Neutral Citation [2012] IEHC 203

THE HIGH COURT

[1999 No. 1308 P.]

BETWEEN

NEIL MARTIN CONNAUGHTON

PLAINTIFF

AND

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM AND ATTORNEY GENERAL

DEFENDANTS

JUDGMENT of Ms. Justice Irvine delivered on the 30th day of March, 2012

1. The plaintiff, at the time material to these proceedings, was a prison officer at Mountjoy Women's Prison in Dublin. He was born in 1972, is married and resides at Lucan, Co. Dublin.

2. The plaintiffs claim arises from a slip and fall which he had on the floor of the prison premises on 15th October, 1996. He maintains that the injuries he sustained on that date were occasioned to him as a result of the negligence and breach of contract on the part of his employer, the first named defendant. In particular, he asserts that the system whereby prisoners were permitted to carry food and accompanying beverage, in this case a pot of tea, back to their cells was unsafe having regard to the physical features of the building.

The Relevant Physical Features of the Locus in Quo

3. Mr. Tennyson, Consulting Engineer, who gave evidence on behalf of the plaintiff, produced a number of photographs which show the relevant features of the prison. The prison has two floors. The ground floor is a rectangular area and is covered with a surface of a thermoplastic nature which provides satisfactory slip resistance when dry but is dangerous when wet. The ground floor area is called "D1". Looking at the first of Mr. Tennyson's photographs, seven cells can be seen on the right hand side of the D1 area. To the left hand side are a number of other rooms, one of which is a recreation room which is used if the prison is overcrowded but is otherwise locked at meal times. Furthest away from the camera is the main entrance in front of which there is a staircase to the upper level. There is a hatch in the wall on the right hand side at the far end of D1 near the metal staircase. It is from this hatch that meals on trays are handed to prisoners who then take them back to their cells to be consumed.

4. The upper level is known as D2 and this houses some 35 cells. There are eighteen cells on one side and seventeen on the other. Access to these is by a walkway or balcony which goes around the internal perimeter. This is 2ft 8 inches wide and has a metal railing at three different levels. The central upper floor area is a metal mesh like grill. This is a protective measure to prevent inmates throwing objects onto the floor below. This metal grill facilitates prison staff observing and hearing activities carried on at both levels of this unit at any one time and is an essential security feature which also provides a significant degree of protection to those walking below it.

The Facts

5. The plaintiff was on duty on the floor of D1 at teatime on 15th October, 1996. Teatime starts about 4.15pm. Prisoners had come from various parts of the prison to queue up for their tea. The plaintiff states that prisoners normally form a line to the right hand side of photograph No. 1. They are served from a hatch which is to the right of the stairway down near the entrance. The plaintiff said this was a busy time with prisoners moving around on D1 which was quite a hub of activity at that time of day. There was a laundry, post and medical facility at the end of D1 which is opposite the staircase and main door. Prisoners regularly gathered at that end of D1 to avail of those facilities prior to queuing for their tea. Prisoners collect their food on what is a fairly standard type of canteen tray of the type shown in photograph No.5. Their meal may include a pot of tea which is dispensed in a standard small stainless steel teapot with a flip top lid as is shown in the same photograph. This is an exercise that is repeated for 35-40 prisoners in this unit three times a day.

The Plaintiff's Evidence

6. The plaintiff states that he was walking across the floor of D1 towards where the cameraman taking photograph No. 1 would have been placed. He was not walking close to the wall where he would have been below the walkway of the upper level. He was walking under the area protected from above by the metal mesh. He heard a bang and a smash and hot liquid fell down from above. Simultaneously, liquid which he now knows to have been tea fell on him from above. He instantaneously moved to avoid further liquid spilling on him and as he did so, he slipped on some of the tea which had already made its way onto the floor surface.

7. The plaintiff was not in a position to give any other evidence regarding the event save to say that he knows that it was tea that he slipped on and that this had come from above him, presumably spilt by a prisoner on their way back to their cell.

