

**THE HIGH COURT**

[2021] IEHC 492  
[2016 No. 443 P]

**BETWEEN**

**EDWARD RONAN**

**PLAINTIFF**

**AND**

**TIPPERARY COUNTY COUNCIL**

**AND**

**JOANNE BARRETT**

**DEFENDANTS**

**JUDGMENT delivered by Mr. Justice Twomey on the 11th day of June, 2021**

**INTRODUCTION**

1. This is a claim for compensation from a slip and fall against a local authority and a house owner by a gentleman when he was walking onto a foot path.
2. It considers the important principles in slip and fall claims of:
  - the obligation of a plaintiff to look where he is going,
  - the duty of a plaintiff to take reasonable care for his own safety, and,
  - the application of common sense to claims for compensation for personal injuriesas set down in by the Court of Appeal in *Power v. Waterford City and County Council* [2020] IECA 196, *Lavin v. Dublin Airport Authority* [2016] IECA 268, *Byrne v. Ardenheath* [2017] IECA 293 and *Cekanova v. Dunnes Stores* [2021] IECA 12.
3. In this regard, on a superficial or *prima facie* level, one can always say that an accident would not have happened but for X or Y (in this case the ramp between a footpath and the road). However, as noted by the Court of Appeal in *Lavin v. Dublin Airport Authority*, this does not make the ramp the 'legal cause' of the accident.
4. Accordingly, perhaps the first question for a lawyer advising plaintiffs in trip and fall cases is whether the plaintiff was looking where he was going and if he was, whether he should have seen the hazard in question. These straightforward questions would, in this Court's view, have led to this claim (and perhaps other similar claims) not being taken and perhaps an easing of the backlog in personal injury claims.

**SUMMARY**

5. The plaintiff ("Mr. Ronan") is a gentleman from Tincurry, Cahir, Co. Tipperary and is 63 years old. On the 17th of February, 2015 at approximately 7pm he claims that he injured his lower back when he tripped on a concrete ramp between a road and footpath, when he was visiting his sister at No. 18 Dunesk, Rosemount, Cahir, Co. Tipperary. Mr. Ronan's claim is for damages for fractures to his lower back, which he says he sustained when he fell. He claims, *inter alia*, that he cannot now sleep because of this back pain which he suffered as a result of this fall.

6. The defendants deny that there any was any negligence on their part and further claim that Mr. Ronan sustained the fractures to his back when he fell down the steps outside a pub, some five years earlier in 2010.
7. The ramp, the subject of these proceedings, is five feet in length (on the road parallel to the path) and approximately five inches wide and slopes up from the road to a height of five inches. It leads from the road to the footpath which is itself five inches above the road. In this way this ramp appears to have been constructed to facilitate the mounting of the footpath by a car in order, it would appear, to park at the far side of the footpath in front of the houses that front on to the footpath. The ramp is constructed in front of No. 17 Dunesk, which property is owned by the second named defendant ("Ms. Barrett"), who is the next-door neighbour of Mr. Ronan's sister ("Ms. Ronan") who lives at No. 18 Dunesk.
8. Mr. Ronan claims that Ms. Barrett is liable for the damage caused to his lower back as a result of this fall, on the basis, *inter alia*, that she constructed the ramp to facilitate the parking of her car. She denies this allegation and points to the fact that there is 'dished area' (i.e. where the path gently slopes down to the road to facilitate cars entering a driveway) immediately to the left of where the ramp has been constructed, which *dished area* she says she uses to access the parking area in front of her house. Hence, she claims that she would have no reason to construct such a ramp.
9. Mr. Ronan also claims that the first named defendant, Tipperary County Council, is liable for breach of duty as it took a long term lease of No. 17 from Ms. Barrett for the purposes of social housing and it owes a duty of care to third parties, such as Mr. Ronan, who might be visiting the estate, in relation to the danger caused by this ramp which is immediately outside a house leased by Tipperary County Council.

