



THE COURT OF APPEAL

Neutral Citation Number [2020] IECA 196

Appeal No. 2019/125

High Court Record No. 2016/6285 P

**Whelan J.
Faherty J.
Binchy J.**

BETWEEN/

HELEN POWER

PLAINTIFF/RESPONDENT

- AND -

WATERFORD CITY AND COUNTY COUNCIL

DEFENDANT/APPELLANT

JUDGMENT of Mr. Justice Binchy delivered on the 23rd day of July 2020

1. On 15th July, 2015, the respondent sustained an injury in a fall on the public roadway known as the Promenade, Tramore, Co. Waterford. The injury comprised a fracture of her left hip from which, in due course, she made a substantial, if not a full recovery. The respondent claims that she was caused to trip and fall by reason of the manner of construction and layout of speed bumps/speed cushions on the public roadway. The proceedings came on for hearing in the High Court before O'Hanlon J., sitting in Waterford, and were heard over a two-day period between 7th and 8th March, 2019. O'Hanlon J. delivered an *ex tempore* decision on 8th March, 2019. While I address the decision of the trial judge in more detail below, in summary she held that the speed bumps constituted a trip hazard, and that the respondent was caused to trip and fall because of the positioning and shape of the speed bumps, which were located immediately beside a pedestrian crossing. She held that it was reasonably foreseeable that the respondent would trip, in the manner described by her in her evidence. Accordingly, O'Hanlon J. found for the respondent and made an award in her favour in the sum of €62,500, made up of general damages of €60,000 and special damages of €2,500.
2. It is against that award that the appellant has brought this appeal, which is an appeal on liability only. The appellant accepts that the accident occurred in the manner alleged, that the respondent sustained a fractured hip as a consequence, and that the award of the trial judge in respect of those injuries is within the range (if at the upper end thereof)

appropriate for such injuries. The appellant, too, accepts the correctness of the quantum of the award.

The Evidence

Evidence of respondent

3. The respondent gave evidence that she lives on the outskirts of Tramore, approximately four and half kilometres from the accident locus. She has lived in Tramore for twenty-eight years. For about fifteen or sixteen years she and her family have hosted Spanish students during the summer. On the occasion of the accident, the respondent was accompanied by one such student. It was her intention to go to a particular café to get an ice cream. The area around the Promenade and the café was very busy. The respondent parked her vehicle in a designated parking space, perpendicular to the footpath, and on the same side of the road as the café. No expert evidence was led as to the distance from the respondent's car to the café but the respondent herself said it was less than 50 yards. The café is located almost adjacent to a pedestrian crossing which traverses the Promenade, and which was, at the time, parallel to and in close proximity to the speed bumps, of which there were four, two on each side of the road.

4. The respondent said that she instructed the student, named Alex, to go to the shop window at the café. She said that the area was very busy, and there were people walking everywhere including, she said, "all over the roads". Alex walked from the car to the footpath and went in the direction towards the café. The respondent considered that the footpath was so busy as to be at full capacity, and decided to walk along the roadway. She was asked by her counsel why she did not use the footpath, as Alex did, to which she replied:-

"Well I could have I suppose but the way I look at it I would have a better chance of getting a seat if I stayed out here, I had a better view. There was too many people around."

5. The respondent described walking along the Promenade until she came to the speed bumps, and she then walked onto the second speed bump i.e. the second from the footpath. She said that she was looking to see if there was a table available, in the café, and then her toe got stuck "in the middle". She was asked to explain this, and she said she thought that the speed bump was continuous. It appears from her evidence that she was caused to trip when she lost her balance in the gap between two speed bumps, either because she stubbed her foot on the edge of the first speed bump, i.e. the speed bump closest to the footpath, in the course of stepping off the second speed bump, or because of the change in levels as she stepped from the second speed bump into the gap between the two speed bumps. The respondent acknowledged that she was aware of the existence of the speed bumps having travelled over them many times (including twice before she parked her car, just before the accident) but she claims that she thought that the first and second speed bumps were a single continuous bump, and therefore that there would be no gap between them, and, therefore, no lip or raised surface on which to catch her foot or otherwise lose her balance.