8. Under cross examination, the plaintiff accepted that he could do no more than theorise as to what had caused the spillage. He could not say whether two prisoners were passing each other by at the time of the incident. Neither could he say if the prisoner who spilt the tea was engaged with or distracted by another prisoner at the relevant time. Further, he did not know whether the prisoner who spilt the tea had themselves slipped or tripped on something that may have been dropped by another prisoner on the upper walkway. He did not any call to give direct evidence as to the circumstances which had led to the spillage of the tea and he accepted that the potential causes for the spillage were manifold.

9. In relation to the system in operation for feeding prisoners in the Mountjoy Women's Prison in 1996, the plaintiff told the court that he believed small kettles should have been available to prisoners in their cells as was the case in Castleree Prison. He also stated that it was his view that there should have been a one-way system in operation which would have eliminated the risk of any spillage being caused by prisoners passing each other by at a time when one or both of them had a pot of tea on their tray.

10. Under cross examination, the plaintiff accepted that from a common sense and personal safety perspective, prison staff were best protected if they moved around the unit under the overhead walkways when at all possible. However, he said that teatime was a very busy time of day in D1. People were milling around. He told the court that he could not have walked under the walkway to the left hand side of photograph No. 1 because people regularly emerged from the recreation room on that side of the unit which often housed seven to ten additional prisoners when the prison was overcrowded. He had to walk down the centre to avoid anyone potentially emerging from that room. He agreed that if the prison was not overcrowded that the recreation room would have been locked at mealtimes. He also denied receiving any training advising him to walk under walkways for protection. He said that in the course of any given day he would cross D1 approximately one hundred times.

11. Prison Officer, Lorraine Pimlott, was working as a kitchen officer in the female prison on D1 landing at the time of the plaintiffs fall. She described teatime as being quite busy with prisoners taking stuff down from their cells to get their tea prior to going back up with their food. Because they were locked up they had to make sure that they had everything they needed. They would regularly collect medication and collect letters at the D1 level at this time of the day.

12. Officer Pimlott told the court that she remembered a number of incidents when food and drink for some reason was spilt from the D2 level down to the D1 level. At times prisoners would have rested their trays on the railings around the balcony of D1. Further, prisoners regularly passed each other on this balcony at mealtime. She also told the court that she is now working in St. Patrick's Institution for juveniles where they are not given teapots but can take boiling water in a jug with no lid from a central area back to their cells.

13. Under cross examination, Ms. Pimlott agreed that prisoners were closely supervised at the level of D2 with two or possibly three officers on the balcony at any given time. Prisoner officers were able to direct the movement of traffic which she accepted was relatively systematic given the delivery of food at approximately thirty seconds to one minute intervals. She also stated that any prisoner seen to place a tray on the rail of the balcony would be immediately spotted and told to remove it. She also accepted that a prisoner going down for their food meeting a prisoner coming up with their food should have no difficulty passing them given that they would not be carrying their tray out in front of them.

14. Mr. Tennyson stated that there should have been a one-way system in operation on the upper level to avoid two prisoners colliding with each other when trying to pass by with their trays. He said that prisoners should not have been allowed bring teapots on trays back to their cells having regard to the confined width of the walkways on the upper level and should have been given small kettles in their cells. Alternatively, prisoners should have had the use of a cafeteria. This would also have avoided risks associated with transporting liquids back to the cells. He told the court that the tray concerned was inherently slippy and that some type of mat should have been provided which would have secured the teapot on the tray. He also stated that a kickboard around the base of the walkway would have stopped any liquids which spilled on the walkway dripping down and providing a slipping hazard to those on the lower floor.

