

Brigid McMinn

V

DRD

MORGAN J

[1] The plaintiff was born on 3 September 1957 and claims damages as a result of injuries sustained by her on the evening of 27 October 2000.

[2] Her case is that on that evening she was visiting her friend, Gerard Wright, who resides at 5 Juniper Way, Twiinbrook. She said that she arrived at approximately 7.40 pm and stayed until 9 pm or thereabouts. She described how she exited her friend's house by the back door and walked along a pathway to the footpath. She then turned left and stepped off the footpath bearing left across a tarmac open area leading to a path which was on her way home. Her evidence was that as she walked she tripped on the tarmac area and fell ending up close to a lamppost which can be seen in the engineer's first photograph. Her evidence is that the tarmac area had worn away as a result of which a tripping hazard had been created and that the street lights were inoperative at the time of the fall.

[3] In cross examination a number of matters were raised with her to seek to undermine her credibility:

- (a) The ambulance man who attended the scene to bring the plaintiff to hospital had prepared a note containing the history "fell off step in back garden" which he says was given to him at the time. The plaintiff accepted that the ambulance man was present soon after her fall but suggested that he had misheard her account.
- (b) She alleged in her evidence that she had been knocked out as a result of her fall. In the ambulance records prepared by Mr Lawlor she denied being knocked out and that is also recorded in 2 entries in the Accident and Emergency notes.

- (c) At the Accident and Emergency Department of the Royal Victoria Hospital a history is recorded in two notes that the plaintiff had slipped on a kerb. The plaintiff again offered the explanation that the doctors had misheard the account given by her and suggested that this was because of the extent of her facial injuries.
- (d) She was examined by Dr McDonald on 4 November 2005 in relation to a complaint of psychiatric upset as a result of this injury. In the background history he records that she told him of no history of emotional ill health. In fact it is clear from her notes and admitted by the plaintiff that she had a history of emotional upset at the time of her marriage break up some 20 years beforehand and a more recent history in 1999 when her mother died. When taxed with this she stated that she told Dr McDonald about the depression and emotional distress at the time of her marriage break up. The report clearly indicates otherwise.
- (e) The medical evidence indicates that the plaintiff sustained fractures of the distal radius and ulna which were repaired by plating. Thereafter she alleged that she required physiotherapy for a period of 1 ½ years. In fact the medical notes show no record of physiotherapy other than a referral before this accident in respect of her back in respect of which she did not attend.
- (f) Throughout her evidence the plaintiff kept her right arm by her side using her left arm to drink water while giving evidence and using her left hand to write the position of an "X" on a photograph. She is right handed and it is clear from the supplementary medical report of Mr Mawhinney dated 13 August 2002 that she writes with that hand and has good use of it apart from her complaints related to heavy work. I conclude that the manner in which she protected the right arm when giving evidence was designed to portray a level of disability far in excess of the true position.

[4] Evidence was given on behalf of the plaintiff by Gerard Wright. He described how he had walked the plaintiff down to a gate at his fence and waved goodbye. He said that he saw the plaintiff step off the footpath and walk along the tarmac. He then went inside and was next aware of the plaintiff at his door with a Mr Donnelly in an injured state. In cross examination he denied that he had ever discussed the circumstances of the accident with the plaintiff in the period of more than 5 years since it occurred. He further accepted that he was present when the plaintiff was speaking to the ambulance assistant Mr Lawlor but could not recollect any reference to a garden step. He said that the only step in his garden was a step leading from his back door into the path in his back garden.

[5] The plaintiff finally relied on a short written statement from Gary Donnelly who was the gentle man who assisted the plaintiff into Mr Wright's house. He describes how she fell on the road. Unfortunately Mr Donnelly is now dead and I do not feel able to place any material reliance on his statement in view of the fact that he cannot be cross examined on it.

[6] On the balance of probabilities I am satisfied that the plaintiff gave the ambulance personnel at the scene and the doctors at the hospital a version of the circumstances of her accident which is inconsistent with the account she now seeks to prove. I do not accept that any satisfactory explanation for that inconsistency has been provided. I am further satisfied that she did not disclose her previous relevant medical history to Dr McDonald in order to exaggerate her claim and that her presentation in the witness box was a further attempt to exaggerate the extent of her injuries. I am unable to rely on her evidence as to how she sustained her injuries.

[7] As for Mr Wright he has not offered any explanation as to why he never discussed the circumstances of the plaintiff's fall in the course of their many meetings after this accident. I do not accept his evidence on that point and therefore cannot accept that he has given me an account upon which I can rely.

[8] In light of the fact that the plaintiff has not satisfied me as to how she sustained her injuries her action must fail and I dismiss the claim.