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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:*	**20/02/2025**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION

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Between:

CARLA CARLIN

Plaintiff

and

CIARAN WALDRON
and
ROISIN KELLY

Defendants

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Mr R Bentley KC with Mr M Doherty (instructed by Brendan Kearney & Co Solicitors) for the Plaintiff
Mr S Spence (instructed by DWF (NI) LLP Solicitors) for the Defendants

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O'HARA J

Introduction

[1] The plaintiff is a nurse who was injured as she walked across a pedestrian crossing within the grounds of Altnagelvin Hospital in Derry on 5 February 2022. When she was more than half way across the road, she was knocked down by a car which failed to stop in time. In these circumstances there is no dispute as to liability between the parties. The only issue is about the value of the injuries which the plaintiff suffered.

[2] At the time of the accident the plaintiff was 28 years old. She is now 31. She has two children, both born before she was knocked down. In February 2022, she worked as an orthopaedic nurse in the hospital but has since changed position and is now, as of February 2023, a district nurse.

[3] The accident caused the plaintiff to suffer three injuries of note. The minor one was a sprain/strain of the left ankle with abrasions. This left her with some pain and

swelling which resolved in approximately eight weeks. There is no continuing complaint about the ankle.

[4] The second injury of note was described by a psychologist, Dr Edel Fitzpatrick, who reported for the plaintiff as a post-traumatic stress disorder while Dr N Chada, a psychiatrist who reported for the defendant, described it as a mild to moderate adjustment disorder. Dr Chada was unavailable to give evidence at trial so counsel helpfully agreed that rather than adjourn that part of the hearing I should receive both reports and hear submissions as to their content. For the plaintiff, Mr Bentley submitted that the label attached to this injury is not important in this particular case because it is not a continuing problem. He suggested that I should approach this aspect of the claim on the basis that there is a cut-off point around six months or so after the accident. Mr Spence did not challenge that proposition and it is one which I will adopt. During that relatively short period the plaintiff had some nightmares and flashbacks to the incident, she had some feelings of high anxiety as she crossed roads and she was hypervigilant when driving. In addition, she had feelings of guilt when she had to stay off work for five months due to the pressure this caused her husband and her mother who carried extra responsibilities during that period in particular.

[5] It was not disputed that there are inevitable adverse mental consequences to being run over, especially if one is carried on the bonnet of a car and then thrown to the ground as the plaintiff was. To the extent that there was any disagreement between the experts it seems really to narrow down to how that condition should be described or termed. There is no suggestion that the plaintiff's complaints were either exaggerated or untrue.

[6] The third injury of note on which the evidence focused was a soft tissue injury to the lumbar spine. Again, there is no suggestion that the injury was not the direct consequence of the accident, the debate was whether the plaintiff's continuing difficulties, three years after the accident, are still the direct result of the accident. That issue developed in the following way.

[7] When the plaintiff was first examined for her claim it was by Mr McCormick, consultant orthopaedic surgeon, in July 2022, five months after the accident. At that point, the plaintiff was returning to work on a phased basis. Mr McCormick describes her in this way:

> "She is still having ongoing discomfort in her lower back but given today's good physical examination, I think this will gradually improve with physiotherapy and would allow a further period of six months from the date of this report for resolution of her complaint. I would anticipate no major long-term sequelae."

[8] She was next seen in May 2023, 15 months after the accident, by Mr Cooke, consultant orthopaedic surgeon. He reported that she co-operated fully with history

taking and examination. She was walking with a limp but had no tenderness across the lumbar spine. When asked to flex forward she could reach her fingertips to approximately mid-way between her knees and her ankles. That movement caused low back pain while other trunk movements were also slightly limited by low back pain. Hip movements were full and pain free. Straight leg raising was full bilaterally when sitting and knee and ankle reflexes were present and symmetrical.

[9] His summary and comment was to the effect that while her symptoms have improved she was continuing to describe low back pain which interfered with a number of activities. Since 15 months had passed since the accident, he suggested that he might review her GP notes and records.

[10] This review led to a further report by Mr Cooke in September 2023 in which he stated:

> "In the absence of any previous low back symptoms, I accept that her low back symptoms as described in my previous report are likely to remain related to the subject incident along with the passage of time one would expect a tendency towards resolution of any residual symptoms in the vast majority of cases, and in the plaintiff's case, I would allow a further period of approximately six to nine months from the time of my examination on 12 May 2023 for improvement in symptoms."

