

THE SUPREME COURT

Common Law & Equity Division

B E T W E E N

MIRANDA BURROWS

Claimant

AND

THE NATIONAL INSURANCE BOARD

Defendant

Before: The Honourable Madam Justice Camille Darville Gomez

Appearances: Mr Stephen Turnquest for the Claimant
Ms Kenria Smith for the Defendant

Trial Dates: 13 December and 14 December, 2021

Subm Rec'd: 31 May, 2022 and 2 June, 2022

Negligence – breach of duty of care – whether existing system was adequate or whether existing system was working to an extent where it could be said that defendant took all reasonable steps to discharge duty of care owed to the Claimant

RULING

Darville Gomez, J.

This action arose out of injuries sustained by the Claimant, who was an Executive Officer at the office of the Defendant when she fell while walking on the ground floor of the office on Baillou Road. She alleged that the Defendant was negligent and seeks an award for damages suffered for (a) physical injury, (b) physiological injury and (c) economic loss/damage in the amount of BSD\$362,660.72, plus interest and costs. The Defendant denied liability and claimed contributory negligence.

Facts and Background

- [1.] I gave my decision orally in December, 2024 and promised to put my reasons in writing later. I recalled the parties back in February, 2025 to address an issue that arose.
- [2.] The Claimant by a generally endorsed Writ of Summons filed on March 4, 2015 sought damages for personal injuries, loss and damage occasioned to her by reason of the negligence

and/or breach of duty on the part of the Defendant, its servants or agents as the proprietor/occupier of premises known as the National Insurance Building situate on Baillou Hill Road.

[3.] Later, by Statement of Claim filed on September 5, 2016 the Claimant articulated her particulars of injuries as follows:

Particulars of Injuries

- a. Closed left bimalleolar fracture of both the tibia and the fibia;
- b. Injury to lower back, after which the Plaintiff was diagnosed with the following conditions, which the Plaintiff believes were caused or contributed to by her injury:
 - (i) Diffuse bulging of the dessicated L2-3 vertebral disc indenting the ventral thecal sac and impinging on both traversing L3 nerve roots;
 - (ii) Left formainal focal bulge at the L3-4 vertebral disc encroaching on the left neural foramina and impinging on exiting left L3 nerve root;
 - (iii) Diffuse bulging of the dessicated L4-5 disc with superimposed broad left foraminal anular tear and early herniation touching both traversing L5 nerve root and involving mild central stenosis and thickening of the ligamentum flavum;
 - (iv) Mild left L5, S1 radiculopathy
 - (v) Neuropathic polyphasic motor unit action potential in left tibialis anterior, left medial gastroc and left L5 paraspinal muscles.

[4.] The Defendant in its Defence filed on February 1, 2019 denied inter alia, that it was negligent. The Defendant averred that it had taken all reasonable steps to provide a safe place of work and that the Claimant's slip and fall was an industrial accident and not negligence.

[5.] The Defendant denied negligence and in its defence claimed as follows:

- (a) The Security Staff of the Defendant has taken and do take all reasonable steps to ensure that the premises are safe.
- (b) That there are regular patrols of all areas of the National Insurance Board's Offices at Blue Hill Road.
- (c) There are periodic inspection tours of the said building and grounds.
- (d) Any irregularities such as broken water pipes, etc are investigated and the same is reported.
- (e) There was no report made of any hole in the floor in the said area of the vending machine.
- (f) The Security Staff register at regular stations to record inspection rounds at specified times.
- (g) If any irregularities are found the said irregularities will be recorded and the said area will be roped off and warning signs posted warning occupants of the danger.

- (h) That the Plaintiff failed to take reasonable care of her own safety.
- [6.] The Claimant gave evidence on her own behalf, and also called three witnesses including Mrs McKay-Dean, Dr. Bowe and Dr. Barrett.
- [7.] The Defendant called three witnesses, Dr. Whitfield, Mr. Symonette and Mrs. Carol Woods.

