Neutral Citation Number: [2010] IEHC 328

THE HIGH COURT

2007 5400 P

BETWEEN

VINCENT THOMPSON

PLAINTIFF

AND

DUBLIN BUS/BUS ÁTHA CLIATH AND SOUTH DUBLIN COUNTY COUNCIL

DEFENDANTS

Judgment of Mr. Justice de Valera delivered on the 4th day of June, 2010.

This action arises from an incident which occurred on the 27th September, 2005 when the plaintiff who is employed by the first named defendant as a bus driver was driving a No. 201 bus on the Tallaght/Bohernabreena route. This route which traverses roadways under the jurisdiction of South Dublin County Council, the second defendant, has a large number of "ramps" erected by the second defendant and, it would appear from the evidence, these ramps conform to "best practice" in respect of their dimensions.

The plaintiff was returning from Bohernabreena to Tallaght at approximately 7.55pm (having already traversed the route and therefore a considerable number of the said ramps) when on approximately the fourth ramp at Kiltipper the pneumatic suspension on the bus then being driven by him malfunctioned causing a loss of "cushion effect" and, therefore, injury to the plaintiff's neck and lower back.

From the evidence adduced before me I am satisfied that:

(a) There is no evidence to suggest that the plaintiff was driving too fast.

(b) There is sufficient evidence to establish that a proper regime of inspection and maintenance was carried out by the first named defendant.

(c) The construction of the ramps, which had been undertaken by the second defendant, conformed to best practice.

(d) The plaintiff did suffer personal injury as a result of this suspension failure which has resulted in an ongoing physical deficit.

Mr. Keane in his closing submissions contended for the proposition that unless the evidence in this matter established that the plaintiff was driving excessively fast then the cause of the suspension collapse was a failure of equipment and I accept this submission. However, were this action grounded solely on the first named defendant's common law duty as an employer then the plaintiff's claim would fail as I am satisfied as stated above that a proper maintenance regime existed.

The question of statutory duty remains. I am satisfied that a bus in the circumstances of this matter is work equipment within the meaning of the relevant statutory provision which is Regulation 19 of the Safety, Health and Welfare at Work (General Application) Regulations 1993 (S.I. No. 44) which appears to impose what is in practical terms an absolute duty on employers in respect of the safety of equipment provided for the use of their employees.

Regulation 19 provides:

"It shall be the duty of every employer, to ensure that –

(a) The necessary measures are taken so that the work equipment is suitable for the work to be carried out or is properly adapted for that purpose and may be used by employees without risk to their safety and health."

Regulation 20(7) states:

"Where there is a risk of rupture or disintegration of parts of work equipment, likely to pose significant danger to the safety and health of employees, appropriate protection measures shall be taken"

This matter was considered in the High Court in 1999 in the matter of *Everitt v. Thorsman Ireland Ltd.* [2000] 1 I.R. 256 where Kearns J. having considering Regulations 19 and 20 of the Safety Health and Welfare at Work (General Application) Regulations 1993 (S.I. No. 44) went on to state:

"Accordingly, while there is no blameworthiness in any meaningful sense of the word on the part of the employer … these Regulations do exist for sound policy reasons at least, namely, to ensure that an employee who suffers an injury at work through no fault of his own by using defective equipment should not be left without a remedy. As O'Flaherty J. pointed out an employer in such a situation may usually, though not always, be in a position to seek indemnity from the third party who supplied the work equipment."

In these circumstances while I accept that the first named defendant carried out a proper system of inspection, maintenance and repair and that no blameworthiness attaches to it, it has a statutory duty which has not been discharged and therefore the plaintiff is entitled to succeed in his claim against the first defendant.

It was accepted by the plaintiff and the first named defendant that, when the 201 bus route was first initiated that ramps had already been constructed on the roadway. It is also common case that pursuant to S.I. 32 1988 paragraph 4(d):

"Ramps shall not be provided on a roadway where the road concerned is a road on which an omnibus service operates."

No application, apparently, was made by the first defendant to have these ramps removed and therefore it must be assumed that this defendant was prepared to operate this service despite knowing of the physical unsuitability of the route. In these circumstances, and as the ramps were of proper construction, no blame can be attached to the second defendant.

Damages
The plaintiff had previous, but fully resolved, injuries to his back in 1987 (disectomy) and a twisted back in 2004.

He was off work for a few days – according to himself "Nothing major" but as a result of this injury no longer works overtime and is now a driver on a shorter route. According to his evidence he was a good snooker player but can no longer take part and enjoyed cycling which again is no longer available to him. The plaintiff has an autistic child and claims that his injuries affect his capacity to attend to this child's special needs.

Medical reports have been furnished to me from Mr. Michael Pegum who examined the plaintiff on behalf of the first defendant and Mr. Joe Sparkes who was the plaintiff's "treating" medical attendant (in addition to his general practitioner from whom I do not have a report).

There is little real difference between the examination results and opinions of these two doctors and their findings reveal a pre-existing degenerative condition which would ultimately have resulted in adverse symptoms to the plaintiff but the onset of these adverse symptoms has been accelerated by the accident which is the subject matter of these proceedings.

The plaintiff has undergone a considerable amount of physiotherapy and has reached a situation where his symptoms "will probably persist indefinitely at nuisance level" and will "probably interfere with his recreational activities to some extent".

Both doctors agree that the plaintiff has had to cease playing snooker and cycling and do not suggest that this is unreasonable.

In these circumstances I will award the plaintiff general damages as follows:

(a) General damages for pain and suffering to date €25,000

(b) General damages for pain and suffering into the future €20,000

To this figure must be added the agreed sum of €30,911.68 special damages.