

*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: **04/10/2006**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

JEANETTE McCONOMY

-v-

DOE

MORGAN J

[1] The plaintiff claims damages as a result of injuries which she received subsequent to a fall from a set of steps leading from the lower to the higher deck of Craigavon Bridge Londonderry sometime after 2 a.m. on 19 February 1997.

[2] The plaintiff explained that at the relevant time her parents had separated. Her mother had experienced personal problems as a result of which she was staying with a friend. These factors had contributed to the onset of depression in the plaintiff.

[3] And approximately 2 a.m. on 19 February 1997 she was unable to sleep and decided to go for a walk. After about 10 minutes she made her way to Craigavon Bridge. She crossed the bridge towards the railway station. Although it had been raining the night was dry but windy. In order to return to her friend's house she started to ascend a set of metal steps leading from the lower deck to the higher deck of the bridge. She was wearing a black coat, black trousers and black boots with a rubber sole. She described how she got to approximately the fifth step and suddenly pitched forward as a result of her right foot slipping underneath her. She described how she hit her elbow, knee and face on the steps and slid down to the bottom of the steps. She was able to get up and make her way back to her friend's house.

[4] Her friend was up to let her in and decided that she needed to go to hospital because of the obvious injuries to her face. The plaintiff described

how they walked back across the bridge to the railway station where they eventually got a taxi to the hospital. The plaintiff was noted to have bruising injuries to her forehead and nose and swelling about her eyes. She had a laceration to the inside of her mouth which interfered with her ability to eat. She subsequently attended her GP who noted bruising over both arms. He also noted bruising to her knee. She returned to the hospital on two occasions because of concerns about her eye which remained bloodshot. She also suffered an interference with sensation in the left side of her face which resolved over a period of months. Because of her injuries she was largely confined to her house for the first month.

[5] In cross-examination the plaintiff indicated that she was familiar with the steps and that she regularly walked her grandfather's dog there two to three times per week. She accepted that she had negotiated the steps in all weathers and in the company of other people. She had never been troubled in her usage of the steps even when it was dark. She said there was nothing different about the steps on this night. She said that she did not realise how badly she had been injured until she returned to her friend's house. At that stage she and her friend decided that they would walk to hospital since they did not have enough money for a taxi. They eventually got a taxi at the railway station and paid the taxi driver the next day.

[6] It was put to her that in May 1997 she met Mr Coyle of Road Service when he inspected the steps and that she told him that she did not know if she slipped or tripped. She accepted that she met Mr Coyle but did not recollect the detail of the conversation. She thought that she told him that she slipped.

[7] In light of a suggestion that she had made up her account of the accident Mr Colton QC called Mr Kevin Casey his instructing solicitor. Mr Casey took the initial instructions from the plaintiff sometime prior to 14 April 1997. Although those handwritten instructions referred to the incident as a tripping accident his description is that the plaintiff fell on metal steps when it had been raining. Although there was nothing else to indicate the mechanism of the accident he interpreted the note to mean that the metal steps and the rain had been responsible for the plaintiff's fall.

[8] The plaintiff's consultant engineer, Mr Cosgrove, attended the scene on 9 March 1999 and took photographs. He noted that the pear drop pattern on the steel steps had worn away on a number of the steps. He tested the coefficient of friction on the steps and measured it at 0.4. He stated that the British Standard recommends a coefficient of at least 0.6 at the nosing of steps. His tests were carried out in dry conditions. If the steps were wet they were likely to be slippier. That had occurred because they had become excessively worn. It was relatively inexpensive to cover the steps with a

compound of rough texture which would provide a sufficient co-efficient of friction.

[9] In cross-examination Mr Cosgrove accepted that the relevant British Standard came into operation in 1987 and that it post dated the construction of the steps. He accepted that the more recent British Standards suggested that friction should be measured by the pendulum test. He said, however, that this was bulky equipment and often did not fit on the tread of a staircase. He could not remember how many readings he took but the figure of 0.4 is an average. He did not have the precise readings available but thought that there was probably a cluster between 0.3 and 0.5. He accepted that the steps as constructed in the 1960s were acceptable. He agreed that it was probably more difficult to go down the steps rather than to go up. He said, however, that backward movement of the foot could occur when pushing to go up.

[10] For the defendant Mr Millinson called Mr Coyle, a Road Service employee. He attended the scene and met the plaintiff on 28 May 1997. She indicated that she had fallen on the fourth or fifth step up. He asked her what had caused her to fall and she stated that she did not know but that it was wet and windy. He asked her if she tripped or slipped and she said that she did not know but that she fell forward and then slid to the bottom of the steps. He noted that the steps were metal and appeared worn. He noted this accident as a possible slip.

[11] Mr McLoughlin, consultant engineer, was called for the defendant. He inspected in October 2003 by which time the locus had changed. He said that the 1987 British Standard did not apply but that it indicated general good practice. He said that the friction co-efficient of 0.6 contained in the British Standard was unsatisfactory because no method was prescribed nor was any material identified. He referred to further work which had been done in relation to slipping accidents which suggested that a coefficient of friction between 0.4 and 0.6 was good. He explained that the greater risk of a slipping accident occurred on a descent.

[12] In cross-examination he accepted that he could not disagree with the proposition expressed by Mr Cosgrove that the co-efficient of friction at the nosing of a step should be at least 0.6. He accepted that unlike Mr Cosgrove he had not had an opportunity to examine the step. He accepted that a step in the condition described by Mr Cosgrove could be inclined to be slippery.

[13] It is agreed between the parties that the steps in question are part of the adopted road. The matters at issue between the parties are, therefore, whether the accident happened in the manner described by the plaintiff and whether the steps in the condition described constituted a hazard for pedestrians.

[14] I am satisfied firstly that the plaintiff sustained her injuries as a result of a fall at the steps in question. Mr Millinson perfectly properly tested the plaintiff's account and I was at one stage concerned about the absence of any record of any injury other than to her face. In the course of the hearing I was provided with a copy of the GP notes and records which include a reference to bruising injuries sustained to her elbows and bruising noted at her patella. I do not find, therefore, any reason to reject the plaintiff's account as to the general manner in which she sustained her injuries.

[15] There remains, however, the issue as to whether she has satisfied me that her fall occurred as a result of a slip. The evidence suggests that she herself was unclear as to the precise mechanism at an early stage. The initial instructions provided to her solicitor certainly raised in his mind the understanding that he was dealing with a slipping case. Although she told Mr Coyle that she did not know whether she slipped or tripped she referred to the weather conditions as contributing to the accident and he concluded that this was a possible slip. I have to bear in mind that in both these interviews this was a vulnerable 16-year-old girl recounting events to mature men in what she would have perceived to be relatively formal settings. Taking that into account I am not satisfied that the inconsistencies which might be detected from these accounts are such as to undermine the plaintiff's evidence to the effect that she slipped.

[16] I have found the issue as to whether the steps were hazardous for pedestrians much easier. In wet conditions there is no real dispute that the coefficient of friction was materially below 0.4. Both engineers implicitly recognised the dangers of such a coefficient of friction in or about the nosing of a step. Whatever may have been the position in dry conditions I am satisfied that in wet conditions in 1997 these steps constituted a hazard for pedestrians because of the risk of slipping.

[17] I do not consider that any issue of contributory negligence arises. The plaintiff has made a good recovery from her injuries and her principal upset appears to have lasted for not much more than a month. Thereafter she had discomfort for a longer period. In all the circumstances I assess general damages at £6,250 and order that there should be a decree for that sum together with interest.