

THE HIGH COURT

[2009 No. 6682 P.]

BETWEEN

JUSTYNA MEUS

PLAINTIFF

AND

DUNNES STORES

DEFENDANT

JUDGMENT of Mr. Justice Barr delivered on the 17th day of December, 2014**Background**

1. The plaintiff is a Polish national. She is 39 years of age, having been born on 1st November, 1975. In this action, she claims damages against the defendant in respect of an injury suffered by her in the course of her employment with the defendant on 6th April, 2007.
2. On that date, she was working as a shop assistant in the defendant's shop premises in Newbridge, Co. Kildare. She was working in the men's department. In the course of the day she was required to fetch a number of large boxes from the storeroom and bring them to the shop floor. The boxes in question measured approximately 72 x 48 x 30cm. The boxes weighed approximately 13-15kg. They contained a number of suitcases of varying sizes, one inside the other. Normally, there would be three or four items per box.
3. The plaintiff stated that on the day in question, she went to the storeroom where the boxes were stacked one on top of the other. The boxes were stacked high above the plaintiff's head height. In order to obtain boxes, she had to knock them off the top of the pile and let them fall to the ground.
4. The plaintiff used a trolley which measured 1,200mm long and 515mm wide. It had two shelves, the lower one 215mm above floor level and the upper shelf at a height of 950mm above floor level.
5. The plaintiff had loaded a trolley with five boxes, three on the upper shelf and two on the lower shelf. Although she found the boxes large and heavy, she managed to fill the first trolley without incident. She suffered her injury while loading the second trolley.
6. On this occasion, she had placed two boxes onto the lower shelf of the trolley. She had lifted two boxes onto the upper shelf. It was while lifting the third box onto the upper shelf that she met with her injury. She stated that she had great difficulty lifting the box due to its size and weight. She stated that she bent over with her knees straight and her back bent. She was able to embrace the box so as to lift it from the floor. She lifted the box to her thigh level and then raised her right knee so as to give the box an extra lift, so that she was able to place the box onto the top shelf. It was while performing this manoeuvre that she hurt her back.

Liability

7. One of the key issues in this case concerned the training which was given to the plaintiff when she joined the defendant company. The plaintiff had signed a card which was apparently a Training Record of the training given to the plaintiff at the time she joined the defendant's employment on 22nd August, 2006.
8. The card had a table on it which indicated the date the training was allegedly given, the type of training, by whom it was given and a column for the signatures of the plaintiff against each of the training modules.
9. The plaintiff's card indicated that all the training took place on 22nd August, 2006. The types of training were stated to be: Induction, Alcohol Sales, Hygiene Level 1, Chemical Training, Health and Safety, and Manual Handling. In the column for the signatures of the trainers, these were blank for the most part, with the exception of Health and Safety and Manual Handling, which were signed by "A. Birchall". In the final column, there appeared six signatures of the plaintiff in respect of each of the training modules.
10. The plaintiff admitted that these were her signatures. However, she denied receiving all of the training set out in the card. In particular, she stated that she received induction training on the day she started. This comprised a tour of the shop premises. In respect of hygiene, she was just given her uniform. She stated that she did not get any training in alcohol sales, as this was not her area. She denied receiving any health and safety or manual handling training. She was adamant that all she got on her first day was a tour of the shop, and a handbook and a uniform. She was told to sign the card and that is what she did.
11. The defendant strongly contested this last assertion. The trainer who signed in respect of the health and safety and manual handling modules was Mr. Andrew Birchall, the Health and Safety Manager. He stated that he recalled giving the training to a group of new employees, including the plaintiff. He stated that he gave a demonstration of good lifting technique, using a box of A4 paper for the purpose of the exercise. He stated that he adopted the crouch and lift technique, which involved bending the knees and keeping the back straight during the lifting operation.
12. Mr. Birchall stated that he showed the group a slideshow dealing with manual handling, followed by a viewing of two DVDs on health and safety aspects, including one on the manual handling of loads. These DVDs were not proved in evidence. The plaintiff denied point blank that she was shown any slideshow or any DVDs.
13. In cross examination, Mr. Birchall agreed that it was strange that the trainers responsible for the other modules had not signed the plaintiff's card. He stated that the card should have been signed by the other trainers if the training in those modules had taken place. He could not explain the absence of the other signatures. He said that he had signed the card in respect of the training actually given by him on 22nd August, 2006. He did nothing as health and safety manager to get the other signatures on the card.