#### **ANALYSIS**

10. Engineering evidence was provided on behalf of Mr. Ronan that the concrete ramp was constructed some time prior to October 2011 and so it was there for several years prior to the accident in 2015. Evidence was also provided that Mr. Ronan visited his sister two or three times a week at around 7 pm, and that he generally approached his sister's house on foot in close proximity to the ramp. Despite this fact, Mr. Ronan claims that the first time that he saw the ramp was the night he fell on it.
11. However, it is clear to this Court from the ramp's dimensions and the photographic evidence produced that the ramp is a significant piece of concrete and that any person who was looking where he was going could not fail to see it even at night time (and in this regard, there was no evidence to suggest that the housing estate was not well-lit), even if they only walked close to it on one occasion, let alone 2 - 3 times a week.
12. On the balance of probabilities therefore, this Court concludes that Mr. Ronan was aware of the ramp and that on the night in question, when it would have been dark, he was not paying sufficient attention to his own safety to avoid what he regards as a dangerous hazard and that this was the cause of his fall.

13. If he had been paying attention, it seems clear to this Court that he would not have tripped on the ramp. In this regard, no evidence was provided that he had slipped on this ramp on any occasions between 2011 and 2015, despite being a regular visitor to his sister's house, nor was any evidence provided of any other members of the public having tripped on this ramp.
14. Accordingly, it is this Court's view that as regards causation, on the balance of probabilities the legal cause of Mr. Ronan's accident was not the alleged acts or omissions of the defendants, as alleged, but rather it was Mr. Ronan's inattention and lack of care that caused him to fall.

**Duty to look where you are going**

15. The forgoing conclusion is based on the legal principle that a person who is walking in this country, whether on private property or property owned by State body, such as a local authority, has a duty to look where they are going. See for example the Court of Appeal decision in *Power v. Waterford City and County Council* [2020] IECA 196 at para. 33 *et seq.* of the judgment of Binchy J.

**Duty to take reasonable care for your own safety**

16. It is also based on the legal principle that a person is expected to take reasonable care for her own safety, see for example the Court of Appeal decision in *Lavin v. Dublin Airport Authority* [2016] IECA 268 at para. 52 of the judgment of Peart J. If Mr. Ronan was looking where he was going, he could not have failed to see this ramp and then he would not have fallen. Therefore the cause of the fall is not any negligence or breach of duty by his sister's neighbour or the local authority, but his own lack of attention. This is not only common sense, but it is also clear from the foregoing caselaw.

**Common sense must be applied to slip and fall and other non-complex accidents**

17. The application of common sense to these types of situations is important as is clear from *Byrne v. Ardenheath* [2017] IECA 293. In that case, the Court of Appeal dismissed a claim for damages for a slip and fall, in that case on a grassy hill, and Irvine J., as she then was, noted at para. 32 that it was important to highlight:

"[...] the need, particularly in cases where the court is not dealing with a complex specialist field of activity, for the trial judge, not only to consider the expert evidence tendered by the parties but to bring *ordinary common sense to bear on their assessment of what should amount to reasonable care.*" (Emphasis added)

18. An example of this application of common sense is to be found in the Court of Appeal decision in *Cekanova v. Dunnes Stores* [2021] IECA 12, where a claim for damages for personal injuries was made by a woman against a shop that sold her a glass jug which shattered when she attempted to make tea in it. This claim was dismissed and Noonan J noted at para. 31 that:

"It is universally known by reasonable adults of normal intelligence that boiling or very hot water has the potential to shatter an ordinary glass vessel."

