**THE HIGH COURT**

**[2025] IEHC 68**

**RECORD NO. 2019 538 P**

**BETWEEN/**

**CARMEL DUDDY**

**PLAINTIFF**

**-AND-**

**ALLINGHAM ARMS HOTEL TRADING AS THE ALLINGHAM ARMS HOTEL**

**DEFENDANT**

**JUDGMENT of Mr. Justice Jordan delivered on the 4th day of February 2025.**

**1.** These proceedings arise out of a slip and fall accident which took place at the Allingham Arms Hotel in Bundoran at approximately 12.38am on 26 February 2017. The plaintiff had attended the premises with her cousin Karen Doherty for a social dancing event. She was jiving on the dancefloor with a Mr John Likely when she slipped and fell. Apparently there were approximately 500 patrons in the function room on that night.

**2.** The dancefloor is 42 feet x 22 feet. There is a stage at one end and a seating area at the other end. There is a bar on one side of the dancefloor with some seating between it and the dancefloor. There is also seating on the other side of the dancefloor.

**3.** The plaintiff's case is that there was drink on the dancefloor which caused it to be wet and slippery. The case was put on the basis that inevitably patrons will cross the dancefloor with their drinks to get to the seats on the far side and that this in turn

creates a strong likelihood of spillages on the dancefloor where dancers are highly vulnerable to slip.

**4.** In these circumstances it is said that the operator of the premises requires very strict control measures as you have a layout of premises which allows patrons to bring drinks across the dancefloor to get to a seating area.

**5.** In something of a strange coincidence, the plaintiff had in 2016 slipped on the same dancefloor while dancing with the same dance partner and had fractured her left wrist. She did not bring any proceedings in respect of the 2016 fall.

**6.** In the accident the subject matter of the proceedings the plaintiff suffered a fracture to her right wrist.

**7.** An originating letter was sent on 09 March 2017. It included a request that the CCTV footage be preserved. That request was repeated on 03 January 2019, 29 January 2020, 15 July 2020, 24 September 2020 and 06 October 2020 (in all six letters).

**8.** Then there was a request for voluntary discovery on 22 December 2020. There were further letters on 03 February 2021, 02 March 2021, 05 May 2021, 15 June 2021, 15 July 2021 and 13 January 2022. A motion for discovery issued and an order for discovery was made on 14 November 2022.

**9.** The affidavit of discovery arrived on 14 June 2023. A covering letter referred to a USB stick but it was not included. That was requested on 14 September 2023 and it arrived on 14 September 2023.

**10.** On 25 April 2024 there was a request for the full CCTV footage for the evening and the morning in question – as only five minutes was provided – but this request did not elicit the desired response for the plaintiff. All the plaintiff received was the five minutes of CCTV footage which is said to capture the fall.

**11.** Insofar as the discovery and CCTV footage provided is concerned the plaintiff raised the doctrine of spoliation and referenced the obligation on a defendant to preserve evidence. While this issue was the subject matter of legal submissions from both sides it is not necessary to dwell on it as the court is satisfied that the evidence adduced establishes full liability on the part of the defendant.

**12.** The plaintiff was born on 23 June 1957 and the plaintiff's medical reports and the report of an actuary on her behalf were agreed. The plaintiff was 59 at the time of the accident. She worked as a domestic at Letterkenny General Hospital. She suffered an intraarticular fracture of the right radius as a result of the fall. She underwent manipulation under Mr O'Rourke on 01 March 2017. She was out of work for six months and then retired on ill health grounds.

**13.** The plaintiff is from Letterkenny and has two grown up daughters and three grandchildren. The plaintiff has worked for most of her adult life. Her first job was as a seamstress in a factory and she was there for twelve years. She then went to another factory where she worked as a seamstress for four or five years. She then took up employment in a café outside Letterkenny and she was there for four or five years before starting work with the HSE in 1998. She was employed as a domestic staff cleaner in the hospital.

**14.** One of the plaintiff's hobbies was dancing and she used to go to the defendant's premises quite regularly. She went dancing every weekend. She would have been in the Allingham Arms Hotel over the years – maybe ten times or more. She explained that she had suffered a fracture to her left wrist in a fall a year earlier.

**15.** The plaintiff had driven her car on the night in question and was the designated driver. Her cousin Karen Doherty was with her. They arrived at around 11.30pm. They went into the dance hall. She knew a few of the regulars who were

there – including John Likely. She had met him before at other dances and he always took her out to dance – to jive. He is a bit younger than her and a good dancer. She was not dancing the whole time as there would be rests in between as the band would play three songs or so and then have a break – and then three more – and so on. She explained that the dancefloor was pretty much clear after each set.

**16.** The plaintiff was asked where did people go to sit down if they got drinks to which she replied "across the dancefloor to the seating area".

**17.** The plaintiff explained that she was dancing with John Likely. She said that the floor was wet where they were dancing and she asked him to move because she saw that the floor was wet.

**18.** According to the plaintiff the dancefloor was quite crowded at the time and the dance was a jive.

**19.** Whilst jiving the plaintiff explained that she put her right foot out to turn around and she slipped on the floor and fell. Her right foot slipped on the floor and went forward. She put her right hand down to save herself and broke her wrist. When asked what caused her to slip she said that the floor was wet and she explained that she had previously moved from a wet spot and because her foot slipped there had to have been some kind of liquid on the floor. The plaintiff explained that Mr Likely and the bouncer helped her up and she went straight over to her cousin Karen Doherty. She explained that she was brought to Letterkenny General Hospital by the Events Manager where her wrist was x-rayed and she was told that it was fractured. She said it was very painful and she was taken to theatre and it was manipulated back into place. There was a temporary plaster applied and two days later she had to go to the clinic to get a proper heavy plaster. She had the cast on for six weeks and then had

physiotherapy. For the initial six months or so she explained that her arm was very painful, extremely painful – and she said that it was painful to this day.