14. The plaintiff had been furnished with a handbook on a wide range of topics. She had received this at the time of her induction training. It comprised two pages on manual handling techniques. The plaintiff stated that she had difficulty reading and understanding the handbook due to her poor English.

15. In cross examination, Mr. Birchall stated that the training was given in a training room which was bigger than the storeroom. He admitted that the storeroom in the engineer's photographs was in a very congested state. It should not have been so cluttered. He surmised that there might have been a large delivery earlier on the day of the engineer's inspection.

16. Mr. Birchall stated that the staff in the Newbridge store would comprise a number of different nationalities. He admitted that when he gave the instruction, he did not check if the new recruits understood him, or the slideshow and DVD presentations. He accepted that this was not satisfactory. While he invited questions at the end of the training, he did not ascertain whether all the new recruits actually understood the presentation.

17. It was put to the witness, that the plaintiff had used the wrong lifting technique when giving a demonstration in the witness box. When asked to comment on this demonstration, the defendant's engineer had described it as a "*spectacularly wrong*" technique. Mr. Birchall admitted that after the training, he had not checked up to see whether the plaintiff was doing the work properly and in particular, whether she was adopting the correct lifting technique. He accepted that they did not follow up on the training, which had been given on the first day of employment.

18. Mr. Birchall also stated that he had used a small box of A4 paper for the purpose of his demonstration. He accepted that the demonstration was not remotely comparable to the lifting of a large box, which the plaintiff was required to do in the course of her duties. In the circumstances, he accepted that the training was not adequate for the plaintiff's job.

19. Evidence was also given by Mr. Peter Johnson, Consulting Engineer, on behalf of the plaintiff. He outlined the statutory provisions that were applicable in the circumstances of this case. Section 10 of the Safety Health and Welfare at Work Act 2005, provides:-

"(1) Without prejudice to the generality of section 8 and having regard to sections 25 and 26, every employer shall, when providing instruction, training and supervision to his or her employees in relation to their safety, health and welfare at work, ensure that—

(a) instruction, training and supervision is provided in a form, manner and, as appropriate, language that is reasonably likely to be understood by the employee concerned,

(b) employees receive, during time off from their work, where appropriate, and without loss of remuneration, adequate safety, health and welfare training, including, in particular, information and instructions relating to the specific task to be performed by the employee and the measures to be taken in an emergency,

(c) in relation to any specific task assigned to an employee, that his or her capabilities in relation to safety, health and welfare are taken into account,

(d) ...

(2) Training under this section shall be adapted to take account of new or changed risks to safety, health and welfare at work and shall, as appropriate, be repeated periodically.

(3) Training under this section shall be provided to employees—

(a) on recruitment,

(b) in the event of the transfer of an employee or change of task assigned to an employee,

(c) on the introduction of new work equipment, systems of work or changes in existing work equipment or systems of work, and

(d) on the introduction of new technology."

20. As the Regulations made under the 2005 Act did not come into force until August 2007, the plaintiff's employment was covered by the Safety Health and Welfare at Work (General Applications) Regulations 1993 (S.I. 44/1993). Regulation 10 thereof placed a duty on employers to carry out a risk assessment of the work which an employee was expected to do. This risk assessment was to form the basis of the safety statement. In this case, the safety statement had been drawn up, but there was no risk assessment carried out of the work which the plaintiff was required to do as an assistant in the men's department, which included bringing large and heavy boxes from the storeroom to the shop floor.

