2005 IEHC358

THE HIGH COURT

2002 No: 13260P

BETWEEN

BARRY MCLOUGHLIN

PLAINTIFF

AND
MARTIN CARR, TRADING AS HARLOES BAR

DEFENDANT

Judgment of Mr Justice Michael Peart delivered on the 4th day of November 2005

1. On the 2nd April 2001 the plaintiff, then a young man of 19 years of age, was working as a barman in a pub owned by the defendant, and which is situated in Maugheraboy, a residential area about one mile outside Sligo Town. This was his first job as a barman and he had been working there since December 2000.

2. He described his job as part-time, although he was doing full-time hours. The significance of this is simply that he was paid a part-time wage, rather than the wage a full--time worker would get for the same hours of work.

3. According to the plaintiff's evidence he was at work in these premises on the evening of the 1st April 2001 and into the early morning of the 2nd April 2001, along with others. It appears that after closing time, which may have been 11pm or 11.30pm, one of his colleagues, Yvonne Gorman, took a phone call in the bar after closing time while they were clearing up. This may have been sometime between 12 midnight and 1am. She told the plaintiff that a person had told her that he was a friend of the owner, the defendant and that he was tipping her off that the Gardai were going to visit the premises that night, so that she could make sure that there were no persons on the premises at a time when persons were not permitted to be on a licensed premises. At the time this call was taken, it appears that there were indeed persons on the premises finishing their drinks, and that after the call was received these persons were informed of the impending arrival of the Gardai, and eventually they all left the premises.

4. The staff set about their normal cleaning up operations once the last of the patrons had left. The plaintiff himself was doing this work in the snug area of the premises when he heard a knock at the door. This is a timber framed door with nine small glass panels in the upper half of the door. One can see out through these panes of glass, provided one pulls aside a roller blind which was down at that time of the night. The plaintiff went to the door, took a look out and saw a man in a Garda pullover and Garda cap. He was told to open the door, and he complied with this request and immediately he did so, the man outside pulled a mask down over his face and entered the premises, whereupon a shotgun was placed against the plaintiff's neck. He was then pushed backwards and told not to do anything stupid. He was also told to put his hands up and to tell his two workmates not to do anything stupid. There were two other men who were with the man holding the shotgun and they entered behind him. They also had masks over their faces. They were all told to lie down on the floor, and they did exactly what they were told to do.

5. These raiders demanded to know where the safe was kept and they were told that it was in a store area at the back of the premises, and the plaintiff told them where the key to the store was located. The plaintiff and his two colleagues were lying on the floor at this point and were terrified. Yvonne Gorman had the added difficulty that she suffers from asthma, and the fear and stress she was going through was causing her to become very distressed and to have difficulty controlling her breathing. The plaintiff was trying as far as he could to encourage her to try and be calm in order to ease her breathing.

6. The raiders were conducting themselves in a very menacing and threatening way. They demanded to know where the safe was, as I have said. They also wanted to know on what day the slot machines in the premises were emptied of money. This information was given. The plaintiff described these men as manic and said they were smashing the place up. He said also that their hands were tied behind their backs with plastic ties as they lay on the floor. After they had been lying face down on the floor for some time, the raiders told them all to get up. This was done with some difficulty, and all three were then brought to a very small storeroom and they were locked into that small room without light. There was insufficient room in that space for all three to stand or sit in any comfort. The plaintiff was very terrified by all of this, but he was also very concerned about Yvonne Gorman on account of her asthma attack and the effect that the stress of the ordeal was having on her. Once all three were huddled together in that small room the door was locked and they were in complete darkness. There was a lot of noise outside the door. The plaintiff seemed to think that the raiders were throwing things against the door of the storeroom where they were, and the door was also being kicked – all of this creating a great deal of noise. Eventually all went quiet. The three colleagues were in a terrified state by this time, and the plaintiff stated in evidence that he could not describe the fear that he felt at this point, yet at the same time he was relieved that all was quiet.

7. After about ten to fifteen minutes they managed to extricate themselves from the plastic ties by melting them with the aid of some cigarette lighters which happened to be stored in the small room where they were. He burned his hand a bit during this procedure. They all fortified themselves somewhat with some drinks of Pernod which was also located in the storeroom, and eventually the plaintiff managed to kick a hole in the partitioning which divided this small room from the main premises. They got out and the plaintiff immediately pressed a 'panic button' whi9ch was located beside a small bank of light switches at the bar counter, and he also telephoned the Gardai. The panic button when pressed set off an alarm in the premises itself, as well as, presumably, sounding an alert either in the Garda Station itself or an alarm monitoring company. In due course the Gardai arrived and the three employees made statements.

