Neutral Citation No.: [2009] NIQB 37 | *Ref:* **McCL7486**

Judgment: approved by the Court for handing down | *Delivered:* **02/04/09**

*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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BETWEEN:

LISA McQUILLAN

Plaintiff;

-and-

DEPARTMENT FOR REGIONAL DEVELOPMENT

Defendant.

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McCLOSKEY J

[1] I have already delivered an *extempore* judgment in favour of the Plaintiff against the Defendant, following a three day trial. I now propose to assess the Plaintiff's recoverable damages in the following way.

[2] The Plaintiff's date of birth is 22 May 1972 and she is now, therefore, aged thirty-six years. The accident giving rise to liability on the part of the Defendant befell the Plaintiff on 29 December 2003, just over five years ago. The Plaintiff's injuries were sustained when she overbalanced and fell in a public area. Those injuries have two components viz. physical and psychological.

[3] I shall consider the physical dimension of the Plaintiff's injuries first. This is documented extensively in the voluminous medical records which have been made available to the court, the contents whereof I do not propose to rehearse *in extenso*. The evolution of the Plaintiff's physical injury can be divided into two phases. The first phase precedes the operative intervention ultimately undertaken by Mr Laverick FRCS, a consultant orthopaedic surgeon, on 11 November 2004. The second postdates this operation.

[4] According to the hospital records, the Plaintiff suffered a fracture of her left tibia and fibula. This was initially diagnosed as a so-called "spiral" fracture of the distal third of the left tibia and fibula. It was treated conservatively in a long leg

plaster. The Plaintiff was admitted to hospital for one week, being discharged on 6 January 2004. During the period which followed, the Plaintiff was under the care of Mr. Laverick. He advised that she should undergo an osteotomy. The reasons for this are documented in a record of the Ulster Hospital, Dundonald dated 28 October 2004. Healing of the fractures had been slow and there was persistent varus deformity of the tibia. The Plaintiff was complaining of pain around the lateral malleolus. Radiologically, the fracture line was still visible. As explained in this record, the osteotomy would entail division of the fibula in order to assess the mobility of the tibial fracture, followed by "*straightforward distraction with a Taylor Spatial Frame*" ***or*** a procedure designed to "*freshen up the fracture site with an osteotome to allow discharging from there*". I accept that there is an element of last resort about this procedure.

[5] The Plaintiff duly underwent an osteotomy under the care of Mr. Laverick on 11 November 2004. A perusal of the hospital records suggests that, initially, her recovery and progress were reasonably positive. This is documented in, for example, a record dated 19 May 2005:

> "*Overall she is doing reasonably well. She still has some persistent swelling of her leg, which I have advised will settle gradually over about a year*".

When this record was made, the frame had been removed from the left tibia, two months previously. To similar effect is a further record compiled some three months later, dated 5 August 2005:

> "*On return today she is making good progress and has now been discharged from the physiotherapists. On examination she has got a good range of movement of the ankle although she does walk with a slight limp … X-ray today shows that the fracture has united soundly and therefore I am happy to discharge her from the clinic at this stage.*"

The positive tone of this record requires no elaboration. In due course, the Physiotherapy Department of the Armagh Community Hospital reported to Mr Laverick, on 24 October 2005, that the Plaintiff had undergone rehabilitation from December 2004 to June 2005 and:

> "*By discharge, she was mobilising independently, although remained very painful around ankle and foot …*
>
> *Her gait pattern was improving and it depended upon her level of pain … Her foot and ankle continued to swell, she was walking short distances only*".

[6] Radiologically, the picture is clear. Per Dr Hall's report:

> "*With regard to the left tibia and fibula, complete bony union is demonstrated with no evidence of significant shortening of the tibial or fibular fracture. There is a suggestion however of mild valgus deformity associated with the angulation of the tibial fracture*".

However, the Plaintiff now asserts a significant enduring physical disability.

What, therefore, has gone wrong? In August 2006, the Plaintiff informed Mr Laverick that she was "tortured" by persistent left leg pain. She was walking unaided, though with a limp, at that stage. Mr Laverick commented that following removal of the external fixator swelling and restriction of ankle and sub-talar movements had persisted. He advised:

> "*At this stage following the injury these are likely to be persistent although I am hopeful that we may be able to improve things a little bit with some further physiotherapy …*
>
> *There is unlikely to be any significant deterioration from her current condition although at this stage I would not be optimistic of any significant further improvement*".