**20.** The plaintiff explained that the range of movement was not great and that she could not lift anything heavy at all. She could not do things like hoovering and things like that at home anymore – which she always did – same as she did at work. They could not offer her anything else at work and they signed her off or retired her. She was 60 years old at that time and had planned to continue working until 66.

**21.** The plaintiff explained that she loved her work. She loved meeting people and the craic was always good. She said she had no social life now. She explained that her prospects in relation to getting other employment were not very good. She said she was limited in what she could do. She tried to use her left hand as much as possible because her right arm is not good. She explained that she had left school at 13 and had worked all of her life from age 13. She explained that her pension would have been more if she had continued working until 65 or 66 – as would the gratuity. The plaintiff explained that she fills her days now with walking mainly – just to get out of the house. She was retired on 06 September 2017. She was retired on ill health grounds and her gratuity was €27,899 and she got an ill health pension of €3,839 gross per annum.

**22.** The plaintiff presently receives the small pension from the HSE and the State pension.

**23.** The plaintiff explained that she is not able to go back to work as her arm gives her pain all of the time. She said she could not work. She can't do housework – very little – and is very limited in what she can do.

**24.** In cross examination the plaintiff was asked about the previous accident in 2016. She explained that the same thing happened then due to the wet floor. She

explained that she was in receipt of sick money from the HSE and did not bother going after the hotel. However, when it happened the second time the break was worse. The first one was a clean break.

**25.** The Plaintiff was asked why she didn't take a claim for the first accident if it was caused by wetness on the floor. She said she did not know why she did not do so at the time – possibly embarrassment – she did not know. She felt she had to do something the second time because she was being paid sick money the first time but the sick money would have been cut off after three months insofar as the second accident was concerned.

**26.** The medical records in relation to the first accident were produced – the date was 21 August 2016. The medical records referred to a left wrist injury a day previously. The plaintiff was asked about the report she gave of that injury as "weakness in left leg due to sciatica last night". It was put to her that that is the account which she gave to the hospital and she was asked why she was telling the court that she slipped on a wet floor the year previous to this accident. She replied that it was because she was embarrassed and that she was embarrassed to even tell them at work that she had fallen while dancing. When pressed the plaintiff said that she did not accept that the first fall was due to sciatica and that there was no wet floor.

**27.** In so far as the hospital record concerning the first accident is concerned it is necessary to observe that it is a hospital note and no more. It is not evidence to which any weight can be attached. It is not known what series of questions or discussion generated the note and the author did not give evidence. Furthermore, the actual cause of the first fall has not been determined.

**28.** The plaintiff was asked about the accident report form for the night in question which referred in answer to the question "how did it happen and why" – "lady fell whilst out dancing".

**29.** The plaintiff was pressed on the point that there was no mention of wetness on the floor and she replied, "the floor was wet". It was put to her that it was sciatica again and the plaintiff replied that she hadn't had sciatica for years now. It later transpired that the incident report form was a form filled out by another person – who did not give evidence.

**30.** The plaintiff was asked about the account she gave to her own engineer at the joint inspection. His report is dated 19 May 2021 and the following account is given; -

> *"The plaintiff did not notice the wetness before the incident. She had moved from a different area of wetness upon the dancefloor during an early dance….. she was only on the floor for a few minutes when the incident occurred. The plaintiff feels that the way her foot slid out in front of her, there was some slippery contaminant on the floor to cause such a slide and the subsequent slip and fall."*
>
> When it was put to the plaintiff that this meant that she herself didn't see any wetness on the floor the plaintiff replied that she did and that that is why she moved from one place to the other – as there was wetness on the floor. She agreed that she did think that they had moved from a wet place to a dry place. She said *"yes, we thought it was dry".*

**31.** The plaintiff explained that she put her foot out to turn around which you do when you are jiving - and her foot slipped.

**32.** It was put to the plaintiff that she was wearing shoes with pretty high heels and she said that they were not that high. Photographs of the shoes were produced. It was put to her that the photographs showed a pretty high heel. The plaintiff said that they were not high. When it was put to her that the photographs showed a high heel with a pointy end she said that the end was not that pointy. She agreed that they were not flat shoes and said that they were dancing shoes. When it was put to her that the shoes wouldn't offer as good a grip as a pair of flat shoes the plaintiff said that she was used to dancing in those kind of shoes all her life. She was jiving at the time and Mr Likely was turning her around. She put her foot out and slipped. She explained that you put your right foot out to turn around or at least that is what she did and then she went down. She slipped on the floor, went down, put her hand out to save herself – her right arm – and broke it.

**33.** The plaintiff explained that the security man, Mr McGinley, was in front of her before she had the accident and was about ten feet away or maybe more. There would not have been many people between them and Mr McGinley prior to the accident.

**34.** It was put to the plaintiff that Mr McGinley would give evidence that he and Mr Likely picked her up off the floor and that Mr McGinley had looked at the floor and did not see any wetness on it. It was put to her that as far as he was concerned the floor was dry and that she made no complaint to him of wetness on the floor when he picked her up.

**35.** In response the plaintiff said that he didn't speak at all and she was embarrassed. She explained that she wanted to get up off the floor as quick as possible - with everybody looking at her – and he didn't speak anyway. She said that he just picked her up and walked back to where he was.