8. The plaintiff described two of these raiders as having "deep Dublin accents", but that the third man did not speak during the raid.

9. It is against this background that the plaintiff seeks damages for negligence and breach of statutory duty against his employer, the owner of this licensed premises. There are a great many allegations of negligence contained in the Statement of Claim, as is to be expected, but in essence, John Finlay SC has refined all these heads of negligence down to the following:

> 1. failing to provide the plaintiff with any training, or any adequate training in relation to security matters, such as how to use the panic button, or how to deal with situations where persons may call to the premises after closing time and seek entry to buy goods, such as by switching on the outside lights when callers arrived at the door after hours in order to assist in establishing the identity of such persons.

10. In this regard there was evidence that it was not uncommon for persons to knock at the door after hours in order to try and buy cigarettes or some take-out order. The outside lights were turned off after closing time in order to deter persons from trying to gain entry.

11. The plaintiff stated that their normal practice was to allow into the premises for these purposes anyone who they recognised as being local, and he would check with the senior person on the premises whether it was in order to sell whatever had been asked for by the entrant.

12. The plaintiff also gave evidence in this respect that when he commenced his employment in the premises the only training which he received was in relation to the work itself as a barman, such as how to change the optics at the bar, how to change kegs in the coldroom, what had to be done in relation to cleaning up after patrons left, what had to be done in relation to the till and so on; but that he received no training in relation to any security matters. He did however accept that he was made aware of the existence of the panic button at the bar, but only because he asked what it was and he was told, but not how to use it.

13. The plaintiff submits that if there had been the sort of training which he says the defendant ought to have provided, this would have resulted in him requiring the persons who arrived at the door dressed as Gardai to produce to him evidence of their identification before he would have let them into the premises. He says also that such training would have taught him that, if he had any doubt about the identity of such persons, the outside lighting should be switched on in order to assist identification, and possibly cause the persons to leave; and if there remained a difficulty or doubt about identification, that the panic button should then be immediately pressed to sound off the alarm both in the premises themselves and at either the Garda Station or the central security monitoring premises, whichever applied. These are the steps which it is submitted would have been taken by the plaintiff had the necessary training in security matters taken place when the plaintiff was commencing his employment at the premises.

> 2. failing to carry out any risk assessment, and to have in place the required Safety Notice as prescribed by the Safety, Health and Welfare at Work Act, 1989, and the General Application Regulations made thereunder.

14. There is no dispute but that no risk assessment was carried out as required by the Act, and neither was there such a Safety Notice in place. Mr Finlay submits that these are statutory obligations which were not complied with, and in so far as the defendant may submit that even if these matters were attended to that it would have made no difference to what happened on this night, that there is a heavy onus upon a defendant in such circumstances to satisfy the court that the failure to comply with these statutory obligations did not deprive the plaintiff of an opportunity to protect himself from what actually transpired on this occasion. In this regard he noted that the defendant himself had not been called to give evidence in the case.

> 3. failing to have an CCTV cameras fitted at the premises, either inside or outside. There were none. That is accepted.

15. Gerard Clarke SC on behalf of the defendant has submitted that there is an air of unreality in what is contended for by the plaintiff as far as the risk assessment, safety statement and training in the use of the panic button is concerned.

16. He has referred to the evidence in this case that these premises are located in a small quiet residential suburb just outside the town of Sligo, and that the modus operandi of the incident which occurred is of a type that is unknown in the area generally, namely that a person would ring up after closing time to warn of an imminent Garda raid, followed up by persons, dressed up in Gardai uniform, calling to the premises and asking to be admitted.

17 There has been evidence from Garda personnel, and retired Garda personnel now involved in private security advice work and training, that such a modus operandi is unique to this particular case. There has also been evidence garnered from official crime statistics that during the years 1996 to 2000 inclusive, there was only a single recorded incident of an armed robbery/aggravated burglary of a licensed premises in the Sligo/Leitrim Division and that one took place in the year 1998.