6. The respondent also claimed that her view of the scene as she approached the speed bumps was obscured by reason of a car being parked beside them. She therefore was prevented from seeing that there were in fact two separate speed bumps on this side of the road, and not a single continuous bump. In cross examination it was put to her that the proximity of parked cars to the bump was irrelevant, because she had walked past all those cars by the time she walked on to the second speed bump and then turned right towards the footpath. She agreed that she walked past the cars which were on her right, but she did not notice that there were two separate speed bumps.
7. Under cross examination, the respondent also acknowledged that each speed bump was delineated by thick white lines. It was put to her that she should have used the footpath, or alternatively an outer passageway between the footpath and the road (which is for use by visually impaired pedestrians) and also that she failed to look where she was going as she walked from one speed bump to the next. In reply, the respondent said that, to use the footpath, she would have had to "beat" her way through the crowd, as it was so busy in the area at the time. There were many others walking on the road, rather than the footpath, for the same reason.
8. It was expressly put to the respondent that the pedestrian crossing had nothing to do with the accident, because she did not use it, and nor was she intending to use it. She confirmed that this was so.

Evidence of Mr. Flahavan (engineer)

9. Mr. Flahavan is a consulting engineer and was called to give evidence on behalf of the respondent. He informed the court that the purpose of the speed bumps was to slow down traffic approaching the pedestrian crossing. He explained the advantages and disadvantages of speed bumps/cushions over a single continuous speed bump. Speed bumps have the advantage that buses and public service vehicles, such as ambulances, can straddle the bumps. They have the disadvantage that motor cyclists rarely slow down at them. He said that the Department of the Environment Traffic Signs Manual specifies that there should be zig zag lines for sixteen metres approaching a pedestrian crossing (on either side), and parking should be prohibited on those lines. There were no such zig zag lines at all at this crossing. He also referred to the Department of Transport guidelines in the United Kingdom (the "U.K. guidelines") which recommend that speed bumps/cushions should not be used in the zig zag areas of pedestrian crossings, and generally should not be located where pedestrians are likely to cross the road. This is so that pedestrians are kept away from speed bumps in order to minimise the likelihood of tripping and falling over the bumps. In general, speed bumps constitute a trip hazard for the simple reason that they disrupt the uniformity of the road surface.
10. Mr. Flahavan also gave evidence regarding a change to the speed bumps that was implemented in 2016. They were removed or converted into a single continuous bump. Counsel for the appellant objected to evidence being given in relation to this change, because, firstly, it was not relevant to the circumstances obtaining at the time of the accident, and, secondly, because the change was brought about to accommodate a specific complaint about the speed bumps, which complaint had been made to the

appellant by a disabled road user. The trial judge allowed the evidence on the basis that she considered it might have a particular relevance having regard to the very high volume of pedestrians that use this area in high summer, and the likelihood that, at certain times, pedestrians would choose to walk along the road, rather than use the footpath, owing to the general busyness of the area. Other measures, including the installation of a railing, were also put in place in 2016 to regulate pedestrian traffic flow, apparently with a view to directing pedestrian traffic towards the pedestrian crossing. Mr. Flahavan was asked by counsel for the respondent whether, assuming that there is a traffic calming measure immediately beside the pedestrian crossing (as in this case), a continuous speed ramp or speed bumps are preferable from a pedestrian safety point of view? He answered that a continuous speed ramp would be preferable because it would slow down not just motorists, but cyclists also.

11. Mr. Flahavan also gave evidence as to the dimensions of the speed cushions. The height of the speed cushions he measured at 87mm (a little over 3 inches) and he found a slope of 15 degrees. The gap between each cushion he measured at approximately 600mm or two feet.
12. On cross examination, Mr. Flahavan accepted that the Irish guidelines regarding pedestrian crossings do not prescribe any distance as between a pedestrian crossing and speed bumps, or prohibit the provision of speed bumps inside the area identified by zig zag lines. This is notwithstanding that there are quite comprehensive Irish guidelines addressing these matters generally.
13. Counsel for the appellant put to Mr. Flahavan a proposition that he had also put to the respondent, i.e. that the pedestrian crossing had nothing to do with the accident, because the respondent did not use it and did not intend to use it. She had no need to do so because she was not crossing the road. Mr. Flahavan affirmed that that appeared to be the case.
14. It was further put to Mr. Flahavan that the vehicle that was parked adjacent to the speed bumps at the time of the accident was irrelevant because the respondent would have had to pass the vehicle before she stepped onto the first of the bumps. Again he affirmed that that was correct.
15. Mr. Flahavan agreed that there is a very high volume of pedestrian traffic in the area and that controlling the speed of traffic in the area is prudent, provided that it is done in the correct way. He accepted that speed bumps would permit an ambulance – which might be carrying a vulnerable person – to traverse the speed bump without causing the injured or ill person to jolt in the ambulance. Similarly, tour buses would be able to traverse the speed bumps without causing discomfort to passengers. Mr. Flahavan accepted that the modifications to the speed bumps were brought about in order to facilitate the use of the roadway by a particular disabled person for whom the speed bumps presented a very specific difficulty.