**36.** It was also put to the plaintiff that Mr McGinley would say that the plaintiff, when he left her, continued dancing with Mr Likely to which the plaintiff responded *"no, no way."*

**37.** Insofar as Mr McGinley is concerned, it is necessary to observe that his "memory" of the incident appeared, at the time of the hearing, to be more comprehensive than that recorded in the defence engineer's report. Furthermore, and importantly, Mr McGinley's assertion that the plaintiff – with a broken right wrist - continued dancing with Mr Likely after she had been picked up from the floor and when he left is simply not credible.

**38.** The plaintiff agreed that it was not necessary for patrons to cross the dancefloor with drinks but she said that people do so.

**39.** The plaintiff said that it was probably a few years ago that she had treatment for her arm – physiotherapy. She also said that she had been on strong painkillers but they affected her stomach as they were really strong and she stopped taking them. She said that she did take painkillers.

**40.** The plaintiff explained that she had 20 years of service at the time she retired. When asked about any effort to get lighter duties or other work the plaintiff explained that she is not educated so she couldn't do office work. She left school at 13. When asked whether or not she had tried to get any other cleaning work or lighter cleaning work the plaintiff said that there was no such thing as a lighter cleaning job. When asked if anybody had told her why she was still having pain in her wrist the plaintiff said that the last time she was with Mr Gain (the defence orthopaedic surgeon) he said arthritis had set in now.

**41.** The hospital record in relation to her attendance on 26 February 2017 was put to the plaintiff where the note was *"fell over onto right wrist, now painful and swollen."*

**42.** It was put to the plaintiff that she didn't say there that she had slipped and she said that she did not think it was necessary to tell them in the hospital that she slipped.

**43.** Reference was then made to the full entry *"4.20, self-referral, was dancing tonight, fell, injured right wrist, smoker, down range of movement, hurt right circle, fully mobile."*

**44.** The point being made to the plaintiff was that the reference was to "fell" with no reference to a slip.

**45.** On this, what the short note in the hospital records says about what happened is simply that.

**46.** On re-examination it transpired that the person who filled out the accident report form worked for the defendant.

**47.** The plaintiff was recalled in relation to documentation on her personnel file in Letterkenny Hospital which the plaintiff's solicitors had received on 21 November 2024 following a request for it – and which they provided to the other side after the plaintiff had completed her evidence – along with a supplemental affidavit of discovery. The plaintiff was cross examined about the fact that she was certified by Dr Eileen Cahill Canning as being fit for retirement on health grounds – with the following reasons being set out; -

"(1) osteoporosis with recurrent fractures;

(2) restricted movement of the right hand;

(3) sciatica."

**48.** The plaintiff was asked in cross examination about a letter addressed to her GP (Dr Gilligan) from the fracture liaison nurse (Bruce McGregor); -

> *"Dear Dr Gilligan,*
>
> *This lady was referred for a DEXA scan after being assessed in the clinic with a fractured left radius. On assessment, she had the following risk factors for osteoporosis, low trauma fracture, post-menopausal on … RX."*

It was put to the plaintiff that a copy of the scan was enclosed with the report and that the recommendation was that she should commence treatment for osteoporosis. The plaintiff agreed.

**49.** The plaintiff agreed that she commenced treatment for osteoporosis and gets injections twice a year. The plaintiff couldn't remember if she had got an injection before the current accident but said that she does get them twice a year. She said the osteoporosis in her left wrist was fine but that her right wrist is painful. She said that it was painful because of the break as it wasn't a clean break. When it was put to her that it could be because of the osteoarthritis she said that she didn't think so - "…., because of the fall".

**50.** The plaintiff explained that sciatica comes and goes and she disagreed that it was a significant issue for her.

**51.** Insofar as the cross examination concerning the retirement on health grounds reasons as set out in the document by Dr Eileen Cahill Canning is concerned, it is necessary to observe that the author of the document did not give evidence – and indeed no medical evidence was given in the case as the medical reports of the plaintiff were agreed. However, the reasons given by Dr Eileen Cahill Canning do include restricted movement of the right hand and to that extent do support what the plaintiff says about the impact of the right wrist injury on her ability to work.

**52.** The plaintiff explained that she has been living alone for 21 or 22 years and she explained the nature of her cleaning work in the hospital – in response to questions from the court.

**53.** The plaintiff gave a credible account of the debilitating effect of the right wrist injury on her in terms of her ability to do the work she was required to do in Letterkenny General Hospital – and indeed on her ability to attend to her ordinary day to day activities at home.

**54.** The plaintiff came across as a very honest and straightforward person. She was a credible witness.

**55.** Mr Vincent McBride, Chartered Engineer – and qualified for over 45 years – gave evidence on behalf of the plaintiff. He was present at a joint inspection on 17 May 2021 with Mr Ross Mooney – the defendant's engineer. The plaintiff was also present. The slip resistance test carried out showed that the floor was perfectly satisfactory for walking upon and dancing upon in his opinion – when dry. When there was clean water contaminant spray applied to the floor in the area where the plaintiff indicated she had slipped the test showed that the floor had a moderate risk of slip. That would in general be for normal walking – straight line walking – not specifically for dancing – where the risk would be slightly greater.

**56.** The timber floor was a maple strip flooring.

**57.** Mr McBride repeated that the slip resistance test when the floor is dry showed that it offered a good level of friction and wouldn't present any problem even for people performing jiving or anything of that nature. The plaintiff's description of the accident – "*if it is as she describes and the reaction of her body as she describes, it would appear that there was some lubricant developed between the sole of the foot and the surface upon which she was stood or moving."*

**58.** Mr McBride agreed that it was possible that the plaintiff could have a fall without there being a lubricant on the floor while wearing the shoes she had on. He pointed out that a person could fall for a variety of reasons. With stiletto heels the chances of an imbalance probably are greater but there was probably not a lot of difference in reality between the chance of a person slipping on a contaminant with stiletto heels as opposed to a flat shoe; *"if you are asking me if there is a greater chance of a person slipping on a contaminant with stiletto heels as opposed to a flat shoe, there is probably not a lot of difference in reality".*

**59.** Mr McBride agreed that a person could go around the back of the hall in order to get to the other side of the dancefloor with drinks without having to cross the dancefloor with drinks.

