaintiff on 3rd October, 2015. He noted a palpable and intermittently audible click of eccentric right patellofemoral tracking with associated apprehension. At consultation the Plaintiff had described pain provoked when in a seated position or after prolonged standing. These complaints are particularly relevant in light of the views expressed in his report of 30th October, 2015, and in a letter of 16th February, 2017, concerning the question of the Plaintiff's capacity to return to work, namely, that the Plaintiff ought to have been fit to return to work within a matter of weeks following her knee arthroscopy "provided she applied pragmatic avoidance of inappropriate kneeling and squatting."

37. No mention is made in this letter of the complaint that sitting, particularly for long periods, provoked pain in her knee, a complaint she made specifically to Mr. McGoldrick. He did not doubt the veracity of the Plaintiff. In his report of 30th October, 2015, he stated "*Ms. Maloney's history and clinical findings are consistent and reproducible. She has bilateral genu recurvatum with clear clinical evidence of likely pre-existence bilateral chondromalacia which is partially related to her weight. Super imposed, she sustained likely traumatic right chondromalacia with patellar maltracking when she fell directly on her knee causing patellar surface injury. A patellar fissure may not have been seen at arthroscopy. Her right patella continues to maltrack demonstrated by a palpable and audible intermittent crack/click sensation during flexion and extension*."

38. It is also clear from the report that the lateral meniscal tear and resection were considered by him to be incidental. The significance of this finding is that if that were the only injury then the expectation was that the Plaintiff should have been able to go back to work within a number of weeks after the arthroscopy, however, she related to Mr. Sparks and to Mr. McGoldrick, that the procedure did not provide the expected relief and she continued to be symptomatic.

39. Mr. McGoldrick recommended that the respective MRI images should be reviewed closely to evaluate the articular patella cartilage and that if the MRI interpretation was inclusive then a whole body imaging ought to be considered. He noted that Mr. Sparks' arthroscopic descriptive findings appeared to contradict the findings of both himself and of Dr. O'Shea who had also expressed the view that the Plaintiff's history was consistent with examination findings which had demonstrated marked crepitus in the right knee.

40. So far as the future was concerned he thought that the Plaintiff may be left with ongoing pain and might also develop some instability in the right knee joint over time, a development which was more likely given the extent to which he considered her to be overweight.

41. In his report of 30th October, 2015, Mr. McGoldrick offered an explanation as to why the traumatic right chondromalacia was not noted on the 2012 MRI scan, namely, an MRI is not reliable in identifying traumatic transitional chondromalacia because the patellar changes may be subtle which no doubt explains, at least in part, why he suggested that the scans should be closely reviewed to evaluate the articular patella cartilage.

42. When Mr. Sparks re-examined the Plaintiff on 5th November, 2014, in addition to noting crepitus in both knees, he also noted a reproducible click in the right knee on flexion past 100 degrees together with tenderness to minimal palpation along the medial border

of the right patella. He did not think this a positive McMurray test although a different conclusion was reached by Dr. Brendan O'Shea in April, 2014.

43. Either way, in November, 2014, Mr. Sparks recommended a further MRI scan which was taken on 9th December, 2014. That scan demonstrated the presence of chondromalacia as well as degenerative changes in the medial tibiofemeral compartment of the right knee. He did not think what he described as a "new clicking sensation" had any obvious cause.

44. Insofar as the degenerative changes in the medial tibial compartment were concerned he considered these to be mild but without attributing any cause. As to that, in a report of 11th January, 2017, Dr. McDonnell expressed the opinion that those changes were unrelated to the accident but related to genu varum (knock knee).

45. Dr. McDonnell's prognosis for the future was that the Plaintiff would need to maintain the strength and flexibility in her knees with conditioning exercises and may occasionally need to take a non-steroidal anti-inflammatory if the knee is particularly painful. Mr. McGoldrick thought that the Plaintiff's modest complaints would continue.

46. As long ago as September, 2012 the Plaintiff was examined and reported upon by Mr. J. A. McKeever, Consultant in Emergency Medicine. He, like Mr. Sparks, referred to the MRI scan of 16th July, 2012, as showing a normal knee with the exception of a horizontal tear in the anterior horn of the lateral meniscus which required an arthroscopy. He considered that the risk of the Plaintiff developing osteoarthritis directly as a result of the meniscus tear had slightly increased. So far as Dr. O'Shea was concerned he considered it premature to offer a final prognosis.

The Plaintiff's evidence.
47. The Plaintiff's evidence to the Court was consistent with the clinical history recorded by the various physicians who have reported on her. She did not seek in any way to over emphasise or enhance her injuries or the consequences of those for her. Subsequent to the arthroscopy she reattended Orla Doyle, Physiotherapist, and also had further acupuncture. She had received advice on exercises she should undertake and had complied with that advice. Although sitting for long periods of time, bending, squatting, kneeling or using a stairs continued to provoke symptoms of discomfort and pain, the Plaintiff was anxious to get back to work.

