

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

SUZANNE STEWART

Plaintiff;

-and-

MIROSLAV PIATER

Defendant.

MAGUIRE J

[1] The plaintiff in this case was born on 1 May 1950. She is now 63 years of age. She was involved in a road traffic accident on 14 November 2007. At that time she was aged 57.

[2] The plaintiff began proceedings against the defendant on 7 September 2010. A defence was filed on 14 December 2011. In it the defendant admitted that he was guilty of negligence. At the hearing before the court on 15 October 2013 the court was asked to determine the damages which ought to be awarded to the plaintiff given that liability was not an issue.

The plaintiff's account

[3] The plaintiff was born in north Wales. Her family came to Northern Ireland when she was school age. After leaving school the plaintiff received training in secretarial work and her first job was as a typist. She is a married woman and has three children all of whom are grown up. At some point, it appears, the plaintiff did a part-time degree in "general studies" at Queen's University, Belfast. For a time thereafter she worked as a family support worker for Bryson House in Belfast. Most recently she was employed as a family support worker by the Northern Health and Social Care Trust ("the Trust"). At the time of the accident she was employed by the Trust in this capacity. She had been in this job for several years.

[4] The plaintiff's accident occurred around 9.00 am in the morning. She was driving her car along Niblock Road in Antrim. The defendant's vehicle came at her from the other direction. She said she could see his vehicle coming. The defendant was on the wrong side of the road. Before the accident the plaintiff said she thought she was going to die. In the event, a collision occurred. This activated her vehicle's airbag. This created dust, which mistakenly the plaintiff thought was smoke. The plaintiff was unable to get out the driver's door. For a moment she thought she might die in a fire in the car. Fortunately, she was able to get out of the car via the front passenger door. Undoubtedly the episode was a distressing one.

[5] After the accident the plaintiff was taken to Antrim Area Hospital for an x-ray to her neck. When taken this showed no bony injury. She was released home. The plaintiff was shaken up by the accident. On the following day she told the court her whole body was sore. She had pains in her neck, right hand, left thumb and in her knees. At the time the plaintiff had already been suffering from two underlying conditions *viz* Carpal Tunnel Syndrome affecting the right hand and arthritis in the right hip. In her evidence to the court the plaintiff indicated that in respect of both of these conditions the accident resulted in an exacerbation of the injuries at these locations. The applicant also said that as a result of the physical injuries sustained in the course of the accident she was unable for a time to engage in her past-time of riding horses.

[6] The plaintiff was off work as a result of the accident for approximately one month. When she returned to work her evidence to the court was that she felt she was not coping well and felt on edge. She thought she was living on her nerves. She said that at times she found it difficult to sleep. In particular she said that when driving she was anxious.

[7] In October 2008 the plaintiff underwent an operation in respect of the Carpal Tunnel Syndrome in relation to her right hand. The operation was not as a consequence of the accident. In her evidence to the court she said the operation was generally successful.

[8] Because of her anxiety driving the plaintiff went to see her general practitioner in November 2008. As a result she was referred to psychologists for a course of Cognitive Behavioural Therapy ("CBT"). She underwent a series of sessions of CBT. In August 2009 the sessions terminated. At that stage the psychologists treating her offered the view that after the course her driving was "more relaxed and pleasurable" but it seems clear that the underlying anxiety had not dissipated altogether.

[9] In the course of the plaintiff's employment it is clear that she had to drive not just to and from her place of work but also between the houses of clients and various locations to which she had to take clients. After the accident increasingly the plaintiff was finding this difficult. The problem was accentuated by the fact that over time there had been an increase in the plaintiff's workload and a concomitant

increase in the driving duties she had to perform. While her employer – the Trust – did seek to make accommodations with her, designed to mitigate her travel anxiety, by mid-2009 it had become clear that the plaintiff would be likely to be unable to sustain employment which had associated with it such a substantial element of driving.

[10] In these circumstances a decision was made by the Trust to end the plaintiff's employment as a family support worker. Her employment was terminated in November 2010. Since that time the plaintiff has not been in employment.

[11] In her evidence to the court it is clear that the plaintiff has made no effort in any serious way to address the issue of obtaining alternative employment not involving a substantial driving component.

Heads of damages

[12] The heads of damages which are at issue in this case are not themselves the subject of dispute and are as follows:

- (i) It is accepted by the defendant that damages will be payable for the physical injuries suffered by the plaintiff as a result of the accident.
- (ii) It is also accepted by the defendant that damages will be payable for the mental injuries suffered by the plaintiff as a result of the accident.
- (iii) There is a financial loss claim in the case which is heavily disputed.
- (iv) Both parties are agreed that there is a recoupment sum, which is subject to reimbursement to the plaintiff's employer, of £404.25.