Issues

- [8.] The following issues must be determined by the Court:
- (i) Whether the Defendant owed the Claimant a duty of care at common law or by statute?
 - (ii) Whether the Defendant breached that duty of care.
 - (iii) Whether the Claimant was contributorily negligent?
 - (iv) Whether the Defendant's breach caused her to suffer damage.
 - (v) What damages if any is the Claimant entitled?

The Evidence

Claimant's Evidence

- [9.] The Plaintiff stated in her evidence in chief regarding how the accident occurred that:

“2. On March 13, 2014, at around 11:00am, I was at work and walking on the ground floor of the N.I.B Building when the heel of my left shoe caught in a hole or crevice in the floor, whereupon I lost my balance and fell.

- [10.] In her evidence in chief she explained how she was taken via ambulance to Doctor's Hospital and was treated by Dr. Winston Phillips who performed a procedure and thereafter placed her leg in a cast. She was given time off from work however, as time progressed, she experience sever pain and discomfort at the fracture site and in her back which necessitated her taking prescription medication which only gave partial relief. It affected her sleep. She eventually obtained additional time off from her doctor and when Dr. Phillips suggested that she return to work, she changed doctors.
- [11.] She then attended Dr. Bowe who concluded upon examination that the hardware in her leg was irritating the tibial nerve, therefore, it was removed on November 7, 2014. She was prescribed physiotherapy by Dr. Bowe, however, they were too painful for her to continue. By February, 2015 she was unable to continue with physiotherapy and was diagnosed with Complex Regional Pain Syndrome (“CRPS”) and by April 2015 still unable to return to work, she became very depressed. She was referred to Dr. K. de Souza for treatment of the CRPS and to Dr. Timothy Barrett for depression.
- [12.] On June 3, 2015 she was diagnosed by the Bahamas Spine and Joint Centre with “peroneal and tibial nerve injury at the level of the ankle, affecting sensory components”. The Centre

concluded that “the injury appears to be demyelinating in nature” and the recommendation was made to consult a neurosurgeon specializing in nerve grafting.

- [13.] She went onto set out her medical history including her visits to Dr. Bowe, Dr. Munnings and Dr. Rahming. The Defendant had approved her visit for consultation with the South Florida Spine Institute where she was diagnosed with Lumbago, bilateral radiculopathy.
- [14.] She testified that she never experienced any issues with her back prior to this injury and so she was certain that it was related to the fall. Further, that she was physically active and an avid jogger. However, as a result of the injury she must avoid high-impact aerobics, she cannot wear high heeled shoes, lift heavy objects or sit for an extended period of time.
- [15.] She complained that the Defendant had withheld her salary and to this date are deducting a approximately \$200 from her salary every month for “sickness” which she does not understand.
- [16.] On cross examination she was questioned about whether the pain was limited to her left leg and ankle and she confirmed that it did initially.
- [17.] She also testified that she was accustomed to wearing high heeled shoes and would be mindful of where she is walking as would “all right thinking people”.
- [18.] She confirmed that she returned to work on 19th September, 2020 and prior to that she had been away from work for approximately five years. She was in the Registration Department and assist customers mostly by telephone because there is not many walk-in customers.

Maragaret McKay-Dean

- [19.] Evidence was given by Mrs. Margaret McKay-Dean, a retired former Clerk, employed at the NIB, who testified that she was not present at the time when Ms. Burrows fell, but upon going towards where she was lying down, she observed defects in the floor. She had this to say:

“I have regularly crossed the area where Ms. Burrows fell and had previously noticed that there were several holes or defects in the floor which, in my opinion, made it unsafe for women in heels to walk on. For this reason, the area seemed to me an accident waiting to happen, and it had been in that condition for a long time.”

- [20.] On cross examination she was asked whether she had witnessed the accident. She confirmed that by the time that she had arrived at the scene, Ms Burrows had already fallen. Therefore, she could not give any evidence as to how the fall had occurred.

Dr. Dane Bowe

- [21.] Dr. Bowe explained that he had prepared a report dated 16 February, 2018 and he testified that he saw Ms Burrows after she had already had an operation done by someone else. He corroborated the Claimant’s evidence that he had removed the hardware from her ankle. He

testified that he had only seen the Claimant in relation to her ankle and that initially she did not present with any back pain and subsequently she had developed back pain. He said that there is a possibility that the back pain can be attributed to the ankle fracture.