19. The importance of common sense to the law on personal injuries (and indeed the common law generally) was noted by Keane J., in *Turner v. The Curragh Racecourse* [2020] IEHC 76, which was a case for personal injuries which was dismissed because the cause of the accident was not the negligence of a jockey riding a horse on the Curragh, as alleged, but rather the failure of the plaintiff to keep a proper look-out while out jogging. As noted by Keane J. at para. 55 (in the course of quoting from the judgment of Geoghegan J. in *Weir-Rodgers v. S.F. Trust Ltd* [2005] 1 I.R. 47):

“the common law is just the formal statement of results and conclusions of the common sense of mankind” (per Lord M'Laren in *Stevenson v. Corporation of Glasgow* (1908) SC 1034 at 1039)

20. The case before this Court, like the *Ardenheath* case, does not involve any complex issues, namely falling over a ramp when walking over it, and it is common sense that one may fall if one does not look where one is going and it is clear to this Court that Mr. Ronan would not have fallen if he was looking where he was going.

**What is the true or legal cause of the accident?**

21. Of course, one can always say, as noted by the Court of Appeal in *Lavin v. Dublin Airport Authority* at para. 54, that but for some particular thing an accident would not have happened - in this case the ramp. However, a plaintiff must bear in mind the very important principles of common sense, looking where one is going and taking reasonable care of oneself before making claims for compensation, since these principles, in some cases of accidents leading to personal injuries, will be the true or legal cause, of the accident.
22. And so it is in this case that while the ramp was in one sense the 'cause' of the accident, it is crucial to bear in mind that the happening of that accident does not *per se* give rise to a right to compensation, since the 'legal cause' or proximate cause of the accident was the plaintiff's failure to keep a look out and take reasonable care for his own safety.

**The reliability of Mr. Ronan's evidence**

23. As regards Mr. Ronan's evidence, the onus was on him to establish that the accident occurred in the manner claimed by him. He has failed to convince this Court on the balance of probabilities that this was the first occasion on which he noticed the ramp, despite its size and his having been a regular visitor to his sister's house for a period of four years between 2011 – 2015. In addition, he has failed to convince this Court on the balance of probabilities that, even if this were the case, that he could not have noticed it on this occasion and duly avoided it, unless he was not looking where he was going.
24. In this regard, it is relevant to note that Mr. Ronan's evidence was inconsistent and therefore not very reliable. At times he contradicted himself, such as when he claimed that he fell on his back when he tripped over the ramp. When challenged on how he could have fallen on his back when walking forward, he changed this evidence to claim that in fact he had suffered this very considerable damage to his back, namely multiple fractures of his vertebrae, when he was getting up after the fall. (In this regard, Mr. Ronan accepted that he had been to hospital some five years previously for x-rays on his back

following a fall down some stairs outside a pub and that he was told at that time about various injuries and in particular, that he was told that he had compression injuries to several vertebrae in his back. He did however claim that he never had any back pain after that incident and so he claimed that it was the ramp accident, rather than the pub accident, which caused his current back pain.)

25. The most striking example of his inconsistent evidence is the fact that his evidence was even inconsistent with his own expert's evidence. For example, when he was challenged about the basis for certain claims contained in his own engineer's report, Mr. Ronan claimed that he had never met his own expert engineer, Mr. Michael Fogarty. However, Mr. Fogarty, who is an independent expert, with a duty to the court above any duty to Mr. Ronan, gave sworn evidence that he had met Mr. Ronan at a visit to the site after the accident. Similarly, Mr. Ronan also gave sworn evidence that he had never before seen Ms. Barrett, his sister's next door neighbour, yet Ms. Barrett gave sworn evidence that she had met Mr. Ronan briefly on several occasions, as he had mistaken Ms. Barrett's house for his sister's house on several occasions and come to her front door. (As noted below, this Court found Ms. Barrett to be a convincing witness).
26. It is also relevant to note that, before being challenged on his evidence, Mr. Ronan gave evidence that he hit his right leg off the ramp and that he fell and landed on his back between the path and the ramp, thereby causing the serious back injuries he now claims. However, his own engineer acknowledged in evidence that when somebody who is walking forward trips, they normally fall forward and not on their back.

