

**APPROVED**

**[2020] IEHC 672**

THE HIGH COURT

2017 No. 10355 P

BETWEEN

B.  
(A MINOR SUING THROUGH HIS UNCLE AND NEXT FRIEND)

PLAINTIFF

AND

THE PERSONAL REPRESENTATIVE OF THE ESTATE OF THE LATE S.H.

DEFENDANT

**JUDGMENT of Mr. Justice Garrett Simons delivered on 21 December 2020**

**INTRODUCTION**

1. This matter comes before the High Court by way of an application to rule upon an offer of settlement in personal injuries proceedings. The injured party is a minor and sues through his next friend. Given that the injured party is still only a minor, the approval of the court is necessary before the offer of settlement can be accepted.
2. These proceedings are subject to reporting restrictions in circumstances, first, where the injured party is a minor; and, secondly, where it is necessary for the purposes of this judgment to disclose certain aspects of the injured party's medical condition. The publication or broadcast of any matter relating to the proceedings which would, or would be likely to, identify the plaintiff or his extended family is prohibited pursuant to section 27 of the Civil Law (Miscellaneous Provisions) Act 2008.

NO FURTHER REDACTION REQUIRED

## **FACTUAL BACKGROUND**

3. The factual background to the application is as follows. (In order to protect the identity of the minor, certain details have been deliberately omitted from this summary).
4. The injured party had been involved in a road traffic accident in 2014. The injured party had been a passenger in a car driven by his mother. Tragically, his mother had been killed in the accident. At the time of the accident, the injured party was seven years of age.
5. It is unnecessary to set out the precise details of the accident given that liability has been conceded on behalf of the defendant in the formal defence delivered on his behalf. The only issue outstanding between the parties is the assessment of the monetary damages to be paid to the credit of the injured party.
6. The injured party had suffered injuries to his head in the accident, and had lost consciousness. He subsequently had symptoms of headache and vomiting, but had otherwise been stable. A CT angiography had been carried out and had revealed a significant bleed in the front of the brainstem. The injured party was diagnosed with a subarachnoid haemorrhage. There was no evidence of focal aneurysm and the injured party was managed conservatively. Having been kept in hospital for a number of days, the injured party was discharged.
7. It seems that for the first two years after the accident, the injured party had been angry and aggressive. He exhibited challenging behaviours in school and engaged in fights with other children. He suffered sleep disturbance with nightmares. The injured party received counselling.

8. Thereafter, the injured party made what has been described as a “remarkable recovery” after his serious head injury. A clinical examination by a consultant neurosurgeon in 2017, i.e. some three years after the accident, did not reveal any neurological defect. The injured party was described as presenting as a quiet boy with normal personality, fully alert and fully orientated appropriate to his age. It was also noted that he was making satisfactory progress in primary school and had returned to sports (including cross-country running).
9. The consultant neurosurgeon recommended that the injured party would require a vocational assessment in approximately three years’ time in order to determine that there have been no long term ill effects following his head injury.
10. The injured party had also been examined in 2017 by a consultant child and adolescent psychiatrist. The injured party was described as having suffered emotional and behavioural symptoms of a traumatic grief reaction for approximately twelve months after the accident. These symptoms responded well to specialised counselling and the injured party also benefited from the support of his very caring and consistent family environment. The injured party is described as having “mild residual symptoms”.
11. In April 2019, the injured party had been examined by another consultant child psychiatrist. The summary and conclusion of her report are as follows.

“This eleven year old boy was involved in a tragic accident in which his mother was fatally injured. [The minor] and his two brothers also sustained significant injuries, one brother requiring Intensive Care treatment. [The minor] was admitted to hospital with a brain injury and a fracture to the hip and other soft tissue injuries. [The minor] developed an Adjustment Disorder, with many symptoms typical of major trauma. He suffered marked distress, feelings of irritability, anger, preoccupation with his loss, distress on exposure to reminders, separation anxiety, and loss of interest in normal activities. He had two series of counselling in the school

setting, where a significant deterioration in his behaviour and application had been noted.

Irritability and headaches together with concentration difficulties may have been caused by his head trauma. It would be helpful to have sight of a neurosurgical opinion, as suggested previously by [the consultant neurosurgeon].

[The minor] continues to suffer a normal grief response. He will be at increased risk of developing anxiety or depression in the future, and may require Mental Health Services at times of stress.”

