

WEIR . DUN Laoghaire

O'Higgins C.J.
Griffin J.
Hederman J.

THE SUPREME COURT

(15-1982)

WEIR

v.

CORPORATION OF DUN LAOGHAIRE

JUDGMENT delivered on the 20th day of December 1982 by
O'HIGGINS C.J. *Hederman J. concurring*

This is an appeal against a jury's verdict awarding damages to the Plaintiff. The appeal rests on two submissions made by the Defendants. In the first place they contend that the trial Judge ought to have withdrawn the case from the jury because there was no evidence that the interference with the roadway which caused or contributed to the Plaintiff's injuries was either authorised or permitted by them. Secondly, they claim as an alternative, that the case ought to have been withdrawn from the jury because there was no evidence of negligence.

I propose to deal in the first instance with the second ground of appeal. The evidence establishes that on the Sunday morning of the accident the Plaintiff who

was an elderly lady was, in the company of her husband, crossing the road at Royal Marine Road, Dun Laoghaire. She was proceeding from Dun Laoghaire Church towards a new shopping centre on the far side of the road. As she neared the side to which she was proceeding she tripped, fell and suffered injuries. There was evidence that the cause of her fall was a difference in road levels of two inches or more along a line where a new lay-by for buses was being constructed. No warning of this difference in level was given and the entire roadway which was tarmacadam, appeared uniform. I am quite satisfied that on these facts it was proper that the case should have gone to the jury on the issue of negligence. The jury having found negligence I do not think that such finding can be disturbed.

As to the first ground it appears that the difference in road levels which caused or contributed to the Plaintiff's fall and injuries came about in the following circumstances. A company called MEPC (Ireland) Limited sought planning permission from the Defendants as the

planning authority under the Local Government (Planning and Development) Act 1963 for the development of a site along Marine Road as a shopping centre. Permission was obtained from the Defendants as the planning authority on the 12th December 1973 but an appeal was lodged by an objector. The appeal was decided and final planning permission granted by the Minister for Local Government on the 21st August 1973. A condition of this permission was that a bus lay-by be provided by the developers, if required by the planning authority, on Marine Road.

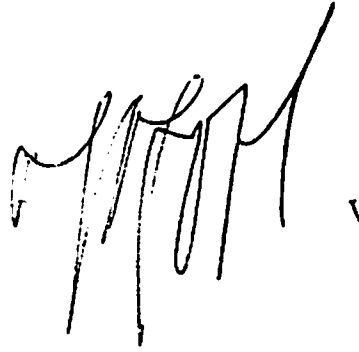
When the building of the shopping centre was completed a firm of contractors called John Paul & Company proceeded to erect or construct a bus lay-by along Marine Road.

This involved considerable interference with the roadway and adjoining footpath. The layout of this bus lay-by was agreed with the Defendants. This appears from the evidence of their Assistant Borough Engineer. In addition, from his evidence it appears that the carrying out of the work was known to the Defendants. From these facts it can fairly be inferred that the provision of the bus

lay-by had been required by the Defendants as the planning authority and that the work was carried out by John Paul & Company on behalf of the developers and with the knowledge and approval of the Defendants as the planning authority.

The Defendants maintain that as the highway authority under the Local Government Act of 1925 they are not to be fixed with knowledge or made liable in respect of any licence or approval which they might have or may have given as the planning authority under the Local Government (Planning and Development) Act 1960. I do not accept this submission. I am satisfied that the Defendants must be held to have known and to have approved of the work undertaken by John Paul & Company. Even if the work was authorised originally by the Defendants solely as the planning authority this does not mean that as the highway authority they cannot be regarded as having knowledge thereof. Whatever was done was clearly done with their knowledge and they had a responsibility to look to the safety of those using the roadway, who might thereby be exposed to danger if what was done caused risk of injury.

In my view, the grounds upon which this appeal appeal has
been moved fail and this appeal should be dismissed.

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WEIR - Dun Laoghaire

O'Higgins C.J. ✓
Griffin J.
Hederman J.
(15/1982)

THE SUPREME COURT

MARY WEIR

v.

CORPORATION OF DUN LAOGHAIRE

JUDGMENT delivered on the 20th day of December 1982 by

GRIFFIN J. (Minority)

The facts are set out in the judgment of the Chief Justice. On those facts, the plaintiff is entitled to succeed against the person who created the danger on the highway - for danger it was to pedestrians such as the plaintiff. The work in this case was, however, not carried out by nor was the danger created by the defendants.

The defendants are the highway authority charged with the repair and maintenance of the roads (including footpaths) in Dun Laoghaire pursuant to Part III of the Local Government Act, 1925, and they are sued as such. It is well settled that, as such authority, although they are not liable to a user of the highway for injuries suffered or caused by want of repair (non-feasance);

(2)

they are liable in damages for injuries suffered by such user if they or their servants, or those for whose acts they are responsible, have been negligent in doing repairs to or in interfering with the highway (misfeasance). Where the interference with the highway is done by their servants, no difficulty arises. Where the work is carried out by an independent contractor engaged by them to do the work, although they are not responsible for the casual or collateral negligence of the contractor, they are liable if their contractor fails to take reasonable precautions to protect the users of the highway from danger which, from the nature of the work, is likely to be caused to them. The authority which has undertaken the work cannot escape responsibility by delegating the performance of the duty imposed on them to the contractor.

If, therefore, in this case the defendants had undertaken the work in question, and the 2 inch difference in level had been caused by their servants or by a contractor engaged by them to carry out the work, they would be clearly liable in damages to the plaintiff. That however was not the position.

(3)

In the High Court and on the hearing of this appeal the case made on behalf of the plaintiff was that because the developers of the shopping centre obtained planning permission for the development, which included the construction of a bus lay-by on Marine Road, the lay out of which had in advance been agreed with the defendants, and because the defendants were aware that work was being carried on by the contractors engaged by the developers, the work being carried out had been "authorised" by the defendants, and that they were liable for any negligence of such contractors in carrying out the work, and in particular in failing to warn of or guard against the danger on the highway on the occasion of the accident.

The learned trial Judge accepted this submission and ruled accordingly. In my opinion, his ruling was incorrect - so to extend the liability of a highway authority to include responsibility for the acts of a contractor engaged by a developer in doing work for which the latter had obtained planning permission, and equating this liability with that of the authority for acts of a contractor engaged by them, is in

(4)

my view warranted neither by principle nor authority. Indeed, all the cases cited in the High Court and referred to in the rulings of the trial Judge were cases in which the work had been carried out to the highway by the highway authority. In this Court, counsel were unable to refer to, nor have I been able to find, any case in which liability attached to a highway authority by reason of the granting of planning permission for the work being carried out.

Although the plaintiff is entitled to be compensated in damages for the injuries suffered to her in this accident, in my judgment she is not so entitled as against the present defendants. I would accordingly allow the appeal.

J.R.

20.12.1982