- [22.] On cross examination he confirmed that the last time that he saw Ms. Burrows was on 6 March, 2017. He testified that at the time he saw her that she did have significant back pain and significant ankle pain over the affected ankle that was operated on. He said that because Ms Burrows had an MRI he knew her symptomatology and some of it related to the back and that is the reason she was referred to the United States for a herniated disc and sciatica. This was not contained in his report, rather, it was in his report to Dr. Dan Cohen at the Miami Spine Institute where surgery had been recommended at L4 and L5 of her spine.
- [23.] He recalled examining the Claimant at the request of the Defendant. He said that he had just noticed that she had back pain as well secondary to a herniated disc which had been confirmed on the MRI.
- [24.] He admitted that he could not speak to any conditions of the Claimant after the last date that he had examined her on 6 March, 2017.

Dr. Timothy Barrett

- [25.] Dr. Barrett testified that he provided a medical report for Ms Burrows on 23 February, 2018. He testified that she first visited him on 27 April, 2015 at the request of the Defendant. He diagnosed her with Adjustment Disorder with Anxiety or Adjustment Disorder with Depression. He explained that an Adjustment Disorder is when something happens and it causes you to make a psychological adjustment in your life and you experience symptoms of either anxiety or depression. He explained further that it is a reaction to what has happened in your life and whether that has produced disability or some dysfunction in some way, it is related to a specific event or set of events with anxiety or depression. In the Claimant's case, it caused depression.
- [26.] He summarized his report of her visits with him between 2015 and 2018 and stated that her chief concern was the painful ankle. The other area of concern was the non-payment of the Med 1. He noted that these are complex situations and that additionally she was in a depressed state because of the relationships within her life which she did not have before problems with her ankle.
- [27.] He confirmed that he was initially paid by the Defendant however, it eventually came to an end and Ms Burrows paid herself. He could not recall when that occurred.
- [28.] He also confirmed that early on he treated Ms Burrows with antidepressants.

Defendant's Evidence

Dr. Patrick Whitfield

- [29.] Dr. Whitfield is currently the Medical Officer, Deputy Director at the Defendant. He confirmed that the Claimant applied for Industrial Injury Benefits on the same day and was approved for coverage of her left ankle. He went onto explain that approximately 15 months after the

accident, the Claimant's provider requested coverage of a back injury which had occurred at the time of her 2014 accident. He noted that this was initially denied because it had not been disclosed at the time of her application for Industrial Benefits, however, it was later reviewed and coverage of her back subsequently allowed.

[30.] He testified that the Claimant was referred by a local neurosurgeon for an overseas consultation with a spinal surgeon in 2016 who recommended surgery which was scheduled on two occasions but was not performed. The surgery was not performed because on both occasions the Claimant gave reasons why she was unable to attend. He explained that she was given an extension to have the surgery performed with the last one being given in 2018.

[31.] Dr. Bowe recommended on 27th May, 2019 that the Claimant was fit to return to work with effect from 5th August, 2019. The Defendant requested that the Claimant attend consultation for a medical assessment by Dr. Kathryn Desouza to confirm her fitness to resume her regular duties at work. After completion of the assessment on 26th August, 2019 she was assessed as fully capable of performing all the duties as contained in her job description.

Carol Sandra Woods

[32.] She is employed at the Defendant in the post of Senior Manager in the Talent Management and Capacity Development Department and had this to say:

