Neutral Citation No. [2009] NIQB 87 | *Ref:* **McCL7666**

Judgment: approved by the Court for handing down | *Delivered:* **10/11/09**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

QUEEN'S BENCH DIVISION

_____

BETWEEN:

ALBERT PARKINSON

Plaintiff;

-and-

NORTHERN IRELAND FIRE AND RESCUE SERVICE

Defendant.

_____

McCLOSKEY J

[1] The Plaintiff is a paramedic by occupation. He is now aged forty-three years, having been born on 29th November 1965. He pursues a claim for damages arising out of his attendance at a fire at private premises known as "The Windmill", Bangor, on 19th January 2006. The claim is brought not against his employer (the Northern Ireland Ambulance Service), rather against the Northern Ireland Fire and Rescue Service. It is common case that the Plaintiff suffered injury as a result of a fall at the locus, at around 11.00pm. The Plaintiff attributes his fall and resulting injuries, including agreed financial loss of £1,399, to certain acts and omissions of the Defendant's employees who were dealing with the fire at the material time.

[2] The Plaintiff testified that he worked initially as an emergency medical technician. He qualified as a paramedic around 1996. During his career, he has attended all kinds of emergency, including over twenty fires. He asserted that upon receipt of every emergency call, the paramount duty is to travel to the scene and provide necessary medical treatment as quickly as possible. On the date in question, the emergency call was received at 10.51pm and it included an element of "*persons reported*", which signified that there were possible victims inside the burning building. The Plaintiff and his colleague travelled to the scene, arriving at 11.04pm.

[3] Access to the premises in question was via a laneway, which was almost completely blocked by a fire appliance, in a reversed position. The evidence established that the total breadth of the laneway, including a small earthen bank to one side, was some 9 ft. 4 ins., while the appliance was 8 ft. wide. While the breadth and height of the earthen bank were not constant, these were approximately 12 ins. and 16 ins. respectively. The bank abutted a garden wall which was, in the main, some 21 ins. higher. The bank was of a rough and uneven composition and the adjoining laneway also had a somewhat rough, stony surface.

[4] The Plaintiff testified that in cases of fire emergency, there was an established practice, which was that upon arrival of the paramedics at the scene, Fire Service personnel would either (a) escort and guide them to those needing medical attention or (b) convey the latter to the paramedics. However, neither of these courses was pursued on this occasion. The Plaintiff recounted the following dealings with Fire Service personnel at the scene:

(a) Upon arrival, he asked a fireman how he and his colleagues could get to the patients. This elicited a response that the fire appliance could not be moved.

(b) Next, the Plaintiff asked a fire officer whether the vehicle could be moved. The officer replied, in terms, that he would make enquiries and would then provide appropriate information. The Plaintiff agreed that this officer instructed the paramedics to remain where they were.

(c) The fire officer did not return. Rather, a fireman approached the Plaintiff and his colleague, informing them that a mother and child had smoke inhalation and needed medical attention, though their condition was not "*too bad*". This person also suggested that access could be gained via the adjacent house. The Plaintiff replied that this was not possible (he and his colleague having checked this in the interim). The Plaintiff asked whether the patients could be brought to where he was, but the reply was negative. No mention was made of the updated status of the instruction given previously to the Plaintiff, recorded in (b) above and it was not repeated.

The Plaintiff further testified that, in total, he enquired several times whether the fire appliance could be moved, generating a negative response each time.

[5] The Plaintiff's evidence was that following the third of the conversations described, he decided that he would have to make his way to where the patients were. He was carrying two bags of equipment over his left shoulder. These had to be held with his left hand. He stepped up onto the earthen bank and "shimmied" along, supporting himself by using his right hand on the appliance. He asserted that the scene was in total darkness and claimed that the surface was very uneven. In this way, he progressed along the length of the vehicle, reaching a better illuminated

area. He put his foot down, with a view to proceeding along the laneway, whereupon he stepped onto a fire hose, went over on his ankle and fell. He was adamant that he could feel the hose when he stepped onto it and saw it after falling. He shouted a warning to his colleague, who was following him along the earthen bank. His colleague then gave him attention. There were two or three firemen around.

[6] It was put to the Plaintiff that during the third of the conversations described, a fireman informed him that access to the burning house was available through the garden and building of the adjoining premises, a single storey dwelling. The Plaintiff agreed that this suggestion was made, but testified firmly that both he and his colleague had already investigated this possibility, while they were waiting, thereby ascertaining that there was no access through the garden on its own (which was common case) and that the bungalow was unlit and appeared to be "*closed*", with no sign of life. The Plaintiff was adamant that the rough earthen bank was the only access option available to his colleague and him.

[7] The Plaintiff was questioned about two letters written by his solicitors, which were admitted in evidence without objection. The first is a letter dated 26th January 2006 (despatched with admirable expedition), addressed to the Defendant, intimating a possible claim for damages. This letter, appropriately, incorporates the essential complaint that the Plaintiff was at no time warned about the presence or position of "*fire hoses*". The letter further asserts that at the scene the "Chief Fire Officer" advised the Plaintiff that he "*… would have to make his way along the wall to gain access*". The letter continues:

> "*As he jumped from the wall he landed on a number of fire hoses and sustained injury to his foot and ankle*".