18. Mr Finlay sought to question the accuracy of these statistics since he had become aware of a newspaper report of a second robbery at a licensed premises in that catchment area in 1998. However, there was obviously an element of hearsay in the report from the newspaper, and Mr Clarke objected to its admissibility. Nothing much turns on that matter really, since there is little doubt one way or another that robberies of a licensed premises, particularly one carried out in the manner of that in the present case, is a very rare matter indeed if not unique in fact.

19. In those circumstances, Mr Clarke submits that since such an event as occurred in the present case is so rare, and possibly unique, it is not of a type that could be expected to be foreseen by the defendant, and that no training in security, even if it had been undertaken at the commencement of the plaintiff's employment, would have taken account of the particular method of entry adopted by these raiders, and that accordingly the element of foreseeability is absent, and therefore the plaintiff has failed to establish an essential ingredient for a successful claim in negligence. He also submits that while there may well be a breach of some statutory obligations in the matters of a risk assessment and the placing of a Safety Notice on the premises, these matters, even if they had been attended to, would not have served any useful purpose in the incident which occurred, and that there is therefore no causal link between the breach of statutory duty alleged and the injury which the plaintiff alleges he suffered as a consequence of those breaches.

20. A different security expert was called by the plaintiff and by the defendant. The plaintiff consulted a Mr Anthony Keane, an expert in the field of security.

21. The defendant consulted Mr Hugh Byrne, who is now retired from An Garda Siochana after many years service in Dublin, and runs his own security services company.

22. Mr Keane was for some years head of security at Aer Rianta advising on airport security, and has a great deal of experience in advising, lecturing and training in relation to security matters. He has also experience of advising two large pub companies in the Dublin area. One of these companies has apparently six public houses and four night clubs in the Dublin area, and the other company for whom he does consultancy work has between twelve and fifteen licensed premises. He accepted, when cross-examined, that this scene in Dublin was significantly different to a small pub in a small rural suburb of Sligo, and he also agreed that much of his work for these larger operations concerned cash in transit concerns, since very large sums of money would normally be involved.

23. However, Mr Keane is of the view that the sort of ruse which the raiders in the present case used is the sort of thing which the defendant ought to have anticipated in any risk assessment which he should have carried out under the Act. He expressed surprise that the plaintiff would have admitted these men dressed as Gardai into the premises without first demanding proof of identification. He felt that no Garda would object to being so requested to produce identification.

24. He was also very surprised that there was no training given in the use of the panic button, and none either in relation to turning on the outside lights when checking who is outside the door seeking to enter after hours. He pointed to the deterrent effect of turning on these lights, as well as the deterrent effect of a panic alarm being activated before persons were inside the premises.

25. He stated that the defendant ought to have provided training to all the employees as to how to deal with persons who may call to the premises after hours, and in particular is of the view that employees ought to have been trained to first of all look out of the door and, in the event of persons outside being Gardai, that they should require the Gardai to first produce evidence of their identification before admitting them to the premises. He was of the view also that while the identification of these persons was being established, another staff member should be standing at the bar counter at the panic button so that the panic button could be immediately activated if so required. He is also of the view that the staff should have been trained to turn on the outside lights in order to make the task of identification easier. As far as the absence of a risk assessment is concerned, Mr Keane is of the view that the defendant ought to have been aware of the risks posed to staff working in the premises after hours and that adequate precautions and training ought to have been in place to address that risk.

26. Overall Mr Keane is of the view that the defendant failed to look after the interests of his staff in the matter of security by failing to properly train them in the use of the panic button, the outside lights and the manner of properly identifying persons in Garda uniform or persons generally, and is also of the view that the sort of ruse adopted by these raiders was perfectly foreseeable by the defendant.

27. When cross-examined by Mr Clarke, he agreed that the ploy used by the raiders was clever and well thought out, and also that no risk assessment if it had been carried out would have anticipated such a modus operandi as persons dressing up in Garda uniform, and ringing ahead to alert the pub of their arrival to inspect the premises. He agreed that he had never heard of such a method being used previously, and agreed that it was unique. He also agreed that it would not have occurred to him as a possible risk, when advising a publican on security.

28. He also agreed that he had never advised publicans in Sligo on security matters or made any comparisons between security issues in Dublin compared to such issues in a town such as Sligo.