48. In January, 2014 she wrote to the Defendant indicating her desire to return to work but requested that she be accommodated in light of her ongoing sequelae. She did not receive a direct reply to the letter but did receive requests to attend meetings every six weeks with a Ms. Scully of the Defendant's HR department. She was given notice of these meetings by letter. Enquiry was made as to how she was progressing. No offer was made to accommodate her difficulties either in shorter working hours or alternative duties.

49. The Plaintiff had several good reasons to go back to work not the least of which was her family finances. She told Mr. Sparks in November, 2014 that her GP was still certifying her unfit for work; he continued to do so until 15th May, 2015.

50. Apart from the Plaintiff's own evidence, there was no explanation offered on behalf of the Defendant as to why she could not have been sufficiently accommodated to enable her to return to work from January, 2014. Her duties were altered after her return in 2015 and in this regard Dr. McDonnell noted in his report of 18th February, 2016 that the alteration in duties meant that she was no longer required to sit for long periods.

Decision on return to work.
51. In these proceedings the Plaintiff brings a claim for loss of earnings from the time of the accident until her return to work in May, 2015. That claim is disputed by the Defendant, it being contended that the Plaintiff ought to have been able to return within weeks of the arthroscopy on 26th April, 2013.

52. That the Plaintiff ought to have been able to return to work within a number of weeks or certainly within a number of months after an arthroscopy for a tear of the anterior horn of the lateral meniscus if that was the sole injury is a view shared by the physicians who prepared reports on both sides of the case.

53. The MRI of 16th July, 2012, having been reported to him showing a normal knee otherwise than for the tear of the lateral meniscus, Mr. McKeever expressed the view that the Plaintiff should make a recovery within approximately three to four months after which time he expected her to be in a position to return to her pre-accident lifestyle.

54. In light of subsequent medical developments, MRI scanning and the opinion of Mr. McGoldrick, it is significant, in my judgment, that the MRI scan of 16th July, 2012, was reported to all of the physicians as showing a normal knee other than for the tear of the anterior horn of the lateral meniscus.

55. I infer from the recording of the results of the MRI contained in the medical reports that there was no reference in the report of the scan to a small tear of the anterior cruciate ligament which was found by Mr. Sparks when he carried out the arthroscopy, nor was there a reference to chondromalacia, a condition which was clearly apparent from the report of the MRI scan carried out on 9th December, 2015. No reference was made by Mr. Sparks to any clinical signs of the condition in his report of September, 2012 although it was clearly present and recorded by him in July, 2013.

56. A patellar friction test on the right knee carried out by the GP on 21st January, 2014, was positive. Mr. McGoldrick noted bilateral chondromalacia in February, 2014 which he categorised as grade 3 in the right knee. Dr. O'Shea's examination disclosed marked crepitus on flexion and extension as well as a positive McMurray test.

57. Mr. McGoldrick appears to have been surprised by Mr. Sparks' arthroscopic descriptive findings which he considered to be contrary to those both of himself and Dr. O'Shea. On my view of the medical evidence the most likely explanation for this conflict is to be found in the reporting of the first MRI scan. In this regard I accept the view of Mr. McGoldrick that an MRI is not reliable in identifying traumatic transitional chondromalacia where the signs are subtle.

58. Given the absence of clinical signs recorded by any of the physicians before July, 2013 a reasonable explanation for the absence of any reference to the presence of the condition in the first MRI scan report or the recording of clinical signs prior to that time is most likely attributable to the subtlety of the changes but which in fact were present.

59. At the conclusion of the evidence it was accepted by Counsel in the course of discussion with the Court that on all the medical evidence the probability is that the Plaintiff had constitutionally developed asymptomatic bilateral chondromalacia and that the trauma of the accident ultimately caused the condition in the right knee to become symptomatic. Having regard to his own clinical examination and a history given to him by the Plaintiff, Mr. McGoldrick expressed the opinion that it was most likely that the accident

had resulted in a traumatic chondromalacia, a view shared by the GP. That condition is quite separate from and not relevant to the tear of the anterior horn of the right lateral meniscus.

60. As has been stated earlier, although he was clearly aware of the circumstances of the accident and the existence of the condition by the time he reported in November, 2014, Mr. Sparks expresses no opinion in relation to causation or effect of the traumatic right chondromalacia on the Plaintiff's ability to return to work before May, 2015.