**60.** In relation to the health and safety documentation Mr McBride was asked a number of questions about the hotel documentation and agreed that it was appropriate for a defendant with this type of premises to identify slips, trips and falls as a risk for customers. He also agreed that it was appropriate to identify wet floors due to spillages as a risk. He agreed also that it was appropriate that a defendant owner/occupier was required to put in measures to mitigate the risk of spillages. He agreed with that insofar as it is reasonable.

**61.** When Mr McBride was asked about Mr Mooney's evidence which would be called that his understanding was that there were signs available to those using the dancefloor prohibiting carrying drinks across the dancefloor or dancing with drinks – Mr McBride said that he could not comment and that there were no signs that he observed or none brought to his attention. Mr McBride agreed that it was one thing having measures set out on paper but that implementation was everything.

**62.** Mr McBride said that one of the most important things to do, insofar as one could do so, was to prevent people from crossing the dancefloor with drink or being on the dancefloor with drink.

**63.** This was a point Mr McBride made after he was asked about the function room spillage sheet. It was put to Mr McBride that on the night of the incident this was signed off by an employee by the name of RM every fifteen minutes and Mr McBride was asked did he think this was a reasonable level of frequency of inspection. Mr McBride pointed out that he had never seen this sheet. He did not know what the person did to try to reasonably keep the floor free from any contaminant and he made the point that he thought it was a question of whoever had carried out this duty and prepared these forms to address the court. On this latter point, it is necessary to say that the employee in question was not called by the defendant.

**64.** The plaintiff's dancing partner at the time of the accident, Mr John Likely, gave evidence. He is a plumbing engineer. The plaintiff is a friend of his whom he has known for several years through their mutual interest in dancing. In describing his dancing with the plaintiff shortly prior to the accident he explained that they had been jiving for a minute or two and that he just nodded to her to go over to a place which was a bit quieter – maybe a metre or two from where they were – where they could jive in more comfort. They were just jiving when the plaintiff went down – she slipped. When asked what did she slip on he said that the floor was wet by the look of things that night, "it was wet, just". When asked if the floor was wet on any other areas of the dancefloor he said that from what he could recollect it was wet in the area where they first went to and then it was wet in the second area as well. It was a busy night and it was just wet. When he was asked what caused the wetness on the

dancefloor he said that it was a combination of a lot of alcohol and it was just warm in there. He said more likely it was a busy night and a lot of people on the floor – and alcohol spillage by the look of things, beer, lager just on the floor. He went on to explain that they were doing a rock and roll jive and the plaintiff slipped and went down and fell. He didn't know how exactly she went down but she just slipped and went down. He said it was the wet floor – it was beer and alcohol. It looked like just beer, lager, whatever on the floor. It was just slippy and when you had so many people on the floor, if they had a spillage in one area the beer will travel along the floor as it just gets carried on people's feet all over the floor.

**65.** After the accident he helped the plaintiff up and led her over to an area of the dancefloor. As far as he could remember it was just himself. The plaintiff looked as if she had an injury to her arm or her wrist.

**66.** On cross-examination Mr Likely confirmed that the plaintiff was a good dancer and said that yes the plaintiff found that he was a good dancer as well and that they made a good partnership for dancing. In relation to the previous accident he recollected that the plaintiff slipped that night also and went down. He was asked about the report to the hospital which said that it was sciatica that caused her to suffer the accident and he was asked to more closely describe the accident in 2016 in terms of what precisely happened. He said that it was quite a while now but that they were jiving that night and that she slipped and went over.

**67.** When asked about moving from one part of the floor to another and when it was put to him that his direct evidence seemed to suggest that the reason for the move was that they wanted more space to do the rock and roll moves Mr Likely said that it was more that the floor was wet than space. The floor was wet in that area. It was a combination of the two. It was a combination of a wet floor and looking for space.

When asked about what caused the wetness on the floor Mr Likely said that he was just guessing that it was just spilled beer because it was so busy that night and there were people standing at the edge of the floor and people being nudged and, it does happen. He explained that it was a busy dancing environment and that you have people standing, holding pints of beer, and people that are maybe just nudged and on a busy night beer gets spilled. He said there was nothing else that it could have been apart from alcohol on the floor. He said that it wasn't perspiration. He said the floor was wet that night to be honest. He said that it wasn't perspiration because of the amount of wetness on the floor that night, it was pretty wet. When asked how did he know it was alcohol he said that it was just a reasonable assumption that it was. It wasn't perspiration or sweat. When asked did he say that from a visual identification of the liquid that he could tell that it was alcohol he said that it couldn't have been anything else. It couldn't have been anything else but beer. He went on to say that it was more than likely alcohol. He said that it could not have been anything else unless there was a leak through the roof or a water leak or something. He repeated that it couldn't have been anything else but alcohol. He agreed that this was simply his opinion – that it was alcohol on the floor. He agreed also that he did not bend down or touch it or smell it or anything of that nature.