12. Thereafter, the injured party has been examined by a consultant paediatric neurologist. The report is dated 20 November 2019. The consultant noted that long term cognitive and emotional dysfunction is common after traumatic subarachnoid haemorrhage. It is suggested that this injury could explain the injured party’s frontal lobe dysfunction, resulting in disinhibition, aggression and outbursts. The consultant recommended that a neuropsychologist or psychiatrist assess the minor to see if there is evidence of frontal lobe dysfunction, to look at ongoing grief reaction and/or other neuropsychic causes of his behaviour.
13. The injured party was duly examined by a clinical psychologist practicing in neuropsychology. Her conclusions are stated as follows in a report dated 25 March 2020.

“On the balance of probabilities, it is my impression that his current emotional and behavioural challenges are as a result of his childhood brain injury; rather than an on-going traumatic grief reaction. It is reasonable to suggest that such challenges can be exacerbated during teenage years. Based on the subjective reports from the minor and his father there is some evidence to suggest that the change in family composition approx. 18 months ago has, at times, been a difficult adjustment for [the minor] but there is no evidence to suggest it has played any primary causal role.

I note in [the consultant neurosurgeon's] report (dated 26/04/2017), he recommended 'vocational assessment in the next 3 years to determine that there has been no long-term ill effect following his head injury'. [The consultant neurosurgeon] referenced the importance of remaining cognisant of the potential impact of [the minor's] brain injury on his developing brain and the possibility for long-term adverse effects on psychological and educational function. However, I can see no subsequent reports to suggest that [the minor's] neuropsychological profile was ever formally assessed thus far.

The negative consequences of dramatic brain injury tend to persist, or worsen, over time within the school setting if not appropriately identified and managed. Indeed factors such as, increased complexity of school work and greater levels of independence expected of young people at secondary level, can trigger an exacerbation of their neuropsychological challenges. It is reasonable to consider this as an additional factor in [the minor's] reported change in behaviour over the previous two years."

#### **OFFER OF SETTLEMENT**

14. Following negotiation between the respective counsel on behalf of the minor and the insurers acting on behalf of the defendant, a proposed settlement had been agreed in the sum of €130,000 by way of general damages. (There is no claim for special damages).
15. Given that the injured party is still only a minor, the approval of the court is necessary before the offer of settlement can be accepted.

#### **DISCUSSION AND DECISION**

16. It appears from the medical reports that the injured party had initially made good progress some two years following the road traffic accident. Unfortunately, there has been a deterioration in his mental health since then. The most recent report, namely that of the clinical psychologist, indicates that the injured party's

current challenging behaviours are attributable principally to his acquired brain injury rather than to any traumatic grief reaction or environmental circumstances.

17. The injured party is still relatively young: he is currently 13 years of age. The extent to which the minor's long term educational and vocational prospects have been adversely affected by his acquired brain injury remains unclear. Whereas it is to be hoped that the minor will overcome his current challenging behaviours and flourish in the longer-term, the possibility of some ongoing mental health issues cannot be ruled out at this stage.
18. It is, therefore, premature to make a meaningful assessment as to whether the injured party is likely to achieve an award greater than €130,000 were the matter to proceed to trial. It would not be safe to accept the award now as to do so might result in the injured party receiving less than full compensation. Accordingly, I make an order refusing to approve the proposed offer of settlement. The costs of the application are to be reserved. I recommend that the matter should be reassessed in two years' time on the basis of further medical reports. The injured party has liberty to apply in the interim.
19. The fact that the offer of settlement has been refused has the consequence that the proceedings will not be brought to a close today. This is, however, unlikely to cause any practical difficulties. The injured party would not be entitled to payment out of the award until he reaches his age of majority in any event. There are no special damages and thus there are no outstanding charges which require immediate payment.
20. Liability has been conceded in the defence delivered, and thus a short delay in the proceedings coming on for trial will not cause the type of difficulties in terms

of the recollection of witnesses which can arise in other cases. If the matter does proceed to trial, it will be on the basis of up-to-date medical evidence.

21. Finally, it should be emphasised that the fact of this court having refused to approve the current offer does not preclude a fresh application for approval subsequently, based on up-to-date medical reports or an increased monetary offer.

Approved  
Gemma S. Mans