21. Regulation 13 deals with training. The following portions of that Regulation are relevant:-

"(1) It shall be the duty of every employer in providing training on matters of safety and health to his employees to ensure that—

(a) his employees receive, during time off from their duties and without loss of remuneration, adequate safety and health training, including, in particular, information and instructions relating to the particular task or workstation involved,

(b) where tasks are entrusted to an employee, his capabilities in relation to safety and health are taken into account, including in relation to the manual handling of loads by employees the individual risk factors set out in the Ninth Schedule, and

(c) particularly sensitive risk groups of employees are protected against any dangers which specifically affect them, including in relation to the manual handling of loads by employees the individual risk factors set out in the

Ninth Schedule.

(2) Training under paragraph (1) shall be adapted to take account of new or changed risks and shall be provided on recruitment of employees or in the event of transfer of employees, a change of job, the introduction of new work equipment, a change in equipment or the introduction of new technology, and shall be repeated periodically where appropriate."

22. Part VI of the Regulations deals with manual handling of loads. Regulation 27 thereof provides:-

"manual handling of loads' means any transporting or supporting of a load by one or more employees, and includes lifting, putting down, pushing, pulling, carrying or moving a load, which, by reason of its characteristics or of unfavourable ergonomic conditions, involves risk, particularly of back injury, to employees."

23. Regulation 28 deals with the duties of an employer. It provides as follows:-

"Every employer shall –

(a) take appropriate organisational measures, or use the appropriate means, in particular mechanical equipment, to avoid the need for the manual handling of loads by his employees,

(b) where the need for the manual handling of loads by his employees cannot be avoided, take appropriate organisational measures, use appropriate means or provide his employees with such means in order to reduce the risk involved in the manual handling of such loads, having regard to the factors specified in the Eighth Schedule,

(c) wherever the need for manual handling of loads by his employees cannot be avoided, organise workstations in such a way as to make such handling as safe and healthy as possible, and –

(i) assess the health and safety conditions of the type of work involved, and in particular examine the characteristics of loads, having regard to the factors specified in the Eighth Schedule, and

(ii) take care to avoid or reduce the risk, particularly of back injury, to his employees, by taking appropriate measures, considering in particular the characteristics of the load, the physical effort required, the characteristics of the working environment and the requirements of the activity, taking account of the factors for the manual handling of loads specified in the Eighth Schedule, and

(d) without prejudice to the provisions of Regulation 11, ensure that those of his employees who are involved in manual handling of loads receive general indications and, where possible, precise information on

(i) the weight of each load, and

(ii) the centre of gravity of the heaviest side when a package is eccentrically loaded."

24. One of the matters outlined in the Eighth Schedule to the Regulations concerns reference factors for the manual handling of loads. It provides that the employer must have regard to the characteristics of the load. It states that the manual handling of a load may present a particular risk of back injury if it is too heavy or too large, unwieldy, or difficult to grasp, and is positioned in a manner requiring it to be held or manipulated at a distance from the trunk, or with a bending or twisting of the trunk.

25. The employer must also have regard to the matters set out in the Ninth Schedule to the Regulations. These provide that the employee may be at risk if he is physically unsuited to carry out the task in question, is wearing unsuitable clothing, footwear, or other personal effects, or does not have adequate or appropriate knowledge or training.

26. The plaintiff's engineer, Mr. Johnson, stated that not only must the employee receive training in a language that he/she understands, the health and safety guidelines refer to the need for supervision of employees following training. In this case, there did not appear to be any follow-up supervision. When the plaintiff used the wrong lifting technique, this should have been observed and rectified by a supervisor. There was no such supervision in this case.

27. Regulation 13(2) was relevant in this case. It provides that training should be given at the commencement of employment and on transfer to a different section, if different work is involved. In this case, the plaintiff had started in the Ladies' section of the shop. Due to the hours she was rostered, she applied to transfer to the Men's section. According to the plaintiff, this involves significantly more lifting of bulky loads. The display of suitcases came under the Men's section. Mr. Johnson stated that training is relevant if there is a change in the nature of the work an employee is doing. The employee must be given task specific training on being transferred to another department. This was not done in the plaintiff's case.