Evidence of Mr. Ken Walsh (engineer)

16. Mr. Ken Walsh, civil engineer in the employment of the appellant, was called to give evidence on its behalf. He explained that, prior to the installation of the speed bumps, there had been representations to the appellant concerning the speed at which vehicles were travelling the Promenade. The appellant looked at a number of options to control speed in order to enhance pedestrian safety. Speed bumps were preferred over a continuous ramp because they could be straddled by emergency vehicles such as ambulances and fire brigades, and would also better accommodate buses.
17. Mr. Walsh accepted that the departmental guidelines for an exclusion area around the pedestrian crossing (i.e. prohibiting parking 16m on either side) were not complied with in the layout of the pedestrian crossing on the Promenade. He said that the speed bumps were not designed to be walked upon by pedestrians, but at the same time he acknowledged that there was a high volume of pedestrian traffic in the area during the summer, including along the Promenade itself. The speed bumps were provided in order to slow down traffic before the pedestrian crossing. He was asked by counsel for the respondent if he accepted that a pedestrian walking along the Promenade in the direction of the speed bumps would have her view of them obstructed by vehicles parked in very close proximity. In reply he appeared to accept this, but he added that if it had been intended that pedestrians should walk the Promenade and onto the speed bumps, then alternative measures would have been considered to prevent accidents occurring on the speed bumps.

Evidence of Mr. Fullam (engineer)

18. The appellant called a Mr. Fullam, consulting engineer, to give evidence on its behalf. He said that speed bumps are very commonly used in this country as a speed calming measure. They have the advantage of slowing traffic down generally, while at the same time accommodating public service vehicles such as buses and ambulances. He expressed the opinion that the most foreseeable route for a person such as the respondent to take, to the café where she was going (having parked her vehicle) was to walk to the footpath, rather than to walk around her car and on to the public roadway. He expressed the opinion that, provided speed bumps are properly highlighted, they present no greater a danger to pedestrians than does a continuous speed ramp. If, as in this case, changes in levels are visible, the pedestrian should be able to adjust her walk as appropriate, to avoid losing her balance.
19. It seems likely that the respondent fell as a result of the change in levels between the two speed bumps. It is possible that her view of the change in levels, as she approached the speed bumps, was obscured by a parked car, but it would have been perfectly visible to her as she traversed from one speed bump to another, for obviously the obstacle of the parked car was no longer present at that point. None of this would be any different if the speed bumps were located sixteen metres away from the pedestrian crossing. Since she was walking on the public road, the respondent would still encounter the speed bumps just as she did on the occasion of the accident.

Decision of Trial Judge

20. In an *ex tempore* judgment delivered the day following the trial of the action, O'Hanlon J. found that the accident had been caused owing to the actions of the appellant. She stated:-

"[G]iven the user generally by both vehicles and pedestrians and given the close proximity of these cushions to the pedestrian crossing, and given the volume as described by the plaintiff of the number of pedestrians in the area at the time, it was reasonably foreseeable that this lady would trip, as described by her, trying to get from where she had parked her car to where she was going.

I would go so far as to say that looking at the pedestrian crossing and the parallel speed cushion at the time of the accident, looking at the photographs, they by any standard were sending confusing signals to the public because the public are being invited to cross on a pedestrian crossing, but the speed cushions being directly parallel, even though outlined in white quite starkly, had very little space between them for a person to walk. And there was nothing significant to indicate to a person such as the plaintiff that she could not walk across the speed cushions as much as attempted, which she didn't do, to walk across on a pedestrian crossing. So I think there was a general confusion about how that area was to be managed.
...

The reality of it is that she did not have a good clear way given the construction of the area in terms of the available parking and available paving and the volume of traffic to otherwise find her way in a safe manner to her destination. I do accept the evidence that the plaintiff was impaired by the parked vehicles and I do accept Mr. Flahavan's evidence that when he found that the Irish guidelines were silent on the point as to whether there should be zig zag areas following the English guidelines that he then referred to himself, he looked elsewhere and he looked at the English guidelines, the Irish guidelines were silent but the U.K. referenced all through it the necessity for the speed cushions not to be used in the zig zag areas of pedestrian crossings and that they should be located away from where pedestrians are likely to cross so that the chance of pedestrians tripping over them are minimised."

