



THE HIGH COURT

[2024] IEHC 82

[Record No. 2021/3062P]

BETWEEN

IVAN BUBAK

PLAINTIFF

AND

OCS ONE COMPLETE SOLUTION LIMITED

AND TESCO IRELAND LIMITED

DEFENDANTS

JUDGMENT of Mr. Justice Paul Coffey delivered on 16 February 2024

1. The plaintiff in this personal injury action is 46 years old and was at all material times employed by the first named defendant as a security man at the second named defendant's supermarket at Drogheda, County Louth. His claim for damages arises from an incident at work which occurred at approximately 9.30pm on 10 June 2020 when it is alleged that the defendants negligently caused the plaintiff to catch his right foot on the wheel of a supermarket trolley as a result of which he fell forwards on to the ground injuring his head,

chest, lung, knee but primarily his lower back which he claims is still causing him constant pain.

2. The incident occurred as the plaintiff walked out from a storeroom into a narrow passageway which he alleges was cluttered with columns of shopping trolleys both to his left and right. The plaintiff contends that due to the alleged obstruction of the passageway by the trolleys, the exit route provided to him was hazardous, unsafe and created a tripping hazard such that his right foot became caught in the rear wheel of the trolley nearest the door from the storeroom. The defendants deny liability contending that the trip was either intentional or, if not, that the plaintiff had a clear and unobstructed path of travel which he negligently failed to take.

3. Both the incident and the events leading up to its occurrence were captured on CCTV. The CCTV footage presented to the Court was obtained from two cameras, one positioned externally which faced towards the door leading into the storeroom and the other positioned within the storeroom looking towards the door from which the plaintiff exited. The footage from the external camera shows that the plaintiff passed the trolleys on eight occasions preceding the incident between 1.46pm and 7.37pm. The footage from the internal camera captures the plaintiff's actions just before the incident and the incident itself which took place at 9.30pm.

4. The plaintiff's evidence was that he visited the storeroom in order to retrieve keys to alarm and shutter the premises when it closed at 11pm. As seen on the footage from the external camera, at 9.30pm the plaintiff walked past three trolleys to his left and entered a door to the storeroom. Although the plaintiff gave evidence that there were two or three trolleys to his right, they are not discernible on the CCTV footage. I am further satisfied from the agreed evidence that the space available between the door and the wall to the plaintiff's right was insufficient to hide a trolley or trolleys from the external camera. Their presence or

absence is in any event immaterial as the plaintiff's consulting engineer accepted in cross examination that the CCTV footage revealed no obstructions hindering the plaintiff's access to the door to the storeroom. Although the plaintiff had on a previous occasion told him that he had to move two trolleys out of his way in order to gain access to the storeroom, his consulting engineer acknowledged, as seen on the CCTV footage, that the only movement the plaintiff made was to move the last and offending trolley on his left slightly into his way as he entered the storeroom. Specifically, the footage shows that having looked at the trolley, the plaintiff used his left hand to pull the back of the trolley towards him such that it was left very slightly but immaterially intruding into the path he would have to take when returning from the storeroom. The internal camera from the storeroom shows that the plaintiff opened its access door and entered the storeroom where he signed a book, accessed a key box and then pushed the door open with his left hand to exit into the adjoining passageway.

5. Immediately prior to the incident, the plaintiff is captured from behind on CCTV facing in the direction of the trolley on whose rear left wheel he would a moment later catch his right foot as he walked out of the storeroom. From this it can be inferred that the plaintiff had seen the trolley and that he was fully aware of its presence and location to his right. The footage further shows that the plaintiff had sufficient space to pass without obstruction to the left of the offending trolley. As seen on the CCTV footage, instead of sticking to the path that was available to him, the plaintiff extended his right leg away from his line of travel and hooked it around the trolley's rear left wheel, resulting in his subsequent forward fall.

6. It was put to the plaintiff in cross examination that he deliberately hooked his right leg around the trolley's wheel, "dragging it like a football player looking for a penalty". The plaintiff denied any deliberate intent but acknowledged that what he did was "really dangerous". However, he failed to provide any explanation for his action. When asked in cross examination about whether the video footage had changed his view about the case, the

plaintiff's consulting engineer (who had only fully viewed the footage on the day of the hearing), stated that he was concerned about the way in which the plaintiff extended his right leg but deferred to the Court to adjudicate on the matter.

7. I share the concern expressed by the plaintiff's consulting engineer, a concern that was not allayed by the plaintiff's previous action of moving the rear of the offending trolley towards him as he entered the storeroom. I was also concerned by the evasive and obfuscating responses the plaintiff gave to simple and direct questions that were put to him about his past history of intermittent lower back pain even though he had acknowledged experiencing such pain in his pleadings.

8. In the evidential context of this case, the plaintiff bears the onus of proving not merely that his injuries were caused by the negligence of the defendants but also of satisfying the Court that what occurred was in fact an accident and not an intentional act on his part. Although the evidence is not so compelling as to be coercive, my unease as to the way the incident occurred is such that I cannot be satisfied that the plaintiff has established on the balance of probabilities that the incident was accidental. Assuming without deciding that I am incorrect in so finding, I am nonetheless satisfied that the plaintiff had seen the offending trolley and that he had sufficient space to pass it in safety such that the incident could have been avoided by the plaintiff through the exercise of ordinary care. I will therefore dismiss the claim.