REVIEW OF 2 DECISIONS IN EMPLOYEE PERSONAL INJURY WORKPLACE CLAIMS

Ryan v Dunnes Stores [2016] IEHC 337

This case involved the High Court assessing whether the employer had failed to provide a safe system of access and egress in the workplace and whether the employee was contributorily negligent, as well as evaluating quantum of damages.

Martin v Dunnes Stores (Dundalk) Ltd [2016] IECA 85

This case involved the Court of Appeal assessing whether the employer had provided the employee with a safe system of work with reference to the employer's policies and procedures, and whether the employee had been provided adequate training.

Employer's Common Law Duty of Care

The duty to an employee is not an unlimited one*:*

"[i]t has repeatedly confirmed by the courts that employers are not the insurers of their employees. They cannot ensure their safety in all circumstances and are not required to do so." [Doyle v ESB [2008] IEHC 88 at 17, Quirke J]

Not enough for a Plaintiff taking an action against their employer to prove that there was mere negligence, the Plaintiff must show that their employer owed them a duty of care, and the Plaintiff must show a breach of that duty

Once an employer carries out their role in a reasonable and prudent manner, they will have discharged their duty of care

Duty may vary with worker's age, knowledge and experience

Employers Liability headings

1. The duty to provide a safe place of work

2. The duty to provide a safe system of work

3. The duty to provide competent staff

4. The duty to provide proper equipment

In many cases each of the above overlap with each other.

Ryan v Dunnes Stores [2016] IEHC 337

Facts: Plaintiff was employed as a shelf packer with the Defendant and whilst descending a flight of stairs leading from the staff locker room to the Defendant's shop floor he tripped on loose nosing on one of the steps, and fell down the remaining 6 steps. There were no witnesses to the fall. The next day the Plaintiff phoned in sick and said that he tripped when his heel caught on nosing at the front of the step and that he had pulled muscles in his arm and back. Repairs were carried out to the step subsequently.

The Plaintiff claimed that the Defendant had not provided him with a safe means of access and egress in his workplace. The Plaintiff sustained soft tissue injuries to his neck, right shoulder and lower back. The Defendant denied liability and claimed contributory negligence against the Plaintiff (using mobile phone whilst descending the stairs, and not holding the bannister whilst descending the steps).

High Court: Barr J

Rejected allegations by the Defendant that the Plaintiff had been on his mobile phone whilst descending the stairs as no evidence was proffered at the hearing to support that allegation – there was no witness to the fall. Found that the evidence as to whether the Plaintiff was holding the bannister or not was equivocal and anyway that it did not constitute contributory negligence as the Plaintiff was descending a short flight of stairs.

Satisfied that there was a defect in the step, that the checking mechanism of the stairs was inadequate, and that the Defendant had failed in its duty to provide the Plaintiff with a safe means of access and egress from his place of work.

"I am satisfied that the injuries sustained to the plaintiff's spine have caused an aggravation of pre-existing degenerative changes in his spine. The plaintiff's neck condition was made considerably worse and the right shoulder and lower back, which had been asymptomatic, have been rendered symptomatic as a result of the injuries suffered in the accident."

In assessing damages Barr J had regard to the guidelines set down by the Court of Appeal in *Payne v Nugent* [2015] IECA 265, *Nolan v Wirenski* [2016] IECA 56, and *Shannon v O'Sullivan* [2016] IECA 93.

Barr J awarded €50,000.00 for pain and suffering to the date of hearing, and €10,000.00 for future pain and suffering, as well as special damages totalling €64,020.63.

Martin v Dunnes Stores (Dundalk) Ltd [2016] IECA 85

This case came before the Court of Appeal as the Defendant's appeal against an award of damages of €67,450.00 made in favour of the Plaintiff by O'Neill J in the High Court.

Facts: Plaintiff was employed as a checkout operator with the Defendant and left her till to replace a 10kg bag of potatoes for a customer. In the course of getting the bag from a pallet the Plaintiff sustained a partial tear to the biceps muscle of her right arm. The Plaintiff claimed that she had not been provided with a safe system of work, that the Defendant had been negligent in failing to provide her with proper assistance, and that she had not received adequate training.

High Court: O'Neill J

Satisfied that the Defendant had in place a system whereby employees would first seek assistance from staff at or near checkout and if no one was available, the employee would seek back up assistance by deploying the tannoy located in the checkout area. However, due to staff shortages that day O'Neill J found that the Plaintiff had no alternative but to leave the check out and get the customer's

bag of potatoes herself. Found that the Plaintiff therefore had not been provided with adequate assistance or a safe system of work.

Further, O'Neill J found that the Defendant was negligent in requiring the Plaintiff to carry out a lift that was excessive, inappropriate, and potentially dangerous and was one for which the Plaintiff had not been adequately trained.

O'Neill J concluded:

"…I am satisfied that the accident which happened to the plaintiff was caused by a dangerous lift and an absence of adequate training in the proper lifting of objects such as this and then the failure of the defendant's system for providing assistance on the day in question… the defendants are entirely liable for and responsible for this accident because of their failure in their duty to the plaintiff…"

<u>Court of Appeal:</u> (Ryan P, Irvine J, Hogan J)

The employer appealed on 2 grounds:

1. The trial judge erred in law in finding that the Plaintiff was not provided with adequate assistance while working at the checkout and that she had no option but to carry out the task of fetching the bag of potatoes herself

2. The training provided to the Plaintiff was sufficient to protect from the risks and hazards she was likely to encounter as a result of the manual handling or lifting of any of the Defendant's products

Court of Appeal decision (Irvine J. judgment)

- Defendant's appeal allowed and High Court decision set aside

1. The Defendant had a system in place which the Plaintiff had been trained to operate.

2. "Dunnes Stores had a policy and procedure in place to protect the welfare and safety of those working at their checkouts… this was a reasonable procedure to deploy."

3. The employer reasonably discharged its obligations to the Plaintiff by training her on a regular basis as to the principles of safe manual handling.

4. Not satisfied the Plaintiff's injuries can be ascribed to any negligence, breach of duty or breach of statutory duty on the part of the Defendant, who had taken *"all reasonable precautions and had implemented all reasonable practices to protect the plaintiff from injuring herself"*.

Conclusions

- Damages should be just, fair and proportionate on the scale of awards

- Court of Appeal sending a message to High Court and lower courts that damages in personal injuries cases mustn't be excessive

- In relation to occupational injury cases, *Martin v Dunnes Stores* is a reminder that if an employer has a procedure and policy in place which they have implemented and which the employee is aware of and trained in, then liability will not be found against the employer

Lauren Tennyson BL
Employment Bar Association Breakfast Briefing
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