21. The trial judge then summarised the evidence of Mr. Fullam, and, having done so, she then concludes:-

"But I think that on the balance of probability it is reasonable to suggest that the plaintiff, as she exited her car and attempted to reach her destination, that she was caused to trip and fall because of the positioning and shape of these speed cushions right beside the pedestrian crossing, but given that they were something which a person shouldn't walk on, it certainly was misleading to her and would be misleading to the average person in my opinion. ... I should say there was a traffic calming measure here which was clearly unsafe and inappropriate to the area it was in and the big problem was that the speed bumps were immediately adjacent to a pedestrian crossing and, further, that they caused a trip hazard. I do believe

that they impeded the capacity of this pedestrian to see and observe the nature of the road layout on the approach to same.”

22. Accordingly, the trial judge found in favour of the respondent on the liability issue because:-

- (1) the speed bumps constituted a trip hazard;
- (2) the speed bumps were located immediately beside the pedestrian crossing;
- (3) while there were no Irish guidelines on the issue, this was contrary to the U.K. guidelines which dictate that speed bumps should not be used within the zig zag areas of pedestrian crossings;
- (4) the respondent’s view of the speed bumps, as she approached them, was impaired by parked vehicles; and
- (5) there was inadequate or very little space between the speed bumps in the context of pedestrian usage.

Discussion

23. There is no dispute at all about the facts leading to these proceedings. The respondent sustained an injury in a fall as she walked on and across speed bumps at the Promenade, Tramore, Co. Waterford on 15th July, 2015. At the time there were four such speed bumps across the Promenade at this location. The respondent, who has lived in the area for very many years confirmed that she is very familiar with the accident locus, but in her evidence she stated that she thought that the first and second speed bumps were in fact a single speed bump with no gap in between. In this regard, she claims that her view of the speed bumps as she approached them was obscured by cars parked (lawfully) in the area. On the occasion of the accident, cars were parked on the side of the roadway all along the way to the speed bumps, and, while it was not claimed that any vehicle was parked on the speed bumps, the respondent said that an estate vehicle was parked immediately adjacent to them, which impeded her view as she walked along the Promenade towards the speed bumps.

24. The respondent claims, and it is accepted by the appellant, that speed bumps constitute a hazard for pedestrians walking along an otherwise uniform road surface. However, it is not the respondent’s claim that the appellant is liable for constructing the speed bumps per se. Rather, it is claimed that the appellant is liable for the respondent’s accident because the location of the speed bumps was flawed, on account, inter alia, of the high volume of pedestrian traffic in the area, and/or on account of flaws in the manner in which the pedestrian crossing and the speed bumps were constructed at the locus in quo. The respondent claims that the speed bumps should not have been located immediately beside a pedestrian crossing, and that by locating both in such close proximity to each other, the appellant created an unnecessary danger for pedestrians. In this regard, the U.K. guidelines require that speed bumps are located outside the zig zag area at pedestrian crossings, or, in any case, at such a distance from such crossings so as to

ensure, as best possible, that pedestrians do not walk on the speed bumps, and that the chances of pedestrians tripping over the speed bumps are thereby minimised.