- “5. On the 13th March, 2014 I was called to the ground floor of the Defendant's head office at Baillou Hill Road, being informed that the Plaintiff had fallen in the area near the vending machine. When I arrived I observed that the Plaintiff's shoe heels were very high, stiletto heels. I further notices that there was no defect in the area where she fell. Later that day I completed the Employer's Report on Accident at Work (Form B-44)...
6. Pursuant to Regulations 52 to 57 of the National Insurance (Benefit and Assistance) Regulations, the Plaintiff is receiving a Disablement Benefit from the Defendant, on a monthly basis in the amount of \$731.01. The Disablement Benefit was awarded to the Plaintiff with effect from the 27th May 2015, monthly disbursements to the Plaintiff in the amount \$731.01 are current and up-to-date (August 2021) and the Plaintiff is scheduled to be paid Disablement Benefit for life.
7. The Plaintiff was paid a total of \$89,306.61 in National Insurance injury benefit and disablement benefit payments from March 2014 to August 2021...
9. Further the Plaintiff has returned to work and her regular duties at the National Insurance Board as of Monday, the 2nd September 2018 following a five-year absence after her fitness to return to work was confirmed by both Dr. Dane Bowe of Bahamas Bone & Joint Centre and Dr. Kathryn DeSouza of Sports, Spine and Rehabilitation Centre....
10. The Plaintiff's regular duties involve sitting at a desk and assisting numerous customers in the Defendant's Registration Department and walking to different

areas throughout the premises among other things. The Plaintiff has performed exceptionally well and discharged her duties as a well-bodied individual.

11. The Plaintiff has been receiving her full salary of \$59,955 since returning to work.

[33.] On cross examination she admitted that she observed the area where the Claimant fell and did not notice any defects in the floor. However, she did admit that the Accident Report completed referred to the accident occurring due to the Claimant's heel being caught in a hole in the floor.

[34.] She also testified that no salary had been withheld from the Claimant and that she had been paid in accordance with the Industrial Agreement and that no salary was withheld that was due to the Claimant.

[35.] Counsel for the Claimant showed various records and emails regarding deductions from the Claimant's salary to justify the deductions that were made. Her testimony was that all deductions were lawful deductions in accordance with the provisions of 41 of the Industrial Agreement between the Defendant and the Public Managers Union.

Lexton Symonette

[36.] He testified that the Defendant's security department was responsible for ensuring the safety and security of the Defendant's staff and facilities and assist with ensuring a safe working environment and safe systems at work by routinely patrolling and inspecting, risks and threats and reporting on the same. A copy of the job description of the security officer was attached to his Witness Statement.

[37.] Mr. Symonette testified that the security officers routinely inspected doors, windows and gates to ensure that they were properly secured and observe other irregularities such as broken water pipes and fire hazards etc. He noted that where there are irregularities a caution sign is placed near any potential "*dangers or the area is cordoned off in order to alert and safeguard employees and customers*".

[38.] On cross examination Mr Symonette explained that while the job description referred to the placing of a caution sign near any potential dangers or areas, it used the word "etc." which meant it was not limited to these things. He admitted that he could not say whether the security officers had discharged their responsibilities.

ISSUE I: Whether the Defendant owed the Claimant a duty of care

[39.] I do not believe that there is an issue of whether the Defendant owed the Claimant a duty of care at common law and or by statute because it is undisputed that the Claimant was at all material times, an employee of the Defendant; and, the law in this area is well settled.

[40.] I refer to Halsburys Laws of England Volume 39 (2021) paragraph 33 which states as follows:
"A contract of employment contains an implied term that the employer will take reasonable care for the employee's health and safety. The level of this duty is the same as that of the

employer's common law duty of care in the law of negligence; and so an employee injured at work may theoretically have a cause of action in both contract and tort. ”

- [41.] The **Health and Safety At Work Act** similarly provides at section 4(1) that the general duty of every employer is to ensure so far as reasonably practicable the health, safety and welfare at work of all his employees and section 4(2) sets out the matters to which that duty extends which included a duty to maintain the place of work in such a condition that it is safe and without risks to health, extending even to ensuring that the means of access to and egress from the premises are safe and without such risks.
- [42.] Further and similarly, section 7 of the Health and Safety At Work Act imposes amongst other things, an obligation upon employees to take reasonable care for the health and safety of himself and other persons who may be affected by his acts or omissions at work.
- [43.] Therefore, I find that the Defendant owed the Claimant a duty of care under both statute and common law.

