

## THE HIGH COURT

[2012 No. 6575 P.]

BETWEEN

STACEY LENNON

PLAINTIFF

AND

FUN FITNESS LIMITED (IN LIQUIDATION)

DEFENDANT

**JUDGMENT of Mr. Justice Barr delivered on the 28th day of February, 2017****Preliminary**

1. In this action, the plaintiff seeks damages from the defendant, her employer, in respect of an accident which occurred on 29th October, 2011. Since that time, the defendant company was put into liquidation. By order of the High Court dated 7th March, 2016, the plaintiff was given liberty to continue the proceedings which she had issued, against the company.
2. By further order of the court dated 9th May, 2016, it was ordered that the defendant's defence be struck out for failure to comply with s. 14(2) of the Civil Liability and Courts Act 2004. It was further ordered that the plaintiff should recover against the defendant, such amount as the Court may assess in respect of the plaintiff's claim for damages.
3. On 31st January, 2017, the plaintiff's solicitor sent a copy of the notice of trial dated 27th January, 2017, to the liquidator of the defendant company, and to its insurers, who had earlier refused cover in respect of any liability that the defendant may have to the plaintiff. By email dated 31st January, 2017, the liquidator indicated that he would not be taking any steps to defend the action on behalf of the company. By email dated 3rd February, 2017, the defendant's insurers sent an email to the plaintiff's solicitor informing him that the insurers had no involvement in the proceedings, as indemnity had been refused by them to the defendant in respect of the claim brought by the plaintiff. They indicated that they would not have any involvement in the proceedings.
4. By letters dated 8th February, 2017, the plaintiff's solicitor wrote informing the liquidator and the defendant's insurers that the action was due for hearing before the High Court in Dublin on 10th February, 2017. There was no appearance by the liquidator, or by any representative on behalf of the defendant's insurers, when the matter was called over at the call over of the List at 10:30hrs on 10th February, 2017. Neither party appeared before this Court when the action commenced later that day.
5. In the circumstances outlined above, the court is satisfied that the plaintiff has obtained a judgment in default as against the defendant and is entitled to have her damages assessed by this Court. The Court is further satisfied that the liquidator and the company's insurers were given adequate notice of the proposed hearing date and had clearly indicated their intention not to appear to contest the proceedings. Accordingly, it was appropriate for the Court to proceed to assess the plaintiff's damages in the absence of any representative of the liquidator, or the defendant's insurers.

**The Substantive Claim**

6. This action arises out of an accident which occurred on 29th October, 2011, when the plaintiff was employed by the defendant company as a part-time supervisor at a children's play centre operated by the defendant from a premises known as Fun Fitness, Total Fitness Complex, Sandyford, Co. Dublin. The accident happened at the end of the day at approximately 18:00hrs, when the plaintiff was asked by a manager to go to the disabled toilet and to turn off the power switch for the hand dryer at that location. The plaintiff went to the toilet and while walking across the floor thereof, she was caused to slip and fall to the ground due to the presence of water or other liquid on the floor surface. She fell to the ground and landed heavily on her outstretched left hand.
7. As the plaintiff has already obtained a default judgment as against the defendant, it is not necessary to make any determination on the question of liability. The allegations of negligence as contained in her personal injury summons, are taken as having been proved. The court is only concerned with the assessment of the plaintiff's damages arising from the injuries sustained in the accident.
8. After the plaintiff fell onto the floor, she got up and made her way to the reception area, where she was put sitting on a chair. When she had composed herself, she was able to drive home to her fiancé's house. She stated that her left wrist was very sore at this time and she found it very difficult to operate the gears on her car and had to drive home in second gear.
9. When she arrived at her fiancé's house, she was not able to unbuckle her seatbelt due to severe pain in the left wrist and hand. Her fiancé freed her from the seatbelt. Later that night, his father brought her to the Accident and Emergency Department of St. Michael's Hospital, Dun Laoghaire. She was detained there for approximately four to five hours. An x-ray was taken which revealed no evidence of fracture in the wrist or hand. She was referred for physiotherapy treatment.
10. The plaintiff had physiotherapy treatment approximately twice per month for a year. She was also sent for a second x-ray, which confirmed that there was no fracture.
11. The plaintiff was seen by Mr. Varian, Consultant Hand Surgeon, at the Blackrock Clinic, on 23rd November, 2011. At that time, she was wearing a wrist brace on her left wrist. She had also hurt her elbow in the accident, but it had since cleared up. When she saw Mr. Varian, she complained that if she worked for longer than thirty minutes, her left hand would swell. She found that she could not wear rings on her left hand due to swelling. She also complained of a general achiness in the left hand. There was tenderness around the ball of the thumb of the left hand. She also reported that at any time during the day, the tips of the index and middle fingers and the thumb could go numb. This numbness would last for about twenty-five minutes. It occurred approximately once, or up to four times, per day. She also complained of an intermittent burning sensation in the hand that could last up to one hour.
12. Mr. Varian noted that it was quite soon after the accident. On physical examination, he found tenderness and limitation of movement of the wrist. Mr. Varian was of opinion that the plaintiff's history of intermittent of numbness and burning sensation in the hand, were consistent with nerve sensitivity in the carpal tunnel, meaning that there was early compression of the median nerve causing a condition called carpal tunnel syndrome. This condition could be caused by morbid obesity, regardless of any injury. He advised that it should be investigated by means of nerve conduction studies. He did not expect there to be any permanent residual disability, but it was too early to give a definitive prognosis.

13. After the accident, the plaintiff was rendered unfit for her part-time work at the defendant's premises. Some short time later, she was let go by the defendant.