25. In this case the speed bumps were located immediately beside the pedestrian crossing, thereby increasing the likelihood of pedestrian traffic thereon, and resulting in a corresponding increase in the likelihood of injury to pedestrians. Moreover, the speed bumps were located in an area where, aside altogether from the pedestrian crossing, it is known there is a very high volume of pedestrian traffic, including pedestrians who choose to walk on the road, rather than the footpath. For this reason also, the respondent argues, the location of the speed bumps was unsafe for pedestrians. It is submitted on behalf of the respondent that the accident that occurred was precisely the kind of accident that the U.K. guidelines are designed to prevent.
26. Furthermore, the appellant failed to comply with the requirements of the Department of the Environment Traffic Signs Manual, so far as it concerns pedestrian crossings, in that no zig zag lines were marked on the road surface for sixteen metres on either side of the crossing, so as to prohibit cars parking within that distance on either side of the crossing. The evidence established that there were yellow lines on the side of the road opposite to that at which the respondent fell i.e. the sea-side of the crossing, but no such lines were provided on the side of the road where the respondent fell. On the contrary, parking spaces were provided, and the respondent claims that it was a car parked in the last of those spaces that obscured her vision of the speed bumps as she approached, as a result of which she did not realise there were two separate speed bumps on her side of the road, rather than a single continuous bump, which she assumed was the case. Nonetheless, she did acknowledge that her view as she walked on the speed bumps was clear.
27. While the respondent herself was not using the pedestrian crossing, she was walking on the public highway known as the Promenade, and it is common case that many pedestrians walk on that roadway in high season when the whole area is teeming with people. So, it is submitted on behalf of the respondent that it was foreseeable that members of the public would walk on the speed bumps in just the manner that the respondent herself did, and, therefore, the appellant failed in its duty of care to the respondent in the manner in which speed bumps were provided and located at the Promenade.
28. For its part, the appellant accepts that speed bumps are a hazard on a flat surface. However, in installing the speed bumps as a traffic calming measure, the appellant was responding to other road safety concerns, in particular that motor vehicles were travelling too fast along a busy promenade at which there was often considerable pedestrian activity. In his evidence, Mr. Walsh for the appellant accepted that the Promenade can have a lot of pedestrian traffic in high season. He also accepted that the view of the speed bumps available to a pedestrian walking the Promenade would be less than ideal, but it was never intended that pedestrians should walk along the Promenade and over the speed bumps.

29. In his evidence on behalf of the Council, Mr. Fullam stated that there was nothing wrong or misguided about the use of speed bumps at the location in question. He said:-

“The speed cushions are obvious which is the most important thing. We as engineers often have to put in raised areas on a road surface. We have footpaths on either side of a road surface. We quite often have islands in the middle of a road. There is no way around them, they are generally used for traffic calming measures to accommodate pedestrians but the most important thing you do is you highlight them. In this case they have been highlighted. There is what looks to be around a six-inch white strip around each of the bumps, each of the cushions and that is there, the purpose of that is to highlight to pedestrians.”

Conclusion

30. First, I think it is appropriate to make some general observations. The appellant, as Roads Authority for the area, is entitled to provide traffic calming measures at such locations as it deems appropriate. Traffic calming measures of whatever kind will often compromise an otherwise perfect highway, involving as they may do the construction of structures on the highway that are intended to slow down traffic, typically by narrowing the road available for traffic, or by raising the surface of the road so as to require motor vehicles, and also cyclists, to slow down in order to negotiate the relevant installation safely and comfortably, and thereby enhancing the safety of pedestrians. This point was made by Mr. Fullam in the passage quoted above. However, such interferences with an otherwise level highway, involve, on the part of the Roads Authority, a balancing act, weighing on the one hand the greater protection afforded to members of the public through the provision of the structure concerned, against, on the other hand, the introduction of another hazard, however remote, through the provision of just the same structure.
31. It is not difficult to understand why the appellant felt it necessary to introduce traffic calming measures at the Promenade, where, in high season in particular, there is a very high volume of both pedestrian and motor traffic. The speed bumps were obviously designed to protect pedestrians using the pedestrian crossing by slowing traffic down immediately prior to the pedestrian crossing. Moreover, the appellant, as Roads Authority for the area, in providing pedestrian crossings, clearly intends that pedestrians should use those designated crossings rather than crossing randomly at other locations.
32. Turning then to the particular facts of this case, it is appropriate first to consider the circumstances in which an appellate court may interfere with facts as found by a trial judge. In *Doyle v. Banville* [2012] IESC 25 and [2018] 1 IR 505, an authority relied upon by the respondent, Clarke J. (as he then was) stated, at para. 14 of the latter report:-

“...it is also important to note that part of the function of an appellate court is to ascertain whether there may have been significant and material error(s) in the way in which the trial judge reached a conclusion as to the facts. It is important to distinguish between a case where there is such an error, on the one hand, and a case where the trial judge was simply called upon to prefer one piece of evidence to

another and does so for a stated and credible reason. In the latter case it is no function of this court to seek to second guess the trial judge's view."