15. Mr. Tennyson criticised the defendants for failing to have carried out a risk assessment which would have thrown up the potential difficulties and dangers associated with bringing liquids back to the cells within this prison and would likely have led to the implementation of a safer system insofar as the risk of injury to prisoner officers and other prisoners was concerned. It was noteworthy that Mr. Tennyson who gave his evidence before Officer Pimlott did so in circumstances where he clearly had not been advised by the plaintiff that there had ever been any other incident in which a substance was spilt from the upper balcony area of D2 down into the D1 area.

The Defendants' Evidence

16. The defendants called three witnesses to give evidence. The first of these was Mr. O'Shea, a retired prison officer, who had worked for some fourteen years in the prison service and had worked in a number of the country's prisons. He told the court that it was his experience of working as a prison officer that most prison officers walked under walkways to avoid deliberate or accidental injury from above and that from the outset of a recruit's training, personal security and safety was instilled by those in authority. However, Mr. O'Shea agreed that he had never received any formal safety training advising him not to cross an atrium such as that in D1 and that he was required to walk under balcony walkways for his own protection.

17. The court also heard from Mr. Daly, a retired prison officer, who worked in the Mountjoy Women's Prison for ten years up until its closure in 1999. While he could not remember any other spillages of liquid from D2 down onto the floor of D1, he accepted that such spillages might have occurred and if they did that they would have been cleaned up immediately. He could not remember any like incident to that which happened to the plaintiff occurring after 1996. He confirmed that the relationship between the prisoners and the prison staff was generally quite good and that the unit operated in quite an orderly fashion at mealtime. Mr. Daly told the court that he did not believe that the recreation rooms referred to by the plaintiff were in use on the day of the plaintiff’s accident. He further told the court that there was always a class officer and an assistant on the D2 landing at mealtimes and that the prison staff would have known all of the prisoners.

18. Under cross examination, Mr. Daly agreed that he had never been told that he should walk under the walkways to avoid the risk of being injured from above. Further, it never occurred to him to walk under the walkways. He did not know how the spillage had occurred on the day of the plaintiffs fall but he thought it probably carne from a prisoner's tray on the D2 landing. After the incident, he wrote to the governor filling out what he described as a "half sheet". He confirmed that all accidents were reported to the governor and investigated. However, he was not aware of any risk assessment having been carried out.

19. The final witness on behalf of the defendants was Kathleen McMahon. She told the court that she worked in the prison service for over 33 years starting in 1976. She moved up the ranks and when she retired had reached the rank of Governor Class 2. She worked in the women's prison in Mountjoy for approximately eight to ten years prior to her retirement in 2009. She was the chief officer of the women's prison at the time of the plaintiffs fall.

20. Ms. McMahon told the court that there were 40 cells in the women's prison. Judging from the records produced to the court, she was satisfied that the recreation room referred to by the plaintiff in evidence was not in operation or open at the time of the plaintiffs fall. That room was only used if there were in excess of 50 prisoners in the prison on any given night. The records showed that there were 40 prisoners in the prison the day before the accident and 41 on the day following the plaintiffs fall. No total appeared in the records for the day of the incident itself.

21. Ms. McMahon told the court that the women's prison was entirely different from a men's prison. She never walked under a walkway because she never thought she would be at risk from any assault from a prisoner on the balcony of D2. Ms. McMahon told the court that mealtimes were busy. Prisoners would be coming and going on the D1 level and also on D2. Medication was administered to prisoners on both levels at mealtime. The women were generally agreeable and there was at least two members of

staff on the D2 level during mealtimes. If anything untoward was noticed, the prison officers would intervene immediately. All incidents and accidents were reported. In her eight to ten years in the women's prison she could not remember any spillage of food from the D2 balcony down to the D1 floor level and she knew of no other injury that it occurred in this way.