29. It is fair to say that Mr Keane and Mr Byrne disagree to a large extent as to what would be reasonable measures for the defendant to have put in place by way of training and equipment from a security point of view.

30. Mr Byrne, on behalf of the defendant, too had never come across another incident such as the present one where Garda uniforms had been used by raiders of a public house. He had come across it in relation to the robbery of security vans on the public road where the perpetrators might don Garda uniform for the purpose of stopping such vehicles on the road, but not in relation to pub robberies. He had never come across this method of robbery during his fifty years experience as a Garda. He also stated that during that long period of service he had never been asked by a member of the public to produce evidence of his identification, even in Dublin where crime levels are greater.

31. When he was cross-examined by Mr Finlay, he expressed the view that it would b e virtually impossible to anticipate this type of crime, and while he agreed that a person was perfectly entitled to ask a Garda to produce his identification, it was not common practice that this would happen. He was also of the view that very little training would be needed in the use of a panic button, since people knew what they were and how to activate them. He was also of the view that in any event a far more effective method of alerting the Gardai to a raid was to phone the Garda Station rather than activate the panic button, since the latter only served to alert the Gardai or the monitoring company that there was some kind of incident, but that a telephone call would actually tell the Gardai exactly what the incident was. But Mr Finlay suggested that the importance of activating the panic button, and therefore being trained as to its use, was the deterrent effect on the would-be raiders before they entered the premises, and that it would in all probability ensure that the raiders left the scene without having entered the premises at all. However, Mr Byrne was not prepared to acknowledge that this would be the effect of the alarm on the raiders.

Conclusions on liability

32. By way of introduction, I should state that nobody could fail to be shocked by the appalling nature of the incident which is the subject of this case. That the plaintiff has suffered greatly in the aftermath of the attack upon him is beyond doubt, and he is deserving of great sympathy for what he has gone through. It has blighted an important period in his life, and has changed him from being what I will describe as being a normal, healthy, active and sociable person into a person prone still to the psychological effects of the incident such as depression, nervous tension, sleep disturbance, difficulties with inter-personal relationships, both in the workplace and elsewhere. It has thrown the plaintiff's life off course, and it is to be hoped that the improvement which he has shown, albeit slowly and falteringly in the years since the incident, will continue so that soon he can return to a normal and contented life-path.

33. However, the appalling nature of this incident and its devastating effect on the plaintiff is not sufficient in itself to make the defendant liable to pay him compensation for what he has gone through. In order to make the defendant liable to compensate the plaintiff, it must be shown that the defendant was negligent, and/or that the defendant was in breach of a statutory duty such that the plaintiff can show (a) that the statute can be seen as intending that the plaintiff should have a right of action against the person who is in breach of the obligation imposed by the statute, and (b) whether there is a causal link shown to exist between the established breach or breaches of statutory duty and the injury sustained by the plaintiff. In *Walsh v. Kilkenny County Council* [1978] ILRM 1, Gannon J. stated in this regard:

> *"Not every failure to comply with a statutory duty from which damage ensues entitles a person damnified to recover compensation from the party in breach of the statute in a claim for damages founded on that ground alone. As stated by Maughan J. in Monk v. Warbey [1935] 1 KB 75 at page 85:*
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> *'The court has to make up its mind whether the harm sought to be remedied by the statute is one of the kind the statute is intended to prevent; in other words it is not sufficient to say that harm has been caused to a person and to assert that the harm is due to a breach of the statute which has resulted in the injury.'*
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> *Furthermore the fact that the statute does not exact a penalty from the defaulting party is not the only factor which signifies that damages may be recovered in a civil action founded on the breach of the statutory duty. In Phillips v. Britannia Hygienic Laundry Company Limited [1923] 2 KB 832 at page 840, Atkin L.J. says:*
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> *'When a statute imposes a duty of commission or omission upon an individual, the question whether a person aggrieved by a breach of the duty has a right of action depends on the intention of the statute. Was it intended that duty should be owed to the individual aggrieved as well as to the State, or is it a public duty only? That depends upon the construction of the statute as a whole, and the circumstances in which it was made, and to which it relates. One of the matters to be taken into consideration is this: does the statute on the face of it contain a reference to a remedy for the breach of it? If so, it would, prima facie, be the only remedy, but that is not conclusive. One must still look to the*

intention of the legislature to be derived from the words used, and one may come to the conclusion that, although the statute creates a duty and imposes a penalty for the breach of that duty, it may still intend that the duty should be owed to individuals.'