[11] The plaintiff was next seen in July 2024, this time for the defendant, by Mr A Adair FRCS. Mr Adair noted the contents of the reports referred to above from Mr McCormick and Mr Cooke. In his opinion, set out at the end of the report, he referred four times to Mr McCormick's report, the earliest one of all, and in effect, allied himself to Mr McCormick's reports from two years earlier. Mr Adair opined that the five months off work was at the upper end of what would be reasonable, that by the time she returned she would have been able to achieve a return to normal working practices within weeks and that she was then able to continue working as an orthopaedic theatre nurse for a further 12 to 18 months before moving to district nursing. In fact, that timescale is incorrect – she moved from being an orthopaedic nurse to district nursing in February 2023, quite some time earlier than Mr Adair understood and did so because she found some aspects of her old work causing significant discomfort in her back.

[12] The final expert report which needs to be referenced is Mr Cooke's report which followed an examination of the plaintiff in October 2024, three months after Mr Adair. Mr Cooke confirmed, once again, that she cooperated fully when he examined her and took her history. He found no tenderness or deformity in the lumbar region. When he asked her to flex her trunk forward she was able to reach her fingertips to just above ankle level while other trunk movements were good in range although she complained of some discomfort in the lower back at the end range of movement.

[13] This then led Mr Cooke to conclude as follows:

> "It is my opinion that she is likely to have suffered a soft tissue straining issue to the lumbar region as a result of the subject incident. After a period of approximately six months symptoms in the lumbar region appear to have plateaued and there has been no further recovery. She continues to describe some low back pain interfering with activities as described above and it is my opinion that but for the accident on 5 February 2022, it is unlikely that the plaintiff would be suffering low back pain at this stage and that therefore her ongoing lumbar symptoms are likely to remain related to the subject incident. Symptoms present in the lumbar region at this stage over two and a half years following the subject incident are likely to be present on a permanent basis. Deterioration of symptoms relating to the subject incident with time is, in my opinion, unlikely."

[14] Both Mr Cooke and Mr Adair gave evidence at the hearing before me. There is no suggestion from either of them that the plaintiff was exaggerating or falsifying her complaints and condition. In large measure the difference between them came down to this – is Mr Cooke correct in saying that while 90-95% of people who suffer injuries of this type would recover on the original expected timescale of 6 to 12 months, this plaintiff is probably one of the unlucky 5-10% whose symptoms continue? Or is Mr Adair correct in suggesting that the symptoms which the plaintiff now identifies are no longer caused by the accident of February 2022 but are instead attributable to the reality that approximately one third of the population suffers from low back pain? If Mr Adair is correct, there is a point in time which I must identify at which the symptoms cease to be accident related and become non-compensatable.

[15] I remind myself that the burden is on the plaintiff to prove that her continuing lumbar spine problems are the result of the accident. Unless she can satisfy me of that, I cannot compensate her for any period beyond whatever I decide is the appropriate reasonable period for recovery.

[16] When considering this issue I must, of course, consider the plaintiff's own evidence. She testified that prior to the accident, apart from her work as a nurse and her role in their family, she helped her father out on his farm and attended a gym regularly. All of this, she said, was adversely affected by the accident. In the early stages of her recovery she depended on her husband and on her mother to a significant degree. That mostly resolved after some physiotherapy which ended in June 2022. Despite this she still has issues which can be triggered by such ordinary activities as lifting her young children, carrying shopping and pushing a trolley or a pram.

[17] Even after her phased return to work, the plaintiff said that she found it painful to stand for long periods and to do some of the lifting and moving of patients which had previously not caused her any difficulty. Mr Adair contended that there is no heavy lifting in orthopaedic nursing, a contention which the plaintiff challenged. On her account, some such lifting is simply part of the job, a part which to her regret she had to rely on her colleagues to help her with. This led her to apply for alternative work and precipitated the move to district nursing in February 2023.

[18] The plaintiff did not make the case that there has not been any improvement in her back symptoms. She acknowledged improvement but said that despite the early optimistic reports, she still had some limited issues, three years later, while doing such things as walking up hills, pushing shopping trolleys, unloading the dishwasher and hoovering or washing floors. In work terms the change of job has helped but there are still days when there are particular heavier tasks which her manager reassigns to others in order to help her.