22. Under cross examination, Ms. McMahon accepted that medication was dispensed at mealtimes on the D2 level thus making it likely that prisoners would have to pass each other by at a time when one of them might have a tray but in her experience this had occurred without incident. The inmates would go to collect their medication in an orderly fashion and would yield to each other where this was required. She never saw a prisoner balance a tray on the upper rail surrounding the balcony area and if this occurred she was satisfied that the situation would immediately have been noticed by prison staff and been remedied. She further denied that the system at mealtimes was chaotic or congested. If there was any congestion, the prison officer would intervene immediately as the staff themselves would be anxious to put the prisoners into their cells to allow them to take their own lunch.

Submissions
23. The plaintiff submitted that the accident was caused by tea that fell from the walkway on D2 onto the plaintiff and the floor of D1. The plaintiff then slipped on the tea, fell and injured himself. The plaintiff argued that he had established facts from which an inference as to how the accident occurred can reasonably inferred.

24. The plaintiff relied on *Cosgrove v. Ryan and the Electricity Supply Board* [2008] 4 IR 537 in the assertion that it was not necessary for a plaintiff to disprove every possible situation whereby damage could have been caused to him other than through the negligence of the defendants, so long as he can adduce reasonable proof.

25. The plaintiff also relied on an extract from Salmond & Heuston *Law of Torts* (21st Ed., Sweet & Maxwell), wherein it was stated that it is not necessary for a plaintiff to eliminate every possibility by which the accident may have been caused without negligence on the defendants' part.

26. The plaintiff cited an extract from McMahon and Binchy *Casebook on the Irish Law of Torts* (3rd Ed., Tottel) which included references to a number of decisions including *Mahon v. Dublin and Lucan Electric Railway Company and O'Rourke v. McGuinness* [1942] I.R. 554. In particular he relied upon an extract from the decision in *Jones v. GW Railway Company* [1930] 47 TLR 39 at 41 in support of his contention that he did not have to establish how the accident occurred, namely:-

> "All that is required for a plaintiff to succeed is to establish facts from which an inference of negligence on the part of the defendants may reasonably be inferred… it is a mistake to think that because an event is unseen its cause cannot reasonably be inferred."

27. Mr. O'Donovan, S.C., submitted that he had established that the plaintiff fell on tea which had fallen from the upper walkway. He had produced evidence that was critical of the movement of prisoners with their trays and hot drinks on the D2 level at a time when medicines were being given out, prisoners were likely to be passing each other and circumstances where there had been previous spillages. All of this, he submitted, pointed to the likelihood of the plaintiffs injuries arising from a systems failure which was negligent.

28. Mr. O'Scannall on behalf of the defendants relied upon *Rothwell v. Motor Insurers Bureau of Ireland* [2003] 1 I.R. 286, Hanrahan v. Merck Sharp Dohme [1988] ILRM 629 and *Rogers v MIBI* (Unreported, Supreme Court, 31st March, 2009. [2009] IESC 30), in support of his submission that the person who alleges a particular tort must in order to succeed prove all the necessary ingredients of that tort. The onus of proof does not shift unless the act or default complained of is peculiarly within the defendants' knowledge, which it was not in this case. He submitted that the doctrine of *res ipsa loquitar* did not apply as clearly the circumstances surrounding the spillage could have occurred without negligence on the part of the defendants. It was argued that, taking the case at its highest, the plaintiff had simply put forward one plausible explanation for the accident and that this was not sufficient to ground liability in circumstances where there were equally plausible explanations for the event in which no negligence on behalf of the defendants was required.

Law
29. The onus of proof in civil cases rests ordinarily on the person who alleges a matter. In negligence actions, this means that the burden of proving the negligence is on the plaintiff. However, this burden is not unlimited. In *Cosgrove v. Ryan and the Electricity Supply Board* [2008] 4 IR 537, Geoghegan J. stated:-

