

THE HIGH COURT**2008 855 P****BETWEEN****SHEILA COLBURN****APPLICANT****AND****SLIGO BOROUGH COUNCIL****RESPONDENT****JUDGMENT of Mr. Justice O'Neill delivered on the 6th November, 2009**

The Plaintiff in this case, Sheila Colburn, is 71 years of age now. On 29th June 2006, at Castle Street in Sligo as she was walking along the footpath she tripped and had a very nasty fall resulting in quite significant injury.

Now, I am quite satisfied that what caused the Plaintiff to trip and fall was an indent or depression in a drainage channel in the footpath at the location in question. What had caused this incident or depression was a piece of concrete missing from the edge or the side of this drainage channel and I am satisfied that what caused this piece of concrete to be missing was the result of the disturbance caused by a variety of excavations in the pathway adjacent to the channel in question.

Quite clearly the indent or depression was not the result of normal wear or tear from the usage of the footpath and in this regard I accept the evidence of Dr. Jordan, the engineer called for the Plaintiff, and his evidence as to what caused the piece of concrete to be missing, was not disputed or challenged by the Defendants'.

The issue then in the case is whether or not the depression or indent which was there was a tripping hazard. Well, I am quite satisfied that in fact it was this particular depression that caused the Plaintiff to trip. The Plaintiff gave me an honest and accurate account of her mishap and soon afterwards she made a complaint to the Defendants' at the Town Hall and attributed her fall to a defect in the path.

Now, Dr. Jordan, the Plaintiff's engineer, in his evidence contended that the edge of this depression which faced the Plaintiff as she travelled along was an abrupt edge which was of sufficient depth to be a trip hazard. Ms. Kelly, the engineer who was called on behalf of the Defendants', disputed this and said that the edge facing the Plaintiff was in effect graduated and not abrupt so that it would not have been a trip hazard. Dr. Jordan measured the depth of the depression and found it to be 15 millimetres and his evidence was that anything in excess of 10 millimetres is a trip hazard. It is quite clear to me from looking at the photographs and hearing the evidence that the depression was created by the dislodging of a piece of concrete. It would seem to me to be quite improbable that the surfaces that would have been left as a result of this would be even or smooth to any degree at all.

It is quite clear that the surface which faced the Plaintiff's travel, so to speak, was uneven and certainly didn't have any kind of uniform regularity about it and would have differed markedly from the kind of smooth surface that one would find, the smooth graduated surface that one would find in the normal course of a channel of this kind.

The depression also was clearly large enough to accommodate the toe of the Plaintiff's shoe. In my opinion it was had sufficient depth also to be a trip hazard if a shoe, or the toe of a shoe, entered into it. It is probable, in my view, that the edge which faced the Plaintiff had sufficient roughness and unevenness to catch the toe of the shoe if the toe of the shoe, in the normal process of walking, went into the depression.

All of this leads me to conclude that the depression in fact did create a trip hazard and it was this that did cause the Plaintiff to fall. Thus, I have come to the conclusion that the Defendants' are liable to compensate the Plaintiff for her injury. This is no evidence or indeed any suggestion of any contributory negligence on the part of the Plaintiff herself. Now, as a result of this accident unfortunately the Plaintiff has suffered a significant injury. I suppose it would be fair to say that having regard to her age and her, previous medical or surgical history, she was a bad candidate for this. She had in the years 2002 and 2003, two knee replacements. Thankfully that surgery, I am quite satisfied on the evidence, was very successful and between that surgery and the time of this accident she led a normal life with normal mobility.

In the course of the evidence the Defendants' did challenge or did contend that prior to this accident the Plaintiff had, as it were, a checkered medical history and that which has arisen since her accident was in fact no more than a continuation of that which went before. I cannot accept that contention because it seems to me that the evidence establishes that whilst the Plaintiff did complain of low back pain two months before this accident, it seems to me to be clear that that was an isolated incident and cleared up pretty quickly and did not lead to any kind of continuation of treatment. Similarly, her complaints with her respect to her knees, she had a very successful outcome to her surgery and apart from maybe some minor complaints thereafter she had healthy functional knees prior to the accident.

Now, as a result of the accident itself she suffered an undisplaced fracture of the head of the radius at the elbow on the left side. Whilst that might have appeared the most serious injury at the time in fact it turned out to be the least troublesome because with conservative treatment i.e., sling and so on, it healed up fairly quickly and apart from some loss of extension has not really given her a whole lot of trouble since. She also suffered with a soft tissue injury to the right knee. Again, whilst that might have appeared threatening at the time having regard to her previous surgical history, it too appeared to have resolved itself fairly speedily and thankfully did not lead to a situation where there was a disruption of, or significant interference with the successful knee replacement surgery she had in the early part of the this decade.

Her significant injuries were in fact to her neck and lower back. Now, in due course MRI scans were done on both and these, as far as the neck was concerned, revealed relatively minor degenerative change, but so far as the low back is concerned very significant degenerative change i.e., a diffuse protrusion of disc at the L4/5 level.

Now, I accept the Plaintiff's evidence and I, indeed, accept Dr. Gallagher's evidence which is to the effect that these two injuries and, in particular, the low back injury have significantly altered the Plaintiff's life since then. As a consequence she is now on a regime of anti-inflammatory and analgesic medication on a daily basis and has been since this fall and that is likely to continue for the foreseeable future.

It is quite clear that there are features to her low back injury which were never present prior to her accident, for example, her difficulty with straight leg raising and so on. I am satisfied that the low back injury has caused a very, great disruption of her life and has hugely hampered her mobility since this accident, as a result of which, she now has a very short walking distance which is limited by the pain in her lower back.

I am also satisfied that she endures a good deal of pain and discomfort in her neck and shoulder and as is typical of that particular injury and indeed low back injury, that would have a very serious detrimental affect on the normal sleep pattern.

It is now three years or more since this accident. There is no prospect of improvement and, indeed, there is no treatment that is available to her which is likely to give her any improvement. All that can be done for her is to keep her on this rather heavy regime of anti-inflammatory and analgesic medication which she will have to continue on for the foreseeable future.

So at the age of 71 she has, over the last three years, endured a very great disruption of her life and a great deal of pain and that is likely to continue for the foreseeable future.

I do not propose to divide the general damages as being past and future, having regard to the length of time since the accident and her age at the moment. It seems to me to compensate her by way of general damages for what she has to date suffered and what she is likely to suffer for the foreseeable future, the appropriate sum to compensate her is the sum of 60,000 Euro. Special damages are agreed at 2,190 Euro, so the award will be 62,190 Euro.