**68.** Mr Likely agreed that he had not seen anybody on the dancefloor dancing with alcohol in their hand.

**69.** When Mr Likely was asked would he agree that there was a route from the bar on the lefthand side to the seating area to the righthand side without the necessity of crossing the dancefloor (*i.e.*, by going around at the back of the dancing area) Mr Likely agreed but said that given human nature people aren't going to take that route and on a busy night they were going to go back to their seats "that's the quickest way,

direct route possible". He compared crossing over down at the back of the hall like driving from Sligo to Dublin *via* Cork in a V – "it doesn't happen. So people are just, when they are having a few beers they are going to pick the shortest route back to their table. It is just human nature". Again, he agreed that this was his opinion.

**70.** Mr Likely said that he didn't see anybody dancing with drink on the dancefloor but on the night in question people were crossing the floor with alcohol to their seats on the righthand side. He said this was happening. He went on to say that between people crossing the floor, people standing at the edge of the floor, getting nudged, there was alcohol on the floor – so a combination of the two. In answer to the court Mr Likely said that he did see people crossing the floor that night with alcohol.

**71.** Mr Likely in cross-examination again described dancing with the plaintiff when she slipped and went down and he was definite in his evidence that it was the wet floor that was the reason that she went down. He pointed out that he does a lot of rock and roll country jiving and that it was just the wet floor. On repeated questioning concerning the cause of the accident Mr Likely was very definite that the floor was wet that night. When it was put to Mr Likely that Mr McGinley (the security man) would give evidence that he helped the plaintiff up along with Mr Likely the latter said that he could not recollect who came over but he did know that he helped Carmel – and maybe Mr McGinley did come over that night. It was put to him that Mr McGinley would give evidence that he looked at the floor and that the floor was not wet. Mr Likely disagreed and again repeated his evidence that the floor was wet that night.

**72.** Mr Likely was very clear in his evidence – and consistent. His evidence was credible. Importantly, the court accepts as correct his evidence concerning the state of the floor on the night.

**73.** Ms Karen Doherty next gave evidence. She is a cousin of the plaintiff and attended the Allingham Arms with her on the night of the accident. She was standing at the bar when the accident happened and she had been there for about an hour. She was watching the dancing while standing by the bar – and minding her bag. She was facing the dancefloor because although she cannot jive she does love watching it. She had been to the Allingham Arms thirty or forty times at least and she always took up the same spot at the bar. It was put to her that somebody had told the defendant's engineer, Mr Mooney, that staff prohibit people from bringing drinks across the bar and she was asked what did she have to say about that from her experience. She said that she had often seen people going from the bar to the seating area – she had often seen it and she saw it that night as well – people crossing the floor. Before the big band comes on, people rush across trying to get to their seats before the big band would come on. She said that not very many people go all the way around the dancefloor with their drinks. Usually people scuttled across the dancefloor – people scuttled across the front of the stage to go across to the seating area. If you were at the top end of the bar you probably would go around the carpeted area at the back. At the side nearest to where the stage is people cross the floor that way with their drinks. But if you are up at the top end of the bar – which is way up at the far end of the dancefloor – people would go round the carpet. Ms Doherty said that she had never seen a sign telling patrons not to carry drinks across the dancefloor and she had been going there for years – she had never seen a sign to stop you crossing the floor. Ms Doherty explained that she had often alerted bar staff to breakages – she had done it a couple of times. On doing so somebody would come out – maybe after a couple of minutes. She explained that she is a bit health conscious herself because she worked in childcare for years and she would block an area if she did see a spillage and

somebody would come out with a long handled shovel and a brush - the scoop and the brush. She said that she had never seen anybody looking for spillages or anything. When it was put to her that the defence engineer was going to talk about every fifteen minutes somebody going on the dancefloor looking for spillages Ms Doherty said that she had never seen anybody trying to get out to look at a floor when the place is packed and everybody is dancing.

**74.** While Ms Doherty didn't see the plaintiff falling or anything – or sliding – or whatever it was – she did see her come off the floor and when Ms Doherty inquired of her what happened to her the reply she got was I slipped and I think I have broke my wrist. Mr Likely was with her.

**75.** On cross-examination Ms Doherty confirmed that she is a first cousin of the plaintiff. She went on to say that she would always have a good view of the dancefloor. She watches specifically because she would love to learn to jive. She wasn't watching the plaintiff she was just watching the dancefloor – watching people dancing. She went on to say that she saw people crossing the dancefloor with drink. Ms Doherty explained that she had seen people up close to the stage crossing the floor with drink. She couldn't say that she saw them up at the further end of the floor. She was just watching straight in front of her at the dancing. She didn't really see anybody crossing the floor in the middle or centre area – with drink. On cross-examination Ms Doherty repeated the plaintiff's account, on being asked by her what happened, that she said I slipped and I think I have broke my wrist.

**76.** When asked about the previous incident and the reference to sciatica Ms Doherty said that she did not have it that night because you couldn't dance if you have sciatica. She said that if you're having a bout of sciatica you couldn't actually dance.

**77.** Again, the evidence of Ms Doherty was consistent, credible and persuasive. In particular, it was clear from her evidence that she did not ever witness the cleaning or inspection system which the defence contended for although she was a regular in the defendant's premises at dances.

**78.** Mr Brian McGinley gave evidence for the defence. He was working in the defendant's hotel on the night of the accident – 26 February 2017. At that time he was employed by a Security Company and they provided staff for events to the hotel. While he did give specific evidence in relation to the accident which occurred his recollection of events of the night seemed patchy in many respects – and many of his replies were prefixed with introductory words of "…would have …". Mr McGinley said that he has worked as a doorman for approximately 35 years and has worked in a lot of places. He explained that one of the house rules was that there was no alcohol, no liquids allowed on the dancefloor. He explained that the policy for dealing with spillages involved him, as probably the primary person beside the speaker which gives him the best vantage point for the whole hall, of having a rolled up towel which he would take every night before going into position. On sight of anything on the floor he would move out with his towel and put the towel down first and then radio the duty manager who carries a radio and tell him that there is a spillage on the floor. Alternatively, if he saw one of the glass collectors coming around he would wave at them and get them to come towards him and tell them of the spillage. They would then go away and bring back the stuff to deal with it. But other than that – if there was a spillage and he was there he would not leave the spillage.