> "Although the onus of proof is always on a plaintiff to prove negligence the requirements of that proof may vary. It would seem that those requirements would not be high where a dangerous substance such as electricity or gas is involved. Indeed, quite apart from any special principles relating to dangerous things, a plaintiff in a negligence action does not have to negative every possibility of absence of negligence. This does not mean that, in answer to the plaintiffs claim, the defendant may not demonstrate that he was in no way to blame. In Salmond and Heuston on the *Law of Torts* (21st ed.), the learned editors under the heading 'The proof of negligence' at p. 240 say the following:-
>
> > 'It is not necessary for the plaintiff to show that the defendant must be found guilty of negligence, or to eliminate every conceivable possibility by which the accident may have been caused without negligence on the defendant's part.'" (at para 28, p. 568)

30. Salmond and Heuston *Law of Torts* (21st Ed., Sweet & Maxwell) state:-

> "The burden of proving negligence is on the plaintiff who alleges it - or as practitioners often put it, the plaintiff must prove causation. It is not for the doer to excuse himself by proving that the accident was inevitable and due to no negligence on his part; it is for the person who suffers the harm to prove affirmatively that it was due to the negligence of the defendant. Unless the plaintiff produces reasonable evidence that the accident was caused by the defendant's negligence, there is no case to answer, and it is the duty of the judge to enter judgment for the defendant. It is not necessary for the plaintiff to show that the defendant must be found guilty of negligence, or to eliminate every conceivable possibility by which the accident may have been caused without negligence on the defendant's part. This rule is particularly important when the injured person has either been killed in the accident or has no recollection of it. But the plaintiff's evidence must pass beyond the region of pure conjecture and into that of legal inference. The dividing line between conjecture and inference is often a very difficult one to draw. A conjecture may be plausible, but it is of no legal value, for its essence is that it is a mere guess. An inference in the legal sense, on the other hand, is a deduction from the evidence, and if it is a reasonable deduction it may have the validity of legal proof. It follows that there can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish. It is to be

noticed that this question is to be decided not by weighing the evidence of the plaintiff against the defendant but by disregarding altogether the evidence of the defendant, and by asking whether that of the plaintiff is per se and apart from any contradiction, sufficient or insufficient or bring conviction to a reasonable mind." (at p. 244)

31. MacMahon & Binchy state the law as follows:-

> "As a general rule a plaintiff in an action for negligence must plead and prove negligence on the part of the defendant in order to succeed. The plaintiff must convince the judge, on the balance of probabilities, that the defendant was negligent. Anything less will not be sufficient." (at para. 9.01)

The same text subsequently states:-

> "The facts in [*Mahon v Dublin & Lucan Electric Railway Co*. (1905) 39 ILTR 126 (KB)] are similar to those in the English decision of *Wakelin v London & SW Ry Co* (1886) 12 AC 41, where the House of Lords adopted the same approach as the Irish King's Bench Division.
>
> This does not mean, however, that the plaintiff "has got to have a story" which explains how the accident occurred:
>
> > 'All that is required for a plaintiff to succeed is to establish facts from which an inference of negligence on the part of the defendant may reasonably be inferred... 'It is a mistake to think that because an event is unseen its cause cannot be inferred.'" (*Gahan v Engineering Products Ltd* [1971] IR 30 at 32-33." (at paras. 9.05-9.06)

32. It is important that I also consider the implications of the doctrine of *res ipsa loquitar* in this regard. In *Hanrahan v Merck Sharp & Dohme* [1998] I.L.R.M. 629 at 634, Henchy J. stated:-

> "The ordinary rule is that a person who alleges a particular tort must, in order to succeed, prove... all the necessary ingredients of that tort and it is not for the defendant to disprove anything. Such exceptions as have been allowed to that general rule seem to be confined to cases where a particular element of the tort lies or is deemed to lie pre-eminently within the defendant's knowledge, in which case, the onus of proof as to that matter passes to the defendant. Thus in the tort of negligence, where damage has been caused to the plaintiff in circumstances in which such damage would not usually be caused without negligence on the part of the defendant, the rule of *res ipsa loquitar* will allow the act relied on to be evidence of negligence in the absence of proof by the defendant that it has occurred without want of due care on his part. The rationale behind the shifting of the onus of proof to the defendant in such cases would appear to rely on the fact that it would be palpably unfair to require the plaintiff to prove something that is beyond his reach and which is peculiarly within range of the defendant's capacity of proof."

