**Neutral Citation No. [2006] NIQB 16** | *Ref:* **MCCC5466**

*Judgment: approved by the Court for handing down* | *Delivered:* **03/02/2006**
*(subject to editorial corrections)*

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**JULIE PATTON**

**Plaintiff;**

**-v-**

**HELEN McFARLAND**

**Defendants.**

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**SIR LIAM McCOLLUM**

[1] The plaintiff, a young lady of 25 brings this action in respect of personal injuries sustained by her on 6 June 1992 when she suffered a serious avulsion injury to her left thumb resulting in the loss of two thirds of the ….. ..…… of the thumb. This serious injury was undoubtedly sustained when she fell from a horse and it stepped on her thumb. No other injury is claimed in the Statement of Claim but it appears that she also suffered fairly minor straining to the right leg. The case is presented on the basis of two allegations. Firstly, that the defendant who was the owner of the horse caused and permitted the plaintiff to ride the horse when she was not sufficiently experienced or developed to be capable of properly controlling it. The second is that there has been a breach of the Animals (Northern Ireland) Order 1976 on the basis that the plaintiff's injury was caused by the animal bolting while the plaintiff was riding it and that under Article 4 of the Order absolute liability devolves on the defendant.

[2] If either allegation is established or a combination of them then the plaintiff will succeed in the action.

[3] The plaintiff told me that she was nine at the time of the accident, her date of birth being the 2 August 1982, and that at the time of the accident she was fond of and interested in horses. She did not have much experience of riding at the time but she had had some lessons and had done some pony

trekking. She had no more than a dozen lessons and had never ridden a horse before the accident since all her experience had been on ponies.

[4] The lessons were at Millbridge Riding Centre where she had learned trotting, some cantering and performing small jumps. There would always have been someone in attendance.

[5] Her height now is 5ft 4 ins and the implication is that she was probably quite a small child for her age.

[6] The ponies that she had ridden would have been of a height about level to her shoulder.

[7] The horse involved in the accident was a lot bigger.

[8] She had visited the stables where the accident happened on a number of occasions during the couple of months prior to the accident and had briefly seen the lady who owned the stables called Mrs Kilpatrick.

[9] She had done some work around the stables grooming and brushing horses, helping to groom and she had also helped to paint fences. Her only visits to the actual stables would have been to muck out. She mostly came after school or at weekends hence she was still attending primary school. She always visited with her friend Natalie who was about 13 or 14 at the time. Their mothers were friends and the plaintiff was allowed to go up to the stables with Natalie but not if she were on her own. She was not paid for any of the work she did at the stables. Mrs McFarland, the defendant, owned the particular horse involved. Neither the plaintiff nor her friend had ever asked to ride any of the horses. The plaintiff was the youngest person who visited the stables. She had not noticed anyone riding the horses but she had seen Mrs McFarland at the stables on a number of times.

[10] At about lunchtime on the day of the accident the plaintiff and Natalie were at the front of the stables when the defendant came up and said She was busy and would we be able to take the horse out and exercise him. She appeared to be speaking to both of them who were standing in front of the stables. The plaintiff cannot remember what they were doing at the time but said she was standing right beside Natalie. The defendant left, the plaintiff saw her drive off in her car. The plaintiff said "We got the horse ready" and then said "Natalie got the horse ready. She put the saddle on together with the bit and reins." Natalie put the riding hat on first. They took the horse into the field, there were hedges around. It was a large enough field. Natalie exercised the horse first; she just trotted round the field for a while, maybe ten minutes or so then Natalie got off and give the plaintiff the hat and the plaintiff got on the horse. She tightened the hat to fit and just trotted about the field. Natalie adjusted the stirrup. She trotted around the field for about

five minutes or so. The horse was fine until it bolted. It just got scared trotting one minute and then took off. There was something like a concreted part of the ground, the horse galloped over there. The plaintiff was caught on the horse and then was set free when the horse hit her head against the wall. She could not remember what it did next, she just remembered after it bolted it ran from one end of the field to the other in ten or fifteen seconds. The plaintiff ended up laying on the concreted floor. She could just remember people standing around her. She had hurt her leg and her thumb. The horse had stamped on it and had hurt it. Mr Eric Smiley was called as an expert witness by the plaintiff. I accept him as an independent expert on the behaviour of horses and accept his evidence which was restrained and balanced.