28. This was specifically provided for in the defendant's Safety Statement at s. 2(1) thereof, where under the heading "Task Specific Training", the safety statement stated as follows:-

"Once assigned or transferred to a new department an employee will be provided with task specific training. This can include a review of task procedures, hazards related to the work, safety precautions and controls as detailed within the safety statement in addition to health and hygiene operating procedures."

29. In the present case, no training had been given to the plaintiff on her transfer to the Men's department.

30. In relation to the weight of the load, Mr. Johnson pointed out that there is no specific weight limit which a female operative can lift. Instead, there are guideline weights for different loads depending on what height the load is in relation to the body and whether the load is being lifted close in to the body or out from it. If a load is being lifted in excess of the guidelines, extra care is needed as the risk of back injury is increased.

31. The box of three suitcases which weighed 13kg would be greater than the guideline weights for the lift from the ground up to thigh level and once it passed to shoulder height, it was again above the guideline weight for that zone. It was necessary to have regard to the fact that the box was large, thereby making it difficult for the operative to lift it from the floor, while keeping the box close to the body at the same time. This meant that the plaintiff was at greater risk of injury. Mr. Johnson was of opinion that there should have been a task specific risk assessment of the lifting operation that the plaintiff, as a small female operative, was required to carry out. This was not done by the defendant.

32. Mr. Johnson stated that given the size of the box, it would be very difficult to lift with a crouch lift posture. Lifting the box with a bending posture, as demonstrated by the plaintiff was incorrect and should have been picked up by a supervisor or someone following through on the training given previously.

33. Evidence was given on behalf of the defendant by Mr. Ciaran Griffin, the Menswear Manager. He stated that the plaintiff did not tell him that she had had an accident while lifting the box. He said that she never referred to this incident. He did not ask for light duties, nor did she say why she wanted time off. She accepted that the photographs showed the storeroom at its worst, as it was very congested.

34. Evidence was also given by Mr. Joseph Kelly, the Assistant Manager. He stated that the plaintiff was under his supervision. He worked on 6th April, 2007, and was not made aware of any accident. He recalled a telephone call in July 2007, when the plaintiff simply said to him that she could not work; she just said that she was sick.

35. Suitcases fell under the remit of the Men's department. He worked out on the shop floor. He accepted that the storeroom was in a mess on the day that the engineer's inspection took place. He did not recall seeing the storeroom being that congested. He suggested that there may have been a large delivery of goods that day. He accepted that the photographs showed that the plaintiff's working conditions were in a very congested state on that day. He agreed that this was unsatisfactory because, given that there were so many boxes there, it was awkward to get at the boxes that one needed. He stated that he would have observed the plaintiff carrying out her duties and he never saw her lifting incorrectly. He stated that he did not do the training in the Newbridge store, and added that whenever he did training, he would sign the employee's training record card. He accepted that the card should be signed by the trainer if the particular training had been given. It was strange that the plaintiff's card had not been signed by the other trainers.

36. Mr. Conor McCarthy also gave evidence on behalf of the defendant. He was the manager of the Newbridge Dunnes Stores. He stated that the plaintiff never told him that she had an injury at work. He recalled that the plaintiff had been absent for a period of time. Personnel would have written out to her and in response she sent in a letter resigning from her position. He had not known that there had been an accident.

37. In cross examination, he said that he was more senior to Mr. Birchall. He was not aware that no attempt had been made to obtain disclosure of person's fluency in English. He thought the training given by the defendant was adequate, even if given in English. He accepted that when it was given in evidence that the plaintiff and others may not have understood the training, it did not sound great. He stated that the training card should have been signed by all the trainers. He said that this was a most unusual training card. There was also a questionnaire which would have been filled out at the time of the training and this was absent from her file. This was a further peculiarity in her case. He did not think that Mr. Birchall would sign the card if he had not done the training.

38. Finally, evidence was given on behalf of the defendant by Mr. Cahill Maguire, Consulting Engineer. He was of the opinion that it was possible for the plaintiff to lift the box in safety, if she turned the box upright and then tilted it and lifted it up from that position. He was of opinion that the type of work done in the Men's department was similar to that done in the Ladies' department, so that there was no need for retraining of the plaintiff on transferring to the Men's department.