Henchy later stated at p. 635:-

> "There are of course difficulties facing the plaintiff in regard to proof of matters particularly as to the question of causation, but mere difficulty of proof does not call for a shifting of the onus of proof… the onus of disproof rests on the defendant only when the act or default complained of is such that it would be fundamentally unjust to require the plaintiff to prove a positive averment when the particular circumstances show that fairness and justice call for disproof by the defendant."

33. In *Rothwell v MIBI* [2003] 1 IR 268 there was an oil spillage on road which caused the plaintiff's car to skid and crash. The plaintiff was unable establish who had been responsible for the oil spillage. The High Court held that the plaintiff was entitled to succeed but that *res ipsa loquitar* did not apply as there were circumstances in which the spill could have occurred without negligence. The Supreme Court held *inter alia* that mere difficulty of proof did not call for a shifting of the onus of proof to the defendant and that the onus of proof would not shift unless the act or default complained of was peculiarly within the range of the defendant's capacity of proof. Hardiman J. stated:-

> "It appears to me that the judgment in *Hanrahan v Merck Sharp & Dohme* requires not merely that a matter in respect of which the onus is to shift is within the exclusive knowledge of the defendant, but also that it is 'peculiarly within the range of the defendant's capacity of proof'. That is not the position here. As the trial judge clearly and succinctly held, neither party could go further, the matter was not within the knowledge, exclusive or otherwise, of either of them." (at p.273)

34. In *Rogers v MIBI* (Unreported, Supreme Court, 31st March, 2009. [2009] IESC 30), Finnegan J. stated at p. 23:-

> "The legal burden of proof in all civil cases lies upon the person who asserts the affirmative on each issue in the case. If at the completion of the evidence the burden has not been discharged the decision must go against the party on whom the burden lay. To find for the plaintiff in an action such as the present the judge must be satisfied that a particular fact or state of affairs is more likely to have occurred than not. If he is not so satisfied then he must find that the burden has not been discharged."

Finnegan J. later stated:-

> "The standard of proof in civil proceedings is on the balance of probabilities. If at the conclusion of the evidence the probabilities are equal then the required standard of proof has not been achieved. There is no burden on the defendant to prove a negative: an exception is where *res ipsa loquitar* applies and the proper inference to draw from the proven facts is that the defendant (in this case the unidentified or untraced owner of user) was negligent."

35. A plaintiff in a negligence case bears the onus of proving causation on the balance of probabilities. However, the plaintiff does not have to rule out through their evidence every possible factual scenario whereby the damage was caused other than by negligence on the part of the defendant. The plaintiff merely has to adduce evidence that gives rise to a reasonable inference that the damage was caused by the defendant's negligence. However, the burden of proof can shift to the defendant where a particular fact is peculiarly within the defendant's knowledge or capacity of proof, under he doctrine of *res ipsa loquitar*. The facts of the case at hand must now be viewed through this legal prism.

Findings of Fact

36. Having heard the evidence of both parties, I am satisfied that the area in which the plaintiffs fall took place was well supervised at the time. I accept that D1 can be busy around mealtimes but I heard no evidence to suggest that there was any significant history of difficulties with the system of feeding prisoners which included prisoners carrying trays of food including a teapot of hot tea back to their cells on a daily basis. In this regard, the plaintiff gave no evidence of any similar incidents having occurred in the eleven months that he was in the relevant unit prior to the date of his accident. While Officer Pimlott and Mr. Daly gave evidence that there may have been one or two incidents where there had been a spillage of food from the level of D2 down to the level of D1, there was no evidence that any prison officer or indeed prisoner had ever been injured as a result. Further, this system of feeding prisoners was operational for well over a decade and had been carried out three times a day without adverse consequences until the injury that occurred to the plaintiff. In this regard I attach significant weight to the evidence of Kathleen McMahon to the effect that she knew of no other incident of the type that had occurred to Mr. Connaughton during her eight to ten years in the women's prison and that she had never received any complaint from any prisoner or prison officer regarding any such risk. Further she told the Court that at all times, including meal times, that prisoners, prison officers and indeed the prison Governor circulated on the D1 floor beneath the metal mesh. It can be inferred from this evidence that none of them perceived themselves as being at risk of being injured from anything that might spill or fall on them from above.

