

APPROVED

[2022] IEHC 459



THE HIGH COURT

2022 No. 585 P

IN THE MATTER OF SECTION 35 OF THE PERSONAL INJURIES  
ASSESSMENT BOARD ACT 2003

BETWEEN

NOAH COGLEY

(A MINOR SUING THROUGH HIS FATHER AND NEXT FRIEND KEITH  
COGLEY)

PLAINTIFF

AND

MIRIAM FOLEY

DEFENDANT

**JUDGMENT of Mr. Justice Garrett Simons delivered on 29 July 2022**

## INTRODUCTION

1. This matter comes before the High Court by way of an application to approve an assessment of damages made by the Personal Injuries Assessment Board. The assessment of damages had been made in the context of a claim for personal

NO REDACTION REQUIRED

injuries arising out of a road traffic accident. As the claimant, Noah Cogley, is a minor, court approval would have been required before the assessment of damages could become legally binding. The claimant will be referred to as “*the injured child*” where convenient.

2. The difficulty with the application is that the assessment of damages has already been rejected by the injured child, through his next friend, and a personal injuries action commenced before the High Court. The principal issue for determination in this judgment is whether it is now open to the injured child to rewind the clock and to accept the previously rejected assessment of damages.

#### **STATUTORY FRAMEWORK**

3. In most instances, it is a necessary first step to the pursuit of a personal injuries claim that the claimant make an application to the Personal Injuries Assessment Board (“*PIAB*”) for an assessment of damages. This procedural step must be completed prior to the institution of any legal proceedings. There are a number of exceptions to this requirement: it does not apply, for example, in cases of alleged medical negligence.
4. The requirement to apply for an assessment of damages is provided for under the Personal Injuries Assessment Board Act 2003 (“*PIAB Act 2003*”). Importantly, the legislation prescribes that a PIAB assessment can only ever become legally binding in circumstances where both the claimant and the respondent have accepted that assessment.
5. This reflects the consensual nature of the process for the assessment of damages under the PIAB Act 2003. The Act does not purport to put in place a parallel process of adjudication which restricts the constitutional right to litigate a claim

for personal injuries. At most, the Act has a temporary suspensive effect on the right to litigate: a claimant is precluded from bringing legal proceedings in respect of a personal injuries claim unless and until an authorisation to do so has been issued by PIAB. This is to allow time for the making of an application for an assessment of damages.

6. Once PIAB has made an assessment of damages, a claimant is allowed a period of 28 days within which to accept or reject the assessment. If the claimant fails to notify their acceptance within this period, then they are deemed to have not accepted the PIAB assessment.
7. In circumstances where the PIAB assessment has not been accepted by a claimant, PIAB is obliged to issue an authorisation which will allow the claimant to bring legal proceedings. This issuance of the authorisation marks the end of the PIAB stage of the process.
8. In certain circumstances, a PIAB assessment, which has been accepted by a claimant and the respondent, will not become binding unless and until the assessment has been approved by the court. See, generally, *Noonan v. Electricity Supply Board* [2022] IEHC 374. Relevantly, court approval is required where, as in the present case, the injured party is a child under the age of eighteen years. If court approval is refused, then PIAB is obliged to issue an authorisation which will allow the claimant to bring legal proceedings and this, again, marks the end of the PIAB process.

## **PROCEDURAL HISTORY**

9. On the facts of the present case, PIAB made an assessment of damages which was notified to the injured child's solicitors on 24 November 2021. General

damages were assessed at €50,000, with an additional sum of €26,575.32 by way of special damages.

10. The injured child's solicitors responded to PIAB in the following terms on 14 December 2021:

“We acknowledge receipt of your Assessment in this matter dated 24/11/21. The Claimant is rejecting the assessment. Accordingly, we await hearing from you with Authorisation.”

11. PIAB duly issued an authorisation to bring proceedings in respect of the claim for personal injuries. The authorisation is dated 14 December 2021. The very next day, the injured child's solicitors wrote to PIAB in the following terms:

“We refer to our letter 14/12/21, copy attached rejecting the assessment in this case. Please note, we misunderstood our instructions. The Claimant wishes to accept the assessment, subject to Senior Counsel's advice and subject to ruling.”

12. PIAB appears not to have appreciated that it had already issued an authorisation. Instead, it simply responded to the letter by acknowledging receipt of the injured child's acceptance of the assessment and requesting that it be notified of the requisite application for court approval of the assessment.

13. Rather than make an application for court approval at that time, however, the injured child's solicitors instead issued a personal injuries summons out of the Central Office of the High Court on 14 February 2022. The summons cites the authorisation to bring proceedings which had been issued by PIAB on 14 December 2021. The summons was served on the defendant and an appearance entered to the proceedings.

14. A number of months later, on 11 July 2022, counsel on behalf of the injured child applied *ex parte* to the High Court for approval of the PIAB assessment. This judgment is delivered in respect of that application.

## **DISCUSSION AND DECISION**

15. The objective of the application before the court is to make the assessment of damages of November 2021 binding upon the parties. With respect, this cannot be done in circumstances where an authorisation to bring legal proceedings has been issued pursuant to the claimant's notification of his non-acceptance of the assessment.
16. The PIAB Act 2003 prescribes that the assessment of damages procedure is to be carried out and completed prior to the bringing of any legal proceedings in respect of a personal injuries claim. To this end, a claimant is precluded from bringing legal proceedings in respect of a personal injuries claim unless and until an authorisation to do so has been issued by PIAB. This is to allow time for the making of an application for an assessment of damages.
17. The PIAB Act 2003 identifies various contingences, on the occurrence of which, PIAB is obliged to issue an authorisation. For example, a respondent may indicate at the outset that they do not consent to an assessment being made. Where this occurs, PIAB is obliged under Section 14 to issue an authorisation to the claimant. This will allow the claimant to bring legal proceedings and to pursue their claim before the courts. Similarly, in circumstances where, as in the present case, a claimant states in writing that he does not accept the assessment, PIAB is obliged under Section 32 to issue an authorisation.
18. In each instance, the issuance of the authorisation marks the transition of the claim from the consensual process under the PIAB Act 2003 to the judicial process. The temporary restriction on the bringing of legal proceedings is lifted and this draws the PIAB process to an end. Any assessment of damages which

PIAB may have made is spent, and it is not possible for a claimant to revive such assessment and to accept it retrospectively.

19. On the facts of the present case, an authorisation issued on 14 December 2021, following the notification, by the injured child's solicitors, of his non-acceptance of the PIAB assessment. Thereafter, the injured child invoked the authorisation to issue legal proceedings before the High Court. The claim for personal injuries has thus moved well beyond the PIAB process and the claim now can only be resolved in the context of the extant legal proceedings. The legislation is predicated on the principle that the PIAB process is consensual and not intended to oust the jurisdiction of the courts.
20. It follows that the application pursuant to Section 35 of the PIAB Act 2003 is inadmissible in circumstances where the assessment of damages is spent: it cannot be accepted retrospectively by the claimant nor approved by the court. The application is therefore dismissed.

*Appearances*

Philip Sheahan, SC for the plaintiff instructed by John A. Sinnott & Co.

Approved  
Sinnott S. M. A. S.