[7] Mr Laverick's most recent report is dated 1 October 2008. However, this is concerned only with the question of the mechanics of the Plaintiff's accident and the mechanism of injury. In his sworn testimony, Mr Laverick highlighted the substantial degree of violence involved in the Plaintiff's injury and classified the fracture as "*more of*" an oblique type, to be contrasted with a spiral one.

[8] In evidence, the Plaintiff acknowledged that, overall, she is "*better off*" as a result of the operation. She has been attending the Pain Clinic of the Ulster Hospital at intervals of six months, since May 2008. Treatment consists of injections which, in her words "*do me some good*" as they ease the leg pain and enable her to walk better and further. She does not walk any further than the distance between her home and a nearby neighbour's house, which she estimated at some 400–500 metres, assisted by a walking aid. Indoors, she asserted that she uses a walking stick on bad days. She is able to negotiate both storeys of her house. While I have described the medical evidence available to the court as "*voluminous*", there is precious little information about the condition and progress of and treatment for the Plaintiff's injured leg during the past two and a half years.

[9] The psychological dimension of the Plaintiff's injuries is described in the first of Dr Mangan's report as a "*major depressive episode*". In subsequent reports, Dr Mangan describes the Plaintiff's condition as "*chronic*". The final paragraph of this third report, dated 12 November 2008, acknowledges, at least tacitly, the influence of certain extraneous factors. On my reading of all the medical evidence, these are essentially threefold. The first is the termination of the Plaintiff's long term

relationship with a previous male partner. The second is the intrusion of other unrelated medical conditions. The third is the Plaintiff's anxiety about her teenage daughter. The court must take these factors into account in assessing this aspect of the Plaintiff's entitlement to damages.

[10] It is clear from the records that the Plaintiff has also engaged with the community psychiatric services. However, she seems to have done so on an intermittent, sporadic basis. I have the impression that she was not well motivated in this respect. However, the reasons for this apparent lack of motivation do not necessarily reflect adversely on her, bearing in mind the factors highlighted immediately above. The Plaintiff was disposed to accept that, during the most recent phase, she has been making some positive progress with the community psychiatric nurse, who continues to monitor her condition, the last home visit having taken place in November 2008. Generally, the Plaintiff would appear to be leading an introverted, introspective and limited lifestyle. I have noted in particular the evidence of Miss Toal, the Plaintiff's niece, in this respect. Miss Toal was a demonstrably honest and credible witness. In her words, the Plaintiff is "*… very depressed … not the same woman … sometimes she does not speak … she just stays in the house …*". Consistent with my assessment of this witness, she readily acknowledged that the Plaintiff's mood *does* improve from time to time. It is clear that the Plaintiff continues to take extensive medication for both her physical and psychological conditions.

[11] The JSB Guidelines (3rd Edition) provide some assistance in the task of measuring general damages in this action. However, given the breadth of the bands in question, this is of a comparatively limited nature. Clearly, I must take into account the age at which the Plaintiff sustained her injuries (thirty-one) and the impact these will have on her for the remainder of her lifetime. Significantly, there is no suggestion from any quarter that the Plaintiff has indulged in exaggeration, pretence or invention. Further, I formed a favourable impression of the Plaintiff when she gave her sworn evidence. Overall, the outcome of her physical injuries is unexpectedly unfavourable. While the evolution of her physical injuries has probably reached something of a plateau, I consider that her mobility is probably influenced negatively to some extent by her psychiatric condition and I find that there is scope for some further modest improvement on both counts.

[12] I assess general damages for pain and suffering and loss of amenity, past and future, in respect of the Plaintiff's physical injuries at £55,000. I further award general damages of £30,000 in respect of the Plaintiff's psychological condition. I must then stand back and consider whether the sum of these two figures, globally, represents fair and reasonable compensation. I conclude that it does.

[13] Accordingly, the Plaintiff will have judgment for £85,000 against the Defendant. The Plaintiff is entitled further to interest at the rate of 2% from the date of the Writ of Summons, 14 December 2006. I award costs against the Defendant. Execution of the judgment will be stayed for the conventional period of three weeks.