Secondly, there is a letter dated 1st April 2008 from the Plaintiff's solicitors to the Defendant's legal representative, stating:

> "*At consultation of* [sic] *4th March 2008 it became obvious that counsel had misinterpreted the instructions given to him and accordingly we enclose amended Statement of Claim …*
>
> *When* [the Plaintiff] *came to the end of the grass verge he stepped down … and put his foot on a fire hose which was coiled and snaked. This caused him to go over on his ankle and he fell. The area was not properly illuminated either adequately or at all.*"

When questioned about these letters, the Plaintiff was adamant that he did not jump, or "*spring*", from the earthen bank with both feet. Rather, he *stepped* off it and this step, his first, brought his foot into contact with the hose. It should also be

recorded that the evidence before the court included the record of the Ulster Hospital Accident and Emergency Department, which notes the Plaintiff's attendance there at 23.58 hours on 19th January 2006 and documents the following history:

> "***Stepping off wall, foot on fireman's hose,*** *went over on right ankle …*".

[My emphasis].

[8] The Plaintiff's case was corroborated in most material respects by his fellow paramedic, Mr. Brown. In particular, he gave evidence of the third of the communications with the Defendant's personnel recorded in paragraph 4(c) above and confirmed that the fireman in question did not articulate any instruction to the Plaintiff and Mr. Brown to remain where they were. He added that, for the reasons which he provided, he arrived at the scene of the Plaintiff's accident one minute "*tops*" after the Plaintiff had begun to progress along the earthen bank. Describing his own progress, he testified that this was an "*awkward*" manoeuvre, during which he had to use both hands to balance against the fire appliance. Furthermore, when treating the Plaintiff, it was necessary to deploy his issue torch on account of the poor lighting. He was adamant that there was no visible displayed lighting in the adjoining residential property. Significantly, he corroborated the Plaintiff's testimony that when he came into view, the Plaintiff warned him to watch "*… where I was stepping down*". He further testified that he observed a hose connecting the fire appliance with the relevant property.

[9] Evidence was also given by Mr. McNeill, the Northern Ireland Ambulance Service Director of Operations. He testified that where there are "*persons reported*" in an emergency call (as here), the primary responsibility of crew members is to deal with casualties. In a fire emergency, this can include attempted resuscitation and triage measures. By convention, the relevant senior fire officer is considered to have responsibility for the safety of the scene. By further convention, upon arrival at the scene the paramedics should be either escorted by fire service personnel to the casualties or, if this is not possible, the fire service personnel should convey the casualties to the paramedics. He emphasized that the paramount duty imposed on the paramedics is not to be regarded lightly. Any failure to properly discharge this duty can, *inter alia,* have disciplinary implications, may generate criticisms in the Coroner's Court and can give rise to public outcry. It was common case that fire service personnel are aware of this duty. Mr. McNeill further testified that, by well established practice, fire service personnel should warn paramedics of any potential threat to their personal safety. There was no real challenge to any aspect of Mr. McNeill's evidence.

[10] The Defendant's representatives readily agreed that the means of access along the earthen bank was irregular and unsatisfactory. Unsurprisingly, they accepted, in terms, that it was unsafe. Most of them testified that the lighting both to the side of

the parked fire appliance and at its rear (i.e. on the "far side" from the perspective of the Plaintiff and Mr. Brown) was of poor quality. Indeed, darkness was the explanation provided by one witness (Mr. Ferguson) for his inability to describe what the Plaintiff stepped onto, in transit from the earthen bank to the laneway. The same witness (Mr. Ferguson) described the corner area of the parked fire appliance, where the Plaintiff was attempting to descend, as "*a blind spot*". He confirmed that the Plaintiff did not jump – rather, he stepped off with one foot. The only witness who purported to describe the Plaintiff's actions as a jump was Mr. Allen. In my view, Mr. Allen was an honest witness. However, given the totality of the evidence from both parties and assessing the quality of the witnesses, I find that he was simply mistaken about this, being reinforced in this finding by Mr. Allen's written statement, made one week later, which makes no mention of jumping and, rather, describes how the Plaintiff "*stumbled*" from the higher surface to the adjoining laneway. Moreover, significantly, this statement makes specific mention of the hose reel, suggesting to me that Mr. Allen was associating this with the Plaintiff's fall.

[11] I am satisfied, firstly, that there was a sufficient relationship of proximity between the Plaintiff and the Defendant's employees to give rise to a duty of care on the part of the latter owed to the former. The determination of this action hinges on the content and scope of this duty. It is clear that the Defendant's employees were acting in the course of their employment at all material times, with the result that the Defendant must be held vicariously liable for any tortious conduct by them. The conduct of the firemen and fire officer in question is to be measured by the barometer of the hypothetical reasonably prudent fire-fighter, taking into account the prevailing circumstances.