**79.** Mr McGinley explained that he saw the plaintiff go down and he moved towards her to help her up – along with the gentleman who was dancing with her. He said that he could see no moisture on the floor whatsoever. He said that if he had he

would have stood there until he got assistance to clean the floor. He said once the lady was up and they were happy enough – they seemed happy enough at the time – he moved back to where he was located. He said the whole thing took a few seconds. He then said *"they continued on jiving for a little while and then they disappeared from the site. Now I didn't know where they went after that".*

**80.** It is necessary to again observe that it is not credible that the plaintiff having suffered a fall and a fracture of her right wrist continued on jiving for a little while after being helped up. While it may be possible it is highly improbable that the plaintiff continued jiving after suffering such an injury.

**81.** When asked about drinks being carried across the dancefloor at the area of the stage Mr McGinley acknowledged that this could happen. He said that he had a system and if he saw somebody with a glass in their hand at the dancefloor and looking to get across the dancefloor he would gesture them on and would walk in front of them. They would come behind him and he'd make the path and they would get across to the far side. He said that he would stand with his two hands out and they would get out to wherever they were going on the far side where the seating is and he would then return across the floor and back to where he was standing.

**82.** When asked about drink being brought across the dancefloor at other places Mr McGinley said that if he spied somebody even looking like they were going to cross the dancefloor somewhere other than the places that he designated he would follow them. He would get to them before they got to the other side and he would admonish them for it. He would explain to them that if they want to cross the dancefloor the safe area is at the front of the stage.

**83.** On this evidence, it is clear that patrons did cross the dance floor with drink in their hands.

**84.** When asked what he would do if spillage was observed by him on the dancefloor Mr McGinley said that he would reach for his trusty towel and would drop the towel and stand back and block anybody from dancing in that area while summoning assistance. When cross-examined on this point Mr McGinley said that he had done this on an odd occasion and he explained that it was he who would have to attend to it initially until he got assistance. When asked about staff being available to attend to a spillage Mr McGinley said that there was him, the duty manager and the staff of the bar. But he was usually the first point of contact.

**85.** Mr McGinley was asked about the defence engineer (Mr Mooney) having spoken to him at the time of the preparation of his report. Referring to the security man Mr Mooney stated in his report;

> *"….the security moves away from the speaker….. It is assumed that he left his post to assist the plaintiff after she fell. It is expected that the security man would have checked the floor for spillages after the plaintiff fell. If the floor was wet, it is expected that the security man would not have left the floor unattended….."*

**86.** It was put to Mr McGinley that he was not able to tell Mr Mooney if he checked the floor because Mr Mooney did not have an account of him checking the floor. On this, Mr McGinley was unable to give an explanation for why Mr Mooney's report was as it was although he did say that he agreed with that part of the report which said he would not have left the floor unattended.

**87.** Mr McGinley said that it was a named security company which he had worked for but confirmed that he is an employee of the Allingham Arms Hotel now and has been since after the COVID-19 pandemic. Mr McGinley gave evidence that he would walk around the periphery of the dancefloor an odd time.

**88.** Although initially saying that there would have been at least two others employed by the company in the function room at the time – or in that general area – Mr McGinley when asked by the court did he remember whether there was just himself or two or three answered that he could not remember off hand. But, he said, that was pretty much the operation.

**89.** Mr McGinley's memory of the night appeared to the court to be unreliable.

**90.** Mr Ross Mooney gave evidence on behalf of the defence. He is a consulting engineer. He had attended a joint inspection with Mr Vincent McBride at the premises on 17 May 2021.

**91.** Mr Mooney was asked about the plaintiff's footwear on the night which he said were what he would describe as high heels. He went on to express the opinion that *"...whether it was wet or dry, in my opinion, that heel could have slipped."*

**92.** In relation to the slip alert test Mr Mooney gave evidence that the average on the dry test was 120 and on the wet it was 141. He said that usually when we do these tests on wet floors, like hardwood floors, like tiles and, vinyl floors, most wood floors, you get a very high reading for a wet floor surface – which is usually above 200 – 210, 220 and more. This reading was only 140 which was in the moderate range and at the lower end of the moderate range. He said that there was not really that huge amount of a difference between the two results. He said that insofar as floors go the floor was actually a very good floor and it had got a very high slip resistance.

**93.** Mr Mooney did go on to deal with safety documentation which had been furnished to him by the hotel. He said that, as you would expect on a risk assessment, slipping hazards had been identified due to wet floors and appropriate control measures had been put in place. He went on to say that the control measures were

appropriate and that he agreed with Mr McBride that so as long as they are implemented – the staff have to know and it has to be applied.

**94.** Mr Mooney confirmed that he could not see the plaintiff's accident as such on the CCTV footage – it was put to him that it was common case that it was not possible to see the plaintiff's accident as such from the CCTV.

**95.** In cross-examination Mr Mooney conceded that he was not able to dispute what the plaintiff said that the shoes she was wearing were typical dancing shoes - even though he said that he did not know what typical dancing shoes were and he was making the point that the shoes were less stable than flat shoes.