37. Notwithstanding the evidence of Ms. Pimlott I am satisfied that the activities at the D2 level during teatime were as a matter of fact quite orderly and extremely well supervised. If the plaintiff is correct that there were significant numbers of people milling around downstairs in D1, then very few prisoners could have been on the upper level. I am further satisfied on the evidence that most of the prisoners would have been out of their cells and downstairs in advance of the commencement of the distribution of food. Hence, it should have been relatively infrequent that a prisoner leaving a cell with their empty tray and teapot would have to pass by another prisoner on the way to their cell. Likewise, whilst medication may have been distributed on the upper floor, I see no reason why a prisoner coming back from receiving their medication could not safely pass a prisoner carrying a tray without creating a hazard to those below on the D1 level. In this regard, I attach significant weight to the evidence of Ms. McMahon who stated that this system was in operation for many years without adverse consequences.

38. I am also satisfied that the system whereby food was dispatched and then brought back by prisoners to their cells was one which was well policed and orderly. By and large, prisoners queued up on the right hand side of D1. They would be served their food and go back to their cells at approximately thirty second to one minute intervals. Again this, to my mind, suggests that there would have been little by way of congestion on the D2 level as prison staff were anxious to lock up each prisoner in their cell as they arrived with their food. I am also satisfied from the evidence that as a matter of fact any congestion could be safely dealt with through the intervention of prison officers.

39. It is also important to remember that tea was being dispensed in a pot with a lid. Any minor unsteadiness by a prisoner when taking the tray of food and tea back to their room could not foreseeably cause a risk to anybody on the lower level. Perhaps some small amount of tea might spill out onto the tray or perhaps even onto the walkway floor. Having regard to the system in operation, I do not accept that two people would ever be trying to pass each other with trays of food. Effectively, a one way system is in operation for those carrying full trays of food and going back to their cells. While those prisoners may meet with prisoners coming the other way either from the area where they collected their medication or to go downstairs with their empty tray and teapot, there should have been no difficulty in the prisoners passing by.

40. What happened in the present case is that the plaintiff moved suddenly and slipped on tea that had been spilled seconds earlier from above him. Every day of the week in cafeterias, patrons face much the same risk as that experienced by the plaintiff in the present case. People using similar types of trays carry food and beverages in close proximity to each other. Many of those beverages are carried in cups, mugs or containers which are not covered. Customers circulate in a random fashion brushing shoulders with each other, passing between tables, peopled with customers and often in circumstances where diners will have bags or parcels on the floor causing further hazards. At any time, a customer's tray may become destabilised and somebody beside them, trying to avoid liquids spilling on them or trying to move away may slip on liquid that managed to reach the floor. If this happens, it is through no fault of the restaurant proprietor. These patrons are not subject to any one-way system and unlike in the prison system are not kept under observation and supervision as they move around with their trays.