14. At the time of the accident, she was in her second year of marketing studies in college. She was able to take a sabbatical from her studies for approximately one month. Thereafter, a decision was made that she would pursue a degree which was confined to academic work only. This meant that she lost the video production major which she had been doing as part of her degree. This was necessary due to the fact that as part of that elective, she would have to handle heavy cameras and heavy lighting equipment. She was not able to do that.

15. The plaintiff completed her degree in 2012, which was a degree in Communications. She did not have the hours built up in relation to video production, so she could not apply for jobs in video production or TV work. This was a matter of disappointment for her.

16. After she obtained her degree, she worked in marketing for a recruitment firm. She then changed job and is currently employed doing marketing work for a software company.

17. The plaintiff was reviewed by Mr. Colin Riordan, Consultant Hand and Plastic Surgeon, at the Blackrock Clinic on 1st April, 2014. At that time, she complained that the tips of her fingers in her right hand occasionally felt numb. There was a "pins and needles" sensation in the fingers of her right hand on waking. Her hand would go into spasm if she had to lift or carry anything heavy, or following typing for long periods. She experienced the odd ache in her arm, which radiated up to her neck.

18. Examination on that date was confined to the left hand. There was no evidence of gross deformity or swelling. The median nerve pressure test, which was a provocative test for the presence of carpal tunnel syndrome, was weekly positive. There was no evidence of objective sensory impairment and the plaintiff demonstrated a full range of movement in the hand and wrist. There was no instability present in the wrist and hand and no residual tenderness on palpation of the wrist.

19. Mr. Riordan noted that the plaintiff had suffered an injury to her non-dominant left wrist in the fall in October 2011. There was no evidence of there being any bony injury, or fracture, but a few weeks after the injury, the plaintiff developed the presence of paraesthesia in her hand. These symptoms had persisted.

20. Mr. Riordan was of opinion that the plaintiff's symptoms were suggestive of the presence of carpal tunnel syndrome. He thought that it merited further investigation with nerve conduction studies. He noted that carpal tunnel syndrome was a common condition present in the population at large, generally considered constitutional, but there was an association with trauma, particularly if it was severe, resulting in fracture or crush injury. He noted that apart from some light symptoms of sensitivity present in the hand, there was no measurable loss of function. The plaintiff was fit to continue with her pre-accident occupation.

21. In an addendum to his report, Mr. Riordan noted that the nerve conduction studies carried out on 23rd September, 2014, confirmed the presence of a mild right sided carpal tunnel syndrome. There was borderline evidence of carpal tunnel syndrome in the left hand, with the values of nerve functioning being at the lower limit of normal, but still within the normal range. His opinion and prognosis were as set out in his earlier report.

22. By a further addendum dated 19th November, 2014, Mr. Riordan stated that should the plaintiff's symptoms of carpal tunnel syndrome, such as tingling and numbness, progress to the point where she was significantly affected and not prepared to live with it, treatment in the form of carpal tunnel release may be necessary. This procedure, was normally done as a day case and often under local anaesthetic. It was normally very successful and should resolve the condition. Recovery would normally be made within approximately six weeks from the operation, during which time a person would have reduced function and use of the hand. The cost of such a procedure in the private sector would be circa €2,500. The plaintiff has not found it necessary to have this treatment.

23. The plaintiff's claim for special damages amounted to €2,630.27. this was made up of a claim for loss of earnings of €1,240.27. In this regard, she had been working on a contract for twenty hours per week at €10 per hour, giving a weekly wage of €200. Loss of earnings for the period 2nd November, 2011, to 22nd August, 2012, amounted to €8,400. From this figure, the sum of €7,159.73 would have to be deducted in respect of injury benefit and illness benefit received by the plaintiff. This gave rise to the net loss of earnings figure of €1,240.27.

24. The remaining special damages were made up of the sum of €1,230 in respect of fees paid to the liquidator in order to have the liquidation of the defendant company kept open. There was also a claim for G.P. fees in the sum of €160.

## **Conclusions**

25. This is a difficult case in which to arrive at an assessment of general damages. This is due to the fact that, while the plaintiff did have significant complaints in relation to her left wrist and hand when she saw Mr. Varian on 23rd November, 2011, by the time she saw Mr. Riordan on 1st April, 2014, her main complaints appeared to relate to her right hand, which had not been injured in the accident. Examination of the left hand on that occasion, was largely negative, except for the median nerve pressure test which was weakly positive.

26. Nerve conduction studies demonstrated a mild right sided carpal tunnel syndrome. There was borderline evidence of carpal tunnel syndrome in the left hand, with the values of nerve functioning being at the lower limit of normal, but still within the normal range. It does not appear that the plaintiff has had any medical treatment since that time. In particular, she has not found it necessary to have the carpal tunnel release operation to either wrist.

27. I am satisfied that the plaintiff's symptoms of carpal tunnel syndrome, came on within a reasonably short time of the accident. In these circumstances, I am satisfied that this condition in her left wrist was caused by the accident. It was more difficult to explain the presence of carpal tunnel syndrome in the right wrist, as this area was not injured in the accident. Nevertheless, I accept that the plaintiff did have some symptoms in her left wrist as a result of the injuries sustained in the accident.

28. It appears that the injury to the left wrist was relatively severe, insofar as she was obliged to change the nature of the course, which she was pursuing in college at the time of the accident. This meant that she could not do the video production part of the course, which limited her employment options after qualification.

29. I am satisfied that the plaintiff has given a fair and accurate account of her injuries and of her recovery to date. In the circumstances, I award her €30,000 for general damages, together with €2,630.27 for special damages, giving an overall award of €32,630.27.

