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

Delivered: 28/06/00

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

MARGARET LOUGHRAN

Plaintiff;

and

ROBERT HUNTER

Defendant.

COGHLIN J

The plaintiff in this case, Mrs Margaret Loughran, was born on 22 October 1955 and for the past 20 years she has been employed as a history teacher at a local grammar school. On 17 December 1998 she was involved in a road traffic accident for which the defendant has admitted liability and the only issue before the court was that of damages.

As a result of the accident the plaintiff sustained a number of personal injuries which included:

(*i*) An abrasion to the inner lower lip.

(*ii*) A 2 cm laceration to the right knee with a 2 cm abrasion over the patella.

(*iii*) A 2 cm abrasion over the left olecranon process at the elbow.

(*iv*) Significant bruising over the left hip.

(*v*) An acute sprain or whiplash type of injury to her neck.

(*vi*) Injuries to her right hand with a fracture of the right fourth metacarpal and tenderness over the scaphoid.

(*vii*) A psychiatric reaction to her injuries described by Dr Fleming, consultant psychiatrist, as a Depressive Adjustment Disorder in respect of which there was a considerable improvement upon the plaintiff's return to work some 4½ months after the accident.

Apart from her right hand and her neck, the other injuries sustained by the plaintiff cleared up within a reasonable period and have not resulted in any persisting symptoms. Mr Campbell, consultant surgeon, recorded that on the date of his examination on 30 March 1999 the plaintiff's neck had improved although it had been quite stiff and sore for about 2 months. She did not have any physiotherapy for her neck although it does appear that she may have had some degree of flare up when she attended her own GP in December 1999.

However, far and away the most significant aspect of the plaintiff's injuries was the damage to her right hand. This has been dealt with in detail in the reports from Mr Calderwood, consultant orthopaedic surgeon, and Dr Gillespie, consultant in Anaesthetics and chronic pain relief. After the accident the plaintiff was reviewed at Mr Calderwood's out-patients' clinic at the South Tyrone Hospital and, on 8 February 1999, Mr Calderwood's registrar, Mr Wilson, noted marked stiffness of her fingers and thumb, increased sweating over the hand and a slightly purplish hue to the skin. He thought that the history and examination was very suggestive of Reflex Sympathetic Dystrophy. This is a poorly understood, but extremely serious condition which, if left untreated, leads to irreversible dystrophy of the affected limb.

The plaintiff was seen by Mr Calderwood on 8 February 1999 who confirmed the

diagnosis and referred her to the Pain Clinic where she came under the supervision of Dr Gillespie. Dr Gillespie saw the plaintiff on 24 February 1999 and, following examination, he arranged for an urgent stellate ganglion block to be carried out. This is a therapeutic procedure involving a deep injection into the throat, the aim of which is to anaesthetise or "block" activity in the Sympathetic Nervous System. It is an unpleasant experience for a patient to undergo and the plaintiff has been subjected to 2 such "blocks" together with a prolonged period of occupational therapy. Dr Gillespie felt that this intervention had just avoided irreversible deterioration and I have no doubt that the plaintiff was extremely fortunate that her condition was so accurately and timeously diagnosed by Mr Wilson. The plaintiff was directly treated by Dr Gillespie from 24 February to 15 March 1999. She did not attend 2 appointments on 21 April and 4 August 1999 and she was discharged by Dr Gillespie after his medico/legal examination on 9 September 1999.

As a consequence of his medico/legal examination Dr Gillespie considered that the outcome had been "satisfactory" in that the dystrophic phase had been averted and that the 2 blocks had produced sustained improvement. In particular, there had been no further deterioration after the second block and there was no complaint of burning pain or hypersensitivity. The plaintiff herself reported improvement in the condition of her hand and Dr Gillespie noted that she had returned to work.

Dr Gillespie gave evidence that there remained a risk of further deterioration resulting from trauma or further surgery and, in the event of such deterioration, further blocks might be required.

When Mr Calderwood carried out his second examination of the plaintiff on 16 December 1999 he noted the treatment that she had received at the Pain Clinic in the City Hospital and the Occupational Therapy Department at the Mid-Ulster Hospital.

Mr Calderwood found restriction of movements of the right forearm and wrist together with obvious swelling of the M.P. joints and lack of extension of the P.I.P. joints of the fingers. When the plaintiff closed her fingers into the palm of her right hand there was a flexion gap of between a quarter and a half an inch in respect of the index, middle and ring fingers. Mr Calderwood found a grip for large diameter objects was reasonable, but that there was weakness of grip for small diameter objects and that tight gripping function was weak.

I note that when the plaintiff demonstrated movements of her hand and wrist for the court during the hearing there was virtually no flexion of the right wrist, although she appears to have demonstrated some 50% flexion when she saw Mr Calderwood in December 1999.

In the "Opinion and Prognosis" section of his report, Mr Calderwood referred to some improvement, but thought that the plaintiff was left with "significant disability". He also noted that "overall the function of her hand is still restricted. I will regard her as having a moderate degree of disability affecting the hand". He thought that she might have very slight marginal improvement over the next 6 months, but that otherwise he would expect her to have ongoing symptoms.

In the course of giving evidence before me the plaintiff described a number of activities which had been adversely effected as a result of her hand injury. She told me that she needed a specially thickened pen to write and that she was only able to write for 10 minutes at maximum. Her ability to use the keyboard of her word processor was limited to 15 minutes. At school she was assisted with this activity by the secretary while her daughter gave her some help at home. She said that she was unable to hold a tennis racket and that she missed playing tennis with her children. She also described how she was no longer able to carry out painting and papering in her home, that she could not do the baking, cut bread or lift a roast out of the oven and that her ability to perform heavy housework had

been severely effected. The plaintiff said that she felt that there were "very few major tasks" that she was able to do about the house.

