

THE HIGH COURT

[No. 2018 6228 P.]

BETWEEN

NORMA GAVIGAN

PLAINTIFF

AND

JOHNSON MOONEY AND O'BRIEN

DEFENDANT

EX TEMPORE JUDGMENT of Ms. Justice Reynolds delivered on the 2nd day of July 2021

Introduction

1. The issue of liability has already been determined in these personal injury proceedings and an ex tempore judgment was delivered on the 24th day of June, 2021. The only outstanding issue is the assessment of damages.

General damages

2. In assessing damages, the plaintiff is entitled to recover general damages for pain and suffering to date and where applicable, into the future. The award for damages must be fair and reasonable having regard to the nature and extent of the injuries sustained. The assessment is to be made by reference to the Book of Quantum which is intended to provide an indication as to the potential range of compensation for a particular injury.
3. Recently, "damages" was defined by Noonan J. in *McKeown v. Crosby* [2020] IECA 242 as follows:

"Damages are, in theory at least, restitutive meaning that they are intended to put the plaintiff back into the position he or she was in before the event complained of."

4. Where there are multiple injuries, as in this case, the Book of Quantum specifically provides as follows:

"If, in addition to the most significant injury, there are other injuries, it is not appropriate to add up values to determine the amount of compensation. Where additional injuries arise there is likely to be an adjustment within the value range."

5. The plaintiff in these proceedings is a 60-year-old married lady with three adult children who is self-employed, doing part time office work within the family nursing home business.
6. Before embarking on any assessment of damages, it is important to note the plaintiff's complex pre-accident medical history.

Pre-accident medical history

7. Prior to the accident, the subject matter of these proceedings, Mrs. Gavigan was unfortunate enough to be involved in four previous road traffic accidents, two of which occurred in 2001, the third in 2004 and fourth in 2007. Due to the overlap in the nature of the injuries sustained in those accidents, all of the proceedings arising therefrom were

compromised in 2009 for an omnibus figure. The principle injuries sustained were to her neck and back.

8. It is clear that arising from those injuries, she underwent chronic pain management involving numerous medical procedures including:
 - (a) A spinal fusion in 2005 at the C5/6 level,
 - (b) rhizotomies to the cervical spine,
 - (c) lumbar epidurals,
 - (d) cervical epidurals,
 - (e) sympathetic nerve blocks, and
 - (f) stellate ganglion blocks.

Her pain management procedures were complicated by severe migraines and hypotensive episodes.

9. In 2013, an anterior disc replacement at C4/5 was performed and an anterior cervical discectomy and fusion at the C6/7 level in circumstances where she had developed frequent numbness in her fingers and hands.
10. Her medical history is further complicated by a history of mild systemic lupus erythematosus (SLE) and Sjogren's Syndrome.

Injuries

11. Arising from the accident, the subject matter of the proceedings herein, the plaintiff sustained multiple injuries as follows: -

- (a) Left ankle injury

The plaintiff suffered immediate discomfort to her left ankle in the aftermath of the accident. She subsequently came under the care of Mr. David Borton, orthopaedic surgeon, who noted that she had a chondral defect in her left Talar dome and the distal tibia. The injury was initially treated with two steroid injections and further with an ankle arthroscopy and micro fracturing.

Unfortunately, her symptoms persisted and upon review on the 26th April, 2021 examination revealed an audible clicking sensation in her ankle, albeit that she maintained a full range ankle movement. Having reviewed a recent MRI, Mr. Borton opined that she required further arthroscopy of the ankle. By way of prognosis, he advised that she has permanent damage to her ankle joint and has a 20% chance of requiring an ankle arthrodesis or an ankle replacement in the future.

In terms of her pre-accident history, Mr. Borton states that she had a previous MRI scan of her left ankle on 16/4/2012 but there was no evidence of a chondral injury at that time.

- (b) Right wrist injury

The plaintiff sustained a right scaphoid fracture which was treated with non-operative management by splinting for six weeks. Thereafter, she was referred for physiotherapy treatment.

Subsequent x-rays revealed the fracture had healed radiologically but unfortunately the plaintiff had developed symptoms of deQuervains tenosynovitis which her medical advisers have stated is not related to the accident. The plaintiff accepted in her evidence that her wrist injury settled relatively quickly post accident and that any treatment she required thereafter was not related to the accident.

(c) Sacro-coccygeal injury

The plaintiff experienced severe pain and discomfort in her sacro-coccygeal region in the immediate aftermath of the accident. She was treated with non-steroidal anti-inflammatory medication for a number of weeks in order to relieve her pain which was relatively severe. She remained symptomatic and was subsequently referred for an MRI scan of her sacro-coccygeal region on February 29, 2016. She was reassured by her treating physician that there was no acute injury and she was advised to continue with her pain medication. Her symptoms fortunately resolved fully thereafter.

(d) Thoracic, lumbar and cervical spine injuries

In relation to her thoracic spine, the plaintiff's first complaints in that regard appear to have emanated some months after the accident. She was admitted to the Hermitage Medical Clinic on the 27th August, 2016 and remained there until the 3rd September, 2016. She complained of severe upper abdominal, left flank and back pain which had come on the preceding day. There was no obvious triggering event in the days or weeks immediately prior to the onset of this pain. She underwent a number of investigations including an MRI scan of her thoracic/lumbar spine. Her lumbar spine showed disc desiccation throughout the thoracic and lumbar region with shallow posterior disc bulges in the mid thoracic region at the T6-7 level which was indenting and causing slight contour deformity of the interior cord without compression and at the T8-9 level. While an inpatient, the plaintiff was reviewed by Professor Duffy, her treating rheumatologist, who advised that the most likely cause of her discomfort was a thoracic radiculopathy due to the posterior disc bulges at T6-7 and T8-9 levels of her thoracic spine. She was treated with analgesics and subsequently underwent facet joint injections by Mr. Nagaria, consultant neurosurgeon, with modest improvement in her symptoms. Mr. Nagaria has opined that there was a significant muscular skeletal type injury to her cervical and thoracic spine as a direct consequence of the accident with involvement of the lumbar spine. In his view, the injury could take up to four months to improve and advised that the plaintiff would require pain management strategies in order to reduce her significant spinal pain.

