

Neutral Citation No: [2014] NIQB 80

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

Delivered: 04/06/2014

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

STEPHEN DEREK McCOOK

Plaintiff

v

DEPARTMENT OF REGIONAL DEVELOPMENT FOR
NORTHERN IRELAND

Defendant

STEPHENS J

Introduction

[1] The plaintiff, Stephen Derek McCook, now 22, then 17 years and 11 months (Date of birth 19 April 1992), brings this action for damages for personal injuries sustained by him on 20 March 2010. He alleges that he sustained those injuries at the junction of Conagher Road and Knock Road, Dervagh, Ballymoney, Co Antrim as a result of a defect in the road surface. The defendant, the Department of Regional Development for Northern Ireland, is the road authority.

[2] The plaintiff alleges that there was pothole at the junction of these two roads. That at about 5:30 pm on 20 March 2011 he rode his bicycle along the minor Conagher Road and that just before the give way line at the junction with the major road, that is the Knock Road, the front wheel of his bicycle went into the pothole causing the bicycle to fall to the left. He makes the case that he ended up on the road surface and that the nasty fracture to his left ankle was sustained as a consequence.

[3] In opening this case on behalf of the plaintiff, Mr McNulty QC who appears on behalf of the plaintiff with Miss Ellis, identified two issues for the court to determine. First, whether the plaintiff can establish on a balance of probabilities that the accident happened in the way that he has alleged. In essence whether the plaintiff's evidence is credible. Secondly, if the plaintiff sustained an injury in the way he alleges then whether the defendant is able to rely on a statutory defence given that

the Conagher Road is inspected on a 4 monthly inspection cycle and was inspected on 19 January 2010 some two months prior to the accident.

The Plaintiff's Account

[4] The plaintiff gave evidence that he was riding his bicycle along Conagher Road, that his sister was riding her bicycle behind him and that he was looking straight ahead as he came to the junction. That he was breaking and slowing down before he reached the triangle painted sign on the road surface, that he was going at approximately 5 mph and as he went forward he took his left foot off the pedal of the bicycle with a view to putting it on the ground whenever his bicycle came to a halt. He stated that when he was about the middle of the triangle sign he looked left and right and saw a car on the major road so that he continued to break and his left foot at this time was within inches of the road surface. That the front the bicycle suddenly dropped and twisted and this caused him to lose his balance and fall. That he lay on the ground unable to get up, but with the assistance of his sister who came to his help, he was able to crawl his way to the verge. That his sister then went back home which was close by on her bicycle to tell their mother. The plaintiff's mother came down by car and they all went straight to the Coleraine hospital arriving there at about 5:50 pm. His sister got a wheel chair to assist him with the transfer from the car to the hospital, and that once in the hospital his mother brought him a seat. That he was then booked into the hospital which was busy and he had to wait for some time before being seen by a doctor.

[5] The plaintiff's evidence as to whether he knew at the time that a pothole had caused the accident was equivocal but his final position was that he did not know until after he had been operated on and upon his return on the Thursday after his operation to his home.

Credibility

[6] In assessing credibility I seek to apply the principle set out by Mr Justice Gillen in *Thorton v Northern Ireland Housing Executive* [2010] NIQB 4. I quote from paragraphs 12 and 13 of that judgment:

“[12] Credibility of a witness embraces not only the concept of his truthfulness i.e. whether the evidence of the witness is to be believed but also the objective reliability of the witness i.e. his ability to observe or remember facts and events about which the witness is giving evidence.

[13] In assessing credibility the court must pay attention to a number of factors which, inter alia, include the following;

- The inherent probability or improbability of representations of fact ,
- The presence of independent evidence tending to corroborate or undermine any given statement of fact,
- The presence of contemporaneous records,
- The demeanour of witnesses e.g. does he equivocate in cross examination,
- The frailty of the population at large in accurately recollecting and describing events in the distant past,
- Does the witness take refuge in wild speculation or uncorroborated allegations of fabrication,
- Does the witness have a motive for misleading the court,
- Weigh up one witness against another.”

[7] I would add that because an individual is not credible in relation to one issue that does not mean that his evidence will be rejected in relation to the other issues in the case. It is all a matter of assessment and degree.

[8] I should say something first about the plaintiff’s character and demeanour. Much of the assessment of evidence depends on the nuances of presentation, small hesitations or alternatively as in this case, a readiness to put forward on the spur of the moment explanations which one can see being constructed. For instance asked why if his foot was just an inch above the ground prior to the accident occurring he did not just put his foot down to save himself from falling, the plaintiff replied that he was always clumsy as a child. First that appeared to me to be a spur of the moment explanation. Second that was not the impression I gained of his pre-accident physical abilities.

[9] I take into account in my assessment of him my assessment of his intellectual ability but even giving full account for my assessment of his intellectual ability I consider that he was quite prepared to and did invent on the spur of moment and knew that he was doing so.

[10] I will not list out all the instances of the unsatisfactory nature of the plaintiff’s evidence. Rather I will give examples.

- (a) The medical evidence indicates that he is quite prepared to exaggerate and in my view to do so with a view to financial gain. I accept the note of the physiotherapist that he was walking well on 23 July 2010 and yet he persisted in using crutches.
- (b) The plaintiff gave evidence that he participated in stock car racing once only in April 2011 and that before he did so he did not attempt to drive a car. I find that a fantastical proposition that he did not even attempt to test his left ankle on a clutch by, for instance, driving a car around the yard at home

before participating in a stock car competition. The plaintiff was quite prepared to lie and to lie on oath.

- (c) The plaintiff's account in the medical notes and records of how his second accident occurred differed markedly from his account in his evidence. The plaintiff was involved in a subsequent road traffic accident in which he sustained a nasty injury to his left knee. In court he stated that his motor bike which he was riding in June 2012, for only the second time after his first accident, slipped in cattle muck on the road. He asserted that he was not racing anyone. To his treating doctors however he said that he was racing a Ford Fiesta and braked too late. This also illustrates what I consider to be another untruth and that was that he had only ridden a motorcycle in June 2012. He gave an account which is contained in the medical notes and records that he had started riding a motor bike 10 months after the accident.
- (d) Next the state of his hands on medical examination belied his suggestion that he was not working. I found all his explanations for his dirty hands, the cuts on his hands and the calloused hands to be completely untruthful.
- (e) A final example is that the timings of his attendance at hospital as contained in the medical notes and records on the day of his first accident are completely contrary to his evidence. I have given consideration as to why he has given that inaccurate evidence. To my mind on the facts of this case this evidence as to timing sits extremely uneasily with the proposition that he was putting forward that there was no real discussion about his accident at any stage between himself and his mother and sister. Furthermore that evidence also sits extremely uneasily with the fact that the first contact with his solicitors occurred on 22 March 2010.

[11] So in short I reject the plaintiff's evidence. It was so replete with inaccuracies and what I consider to be untruthful evidence that I can place no reliance on his description of how the accident occurred. I do not consider that the deficiencies in the plaintiff's evidence are counterbalanced by the evidence from his sister. I consider that her evidence was untruthful, for instance, in relation to the lack of any conversation between her and her mother and the plaintiff as to how the accident occurred.

Conclusion

[12] I enter judgment for the defendant.