In her direct examination the plaintiff gave evidence about the large number of social activities in which her children were involved outside the home and she emphasised the fact that she was only fit to do the drive from her home to school and could no longer "ferry" the children as she had before the accident. She said that her ability to drive was limited to about "20 minutes". When asked about her ability to perform various household duties she volunteered, by way of example, that she "wouldn't push a shopping trolley".

However, in cross-examination, the plaintiff conceded that she had driven for longer than 20 minutes although, initially, qualifying this by emphasising that she did so only in "an emergency". She then admitted that she would drive 20 miles which could take 20 to 30 minutes and that she might have visited Magherafelt in the week before the hearing which would have been a drive of 30 minutes each way. On a Saturday her oldest child goes to orchestra practice in Antrim, which is a journey of about one hour from the plaintiff's home. Initially, she said that she had never performed that journey but, after further questioning, she agreed that "Saturday week ago" she had driven to Antrim and that she might have made this journey twice in the last year. At first, she maintained that she would only go shopping if she was accompanied and that she normally shopped in Super Valu in Cookstown. She then agreed that she had driven there and shopped "on my own" and that she had lifted the bags out of the trolley and into the boot of the car.

I was not impressed with the reliability of the plaintiff's evidence as to the extent of her disability and I thought that she was particularly evasive when being cross-examined about her ability to drive and shop at the supermarket.

Financial loss

(*i*) It is agreed that the plaintiff should recover £100 in respect of her insurance excess payment.

(*ii*) The plaintiff's employers, the local Education & Library Board, are seeking repayment of a sum of £5,743.50, but the parties requested that I should not deal with this aspect of the case until they had a further opportunity to consider the nature and extent of any contractual obligation.

(*iii*) Since the date of the accident the plaintiff has paid her sister-in-law, Muriel Loughran, some £200 per month in return for carrying out housework and associated tasks. The plaintiff's sister-in-law attends the plaintiff's house on Mondays, Wednesdays and Fridays when she works from approximately 4.00 pm to 7.00 pm although, on occasions, she may work for an additional period. The plaintiff has continued to make these payments during holiday periods and during those weeks when her sister-in-law has only worked for 2 days. To date, these payments amount to £3,200 and I am prepared to allow this figure as reasonable in the circumstances.

(*iv*) Much of the debate between counsel in the case centred upon the extent of future financial loss. Muriel Loughran was 63 years of age in November 1999 and, apart from the housework assistance which she performs for the plaintiff, she is employed by the local Health & Social Services Board as a home help for the elderly. She intends to retire from her work with the Social Services Board when she reaches the age of 65 and looks forward to spending more time with her children and grandchildren and, in particular, to visiting her son in Australia. She told the court that she had initially worked 2 days a week for her sister-in-law, but by February 1999 this had increased to 3 days a week. The plaintiff gave evidence that, during the summer holidays, her sister-in-law's assistance was "never less than"

2 days a week and maintained that it was always 3 days a week during the school terms. The plaintiff later qualified this by stating that during July and August 1999 there was the "odd" week when her sister-in-law worked for only 2 days and it appears that there were also 2 weeks during the summer when her sister-in-law was on holiday. The plaintiff was adamant that she would not have employed a home help, but for the accident. She agreed that she might arrange for someone else to work 3 days a week when her sister-in-law retired. Muriel Loughran gave evidence that the current rate for home helps employed by the Health & Social Services Board was £5.11 per hour.

In opening the case on behalf of the plaintiff, Mr Fee QC submitted that a multiplier of 20 was appropriate to reflect the plaintiff's continuing disability for the rest of her life. He argued that, upon the retirement of her sister-in-law, the plaintiff would need full-time home help which should be measured on the basis of 3 hours a day 5 days a week. Fifteen hours a week at approximately £5 an hour produces £75 per week and when multiplied by 50 this would produce an annual figure of £3,750. Applying the multiplier of 20 would produce a total figure of £75,000.

It is clear from the medical evidence that, as a result of the accident, the plaintiff continues to suffer from significant disability and limitation of function of the right hand which Mr Calderwood, in his second report, described as both "significant" and "moderate". Mr Calderwood raised the possibility of "very slight marginal improvement" but, in practical terms, it seems to me that the plaintiff's disability is likely to be permanent. Unfortunately, Mr Calderwood does not appear to have been asked to comment upon the plaintiff's ability to perform her household work although opinions on this aspect of the case have been expressed by her GP and by Dr Fleming. As I have indicated above, I have reservations about the

plaintiff's assessment of her own disability.

In the circumstances, I propose to allow the following in respect of future financial loss:

(*i*) Continuing loss at the current rate until Muriel Loughran retires on reaching 65 in November 2001 18 months at £200 per month equals £3,600.

(*ii*) To take the youngest child up to the age of 18 I allow 9 hours a week at £5 an hour 48 weeks per annum over a period of 5½ years equals £11,880.

(*iii*) Thereafter I allow 6 hours per week at £5 an hour at 48 weeks per annum over the balance of the 20 year multiplier a period of 13 years equals £18,720.

General damages

In respect of the personal injuries and loss of amenity sustained by the plaintiff I award £40,000. In total, there will be judgment for the plaintiff for £77,500.

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JUDGMENT

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