41. I reject Mr. Tennyson's evidence that I should consider the defendants as negligent in failing to provide, as an alternative and safer system, a kettle in the room of each cell. The fact that small kettles may be given to inmates in other prisons does not mean that it was negligent on the part of the defendants not to have implemented a similar system in Mountjoy Women's Prison. Clearly, the provision of kettles in cells provides an alternative range of risks which has to be balanced having regard to the specific characteristics of an individual prison and its inmates. I can well imagine a scenario in which a prison officer could be assaulted with boiling water by a prisoner and I might find Mr. Tennyson advising the court that it was foreseeable that providing access to boiling water in this way increased the risk of prison officers being subjected to such an assault. Further, a whole range of alternative risks are generated in a canteen situation. Even if it were established that this system would have been safer for prison officers, the obligation is not on an employer to provide a system which rules out any possibility of injury. Given that it is not known as to how or why the teapot was caused to fall and its contents spilled down to the lower level, a consideration as to whether or not providing a paper mat for each tray or a kickboard for the walkway is pointless and Mr. Tennyson's evidence in this regard seems somewhat lacklustre in the absence of any mention of these alleged deficiencies in his report or in the plaintiffs pleadings.

42. It is accepted that the plaintiff is not required to discount every possibility whereby the accident could have been caused other than by negligence on the part of the defendants but the law requires that the plaintiff adduce evidence that gives rise to a reasonable inference that the defendants' negligence was the cause. Taking the plaintiffs case at its highest here, the plaintiff has not pointed to any objective facts from which it could be inferred that negligence on the part of the defendants was to blame for the spillage. The plaintiff has merely put an inference of a plausible explanation before the court, which is insufficient where there are myriad equally plausible explanations which do not turn on negligence on the part of the defendants. Further, the factual nexus does not give rise to the doctrine of *res ipsa loquitar*. Indeed this is a case where the plaintiff knew each of the prisoners by name and his injuries occurred in circumstances where the court would expect him to have been in a position to adduce actual evidence of causation. It is accepted that, in the circumstances, it would be extremely difficult for the plaintiff to be able to prove negligence, but, as Henchy J. stated in *Hanrahan*, "mere difficulty of proof does not call for a shifting of the onus of proof'. In order for *res ipsa loquitar* to apply, the matter must be singularly within the power of the defendant to prove. However, in the instant case, either party potentially had the capacity to prove or disprove what happened on D2 to cause the tea to spill and so the burden cannot shift.

43. I am satisfied that the plaintiff has failed to discharge the burden of proof in respect of factual or legal causation and I cannot infer from the evidence that his injuries were caused by the negligence of the defendants. Even if I had been, for example, satisfied that his injuries were caused by two prisoners passing each other, one with a tray or one without or as a result of someone coming back from getting medication barging into a prisoner destabilising their tray causing the tea to spill, I still would not have concluded

that the plaintiffs injury had been caused by the defendant's negligence. I am satisfied on the evidence that the defendants provided the plaintiff with a system of work that took reasonable care for his safety.

44. It is the duty of the defendants to provide a reasonably safe place and system of work for its employees. The defendants are not an insurer of the safety and welfare of its employees. As Henchy J. stated in *Bradley v CIE* [1976] IR 217:-

> "The law does not require an employee to ensure in all circumstances the safety of his workmen. He will have discharged his duty of care if he does what a reasonable and prudent employer would have done in the circumstances." (at p. 223)

45. As has been stated in many judgments, the operation of a prison provides a particular challenge to those who are responsible for the safety and welfare both of the inmates and its staff. It is a struggle to balance the dignity of a prisoner who should be provided with a human environment and yet afford appropriate protections to those who of necessity must engage closely with prisoners on a day-to-day basis.

46. As to that portion of the evidence which dealt with the plaintiff's failure to walk under the overhead walkways, I have to say I believe that any findings of fact on that issue are entirely irrelevant on the facts of the present case. The plaintiff was not trained to walk under the overhead balconies. Further, Kathleen McMahon and Mr. Daly and apparently the prison governor all moved around the prison without any regard to risks of deliberate or accidental assault from above.

47. For all of the aforementioned reasons, I do not accept there was any negligence or breach of duty on the part of the defendants. The plaintiff's injuries, although clearly regrettable are as a result of accidental injury for which his employer is not responsible.