Physical injuries

[13] The plaintiff's physical injuries can be divided into three categories. First, there are a number of musculo-ligamentous injuries which she sustained in the accident. These are described in the reports of Mr Garstin, consultant surgeon. He notes that when the plaintiff went to hospital she was in shock but made no other complaints. As noted above, she had an x-ray to her neck on a cautionary basis which demonstrated no bony injury. She was reassured and discharged to the care of her GP. Mr Garstin accepted that on the following day the plaintiff was sore and that she at that time was making specific complaints relating to her neck, right hand, left thumb and both knees. As a result of these complaints it appears that some days later the plaintiff attended her general practitioner and was prescribed painkillers. As already noted she was off work for a month. The plaintiff claimed to Mr Garstin that her neck movements were stiff and restricted but she accepted that after two weeks her symptoms started to improve. It was Mr Garstin's opinion that in respect of the various particular symptoms these would largely resolve. While the recovery period for each injury site differed, overall he thought that the bulk of the injuries would have resolved in less than a year though he thought some would have resolved in a much shorter period.

[14] The second category of physical injury related to a pre-existing condition which the plaintiff was suffering from at the date of the accident. This injury was longstanding and is described as a Carpal Tunnel Syndrome relating to her right hand. Mr Garstin says that this injury was aggravated for approximately three weeks after the accident. At the end of this period according to him the condition of the right hand would have returned to its original state. As noted above, this injury was later the subject of an operative procedure in October 2008.

[15] The third category of physical injury relates to aggravation for a short period of a pre-existing hip injury. This injury, which had brought about degenerative change, long pre-dated the accident. The aggravation does not appear to have been significant.

[16] Mr Halliday a consultant orthopaedic surgeon, saw the plaintiff after 13 months from the date of the accident. In broad terms, this report reiterates themes found in Mr Garstin's report. Mr Halliday felt that in the accident the plaintiff had suffered a wrenching injury to her spine. There was also bruising to her knees, an exacerbation of the symptoms of the Carpal Tunnel Syndrome relating to the right hand, and pain at the base of the left thumb. All of these injuries appear largely to have settled by the time the plaintiff saw Mr Halliday.

[17] The court also had a report before it from Dr Gary Wright, a consultant rheumatologist. In his view the plaintiff had sustained a whiplash injury and musculo skeletal injuries to her upper limbs. He accepted there had been an exacerbation of her pre-existing Carpal Tunnel Syndrome relating to her right hand. In Dr Wright's view the plaintiff made a good recovery in respect of the operation to the right hand. When he saw the plaintiff some 13 months after the accident he felt there were some still on-going symptoms related to the musculo skeletal injury.

[18] Mr Yeates, consultant orthopaedic surgeon, saw the plaintiff on behalf of the defendant some 4½ years after the accident. At this time the plaintiff was complaining of pain around her right hip. He notes "her neck settled quickly ... around two months at the most." Her knees "were sore for between 6-8 weeks before settling down ...". Her left thumb was painful for up to two years "... because she kept catching it on objects".

[19] In his opinion, Mr Yeates did not think that there had been an exacerbation of any pre-existing hip condition. In his view any inability or restriction in respect of her driving was "related more to anxiety than the ... physical consequences of the Carpal Tunnel Syndrome. The subject accident itself had not led to any difficulties when driving other than during the first 4-6 weeks".

[20] The court has carefully considered the plaintiff's evidence in respect of her physical injuries together with the detailed reports of the four different consultants

already referred to. It has also kept in mind the loss of her pleasure in respect of horse riding for a period.

[21] The court is satisfied that the plaintiff did sustain relatively low level musculo skeletal injuries to the neck, left thumb and both knees and perhaps also to the left elbow. The period over which these injuries subsisted was modest: in some cases for no more than a matter of weeks though in others in or around the one year mark.

[22] The court is also willing to accept that in addition there was an exacerbation of symptoms connected to the Carpal Tunnel Syndrome relating to the right hand for a short period.

[23] The court is less certain about the exacerbation of her pre-existing hip condition. It notes Mr Yeates's view that this was not related to the accident. However even if it was, the court is of the view that it was not a significant injury.

[24] Overall the court assesses the plaintiff's physical injuries in financial terms at £10,000.

Mental injuries

[25] In addition to the plaintiff's physical injuries, it is accepted by both sides that the plaintiff also sustained psychological suffering as a result of the accident. Each side commissioned a report from a consultant psychiatrist.

[26] To a certain extent, both consultants accept that in the aftermath of the accident the plaintiff was anxious and tense and nervous when driving. This made her irritable and to a degree disturbed her sleep for a time.

[27] For the plaintiff, Dr Egan diagnosed her as presenting with a mixed pathological anxiety and depressive psychological stress reaction. By the date of Dr Egan's first report (he saw her in December 2008 just over a year after the accident) he felt that some of her symptoms had eased. He thought as regards others there would be a pattern of slow improvement. She suffered, in his view, from what he described as "travel anxiety" which after a year was "still appreciable".

[28] Dr Egan's second report is dated April 2012 - nearly 4½ years after the accident. Again he referred to the plaintiff suffering from a mixed pathological anxiety/depressive psychological stress reaction. In his view the general improvement he had earlier expected had turned out to be limited. Dr Egan continued to use the phrase about the plaintiff that she was suffering "travel anxiety". He thought that the plaintiff had undergone "very substantial psychological suffering since the accident". However he thought that in the medium term the prospects for her mental health were reasonable.