39. As stated earlier, he described the plaintiff's lifting technique as "*spectacularly wrong*". If she was doing that lifting technique, that should have come to someone's attention at an early stage and should have been corrected. Her lifting technique would have made her vulnerable to back injury.

40. Mr. Maguire stated that the Safety, Health and Welfare at Work Act 2005, requires the employer to do a risk assessment and draw up a safety statement based on this. It appeared that the defendants had not done any risk assessment because in the order for discovery, it was told to produce any risk statement and this had been returned with the words "*none such*". Mr. Maguire accepted that the absence of a risk assessment reduced the value of the safety statement. The safety statement in this case was generic as no specific risk assessment had been done. It was put to Mr. Maguire that the training as given by Mr. Birchall was not remotely comparable to what the plaintiff was required to do in the course of her employment. He stated that if he had known the quality of the training was as set out in the evidence of the defence witnesses, it would not be adequate.

Decision on Liability

41. I am satisfied that liability in this case must rest with the defendant. There is a large dispute between the parties as to whether the plaintiff received any manual handling training on the day of her induction on 22nd August, 2006. The plaintiff struck me as a truthful witness. I accept her evidence that she was not shown any slideshow or DVDs at her induction training. I accept that she was given a tour of the shop premises, was given a uniform and a handbook and was told to sign the record card. In the circumstances, she did not receive adequate training in respect of the duties of her employment.

42. Even if I am wrong in this, I am of opinion that the training stated to have been given by Mr. Birchall was inadequate. The demonstration given was in relation to the lifting of a box of A4 paper. This was not remotely comparable to the lifting exercise which the plaintiff had to do in the course of her duties in the Men's department. Furthermore, it has been admitted that no attempt was made to inquire whether the plaintiff actually understood the content of the instruction allegedly given to her in relation to manual handling. In the circumstances, I find that even if the training as alleged by Mr. Birchall was given to the plaintiff, it was inadequate to enable her to perform her duties in safety.

43. There was no proper follow-up to the training which had been given. Nobody checked to make sure that the plaintiff understood the basic requirements of safe manual handling techniques. If there had been adequate follow-up and supervision, the defendant would have learned that the plaintiff was using an incorrect and dangerous method of lifting items. This should have been spotted and corrected.

44. There was no risk assessment carried out in relation to the lifting duties of the plaintiff in the Men's department. If there had been such an assessment, it would have shown up that the plaintiff was obliged to lift a large and bulky box of significant weight in the course of her duties in that department. The risk of back injury would have been evident. It was necessary in these circumstances to

ensure that the plaintiff knew and understood how to use safe lifting techniques in relation to these loads. No such task specific risk assessment was carried out. In the circumstances, the defendant was in breach of Regulation 10 of the Safety, Health and Welfare at Work (General Application) Regulations 1993, and in breach of its duties at common law. The defendant was also in breach of s. 10 of the Safety, Health and Welfare at Work Act 2005, and with Regulations 13 and 28 of the 1993 Regulations, and with the matters as set out in Schedules 8 and 9 thereto.

45. The defendant pleaded that the plaintiff should have asked for help. The plaintiff stated that her colleagues were busy with their own duties and were not available to assist her on each occasion that she had to fetch large boxes from the storeroom. She stated that she would make three or four such trips during the day. I accept the plaintiff's evidence in this regard. She could not keep asking her colleagues to come to the storeroom to help her. She had to do the best that she could to load the trolley. She cannot be faulted for failing to seek assistance.

46. In the circumstances, the defendant is liable for the accident suffered by the plaintiff on 6th April, 2007.

Quantum

47. On the day of the accident, the plaintiff rested after the incident as it was near her lunch break. She managed to work out the rest of her shift. She hoped that the pain in her back would settle. On the following day, 7th April, 2007, she worked from 8am until 4pm. On 9th April, 2007, she worked a full week and similarly worked a full week on 16th April, 2007. She stated that at this stage, she took painkillers and hoped that the pain would pass. She was off work for one week and then worked for four days on 7th May, 2007. In the week commencing 14th May, 2007, she worked for five days and in the week of 20th May, 2007, she worked for four days, she missed one day from work. She stated that she was in pain and visited her doctor. She was prescribed medication which helped and was referred for an x-ray.