However, it is notable in Mr. Nagaria's first report that the plaintiff reported that she had suffered a reoccurrence of her cervical spine pain which had subsided significantly prior to the accident. It is clear, therefore, that the plaintiff continued to have at least some

symptoms in her neck which were aggravated by the accident, the subject matter of these proceedings.

More recently, Dr. Illyinski has stated that prior to the accident herein, the plaintiff suffered mild to moderate upper spine pain which was intermittent and was significantly exacerbated after the accident. He advised that she will continue to require ongoing pain management into the future.

In respect of her thoracic spine and low back complaints, the Defendant's medical advisers are of the view that she has long standing degenerative changes which were exacerbated by the accident and advise that it is likely that the soft tissue injuries she sustained in the accident have now settled to the extent that her ongoing complaints relate to her underlying problems. I accept that this is the most likely scenario at this stage.

(f) Injuries to her jaw and teeth.

The plaintiff gave evidence of having suffered severe bruising and swelling together with pain and discomfort to her jaw area in the aftermath of the accident. However, her own general practitioner, Dr. Ryan, makes no reference to these complaints in her report nor indeed is there any evidence before the court of any damage to her teeth arising from the accident. It may well be the case having regard to the multiplicity of her injuries that the jaw injury was seen as a relatively minor soft tissue injury. Further, it appears to have healed relatively quickly without any adverse sequelae. There is no evidence before the court of any damage to the plaintiff's teeth nor indeed is there any claim for special damages in that regard.

Relevant case law

12. As already outlined above, where there are multiple injuries as in this case, the Book of Quantum requires the court to firstly consider the most significant injury and its value range, and thereafter consider the additional injuries and apply an adjustment within that value range. However, it is well recognised that such an approach is not always feasible particularly in more complex cases and that the Book of Quantum is perhaps more relevant where the injuries are straightforward.

13. In the *McKeown* decision referred to above, the Court of Appeal considered the Book of Quantum and its application in cases where multiple injuries were pleaded and stated (Noonan J.) as follows:

"It does of course remain the case that the Book of Quantum is most suited to relatively straightforward cases where the injury falls more clearly into one or more of the defined categories. In complex cases with multiple injuries, it may be of little or no assistance and there are many injuries it does not capture at all."

14. In that case, the plaintiff had suffered multiple injuries to her lumbar, thoracic and cervical spine, left shoulder, arm and hand following a road traffic accident. In reducing the general damages awarded by the High Court from 70k to 35k, the court stated:

"It is not proportionate when viewed against the measure of the maximum for the most serious injuries. Neither is it proportionate in relation to other comparable awards and in that respect, the most directly comparable award is that in Payne v. Nugent. Finally, it bears no relation to the range identified in the Book of Quantum which I consider appropriate in this case.

15. It is clear, therefore, that the approach to be adopted by the court in determining the appropriate award for general damages is as follows:
 1. The award must be proportionate when viewed against a cap on general damages of €500,000 for the most serious of injuries, as confirmed by the Supreme Court in the Ruth Morrissey case last year.
 2. The award must be proportionate having regard to other comparable awards.
 3. The award must be proportionate having regard to the range identified in the Book of Quantum where appropriate.

Discussion

16. There is no dispute but that the most significant injury sustained by the plaintiff was to her left ankle as already outlined, amounting to damage to the articular cartilage and underlying bone of the ankle joint. I am satisfied that this injury falls within the severe and permanent category of injuries in circumstances where her treatment involved steroid injections, arthroscopy and microfracturing. Further, the prognosis is that she has permanent damage to the ankle and may require an arthrodesis or ankle replacement in the future.
17. In addition, the plaintiff sustained a fractured scaphoid which is fortunately resolved and the plaintiff accepts that any ongoing symptoms are not related to this accident.
18. The plaintiff also sustained an exacerbation of pre-existing injuries to her lumbar, cervical and thoracic spine requiring significant medical intervention.
19. Finally, the plaintiff suffered additional soft tissue injuries to her sacro-coccygeal region and jaw area which are fortunately resolved without any adverse sequelae.
20. Having regard to the foregoing, I think it would do an injustice to the plaintiff to simply look at the most significant injury and carry out an adjustment within the value range to compensate her for her other injuries.
21. Equally, I am cognisant that it would be inappropriate to simply add up the additional values for each injury as to do so would result in a disproportionate award of compensation.
22. It is difficult in the particular circumstances of this case to find comparable awards by the courts having regard to the nature and multiplicity of her injuries together with her complex pre-accident medical history and exacerbation of underlying conditions.

23. In all the circumstances, and in attempting to measure general damages in a fair, reasonable and proportionate manner having regard to the particular circumstances of this case, I will award the plaintiff the sum of €90,000 for general damages.

24. Special damages are agreed by the parties at €53,400.72.

Conclusion

25. The plaintiff is therefore entitled to judgment in the sum of €143,400.72.