

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

**BETWEEN:**

**COLIN ADAMSON**

**Plaintiff;**

**-and-**

**DRD**

**Defendants.**

**MORGAN LCJ**

[1] The plaintiff was born in 22 April 1966. He claims damages as a result of injuries he sustained on the evening of Friday 7 March 1997 when he fell close to steps at Kearney Gardens Bangor in or about 10 pm. The steps were part of the adopted footpath for which the defendant was responsible.

[2] The plaintiff sustained serious injuries as a result of road traffic accident in 1991. He suffered an above knee amputation in the left leg and a below knee amputation in the right leg. He also suffered a brachial plexus injury to his left shoulder which required an arthrodesis. In December 1996 he underwent a muscle transfer operation to the left elbow to improve his movement. He had generalised lack of feeling in the upper left side.

[3] On the evening in question he said that he had been in the company of his brother. He accompanied his brother to visit Mr Martin who lived at Kearney Gardens. He had to walk up a pathway which contained three or four steps. Although severely disabled he was able to walk using a crutch or with the support of another person. He and his brother stayed for a short while with Mr Martin and then made their way back to their car. In order to descend the steps the plaintiff had to proceed by placing his left foot on the

lower step while balancing with his crutch and right foot on the upper step. As he placed his weight on his left foot part of the flag which comprised the step moved as a result of which he lost his balance and fell heavily on his left side. He sustained a supracondylar comminuted fracture of the left elbow joint which required a very major operation to insert internal fixation in the joint.

[4] He was unable to get to his feet and his brother ran back to get help from Mr Martin. They were able to get him up and into the car. His brother took him home where he lived with his parents. He stayed there for most of the next day but gradually began to feel unwell and experience increasing pain. He attended hospital on Sunday and was admitted for operative treatment which was carried out on 12 March 1997. He had 2 plates and screws applied together with a further transverse screw. This has resulted in severely reduced mobility in the left elbow which has affected his gait and limited his walking abilities.

[5] In cross-examination he stated that he had not seen that the step was broken when he placed his foot on it. He explained that it was dark. He denied that he had attended hospital with problems as a result of alcohol consumption the previous month. He said that at the time of the accident he had stopped drinking. Although he was asked some questions about his drinking no medical notes or records of any kind were introduced in evidence. He explained that he had not visited hospital immediately as he hoped that he would get over the injury. He agreed that when admitted to hospital he said that he had fallen on his left side two days beforehand. He agreed that he did not make a complaint about the state of the steps. He stated that his previous solicitors had not pursued his claim expeditiously and it appears that photographs taken some short time after the accident had been lost and others had just been discovered on the morning of the hearing.

[6] Mr Martin confirmed that he had been visited on the evening in question by the plaintiff and his brother. He described how shortly after they left the brother had returned to seek his assistance in relation to the plaintiff. He had gone down to help lift the plaintiff off the ground. He said the plaintiff was lying on the steps towards the side of the path. The steps were broken and he said that this was a feature of the estate. He could not remember which was the step involved in the accident.

[7] In cross-examination he agreed that he had made no complaint about the step. He had not been aware of the seriousness of the plaintiff's injury until very recently. He believed that the step had been broken as a result of vandalism. He said that no alcohol had been consumed on the evening question.

[8] It was common case that the area had been tarmacked since the accident and the steps were no longer in place. The plaintiff's engineer, Mr McGill, stated that the steps as shown in the earlier photographs were dangerous. Looking at the photographs he believed the inner edge of the flagstones appeared weathered which suggested that they had been cracked for some time. He said that flagstones such as those used in these steps were prone to cracking.

[9] Mark Wilson was the highway inspector retained on behalf of the defendant. He explained that he had inspected the area on 12 February 1997 and 9 April 1997 but recorded no defects at the subject site. He had noticed a defect at his next inspection on 5 June 1997. He considered that the damage had been caused by vandals. He agreed in cross-examination that he could not remember the detail of the inspections now. When flags were cracked he said that his instructions were to identify a danger where a tripping point was created. He accepted that if there was a crack which did not create such a tripping point he would not have recorded it.

[10] Mr Montgomery was the sectional engineer for Bangor. He said that there had been ongoing problems with defects in flagstones in this area. Responsibility for the estate had been inherited by the defendant in 1973. At the edges the flags overhung the steps and were prone to being easily moved or vandalised. Money had not been available to ramp or remove the flags and replace them with concrete until relatively recently. Because of the problem inspection in the estate was carried out at eight week intervals rather than four months. In cross-examination he agreed that if a flagstone was cracked it could be potentially dangerous for someone going up or down the step because of the possibility of movement.

[11] I accept the evidence of the plaintiff as to how this accident occurred. I consider on the probabilities that the portion of the flag close to the front of the step moved as a result of being cracked. I do not consider that the defendant has made out the defence under article 8 of the Roads (Northern Ireland) Order 1993 that it had taken all such care as was reasonable in the circumstances since the evidence indicates that the foreseeable danger from cracked flags was not one which was taken into account.

[12] The plaintiff sustained a nasty injury which will impede his function in the longer term. I make an award of £35,000 which was a figure within the range offered by both counsel together with interest at 2% from the date of issue of the writ.