ISSUE II: Whether the Defendant breached its duty of care to the Claimant

- [44.] The parties disagree as to whether the Defendant breached its duty of care.
- [45.] On the one hand, the Claimant alleged negligence against the Defendant and particularized in her Amended Statement of Claim how the Defendant was negligent as follows:

Particulars of Negligence, Breach of Occupier's Duty, Breach of Contract and Breach of Statutory Duty

- (i) Failing to take reasonable care to maintain the premises in a proper state of repair in breach of the duty of care owed by the Defendant as occupier of the premises to the Plaintiff as invitee and/or contractual entrant.
 - (ii) Failing to take reasonable care to ensure that the premises were safe in breach of the duty of care owed to the Plaintiff by the Defendant under the employment contract between the Parties and/or virtue of the common law duty of care to maintain safe premises and safe working environment owed to the Plaintiff as the Defendant's employee.
 - (iii) Failing to discharge the duty under the Health and Safety at Work Act section 4(2)(d) to maintain its premises in a safe condition with risk to the health of the Plaintiff and its other employees.
 - (iv) Failing to fence off or guard the floor defect.
 - (v) Failing to provide any or any adequate warning of the presence of the floor defect.
- [46.] The Defendant has on the other hand, maintained that it had taken all reasonable steps to provide a safe place of work. Additionally, the Defendant insisted that the Claimant's slip and fall was an industrial accident and not negligence on its part and, that it had discharged all

obligations to the Claimant in respect of the cost of medical care and treatment relative to the industrial accident.

[47.] The Defendant maintained that the Claimant was contributorily negligent because she was wearing stiletto heels at the time of the claimed fall.

[48.] The Defendant particularized the Claimant's negligence as follows:

- (a) Failing to keep any or any proper look out.
- (b) Failing to look where she was placing her feet.
- (c) Failing to heed the presence of any defect which she may prove to have existed in the surface upon which she was walking.
- (d) Failing to avoid any such defect.
- (e) Stumbling, slipping or overbalancing in some manner unknown to the Defendant, so as to fall and injure herself.
- (f) Wearing stiletto heels at work.

[49.] It is undisputed that the Claimant has the burden of proving that on a balance of probabilities that the Defendant failed to maintain its premises properly. **Manzoni v Douglas [1886] 6 QBD 145**

[50.] There was no witnesses to the Claimant's fall and an allegation by the Claimant's witness that the area where she fell had defects which were present for some time. The Claimant' in her own evidence admitted wearing stiletto heeled shoes which she alleged got caught in the defect in the floor. However, the Defendant's witness, Ms Woods to whom the accident was reported testified that she went downstairs afterwards and found no holes in the surface of the floor, only the normal line where the tiles were separated from each other.

[51.] The Claimant's submitted that the evidence of the breach by the Defendant of its duty to maintain its premises in a condition that it is safe and without risks to persons can be taken as proven on the balance of probabilities.

[52.] I refer to the dicta in **Leversley v Thomas Firth and John Brown Ltd. [1953] 2 All ER 866** where it was stated that it will be sufficient that the premises are maintained "*in as safe a condition as a reasonable prudent employer make them*" and that if the employer "*has an efficient system to keep the workplace clean and free from obstruction, that is all that can be reasonably demanded from him.*"

[53.] Additionally, I refer to the dicta of the Honourable Justice Hall (as he then was) in **Pratt v Cable Beach Resort Limited [2010] COM** at paragraph 67 where he said as follows:

“Employers have no duty to ensure that the workplace is risk free. There are hazards in every workplace as there are in every household, and an employee does have the responsibility to take reasonable care for his own safety.”

- [54.] I accept the evidence of Mr. Symonette which I found demonstrated that there was a system of maintaining its premises through weekly and daily checks to minimize the risk of injury to employees and other visitors to its premises.
- [55.] Therefore, the Claimant has not discharged the onus of proving negligence on the part of the Defendant in relation to her fall.

Conclusion

- [56.] For these reasons, I do not find that the Defendant was in breach of their duty of care to the Claimant or pursuant to the provisions of the Health and Safety Act.
- [57.] Therefore, I do not need to consider the remaining issues, viz., whether the Claimant was contributorily negligent or damages.
- [58.] I found no reason to depart from the usual costs order, viz., that costs follow the event. Therefore I award costs in the sum of \$3,500 to the Defendant to be paid by the Claimant.

Dated this 1st day of April, 2025



**Camille Darville Gomez
Justice**