Romer L.J. in Solomons v. Gertzenstein Limited [1954] 2 QB 243 at 266 observed;

'No universal rule can be formulated which will answer the question whether in any given case an individual can sue in respect of a breach of a statutory duty. "The only rule", said Lord Simonds in Cutler's case……"which in all circumstances is valid is that the answer must depend on a consideration of the whole Act, and the circumstances, including pre-existing law in which it was enacted." '

34. Considering these matters, albeit in a necessarily brief way due to time constraints, I am of the view from the general scheme and context of the Safety, Health and Safety at Work Act, 1989 ("the Act"), that, in spite of the fact that certain offences and penalties are provided for in s. 48 of the Act in respect of breaches of duties imposed by certain sections thereof, it evinces an intention that the duties and obligations imposed upon employers therein are such that the employee is intended to benefit therefrom, and that an employee should therefore be entitled to sue in respect of a breach thereof, provided of course, and necessarily, that the employee can reasonably establish a causal link between the actual breach of statutory duty and the infliction of damage upon him/her.

35. This intention seems evident in, for example, Part II of the Act where s. 6(1) provides as follows:

"It shall be the duty of every employer to ensure, so far as is reasonably practicable, the safety, health and welfare at work of all his employees."

36. Quite clearly this duty is being specified for the benefit and protection of employees in the workplace, and the remainder of s. 6 is very specific as to what is embraced by that duty. It can be seen in my view as giving statutory recognition to what hitherto was the common law duty of care which an employer owed to an employee. But even in the statutory provision, it is important to note the use of the words "so far as is reasonably practicable", and that phrase is repeated throughout the other subsections of s. 6 where the precise matters to which the duty extends are set forth in detail.

37. The employer's duty is balanced in s. 9 of the Act by the provision that it shall be the duty of every employee while at work to take reasonable care for his own safety, health and welfare, and the section goes into certain specifics in that regard also. A breach of that duty is also an offence carrying the same maximum penalty by way of fine as the offence in respect of a breach of the employer's duty.

38. However, as I have already stated, I am of the view that the employee has rights to sue his employer for a breach of statutory duty created by s. 6 of the Act. But as I have also stated, the fact that the employer is in breach of a specific duty, such as in the present case the duty to carry out a risk assessment, or put up a safety notice, or the eliminate hazards in the workplace, or to provide training in matters related to security and so on, is not the end of the matter as far as a plaintiff is concerned. There must be shown to be a link between that breach and the injury suffered. To take a simple example, it will avail a plaintiff nothing in a road traffic accident case to establish that the defendant's vehicle had a defective brake light in breach of statutory duty in that regard, if the absence of the brake light in no way caused or contributed to the accident in which the plaintiff suffered injury.

39. In the present case, the plaintiff will have to satisfy the Court that, on the basis of a probability, the fact that there was no risk assessment carried out, or the fact that there was no safety notice in place in the premises, or the fact that he was not given training in security matters such as the use of a panic button or how to deal with the identification of persons seeking to gain entry after hours, caused him to receive the psychological injuries for which he seeking to be compensated.

40. In my view he has failed to so establish matters sufficiently given the uniquely unusual method by which these raiders gained admittance to the premises, and in particular given the location of this public house. Looking at the matter from a perspective of reasonable reality - firstly, the absence of a safety notice on the wall of the premises, even if it had been evidence (which there was not) as to what such a notice would have or ought to have contained, same could not be expected to have stopped the plaintiff from letting these men dressed as Gardai, into the premises.

41. Secondly, I cannot see that even if the plaintiff had received some form of training or instruction in how to deal with persons who might call after hours, this training would reasonably be expected to anticipate persons masquerading as Gardai. The Act refers all the time to the phrase "so far as is reasonably practicable". With the benefit of hindsight this event is now seen as one that is possible, and it is contended that it should have been foreseeable. I cannot agree given the evidence that such a method was never before used, and has not been known to have been used since. This point covers also the absence or failure to carry out a risk assessment. In my view no risk assessment at these premises would have thrown up as a possibility the fact that persons might phone up and alert the employees to the arrival of gardai and to the fact that persons dressed up as Gardai would in fact arrive and ask to be admitted. This had never been known to happen in the area and cannot be regarded as being something which would have been foreseen in such an assessment.