[19] It was also part of the plaintiff's evidence that while she formerly helped out on her father's farm for an hour or two once or twice a week, she now rarely feels able to do so. This is despite the fact that she paid for sport massages subsequent to and independent of the physiotherapy already referred to above.

[20] In cross-examination Mr Spence challenged the plaintiff on a number of issues:

- Her evidence that her back troubled her to the extent that she changed her car to a different make which made it easier to lift her children in and out – there is no claim for special damages in respect of the change of car.

- Her evidence that there are still some tasks which she is unable to do as a district nurse, a point which she did not raise with either Mr Adair or Mr Cooke in their later reports.

- Whether she was telling the truth about the independent physiotherapy she had sought since that was not an item which was included in her claim for special damages.

- The fact that she had not raised any of these issues with her general practitioner – the plaintiff acknowledged that that was correct but then contended that she had seen her GP for other matters which were more significant than her ongoing but occasional back problems.

[21] Having continued his cross-examination along these lines, Mr Spence ended by putting it to the plaintiff that she was exaggerating about the length of time for which her injuries had troubled her and that she was fit to return to work in July 2022 having made a full recovery.

Analysis of lumbar spine issue

[22] The plaintiff was not described to me by either Mr Cooke or Mr Adair as an unreliable witness. The difference between them, identified above, is whether her troublesome but limited problems three years after the accident are still attributable to the accident. I was therefore surprised to hear Mr Spence cross-examine the plaintiff on the basis that she was exaggerating her injuries and that she had fully recovered by July 2022. Mr McCormick did not report on that basis in 2022 and Mr Adair's report described her as "largely improved and settled" by July 2022, not fully recovered.

[23] My impression of the plaintiff from all of the evidence, oral and written, is that she has not exaggerated or falsified her account in any way. On the contrary, the fact that she has seen her doctor about other matters and has not complained to him/her about her back, indicates that while it troubles her, she largely gets on with her life, within somewhat reduced parameters, as best she can.

[24] I conclude that it is far more likely than not that her ongoing lumbar back issues relate to the accident. I reject Mr Adair's alternative and unpersuasive proposition. The plaintiff in my judgment is one of the unlucky 5-10% whose recovery is good but not as complete as was originally anticipated.

Damages

[25] In his closing submission Mr Spence submitted that the plaintiff's ongoing problems must be regarded as minor given her lack of complaint to her doctor and the fact that she is continuing to work in a full-time capacity. Mr Bentley put her case higher than that but not much higher. In my judgment, he was right to adopt that approach. In light of all the evidence and having considered the references which I have been given to the current guidelines for the assessment of general damages I award the following amounts by way of general damages, bearing in mind the necessity to avoid the risk of overcompensating the plaintiff by simply making a series of separate assessments and adding them up:

(i) For the lumbar spine injury which I consider to be at the higher end of the scale for a moderate back injury I award £45,000. I am satisfied that progress has reached a plateau and that further recovery for the plaintiff, who is still only 31 years old, is unlikely.

(ii) For the sprain to the plaintiff's ankle which left her with some pain and swelling for approximately eight weeks, I award £3,000.

(iii) For the psychiatric injury which I have described above in the context of the issues between Dr Fitzpatrick and Dr Chada, I award the plaintiff £20,000, at the lower end of the range for moderate psychiatric damage. There has undoubtedly been marked improvement and the plaintiff's prognosis in this area is good.

(iv) For loss of amenity, which I consider to be of some consequence to the plaintiff, I award £5,000.

(v) For loss of congenial employment I award £3,000. This aspect of the claim arises from the fact that the plaintiff had to change position in February 2023 as a direct result of the accident. While she still enjoys her work, she spends much more time working on her own. I accept her case that this is less enjoyable and more isolating than before when she was part of a team whose company she valued and now misses.

[26] This gives a total award of £76,000 for general damages. Unless there is good reason to take any other course, that sum will attract interest at the appropriate rate from the date on which the writ was served.

[27] For special damages there are two agreed figures. The first is a figure which is to be recouped by the Western Health and Social Care Trust being the difference between the plaintiff's net pay and her statutory sick pay. That figure which covers the period of absence from 5 February 2022 to 3 July 2022, is £4,717.40. In addition, there is a loss of overtime claim for the same period in the sum of £438.32. Interest on those figures is payable from the date of loss at the usual rate.

[28] The total award is therefore £81,155.72. I will leave the parties to agree the additional elements for interest. The plaintiff is entitled to her costs to include senior counsel. I make an order for taxation in default of agreement.