[29] Dr Chada examined the plaintiff for the defendant. Unfortunately her examination was not until well over three and a half years from the date of the accident. In her report she appears to accept Dr Egan's reference to the plaintiff suffering from travel anxiety. In her opinion the plaintiff was coping reasonably well up to the time when changes in her work increased the extent of the driving she had to perform. Dr Chada appeared to accept that the travel anxiety persisted. She did not dispute the assessment of the Trust that due to her driving difficulties the plaintiff could not continue on with her job as a family support worker. She did, however, say that the circumstances pertaining to her driving did not preclude the plaintiff from returning to work in another capacity which did not involve significant driving.

[30] The court accepts that in this case the plaintiff did suffer from travel anxiety which was brought about by the accident. Initially this anxiety was at a moderate level. However it appears that over time it did not resolve and that it has been responsible in large part for the plaintiff being unable to continue her job as a family support worker because of the driving component involved in it. It is clear that the plaintiff is able to drive a car to and from places in her local area and that she can undergo longer journeys. But it appears that the extent of the driving required as a family support worker and the fact that that driving duties had increased over time as an element within her job has meant that she is unable to continue working in this capacity.

[31] The court accepts that the anxiety continues at a low level to this day but it does seem to the court that it will likely lessen still further and that the termination of the litigation may be a factor which might help bring it to an end.

[32] The court is of the view that it should award damages under the heading mental injuries to represent a figure to compensate for the relatively low level travel anxiety which has gone on for a now substantial period.

[33] The valuation the court puts on this element of the claim is £15,000.

Loss of earnings

[34] The final issue in this case relates to loss of earnings.

[35] It is agreed between the parties that it was as a result of the plaintiff's travel anxiety that she could no longer continue to work as a family support worker for the Trust. This was especially so because of the fact that in recent years the driving element within her post had become more extensive.

[36] As noted earlier in this judgment, the plaintiff was unable to provide any evidence that she had actively considered seeking employment which did not involve, as a significant element, driving. The documents contained in the papers before the court from the Occupational Health Service of the Trust clearly draw a

distinction between the plaintiff being unable to work in a predominantly driving based job and her being able to work in other jobs. It seems to the court that there is no reason why the plaintiff could not do a job which does not have driving as a substantial element within it. This seems to have been the view of Dr McGread who saw the plaintiff on behalf of the Occupational Health Service of the Trust. It also is implicitly the view of the various consultants who have provided reports in this case, with the possible exception of Dr Egan.

[37] The plaintiff, both sides agree, is under a duty to mitigate her loss and if she fails to do so the court must take account of this.

[38] The evidence before the court shows no attempt by the plaintiff to mitigate her loss. As already noted, she has not sought to apply for any job since being let go by the Trust. She has not sought even to make enquiries about jobs from the Job Centre or a private employment agency. The above is so, notwithstanding the fact that the plaintiff seems to have been, and indeed appears to be, a person who could do a range of jobs not involving extensive driving.

[39] An important exchange, it seems to the court, occurred between the plaintiff and Dr Chada during the latter's assessment of her in August 2011. Dr Chada records the plaintiff as saying that she was not looking for a job, notwithstanding that she accepted at this time that she could be working.

[40] In these circumstances Mr Maxwell for the defendant has argued that the court should not allow any figure for the plaintiff's loss of earnings from the date she stopped working for the Trust in November 2010.

[41] Mr Bentley QC (with whom Mr Bernard Fitzpatrick appeared) for the plaintiff argued that the court should not penalise the plaintiff in the absence of the defendant adducing evidence to the effect that if the plaintiff had sought employment she would have got a job. Alternatively, he argued that the court should make a broad assessment and allow at least part of the plaintiff's economic loss claim.

[42] The court has not found this issue easy. While it accepts the broad proposition that the plaintiff ought to mitigate her loss, in this case by seeking other employment which she could take up, there is no evidence before the court of the state of the job market for a woman of the plaintiff's age, skills and experience in respect of the relevant period. Either party could have led evidence of this sort.

[43] The court, in the absence of such evidence, has little to guide it to a conclusion in this area. On the one hand, it feels that it may be unjust to the defendant to allow the plaintiff's claim in full but it might also be unjust to expect that the plaintiff could have obtained suitable alternative employment speedily and without difficulty.

[44] Taking account of all of the material above and doing the best it can, the court accepts that in the economic climate which would have prevailed at the end of the last decade there would likely have been at least some delay in achieving employment for even those who came to the job market with a range of skills and experience, such as the plaintiff. While the court believes that with reasonable persistence a person in the position of the plaintiff would be likely to achieve employment, this would probably not have been immediate.

[45] In these circumstances, while accepting that any judgment of the court on this point will be necessarily rough and ready, the court will allow the plaintiff a period of loss of earnings of eighteen months.

[46] In financial terms, given that there is an agreed figure of £8316 as representing the plaintiff's annual loss of earnings, the court will award the sum of £12,474 under this head.

Recoupment

[47] To the figures above will be added the sum of £404.25 recoupment.

Conclusion

[48] The court awards the plaintiff overall damages, made up in the way described above, of £37,878.25.