[11] He said that any rider has issues of balance to contend with. The means of communication with the animal can be quite subtle and can be beyond the capabilities of an inexperienced rider. If the rider is too small for the size of animal then the application of the means of communication can sometimes be interfered with and the strength of a command is not always clear to the horse. The strength of the rider is not only one of communication. A very small rider may not make his or her message clear. A problem that can be caused is that the horse will normally work on a conditioned reflect. It is accustomed and trained to particular input of a message; a misunderstanding can result if the rider is inexperienced. The horse can do something that it was apparently not asked to do. There can be confusion for a horse.

[12] Mr Smiley was asked what would cause a horse to bolt. He answered:

> "It is an animal of flight. At any moment of uncertainty it's first reaction is to take flight. That is still present when it is ridden."

He described bolting as in the motive expression, a horse will try very very quickly to get away from an unusual danger. This is similar to taking flight. To the lay person a horse going faster than normal could be conceived as bolting. The plaintiff tried to describe the horse as bolting but a rider can misconstrue according to what the rider is accustomed to. If accustomed on a pony then the movements of the bigger animal would be slightly alien to what that person is accustomed to. If the horse goes in a canter or towards a gallop it could feel very very fast on a horse and can easily be mistaken for a horse bolting to the inexperienced person.

[13] For a very inexperienced rider there is a huge difference between a pony and a horse particularly in the light of the size of the person. Communication is easier for a child on a pony. The child on a horse will have

difficulties and a horse with a strange rider may take some time to become familiar.

[14] He confirmed that he would expect a person permitting another young person to ride a horse to satisfy himself or herself that the person was suitably experienced.

[15] Mrs McFarland evidence was that she was at all material times the owner of the horse and indeed is still its owner. Its name is Paddy. She had had him for about two years in June 1992 and he was aged about nine. From February 1992 she kept him at the Manse Road stables; she visited there at least once every day. At an earlier stables at ……. he had been ridden by both children and adults and under her supervision her two elder daughters aged six and eight had ridden him.

[16] So far as his temperament was concerned he has never, to her knowledge, bolted. He has been in exciting situations such as hunting and the defendant achieved international success while riding him.

[17] She described Mrs Kilpatrick's stables at Manse Corner as a "Do it yourself" livery in which the person who owns the stables does not organise the activities of the horses but charges a weekly fee for the use of grazing.

[18] The defendant met a girl called Natalie on at least two occasions at the stables. One evening in April was the first time when she was exercising her horse. Natalie had written a horse in her presence for twenty minutes to half an hour.

[19] She appeared to the defendant to be a very competent rider who walked, trotted, cantered and jumped the horse over an obstacle of some 3ft 6 ins in height.

[20] After April she had seen her at the stables. Natalie had helped her tack up the horse. The defendant has seen a young girl at the stables whom she believed to be the plaintiff. She had spoken to her as a matter of polite conversation, asked her about her interest in horses.

[21] On the date of the accident, 6 June 2002, she attended the stables at around lunchtime. She went to check the horse which was in the field. When there she saw girl whom she believed the plaintiff. Natalie was talking to another owner. The young girl was some distance away near the front of the stables. The defendant spoke to Natalie; the plaintiff was not with her or near her at that time, she was at least twenty yards away from Natalie at the time.

[22] Natalie asked after the horse and how he was and the defendant asked her would she like to ride him that afternoon. She said she would love to so

the defendant brought the horse in from the field to the stable. She did not say that she was busy or ask her to take the horse out for exercise. She did not speak at all to the plaintiff on this occasion. There was no requirement for the horse to be exercised. It was simply a good turn for Natalie to allow her to ride the horse. She reminded Natalie where her tack was kept, Natalie had previously seen it. Natalie was a similar size and build to the defendant.

[23] She told her to ride him in the ménage which is an enclosed arena and then once warmed up she might ride him in the field. She told her that he could be lively, not to take him onto the road. There was a direct access to the field without going onto the road. The defendant judged Natalie as well capable of controlling the horse. She had no knowledge of the plaintiff's riding abilities. She would not have allowed a nine year old to ride the horse unless she had been in full control and supervision of the horse. She left after twenty minutes or so, became aware of the accident later through a telephone call.

[24] She went to the stables and met Natalie there and was informed of what had happened. She telephoned the plaintiff's parents to enquire after her wellbeing and express her concern.

[25] The first allegation made against her that she had given the plaintiff permission to ride the horse was in the letter of claim of January 1995. No allegation to that effect had been made prior to that. She had never seen Paddy take flight or bolt. She had seen him trot and gallop in an enthusiastic way but never outside of her control or that of her daughters who rode him regularly from the age of 12. She saw him after the accident and he appeared to be uninjured.