## **CONCLUSION**

27. For all these reasons, this Court treats with considerable caution the claims made by Mr. Ronan, and it does not believe that Mr. Ronan's memory is reliable and therefore that this Court can rely on his recollection of how the accident occurred to support the claim he makes and to enable this Court to conclude that he has discharged his onus of proof on the balance of probabilities. In any case, this Court has concluded that if the accident occurred as Mr. Ronan suggested, the cause of the accident was his failure to keep a proper look out when walking.
28. Even if this Court had found that the accident had occurred as Mr. Ronan claimed, this Court would have considerable difficulty with Mr. Ronan's attempt to affix Ms. Barrett with liability for his fall. This is because, in contrast to Mr. Ronan, this Court found Ms. Barrett to be a credible witness who gave consistent evidence, in particular regarding the fact that she did not construct the ramp, since she did not use, or need to use, the ramp to access the parking area in front of her house, as she could use the dish area to the left of the ramp to access that parking.
29. She also gave credible evidence that her neighbour, Ms. Ronan, used the ramp for the purpose of accessing the parking in front of her own house (No. 18). This was because if Ms. Ronan wished to access the parking in front of her own house, she would have to mount the path close to the ramp (when Ms. Barrett was parked outside her house (No. 17) and if there was a car in the disabled parking space in the road space in front of Ms.

Ronan's house). Therefore, on the balance of probabilities, this Court finds that Ms. Barrett did not create the ramp as alleged by Mr. Ronan and cannot therefore be held liable for the injuries sustained by Mr. Ronan when he fell on the ramp (even if Mr. Ronan had convinced the Court that the accident was not his fault and that it had happened as alleged). While the evidence supports a finding that the ramp was of use to Ms. Ronan, it is not necessary for this Court to make a finding as to whether Ms. Ronan or her partner constructed that ramp.

30. Finally, this Court does not need to decide on the claim that a landlord, such as Tipperary County Council, in taking out a lease of a house, which lease specifically restricted the demised premises to the interior of the house (which it did in this case), owes a general duty of care to members of the public in relation to matters which are outside the demised premises under the lease. In this case, the ramp was clearly exterior to the house. It is also relevant to note that the ramp was on the roadway which was not taken into charge by the local authority, which fact was accepted on behalf of Mr. Ronan. In these circumstances, even if the accident had occurred as claimed by Mr. Ronan, this Court would express considerable reservations as to whether such a duty of care could be owed by a landlord, whether a public authority or not, to Mr. Ronan in such circumstances.
31. Having considered the evidence therefore, and in all the circumstances of the case, this Court must dismiss Mr. Ronan's claim.

**It may be lose-lose for the 'winning' defendants**

32. This Court also awards the costs of the proceedings to Ms. Barrett and the local authority.
33. However, as Mr. Ronan is unemployed, it may well be that both defendants will end up having to pay their own legal costs even though they have won the litigation. If so, this is an example of what the Supreme Court in *Farrell v. Bank of Ireland* [2012] IESC 42 has described in as the 'inevitable injustice' for defendants who do not 'buy off' what they believe to be unmeritorious claims and thereby end up 'losing' financially, when they have to pay their own legal costs of 'winning' proceedings brought by an impecunious plaintiff.
34. As noted in more detail in *Dempsey v. Foran* [2021] IEHC 39, in the absence of financial disincentives for such plaintiffs (which also take account of the right of access to the courts), this 'inevitable injustice' means that there is an unlevel playing field since, in terms of legal costs, it is 'win and no lose' for impecunious plaintiffs but 'lose/lose' for defendants. This injustice is the same whether the defendant is a local authority funded by the taxpayer, an insurance company funded by premiums from policy holders or an individual defendant such as Ms. Barrett, who may or may not be funding the litigation out of her own pocket, since as noted by Hardiman J. in *O'Keeffe v. Hickey* [2009] 2 I.R. 302 at p. 317 in relation to personal injuries actions:

"I do not consider that companies, institutions or even the State itself are necessarily to be considered in a different light than an individual."