42. Thirdly, even if the plaintiff had been told more about the panic button, I doubt if it would have availed him at all. He has said that he knew that it was there in fact. It is not reasonable to conclude that he did not know how it could be activated. In addition, even if the a second person had been at the bar with a finger on the button waiting for the signal from the plaintiff to activate it, can it reasonably be stated that the plaintiff would have had any reason to direct its activation given the fact that as far as he was concerned these persons were Gardai and entitled to be admitted. I think not. The same can be said about training in the use of outside lights, since on this occasion the plaintiff was not handicapped as far as his sight of the persons was concerned. He could see that they were Gardai. It is pure speculation to now say that if the lights had been turned on, these men would have scarpered.

43. I am satisfied that the plaintiff cannot recover on the basis of breach of statutory duty.

44. Turning to the question of whether the defendant has been negligent as opposed to being in breach of statutory duty, much of what I have already stated is relevant to this question also.

45. To establish negligence, there must first of all be a duty of care owed by the defendant to the plaintiff, and a breach of that duty. It must also be shown that the plaintiff suffered damage as a result of that breach, and that the injury involved was reasonably foreseeable as a consequence of the breach of duty.

46. For a duty of care to exist, there must firstly be a relationship of proximity between the plaintiff and the defendant. That is not a

difficulty in the present case for the very obvious reason that the plaintiff was the defendant's employee.

47. An important consideration will then be the extent of that duty of care. In the context of the present case the defendant's duty at common law was to use reasonable care to ensure the safety of the plaintiff during the course of his employment. That will involve an assessment of what risks were foreseeable, so that the defendant's conduct can be considered, in order to form a view as to whether there was something which reasonably ought to have been done and which was not done, and the absence of which resulted in the injury.

48. It is alleged in the present case that the defendant ought to have foreseen that an incident such as the present one might happen, and that if such an event had been anticipated, whether in the carrying out of a risk assessment or otherwise, then the defendant would have been obliged to take certain steps to avoid it or minimise it by the provision of appropriate training designed to enable the plaintiff to avoid injury in the manner which happened. In my view the answer to the question of foreseeability is that this event was unique in the sense that it had never before occurred in a licensed premises in the general area of the defendant's premises. How then can it be said to be something foreseeable. It has only become a visible or foreseeable possibility with the benefit of hindsight.

49. Sometimes the question of whether any act by the defendant can be seen as having caused injury to the plaintiff is discussed in terms of the "but for" test. As *McMahon and Binchy* state in their work *Law of Torts, 3rd ed*. at page 61:

> *"…the rule they [the courts] most commonly favour in distinguishing the relevant causes from irrelevant causes is what has become known as the "but for" rule. An act is the cause of an event if the event would not have occurred without ("but for") the act in question. If the event or effect would have occurred without the act in question then the act cannot be deemed to be a cause."*

50. The extent of the employer's duty of care has been described by Henchy J. in the following terms in *Bradley v. CIE* [1976] IR 217 at 223:

> *"The law does not require an employer to ensure in all circumstances the safety of his workmen. He will have discharged his duty of care if he does what a reasonable employer would have done in the circumstances."*

51. In similar vein is the remark of Kingsmill Moore J. in *Christie v. Odeon (Ireland) Limited* [1957] 91 ILTR 25 at 29:

> *"It is of little avail to show, after an accident has happened, that such and such a precaution might in the circumstances have avoided a particular accident. The matter must be considered as it would have appeared to a reasonable and prudent man before the accident."*

52. In all the circumstances can it be argued successfully that this reasonable and prudent man would have anticipated what happened at these premises, and taken precaution against that thing occurring? I think not.

53. The employer's duty is, *inter alia,* to provide a reasonably safe place of work for his employee. He cannot be reasonably be expected to provide a place of work, guaranteed to exclude any potential hazard no matter how remote a possibility, or unforeseeable it is. In my view the plaintiff has failed to establish that any act or omission on the part of the defendant was the cause of the undoubted injury which the plaintiff has suffered. Harsh as it will seem, the law has provided that certain things must be established by a plaintiff if he is to be successful in a claim of negligence against his employer, and unfortunately the plaintiff has fallen short of satisfying me of these matters in the present case.

54. I must with great regret dismiss the plaintiff's claim.