[26] She had seen a horse on other occasions and it was a utterly terrifying spectacle.

[27] Having considered the evidence of both the plaintiff and the defendant I am satisfied that the defendant's account of what took place at the stables is correct.

[28] She appeared to me to be a most responsible and accurate witness and I am satisfied that I can accept her account.

[29] I doubt if the plaintiff has a really accurate recollection of what happened when she was nine. She may well have convinced herself that the account which she gives of being encouraged by the defendant to exercise the horse but I am satisfied that that did not happen.

[30] On the defendant's behalf it is admitted that if she allowed the plaintiff to ride the horse without making any arrangements for her supervision or for

an adult person to be in control of the situation it would have been a completely foolhardily action which would entitle the plaintiff to recover damages.

[31] I am satisfied that it would be such a blatantly irresponsible act that it would have drawn upon the defendant the justifiable anger of the plaintiff's parents if they had received that account of what had occurred.

[32] Moreover there would have been absolutely no reason for the plaintiff not to tell her parents that she had ridden the horse with permission is that were so and I think that quite apart from any question of taking legal proceedings even the most timid of parents would have made their feelings very clear to a person in the defendant's position who had allowed their daughter to ride a fully grown horse without any form of adult supervision, that they would have made their feelings very clear to the defendant.

[33] There is no suggestion that a word of blame was directed towards the defendant or that any criticism of any kind was made of her behaviour.

[34] I am satisfied therefore that the defendant did not give permission or any encouragement to the plaintiff to ride the horse, nor that she had any reason to anticipate that the plaintiff might ride the horse. There is no suggestion that she associated the plaintiff with Natalie or that she had any reason to anticipate that the plaintiff would attempt to ride the horse without her permission or direction. I therefore find that the defendant was not guilty of any negligence.

[35] The plaintiff also bases a claim on Article 4 of the Animals (Northern Ireland) Order 1976.

[36] Article 4(2) of the Animals (Northern Ireland) Order 1976 provides:

> "Subject to Article 6, where damage is caused by an animal which does not belong to a dangerous species, a keeper of the animal is liable for the damage if –
>
> (a) the damage is of the kind which the animal, unless restrained, was likely to cause or which, if caused by the animal, was likely to be severe;
>
> (b) the likelihood of the damage or of its being severe was due to characteristics of the animals which are not normally found in animals of the same species or are not

normally so found except at particular times or in particular circumstances;

(c) those characteristics were known to that keeper or were at any time known to a person who at that time had charge of the animal as that keeper's servant or, where that keeper is the head of a household, where known to another keeper of the animal who is a member of that household and under the age of 16 years."

[36] The plaintiff's case is that her fall from the horse and subsequent injury to her thumb were caused by the horse bolting which is a characteristic which could be found in horses in particular circumstances.

[37] The first question therefore is whether the horse bolted.

[38] Mr Smiley described a horse bolting with a rider falling from the saddle at the very worse thing that could happen in horseriding. I am sure that this is correct and that such an experience would be a terrifying one even for an experienced rider. For an inexperienced young girl it would have been highly traumatic.

[39] It is my view therefore that if the horse had bolted:

(i) the plaintiff's injuries would have been much more generalised and serious than they were, consistent with being dragged across a field by a horse running at high speed;

(ii) her terrifying experience would have been evidenced in some way by medical notes at the time. I cannot imagine that her nervous state would not have been remarked upon or that she would not have complained about her reaction to the experience that she had;

(iii) the fact that their daughter had been involved in such a terrifying incident would surely have been the source of immediate complaint by her parents about the behaviour of the animal. Nothing in the contemporary records gives any credence to the suggestion that the horse had bolted.

[40] I am satisfied therefore that the horse did not bolt but that the accident occurred when the plaintiff, through inexperience and possibly through the use of ill-fitting stirrups, fell from the horse.

[41] I regard the accent of the horse in stepping on the plaintiff's thumb as a purely accidental occurrence and not something that resulted from the

exhibition of a characteristic of the animal which was not shared by others of the same species.

[42] The plaintiff has suffered a disabling and disfiguring injury as a result of her love of horses and an adventurous spirit. But in my view it was not caused by any negligence on the part of the defendant or any vice by way of characteristic liable to cause injury on the part of the horse and, accordingly, the plaintiff's claim must fail.