61. Mr. McGoldrick, who was aware of the chondromalacia, expressed the opinion in February, 2017 that he would have expected the Plaintiff to be in a position to return to work within a number of weeks of the arthroscopy provided that she avoided inappropriate kneeling or squatting, however, when his first report is read carefully I note that he referred to an arthroscopic patellofemoral chondromalacia debridement. This is an entirely separate procedure to that carried out by Mr. Sparks. To what extent that would impact on the low grade intermittent symptomology which the Plaintiff continues to experience I do not know but on the basis of the evidence before the Court the Plaintiff has never had nor was she recommended to have such a procedure carried out.62. This does not dispose completely of the view expressed in the letter of 16th February, 2017, because that letter refers to the Plaintiff's knee arthroscopy. Again when that letter is read carefully it will be seen that no reference was made or an opinion given in relation to the Plaintiff's ability to apply pragmatic avoidance of sitting.

63. In the context of her work duties as they then were and which involved working 7.5 hours a day, five days a week sitting at a checkout and when sitting for long periods was consistently reported by the Plaintiff as something which provoked her knee pain, the omission of any reference to avoiding the action of sitting is clearly a significant omission.

64. The physician, who saw the Plaintiff most regularly, as is apparent from his reports, is her GP. He continued to certify the Plaintiff unfit for work until May, 2015. In addition he consulted with both Dr. O'Shea and Mr. Sparks. Dr. O'Shea was unable to recommend a return to work; he considered it premature to offer a final prognosis pending further orthopaedic review which was subsequently undertaken by Mr. Sparks in November, 2014 following which he referred the Plaintiff for a further MRI scan.

Conclusion.
65. Having due regard to all of the evidence, the Court finds that as a result of the accident the Plaintiff sustained soft tissue injuries to her right knee which were superimposed upon a pre-existing asymptomatic chondromalacia which rendered that condition symptomatic and that the Plaintiff suffered a small tear of the anterior cruciate ligament as well as a tear of the anterior horn of the lateral meniscus in the right knee which were arthroscopically repaired by Mr. Sparks on 26th April, 2013.

66. As already stated I am quite satisfied that the Plaintiff did not make more of her injuries than is warranted by the medical evidence. Quite clearly she would benefit in many respects, including in respect of her knee symptoms, from a reduction in her weight. That said she undertook the rehabilitation measures which were advised, including physiotherapy and acupuncture, in order to assist her recovery from the injuries. She is a long time employee of the Defendant who is well motivated and who attempted to get back to work as soon as she could in January, 2014.

67. I have no doubt that if they were in a position to accommodate her that the Defendants would have done so, however, they weren't and they didn't. The fact that the Plaintiff found herself in the position where she was only able to carry out restricted duties over reduced hours was attributable to her injuries and to nothing else. It appears, and I accept her evidence, that she was vocationally reviewed every six weeks by the Defendants HR department; they were at all times fully aware of her condition and her progress until she ultimately returned to work in May, 2015 and this during a time when, no doubt, they were aware of Mr. McGoldrick's opinion.

68. I accept the medical evidence comprised in the reports of the GP which were admitted in evidence and find, having regard to his knowledge of the Plaintiff as her treating GP and his knowledge of the views of Dr. O'Shea, given in the context of a medical examination to assess the Plaintiff's vocational capacity to return to work, that he considered it appropriate and continued to certify the Plaintiff unfit for work as a result of her injuries until May, 2015.

69. Accordingly, the Court will allow the Plaintiff's claim for loss of earnings to that date in the amount agreed between the parties subject to appropriate provision being made in respect of social welfare benefits received by the Plaintiff added to which will be the sum of €2,269 agreed between the parties in respect of non-loss of earnings special damages.

Conclusion in relation to the injuries.
70. In relation to her injuries the worst appears to be over as evidenced by the Plaintiff's return to work, however, she still experiences some low grade intermittent symptoms which will most probably not recover completely. I accept the prognosis of her GP that she is likely to experience some mild intermittent symptoms, the course of which will very much depend on following the medical advice which he has given to her.

71. Turning to the assessment of general damages, the Court has had regard to the revised Book of Quantum which does not cater specifically for the type of injuries sustained by the Plaintiff; in any event wide ranges are given for moderate to moderately severe injuries. In the particular circumstances of this case I did not find the Book to be of any great assistance. In any event it is necessary to apply the well settled principals of tort law to the assessment of general damages to the findings made and conclusions reached in relation to the injuries.

72. Having done so the Court considers that a fair and reasonable sum to compensate the Plaintiff for pain and suffering to date, a term which includes interference with the ordinary amenities of life, commensurate with the injuries is €35,000 and in respect of the future is € 15,000 making in aggregate the sum of €50,000 to which will the special damages will be added.

73. I will discuss with Counsel the terms of the final order to be made.