48. On 4th June, 2007, she worked four days. In the week commencing 11th June, 2007, she worked for five days and during the week of 18th June, 2007, she worked four days. In the week commencing 25th June, 2007, she worked for four days and in the week of 2nd July, 2007, she was absent for one day.

49. The plaintiff requested extra days at the start and end of her annual holidays. She spoke to Mr. McCarthy. She did not mention the back injury, she just said she had an important hospital visit in Poland. She did not mention the injury to her back at work. In the week commencing 6th August, 2007, she did not return to work in Dunnes, she sent in a Polish medical certificate which stated that she was not fit for work.

50. The plaintiff had attended Dr. Salem on 23rd April, 2007. He prescribed painkillers and rest. She went home during the summer holidays to Poland and had further conservative treatment there. When she returned to Ireland, she did not feel up to the work with the defendant. She got a part time job working in a hotel in Newbridge.

51. The plaintiff first came under the care of Mr. Bruce Bough, Orthopaedic Surgeon, on 24th September, 2008. On examination on that occasion, the doctor found specific tenderness to palpation over the para-vertebral muscle and facet joint regions of the lower lumbar sacral spine with pain on movement of extension and lateral flexion to the left and forward flexion. There was specific right sided lumbar facet joint pain on stress testing. Straight leg raise of the left leg was reduced to 80% with a positive cross over sign. Straight leg raised test of the right leg was reduced to 70% with a positive sciatic stretch test. No neurological abnormalities were detected in the legs. Rotational movements of the dorsal spine also produced pain at the right side of the dorso-lumbar junction.

52. Mr. Bough was of opinion that clinically the history was one of acute trauma to the lower back, most likely to a lumbar disc, but also possible as the result of trauma to the right sided lumbar facet joints. Sciatic pain indicated a degree of associated nerve root entrapment or irritation. It was of particular concern that despite conservative management over a seventeen month period, there were persistent significant signs on examination, in particular ongoing evidence of lumbar facet joint pain and irritation in positions when the right sided facet joints were classically stressed, and ongoing significant limitation of the right straight leg raise test with a positive sciatic stretch test, and also of the left straight leg raise test with a positive crossover sign. This indicated ongoing symptomatic lower lumbar trauma and associated nerve root irritation or entrapment.

53. Clinically the main diagnosis was of acute lumbar trauma, particularly acute disc prolapse and this was entirely consistent with the biomechanics of the injury as described. As the clinical signs and symptoms suggested that there had been structural damage to the lumbar spine, the long-term prognosis at that time remained extremely guarded.

54. The plaintiff was reviewed by Mr. Bough on 17th April, 2013. Mr. Bough noted that the plaintiff had received a number of modalities of treatment in Poland. In particular, she had attended at an Orthopaedic and Rehabilitation Clinic on a regular basis receiving treatment including physiotherapy, kinesiotherapy, NSAID and analgesic medication and reduced physical activity, despite which she remained symptomatic and further significant improvement was not anticipated.

55. The plaintiff had undergone further radiological and MRI examination of the lumbar spine in Poland and these had been reported as demonstrating degenerative change within the lumbo-sacral spine and damage to the L5/S1 disc consistent with the clinical findings.

56. When reviewed on 17th April, 2013, the plaintiff reported ongoing right sided lumbar sacral pain and associated right sciatic pain. At clinical examination, there was bilateral pain on rotation at the dorso-lumbar junction, pain and tenderness at the L5/S1 and L4/5 lumbar facet joint on movements of extension, lateral flexion and lateral rotation. Straight leg raise test on the left was normal at 90 degrees, straight leg raise on the right was limited to 70 degrees with a positive sciatic stretch sign.