**96.** Mr Mooney was asked about the documentation provided to him by the hotel. It was put to him that the hotel had on paper acknowledged that drinks on the dancefloor is dangerous with a potential to cause slipping. He agreed. He agreed also that for that reason drinks should be kept off the dancefloor. He was asked about the statement in his report that drinks are not permitted on the dancefloor in circumstances where Mr McGinley had given evidence of drinks being permitted on the dancefloor with he walking in front and people behind him. Acknowledging what he had heard in that regard concerning what had happened at the front of the stage Mr Mooney said he had not heard that before. Mr Mooney was then asked about the documentation provided to him by the hotel and about a check list appended to his report and filled in by a man called RM. He was pressed about this document in circumstances where RM was then no longer a witness for the defendant. Perhaps understandably Mr Mooney was unable to offer anything of substance in relation to this document which had been provided to him and which he appended to his report.

**97.** Mr Mooney was pressed in relation to what checks he saw on the CCTV footage and said that he could not see anybody on the footage but pointed out that the

footage wasn't long enough in duration to confirm whether or not there were checks every fifteen minutes. He never asked for any other footage and just accepted the CCTV footage that was provided to him that was only five minutes long. It was put to him that the whole case was about whether there was a proper cleaning system in place on the dancefloor and in reply he said that he supposed that was part of the case. It was put to him that part of the case was whether part of the floor was wet and he agreed. It was put to him that part of the case was whether people were carrying drinks over the dancefloor. He agreed. It was put to him that part of the case was whether there was an adequate cleaning system in place. He agreed.

**98.** It was put to Mr Mooney that; -

> *"Question – The evidence from Mr McGinley in fact was quite contrary to the fictitious documentary evidence produced to you when in fact he said that nobody else was on the spot to attend to spillages. You heard him giving evidence?*
>
> *Answer – I think that's probably right. I did hear him give evidence. So he's the one on the spot."*

**99.** He went on to explain that *"the other person that's doing these walkabouts is not there all of the time, it's every fifteen minutes."*

**100.** Mr Mooney did acknowledge that having drinks while walking across the dancefloor was likely to give rise to spillage but he pointed out that walking across the floor would not be a route that he would take. If anyone was doing energetic dancing he would either to go to the end or he would go to the front where Mr McGinley was leading people through.

**101.** Mr Mooney reiterated that he thought the heel would have gone on wet or dry and that there was not much difference between the dry and the wet slip resistance on

the floor. He did agree that what the plaintiff had said about the mechanism of the accident was consistent with her slipping on a wet floor.

**102.** Mr Mooney also posed the question why would other people not be slipping on the dancefloor if it was wet.

**103.** It was put to Mr Mooney that in his report he had said *"that if the plaintiff fell while dancing and if there was nothing on the floor to cause her to fall then she was the author of her own misfortune."*

**104.** He said that was correct. It was then put to him that the corollary of that was that if there was something on the floor then she wasn't the author of her own misfortune to which he replied "*if it was wet, yes".*

**105.** Insofar as the latter answer is concerned, it would be wrong to seek to pin the determination of liability on the answer to one question and the answer is just part of the evidence.

**106.** It is possible that a person can simply slip or lose their footing whilst jiving and without any fault on the part of the occupier. However, the court must look at the evidence and determine what occurred as a matter of probability.

**107.** There were a hundred or so people dancing on the dance floor with several hundred patrons attending and present in the dance hall. Drink was being served and carried about. In these circumstances reasonable care required a system to prevent the drink being carried across the dance floor and spillages occurring. It also required a system to attend to and clean up any spillages without delay. Although alert to the risk of spillages on the dance floor and the resulting risk to people dancing, there was no evidence from any staff member of the defendant as to any cleaning system or any control measures to prevent and attend to drinks being spilled on the dance floor.

**108.** The only evidence in that regard was from Mr McGinley who was then an employee of an outside security firm employed on the night (and who became an employee of the defendant post-COVID). The evidence of Mr McGinley was not persuasive. His recollection appeared to the court to be poor and unreliable. The court prefers Mr. Likely's evidence of the wet floor than Mr. McGinley's evidence to the effect that the floor was dry. It did also appear from his evidence that drinks being carried across the dance floor was an issue. What he had to say in fact illustrated the absence of any credible evidence concerning any proper system in operation on the night.

**109.** The court is satisfied that ; -

(a) The floor was wet.

(b) The cause of it being wet was spilled drink.

(c) The fact that there was a seating area across the dance floor from the bar created a risk of spillages which the defendant was aware of.

(d) The occupier was aware that spillages and a wet dance floor created a risk of falls – a danger.

(e) The occupier was aware that these risks required a system to eliminate or at least reduce the occurrence of drink being brought across and spilled on the dance floor - and to have staff check regularly the dance floor to ensure that spillages were cleaned up without delay.

(f) There was no credible evidence that any system for managing the known risks was in operation on the night of the accident. As a matter of probability, there was not.

(g) The plaintiff fell as a result of the wet and slippery floor and she suffered a significant injury to her right wrist as a result of the fall.

(h) The plaintiff was wearing shoes with stiletto style heels which the court accepts are normal for such dancing. The court is satisfied that the shoes did not cause or contribute to the slip and fall.

**110.** Having heard the evidence of the plaintiff, Mr. Likely and Ms. Doherty whom the court found credible and reliable witnesses the court is satisfied that no proper system was in operation on the night. The defendant did not take such care as was reasonable in all the circumstances for the safety of the Plaintiff on the night and failed to comply with Section 3 of the Occupiers Liability Act 1995.