33. I consider that the trial judge fell in to error to the extent that she concluded that the respondent "did not have a good clear way" or that the respondent was "impaired by the parked vehicles" (see para. 20 above). That is simply not borne out by the evidence of the respondent. While the respondent did at first say that she did not see the first speed bump, the one nearest the footpath because, in her own words, "the car was parked there and I was looking towards where I was going for a table", when pressed on the issue she agreed that by the time she had stepped on and across the second speed bump (the one she first stepped on to), and moved in the direction of the footpath, she was beyond the parked car, and it was no longer blocking her vision. It is clear from her own evidence that she was looking for a vacant table at the café, and not where she was walking. She also said that she presumed she was walking on a continuous bump i.e. she did not look. Accordingly the conclusion of the trial judge that the respondent did not have a good clear way is not correct, on the respondent's own account.
34. Secondly, as far as the facts are concerned, to the extent that the trial judge concluded that the pedestrian crossing had anything at all to do with the accident, she also fell into error. The clear evidence of the respondent was that she was not walking on and had no intention of walking on the pedestrian crossing. She was expressly asked in cross examination if she therefore agreed it had nothing to do with the accident, and she confirmed her agreement in this regard. I realise that there is another context to the findings of the trial judge as regards the pedestrian crossing i.e. its location vis à vis the speed bumps. However, in my opinion this was not relevant to the cause of the accident either, for the reasons I set out below.
35. In my view, the respondent's arguments on liability cannot be sustained, and for several reasons. Firstly, even if the appellant was negligent in the layout of the area generally, and the location of the speed bumps in particular (about which, for the avoidance of doubt, I should say I make no finding), there is a complete absence of causation as between that alleged negligence and the occurrence of the accident. The respondent was not using, and did not intend to use, the pedestrian crossing. In addition to that, it is only necessary to consider the position if both the pedestrian crossing and the speed bumps had been constructed in the manner contended for by the respondent. There would have been zig zag lines for approximately sixteen metres extending from the pedestrian crossing in the direction from which the respondent approached the speed bumps. As likely as not, there would then have been the speed bumps, just outside the zig zag lines, because the speed bumps are intended to slow down traffic approaching the pedestrian crossing. Such a scenario would have been in conformity with both the guidelines of the Department here and the U.K guidelines. However, the respondent, approaching the speed bumps from the same direction, would have been faced with just the same structures on the roadway, and the same parking arrangements, and the accident would still have occurred. It was not argued that speed bumps in and of themselves require the provision of a parking free zone, in the way that pedestrian crossings do. But even if that

had been argued, such an argument could hardly have succeeded in circumstances where the respondent accepts that she saw the second speed bump (i.e. the second from the footpath) onto which she stepped before turning right towards the speed bump nearest the footpath, at which point there was nothing at all obstructing her view of the road surface. As observed above the respondent simply presumed she was now walking on a continuous speed bump extending to the footpath.

36. Perhaps most significantly of all, is the admission on the part of the respondent that she was not looking where she was going. She was looking beyond the road in front of her to the tables in front of the café, to see if a table might be available. In my view it was this, coupled with the fact that the respondent chose to walk on the road in the first place, that caused the respondent's accident, and not the failure on the part of the appellant to provide parking restrictions around the pedestrian crossing or to locate the speed bumps further away from the pedestrian crossing, both of which recommendations are aimed at those using the pedestrian crossing itself, in order to try and discourage pedestrians from walking on the speed bumps. As far as those walking along the Promenade are concerned, the evidence of Mr. Fullam was that as long as the speed bumps were highlighted with bright lines, as they were in this case, they did not constitute a hazard to such pedestrians.
37. Moreover, while the evidence established that pedestrians walking on the Promenade is a common occurrence, and is therefore foreseeable, the fact remains that in making this choice (to walk on the Promenade rather than the footpath) the respondent exposed herself to certain dangers that do not present themselves on a footpath. By way of explanation for this, the respondent said that in order to use the footpath, she would have had to push her way onto it, but that is just another way of saying that she would have had to wait however long it might take a person to find a gap on a busy footpath. It is this choice that the respondent made, coupled with her failure to look where she was going as she walked across the speed bumps, that were the causes of this accident, and not the location of the speed bumps or the parking arrangements in their vicinity. For all of these reasons, it is my view that the appeal should be allowed and the respondent's claim against the appellant dismissed.
38. As regards the costs of this appeal, subject to consideration of any submissions that the respondent may wish to make within fourteen days from the date hereof, the appropriate Order is that costs should follow the event, and that the appellant shall be entitled to recover from the respondent the costs incurred by it both in this appeal, and in the proceedings in the court below, when taxed and ascertained.
39. Since this decision is being delivered electronically, Whelan and Faherty JJ. have authorised me to record their agreement with the terms of this judgment.