

Neutral Citation No. [2006] NIQB 46

Ref: MORC5606

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

Delivered: 26/06/2006

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

BETWEEN:

PAULA JOHNSTON

Plaintiff;

-and-

NORTHERN IRELAND HOUSING EXECUTIVE

Defendant.

MORGAN J

[1] The plaintiff claims damages as a result of injuries sustained by her on 12 November 2001 at Bracken Avenue, Newcastle. She was at the material time a tenant in a block of flats owned by the defendant at that address. The defendant accepts that if she tripped and fell as she alleges she is entitled to succeed subject to contributory negligence.

[2] The plaintiff alleges that at approximately 2:30 p.m. on 12 November 2001 she decided to leave her flat in order to visit her parents. Her flat is situated on the first floor of a block of four apartments at Bracken Avenue, Newcastle. She described how she negotiated the first two steps leading onto a small landing. She then turned to go down a flight of stairs. At the bottom of the stairs she turned again to walk along a short hallway leading to the external door. When she reached the external door she alleges that she tripped over a metal draught excluder at the foot of the doorway as a result of which she fell and sustained a fracture dislocation of the right ankle and soft tissue injury to the right knee. The draught excluder as shown in the photographs is sitting somewhat proud of the floor and the wooden guard that would have protected the tripping point is absent. The plaintiff described how she lay on the ground immediately outside the external door. There is a single step from the doorway to the exterior ground. She described

how her bag fell and she was able to retrieve her mobile phone which was lying separately on the ground. She contacted her father who arrived approximately 20 minutes later. He took her to Downe hospital. She was treated at the hospital and referred to the fracture clinic at the Royal Victoria Hospital. She went there two days later with her father and mother. She required admission for fixation with plate and screws but because of a lack of beds she was not admitted until some nine days later.

[3] In cross-examination she described how her father had taken her to the accident and emergency department of the Downe hospital. He had gone inside as soon as they arrived in order to get a wheelchair for her. He was successful in doing that and as she was being brought into the department a nurse looked at her ankle and described the injury as "a corker". She said that she was then referred to a doctor, x-rays were taken and a POP cast was applied. She was referred to the accident and emergency department note concerning her treatment. It was put to her that the nursing note contained a history that "patient fell down stairs". She stated that she did not know how that history came to be within those notes. She denied that the nurse had taken any history from her. In re-examination Mr Corrigan B. L. who appeared for the plaintiff established that the note was inaccurate in relation to her occupation as it described her as a schoolgirl whereas she was in fact a 26 year old woman but it appeared that this portion of the note had been taken by the receptionist and that the plaintiff's father was the informant.

[4] The doctor at the accident and emergency department made a handwritten note. This contains the entry "history as above". That refers to the history contained in the nursing note. The plaintiff again denied that the examining doctor had taken any history from her. She could not say how either of these entries came to appear in the notes.

[5] The plaintiff was then cross-examined about her attendance at the fracture clinic on 14 November 2001. She described how she had been referred to a cubicle in which she sat with her father and mother. She remembered being seen by a doctor who explained to her the nature of her injury and drew a diagram on a piece of blue paper. She described the fracture clinic as chaotic on the day in question and denied that any history had been taken from her in relation to the circumstances in which she had sustained her injury. It was put to her that the examining doctor had recorded a history that she had sustained her injury after falling down 3 stairs. Although she could not remember all of the events at the fracture clinic she was adamant that the doctor had not taken any history from her.

[6] The plaintiff alleged that she had reported the defect in the draught excluder to the Executive some months before her accident. She said that she had done so by telephone. She described in her evidence how she had spoken to a female and told her about the defective state of the doorway. It was

pointed out to her that in replies to particulars she had described this conversation as taking place with a male.

[7] Evidence was given by her father about the receipt of the phone call from the plaintiff on the day of the accident. He remembered arriving at the block of flats and finding his daughter sitting on the doorway step. He said that she told him what had happened. He then took her to Downe hospital. When he arrived at the accident and emergency department he went inside to get her a wheelchair. He approached the reception and explained that his daughter had sustained her injury when she tripped on a step. He said that he was with his daughter in the cubicle at the fracture clinic two days later. He also denied that the examining doctor had taken any history from her in relation to the accident. He accepted that he had very little recollection of events at the fracture clinic at this stage. He could not remember the name of the doctor who examined his daughter nor could he recognise him.

[8] The defendant called Dr Clarke who was the doctor who examined the plaintiff at the fracture clinic. He said that his practice was to look at the medical records in relation to the patient before speaking to the patient. Having done so he then took a history from the patient. He said that he did this in every case because it was important firstly to assist in the diagnosis of the injury about which the complaint was being made and secondly to exclude the possibility of any other injury. There were no circumstances in which he would not take a history. Having taken a history and carried out such examination as he could he then discussed the case with the registrar. In this case it was clear that surgical intervention would be necessary and he then returned to the plaintiff to explain that to her and her parents. Having done so he then dictated a letter to the plaintiff's GP which was dated 14 November 2001. In that letter he described the history given to him by the plaintiff, "she sustained an injury to her right ankle after falling down three stairs".

[9] Evidence was given by Mr O'Reilly who was the district maintenance officer for the area in question. He produced the Property Record Card which showed that there had been no prior complaint about the doorway. There was a note that the doorway was recorded as defective on 19th February 2002 as a result of a letter of claim on behalf of the plaintiff. The letter of claim had been misdescribed as a complaint by telephone in the computer system.

[10] The issue in this case is whether I can be satisfied that the plaintiff in this case is sufficiently reliable to enable me to be satisfied on the balance of probabilities that she sustained her injury as she alleges. I have decided that I cannot be so satisfied for two principal reasons. Firstly I am entirely satisfied that Dr Clarke took a history from the plaintiff at the fracture clinic and I consider it probable that the nurse and the examining doctor took a history from her at the Downe hospital. Either the plaintiff remembers that occurring

and is deliberately misleading the court or, more likely, the plaintiff has no recollection of the precise events at either hospital but is denying that the history was taken because of the damage it does to her case. On either view this introduces a measure of unreliability into the assessment of the plaintiff's evidence.

[11] Secondly I am satisfied that the plaintiff gave a history to Dr Clarke which included a reference to a fall down three stairs. The plaintiff was the only person from whom Dr Clarke could have obtained that history. Such a history is inconsistent with the plaintiff's case and remains unexplained. The plaintiff said that if she had fallen in that way she would have expected to hit a wall at the bottom of the stairs but there was no other evidence before me to suggest that if she had so fallen she would inevitably have sustained other injuries.

[12] In those circumstances I cannot be satisfied on the balance of probabilities that I could accept the plaintiff's account as reliable and accordingly must dismiss the plaintiff's claim.