

THE HIGH COURT

[Record No. 2003 13293P]

BETWEEN

CLAIRE HESSION (A MINOR, SUING BY HER MOTHER AND NEXT FRIEND, BRED A HESSION)

PLAINTIFF

AND
MICHAEL HESSION

DEFENDANT

Judgment of Mr. Justice Diarmuid B. O'Donovan delivered on the 22nd day of April, 2005

1. The plaintiff in this case, Claire Hession, is a fifteen and a half year old school girl who was born on 26th day of August, 1989 and she resides with her parents at Laraghmore, Ballyglunin, Tuam, Co. Galway.

2. Claire Hession comes to court seeking damages for injuries which she suffered on 7th day of August, 2003; at a time when she was nearly fourteen years of age as a result of an incident in which she was involved while playing in the yard adjoining her home aforesaid. On that occasion, her father's car was parked in a hay shed in the said yard and, while she was playing with her puppy, the plaintiff noticed that her father's car began to move despite the fact that there was no one in or near it. Apparently, the brake had been left off. Without thinking, the plaintiff rushed forward to try and stop the car and, inevitably, failed to do so and was crushed between the car and an adjoining wall. While there is no doubt but that it was very foolish for the plaintiff to attempt to stop the car, as she did, I am quite satisfied that her reaction, when she saw the car moving was an instinctive one arrived at on the spur of the moment which, in my view, is easy enough to understand, notwithstanding the risk involved. In particular, I am satisfied that the plaintiff did not deliberately expose herself to a risk of injury; that what happened was more or less involuntary. Accordingly, as the plaintiff was only fourteen years of age at the time, I am not persuaded that, as alleged on behalf of the defence, her conduct on the occasion amounted to negligence on her part. Accordingly, as liability has been conceded on behalf of the defence, the only issue that I have to decide is the amount of compensation to which Claire Hession is entitled.

3. As a result of the said occurrence, both of the plaintiff's legs were crushed against a wall. However, she succeeded in extricating herself and, when help arrived, she was taken to University College Hospital, Galway and, ultimately, came under the care of Mr. Jack McCann F.R.C.S.I., a consultant plastic surgeon. While x-ray examination excluded any bony injury, she was found to have sustained severe soft tissue injuries to both legs. In particular, there was grazing of her right shin and bruising below her left knee. Initially, her treatment comprised dressings for the wounds and tubigrip support bandages for both legs. In addition, she was prescribed pain killing and anti-inflammatory medication and advised to elevate her legs when resting. She was then discharged from hospital. However, within a matter of days, she developed swelling of her right calf, bruising at the base of her right foot and sloughing of the tissue of the wound on her right foot. As a result, she was unable to bear weight on her right leg and neither could she extend her left knee fully. Her left leg was then encased in a pressure bandage and, sometime later, the wound on her right leg became infected and necessitated excision. It is unnecessary, I think, for the purpose of this judgment that I review in detail how the plaintiff's injuries progressed during the weeks immediately following her accident or the treatment to which she had to submit on account of them because these matters are well documented in the several reports on her which have been submitted by Mr. John O'Donnell, a consultant in A&E medicine at University College Hospital, Galway, and Mr. Jack McCann aforesaid. It is sufficient to note that, as a result of her injuries, the plaintiff spent ten weeks in hospital during which she was subjected to two surgical operations under general anaesthetic involving debridement of a degloving injury to her right leg and the application of a split skin graft to that leg; the graft being harvested from her right upper thigh. In this regard, I have no doubt but that her stay in hospital was a very distressing and painful experience for the plaintiff. She was discharged home on 12th September, 2003 on crutches and it was another four weeks before she was able to mobilise without the assistance of crutches and, indeed, she told me and I accept that, after her discharge from hospital, she had to learn how to walk again. However, while she was reviewed in hospital from time to time, her recovery from the effects of her injuries appears to have been relatively straight forward. She did experience pain in her left leg on walking and her left knee clicked a little. However, with the passage of time these symptoms abated. Nevertheless, she still has to wear a support on her left knee when playing football. She also tells me and I accept that she experiences weakness in her left leg after standing for long periods of time and, indeed, when playing games. Nevertheless, having only missed three weeks of schooling, she was able to resume playing basketball and football and, indeed, participating in Irish dancing shortly after her return to school. In this regard, she told me that she had to resume Irish dancing or else she was going to lose her place in the class. She also tells me and I accept that she experiences pain in both legs in cold or frosty weather. Moreover, she has been left with a residual indentation of her right leg, which is very obvious and a source of considerable embarrassment to the plaintiff; so much so that she wears tights all the time so that people will not see her leg. She also has residual scarring on her right thigh and irregularity in the appearance of her left leg below the knee. Having viewed both of the plaintiff's legs, I can well understand why she is embarrassed by the appearance of her right leg because I accept that it is quite disfiguring. However, I do not consider that the residual irregularity in the appearance of her left leg is of any great significance. In this regard, it is clear from Mr. McCann's report that nothing can be done to improve the appearance of the plaintiff's right leg and that, as a result of the lack of underlying fat on that leg, there is an area of diminished sensation and the leg is more sensitive to injury. Accordingly, Mr. McCann advises that the plaintiff wear protection when playing games. It is also clear from Mr. McCann's report that the appearance of the plaintiff's left leg cannot be improved.

4. Given the nature and extent of the plaintiff's injuries and the treatment to which she had to submit on account of them, it is, in my view, to her credit that she only lost three weeks schooling and, on her return to school, was able to resume most, if not all, of her pre-accident activities. I have little doubt, however, but that, if she did, she had to break some pain barriers on the way. In my view, this young lady makes very little of her on-going problems with the exception of the appearance of her right leg and, to a lesser extent, that of the left leg. She is clearly very embarrassed by the appearance; in particular, of her right leg and is anxious to hide it from public gaze. I sympathise with her in that regard.

5. It is now nearly two years since the plaintiff's accident and for all that she has had to put with on account of the injuries which she suffered during that period I will award her a sum of €35,000. As for the future, allowing that she is not yet sixteen years of age and that, for the rest of her life, the appearance of her right leg, in particular, will be a constant reminder of an accident in which she was involved through no fault of her own and that it is probable that she will spend a lot of time trying to hide the appearance of that leg from public gaze, for future general damages, I will award her a sum of €50,000.

6. Having regard to the foregoing and allowing that special damages have been agreed in the sum of €10,250, I will award the plaintiff damages amounting €95,250 and costs.