**111.** The plaintiff may have continued at work until retirement age were it not for the injury to her right wrist. Her evidence in relation to the osteoporosis was that she gets injections twice a year and that the left wrist is fine whereas the right wrist is not because it was not a clean break. Her evidence in relation to the sciatica was essentially that it comes and goes and is not a significant issue for her (her mobility is clearly not an issue for her as she now walks a lot to occupy herself). The court is satisfied that the right wrist injury and sequelae have been and remain a significant disability for the plaintiff in so far as her ability to carry out cleaning duties is concerned. However, in the replies to particulars the plaintiff confirmed that she had taken early retirement as she was unable to carry out her duties partly due to the injury in her wrist. The plaintiff's evidence was that she believed she would have continued at work were it not for the right wrist injury and it may well be that she would have managed to continue at work if she was contending solely with the sciatica and osteoporosis without having suffered a fracture of the right wrist.

**112.** At her age and given her education and experience and qualifications the court accepts that the plaintiff did not have other employment opportunities available to her after her job ended.

**113.** It is not possible to say for certain whether or not the plaintiff would have continued at work to retirement age if she had not suffered a fracture of her right wrist. While there is good reason to believe that her own evidence in that regard is correct the true position is unknown and the court considers that a *Reddy v Bates* deduction of 20% is just.

**114.** The plaintiff suffered an intra-articular fracture of the right radius which required manipulation and casting in Letterkenny General Hospital. She spent six weeks in a cast and the fracture healed fully. She was referred for physiotherapy but has not had any for some time. The plaintiff continues to complain of pain and discomfort in her wrist which Mr Mc Cormack describes as chronic.

**115.** The defence submits that the injury falls within the category of minor fracture which has substantially recovered in the Book of Quantum classification - where the appropriate damages are €22,100.00 to €38,300.00.

**116.** The plaintiff is right hand dominant and the injury and sequelae are disabling for her. The plaintiff submits that the moderate range refers to simple or minimally displaced fractures with a full recovery expected with treatment and it does not cover chronic and permanent conditions. The moderately severe range relates to multiple fractures that have resolved but with ongoing pain and stiffness which impacts on movement of the wrist.

**117.** The medical reports of Mr MJ McCormack, Consultant Orthopaedic Surgeon include summaries of the injury as follows.

Medical Report dated 20 March 2018:-

> *"In summary Ms Carmel Duddy sustained a fracture of her right wrist and forearm in a fall on 26 February 2017. This lady had a cast applied to her*

*right wrist following manipulation under anaesthetic and this was maintained in place for a period of 6 weeks with subsequent physiotherapy.*

*Currently she is left now with reduced range of movement in her right wrist and pain and discomfort along the ulnar border and discomfort around the distal radioulnar joint on the right side with diminished use of her right arm. This lady is right handed dominant.*

*I think it would be prudent to see Ms Duddy's x-rays and copy of her x-rays following her healing in relation to her right wrist to ascertain the potential for ongoing problems in relation to this. Currently it appears that she has still got discomfort now 14 months post subject injury which is not yet fully obviated and I think some residual discomfort I think will persist for this lady."*

Medical Report dated 22 August 2019:-

*"In summary Ms Carmel Duddy sustained injury to her right wrist with a fracture following a fall on 26 February 2017. Treated conservatively this gave rise to good bony union for this lady but she is left now still with a residual discomfort as described in her right wrist with limitation of motion of the right wrist, diminished power of grip on the right side on clinical testing today and chronic discomfort more to the ulnar aspect of her wrist in the area of distal radio-ulnar joint.*

*At this point I think Ms Duddy's complaint would be chronic in nature and she is making an improvement in her lifestyle by adaptation rather than by clinical improvement in her right wrist condition. Physiotherapy may be helpful in respect of this lady's wrist in the future but I think an ongoing chronic*

*complaint of pain and discomfort as described will be likely for this lady and what we are seeing today may remain the status quo."*

Medical Report dated 19 April 2024:-

*"In summary Ms Carmel Duddy sustained a fracture of her right wrist and forearm on 26 February 2017. This was treated conservatively with good affect and bony union occurred. However, this lady is left with residual discomfort around her right wrist and right hand in daily activities and discomfort outlined above.*

*At this point now 7 years post subject injury I think what we are seeing will remain an ongoing sequelae for this lady and a chronic complaint with some functional deficit as a result."*

**118.** Having regard to the medical evidence and the plaintiff's own evidence the court is satisfied that the injury and sequelae amount to a significant wrist injury - with chronic pain resulting and discomfort and functional impairment which do impact on the plaintiff's quality of and enjoyment of life.

**119.** Having regard to the Book of Quantum, the court considers that the appropriate figure for general damages is €55,000.00 as the injury and sequelae are moderately severe. The injury is described as an injury to the right wrist and forearm with x-rays showing a fracture of the right radius. There is ongoing chronic pain and discomfort and residual disability many years on.

**120.** The Report of the Actuary was handed in to court by agreement of the parties. It is dated 14/11/2019. While it deals with capital values to age 67 in the summary the plaintiff's evidence was that she had intended to work until 66.

**121.** The future loss of earning calculations at para 5 are to age 65 and age 67. The court will fix the loss roughly midway - in circumstances where the plaintiff's evidence was as stated – at €100,000.00.

**122.** The court will leave the figure for loss of pension undisturbed at €14,421.00 and likewise the Loss of Gratuity figure undisturbed at €13,155.00 even though the calculations are from age 67 and at age 67. They are the only figures provided.

**123.** The total of the above figures is €127,576.00 less 20% = €102,060.80.

**124.** The court will leave the loss of earnings to date figure from 26/2/2017 to 14/11/2019 at €76,426.00 [ On this, it is apparent from the report of the Actuary that Recoverable Benefits will have to be dealt with in accordance with the legislation].

**125.** Adding €55,000.00, €102,060.80 and €76,426.00 gives a total decree of €233,486.80.

**126.** The Court will hear the parties in relation to costs and any matters arising at 10.30 a.m. on Wednesday 5/2/25.