57. Mr. Bough reached the opinion that as a result of a trauma in April 2007, the plaintiff sustained an acute traumatic injury to the lower back, most specifically involving the L5/S1 disc and associated right sided lumbar facet joints. In addition to lower back symptoms there was an associated right sciatic pain and persistent limitation of the right straight leg raise test with a positive sciatic stretch sign which remained present over six years after the initial injury.

58. Structural changes in the lumbar spine have resulted and given the presence of these and the persistence of clinical symptoms for six years now, the present level of chronic disability was likely to persist for the foreseeable future. He concurred with the view of the Orthopaedic Specialist in Poland that further significant improvement in her condition was unlikely.

59. In evidence, Mr. Bough stated that bending puts strain on the lumbar spine and a lifting operation maximises the strain on the lumbar spine with any twisting also putting pressure on the lumbar spine and the facet joints. This was a reasonable explanation for the symptoms which she has and was a justification for the treatment she has had in Poland. As for the present, when symptoms had gone on for so long, the plaintiff expects pain and anticipates its onset and so she tries to avoid movements which cause pain. She

expects pain on certain movements, she will not do these active movements. In relation to the future, he stated that he would like to see an MRI scan. He would try a course of steroid medication with her. She needs to do an exercise regime so that the muscles could take the strain. He would also use mindfulness meditation to control the pain.

60. The plaintiff was examined by Mr. Walsh, FRCSI, on behalf of the defendant. He noted that as a result of an incident at work on 6th April, 2007, the plaintiff experienced a sudden onset of pain in her lower back and right gluteal area which he believed arose as a result of a muscular/ligamentous strain with perhaps a component of her problems arising in the L4/5, L5/S1 facet joints (right). At review on 17th April, 2013, he felt that there was no evidence of significant ongoing problems in her lower back area and furthermore that there was a considerable functional overlay to her complaints and this would be supported by the discrepancy in her forward flexion and straight leg raising test.

61. Mr. Walsh was of opinion that any lingering complaints could be satisfactorily treated and finally fully resolved with involvement in a programme of exercises designed to manipulate her lumbo-sacral facet joints in tandem with strengthening of her abdominal/para-spinal muscles. This would involve a daily commitment of 20 to 30 minutes and could be usefully supplemented by swimming, in particular the back stroke and front crawl on two to three days per week. On these measures, in tandem with the adoption of good posture, there was every reason to believe that her current complaints had the potential to fully settle over a period of six to nine months. Mr. Walsh was of opinion that it was extremely unlikely that the incident at work described by the plaintiff, had resulted in the onset of disc degeneration at the L5/S1 level.

62. The plaintiff herself stated that she has had a lot of physiotherapy treatment and various modalities of treatment in Poland. In particular, she has had kinesiotherapy, massage and analgesic medication. She is unable to do a number of activities such as sports. In this regard, she is unable to do any running. She has been recommended swimming and walking. Her ability to swim is limited due to her pain. She has received a lot of treatment in Poland and in 2013, was in a rehabilitation clinic during the months August to December, which she attended twice per week.

63. I am satisfied that this young woman has suffered a significant injury to her lower back. It has adversely affected her in the work and social aspects of her life. She has fairly constant pain in her back. While she can manage with the demands of her clerical work, she is limited in the recreational activities that she can undertake.

64. The prognosis is guarded. As she has had pain since the accident in 2007, Mr. Bough is of opinion that the present level of chronic disability is likely to persist for the foreseeable future. He agreed with the opinion of the Polish doctors that further significant improvement in her condition is unlikely.

65. This rather pessimistic outlook is not shared by the defendant's doctor, Mr. Martin Walsh, who has given the opinion that if she engages in a rigorous exercise regime, she had the potential to fully settle over a period of six to nine months.

66. Insofar as there is a conflict between the evidence of the medical specialists, I prefer the evidence of Mr. Bough, FRCSI. In the circumstances, I award the plaintiff the following damages:-

General Damages to date €60,000

General Damages for pain and suffering into the future €20,000

Agreed Special Damages €5,255

Total award €85,255