[12] The Plaintiff has satisfied me, on the balance of probabilities, that the essential core of his account of events is correct. I consider him to have been an impressive and basically truthful witness, corroborated in all essential respects by two equally frank and persuasive witnesses, Mr. Brown and Mr. McNeill. Furthermore, there was no challenge to the evidence about established practices and conventions vis-à-vis the two agencies concerned, which I accept.

[13] The Plaintiff's case, economically and realistically, resolved to two basic complaints of negligence. The first is that the fire appliance should have been moved. I find that the evidence fails to establish either that this was a feasible option or, if feasible, that it could have been carried out precisely when requested by the Plaintiff and with sufficient speed to satisfy the Plaintiff and his colleague that it would be safe and appropriate for them to remain inert in the interim, neglecting the two casualties. I find further that even if it was feasible to move the fire appliance at the time in question and expeditiously, it was not negligent to fail to do so, given the availability of the access along the earthen bank which could be negotiated successfully if particular care were taken.

[14] The second basic complaint of negligence was that of a failure to provide the Plaintiff and his colleague with appropriate warnings, advice and information. In

essence, it was contended that they should have been specifically warned about the conditions and topography in the immediate vicinity of the rear of the fire appliance. Linked to this is the question of whether the Plaintiff should have been provided with some physical escort or assistance. I find, firstly, that the former complaint is made out in the circumstances. I consider the two main factors to be the presence of a dark coloured hose on the ground, adjacent to the bank and the poor illumination. A warning about the prevailing conditions and topography, in particular the drop from one surface to the other and the presence and position of the hose on the lower surface would have been simple, undemanding and cost free. Furthermore, the Plaintiff's anxiety to reach the casualties was manifest to the fire service personnel concerned. I consider that the hypothetical reasonably prudent firemen and fire officer would have provided a warning or warnings of this kind to the Plaintiff and his colleague. Further I find that this omission was causative, in the sense that it made a material contribution to the Plaintiff's fall and ensuing injury. This omission, accordingly, constituted a failure to take reasonable care for the safety of the Plaintiff in the circumstances prevailing, giving rise to a finding of negligence against the Defendant.

[15] I also find that the Defendant was negligent on the further, freestanding ground that a simple escort and/or physical assistance should have been provided to the Plaintiff during the very brief moments when the Plaintiff was at risk of suffering the kind of accident which materialised. This discrete failure was, in my view, in breach of the established practices and conventions, about which there was no controversy.

[16] Was there any contributory negligence on the part of the Plaintiff? Firstly, the suggestion that there was an alternative safer means of access available to the Plaintiff and his colleague through the adjoining residential property is based on evidence which I find flimsy, half hearted and unpersuasive. Secondly, bearing in mind the elapse of time, the Plaintiff's overarching responsibilities to the casualties and the failure to repeat the initial instruction to him to remain where he was, I do not fault him for the decision which he made subsequently to proceed to where the casualties were. The third, and final, issue in this respect concerns the Plaintiff's conduct in attempting the transition from the higher surface to the lower one. In this respect, the Plaintiff was disposed to accept that he was proceeding with some speed, in circumstances of poor underfoot conditions and manifestly inadequate illumination. This, in my view, required of him enhanced attention, care and concentration, which would have been of momentary duration only. The Defendant, in my judgment, has discharged the burden of establishing some failure on the Plaintiff's part to take reasonable care for his safety, in this respect. I measure this at 25%.

[17] According to the hospital records, the Plaintiff suffered a spraining injury of his right ankle. He was not admitted. Radiological examination confirmed the absence of any bony injury. Crutches were provided. Treatment included physiotherapy. Subsequent progress was satisfactory. The Plaintiff testified that he

was off work for around ten weeks. In my view, he tended to minimise the nature and impact of his injury and its enduring sequelae, which I consider relatively slight. Mr. Wallace FRCS diagnosed a "*significant twisting and spraining injury*" of the right ankle. Referring to the findings of a MRI scan, Mr. Wallace opined that there are "*features on the lateral aspect which would be consistent with a significant straining injury to the ankle*". He acknowledged that there could be some residual discomfort at a relatively low level and did not challenge the Plaintiff's complaints in this respect, describing the symptoms as an "*irritation*", rather than generating any significant disability. The Plaintiff has resumed his pre-accident hobby of golf. One of his consistent complaints has been that driving can give rise to an aching sensation on the inner side of the ankle, which was considered by Mr. Yeates FRCS to be the site of a slight sprain, coupled with a ligamentous injury to the outer side.

[18] I measure general damages for pain and suffering and loss of amenity, past and future, in the amount of £10,000. To this must be added the agreed special damage of £1,399. To reflect the finding of contributory negligence, both general damages and special damage will be reduced by 25%. Interest will be added to each of these components at the appropriate rates. The parties should agree the appropriate calculations and submit them to the court office by close of business on 11 November 2009. Taking into account that there was no attempt to remit the action at any stage, while also bearing in mind the "*special cause shown*" provision in Section 59(2) of the Judicature (NI) Act 1978, I award the Plaintiff costs on the County Court scale and High Court outlays. It seems to me that this strikes a fair and reasonable balance in the circumstances.

[19] There will be judgment for the Plaintiff accordingly.