

**Neutral Citation No: [2019] NIQB 110**

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

**Ref: MAG11128**

**Delivered: 6/12/2019**

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

**QUEEN'S BENCH DIVISION**

**2017 No. 112672**

**BETWEEN:**

**ELLEN SCOTT**

**Plaintiff;**

**-and-**

**DEPARTMENT FOR INFRASTRUCTURE/TRANSPORT NORTHERN IRELAND**

**Defendant.**

**MAGUIRE J**

**Introduction**

[1] The plaintiff in this case is Ellen Scott. She is a retired person, having been born on 19 June 1950. She is now 69 years of age. On 26 July 2016 Ms Scott was involved in an accident at Dundella Street, which is in east Belfast.

[2] At the time of the accident, which took place in daylight hours, she was crossing the road when her right foot caught in a hole in the tarmac road surface. As a result she fell heavily and in the course of doing so she sustained abrasion type injuries to both knees and hands.

[3] After the accident she made her way to a nearby shop. The court accepts that she was upset and in pain and it is unsurprising that after a time she decided to take a taxi to the Royal Victoria Hospital.

[4] At hospital, following x-rays, it was discovered that she had two fractures. One was to the right ankle for which she was treated by the provision of an air cast boot. The other was to the left wrist for which she was treated by means of the application of a cast. [5] The plaintiff returned home after the accident but the

court accepts that for a period her injuries resulted in significant pain and discomfort exacerbated by the fact that the combination of them made it difficult for her to fend for herself. As she lived by herself, this placed a particular strain on her.

[6] Fortunately she was able to obtain the help of a friend in respect of her day to day activity and also the help of her cleaner who came into clean the house from time to time.

[7] In this case, liability has been admitted by the defendant, the Department of Infrastructure. The only issue before the court is quantum of damages, the parties being unable to arrive at a negotiated settlement.

[8] In the course of these proceedings, the only person to give evidence was the plaintiff. She described the accident and its sequelae at some length and then was carefully and thoughtfully cross-examined by Mr Michael Potter BL for the defendant. It is unnecessary for the court to set out the details of the plaintiff's evidence, save to say that the court has no difficulty in accepting that the effect of the injuries related to her accident on her was substantial though she fortunately has recovered reasonably well.

[9] In addition to the plaintiff's oral evidence, the court has had the opportunity to read a booklet of medical reports and records which had been placed before it.

[10] What is not in doubt is that the main injuries were as follows:

- (i) She had a fracture to the right ankle and had to use a boot for a period. The fracture was undisplaced and is described as being on the distal fibula below the level of the ankle mortise. The fracture largely settled within a period of about five months or so, though she was left with some feeling of instability. There was an element of ligament distain consistent with the injury.
- (ii) She had a fracture of the right hand. This is described as an avulsion fracture of the triquetrum. In fact it healed well.
- (iii) She had a short term twisting type injury to her right knee. This probably involved a few months of symptoms which would be related to the accident.

[11] The main area of dispute between the parties at the hearing related to whether the plaintiff had sustained in the course of the accident any significant injury to the thumb area of her left hand. The plaintiff was of the view that this area had been damaged in the accident, but it seems clear from the medical records (which Mr Potter took the plaintiff through) that there was no record of any complaint or damage at this site until 16 December 2016 i.e. some five months after the accident. This is so even though there are records of the fracture to her left wrist

being considered at the Fracture Clinic on 5 August 2016; 30 August 2016 and 18 September 2016. On this issue the court is of the clear view having had regard to the totality of the plaintiff's evidence and the way it was given from the witness box that she must have not referred to the thumb injury on these occasions. It is most unlikely, in the court's opinion, that had she sustained this injury at the time of the accident that she would not have referred to this on one or other of the three occasions just mentioned. The court also considers that it is unlikely that had she referred to the injury to the thumb area on any of the three separate occasions this would not have been noted. Notably there was a different doctor dealing with her on each occasion.

[12] On this issue, the court considers that it is more likely that any problem being experienced at this location since December 2016 is not related to the accident but is related to degenerative change which plainly has affected other parts of the plaintiff's anatomy.

### **Quantum**

[13] The court is grateful to Mr Dermott Fee QC (who appeared with Mr Paul Boyle BL) for the plaintiff for their helpful submissions on quantum. Likewise the court thanks Mr Potter BL for his.

[14] The court has taken account of the particular features of this case and has thought to consider each of the main injuries sustained by the plaintiff and how they have affected her. In addition the court has considered in its mind the value of the case in the round. Taking account of all of the above factors the court considers that the appropriate award in this case is £32,000.