

THE HIGH COURT

[2022] IEHC 665
[Record No. 2021/1438 P]

BETWEEN:-

DARRAGH LYTTLE

PLAINTIFF

AND

JOE CURRAN COMMERCIALS LTD

DEFENDANT

JUDGMENT of Mr. Justice Barr delivered *extempore* on 30th November, 2022.

1. This action arises out of an accident at work which occurred on 16th October, 2019. At that time the plaintiff was working in the course of his employment with the defendant. He was carrying out a sandblasting operation on a machine. This involved using a sand blaster, which fired very small shards of glass onto the affected area to remove rust therefrom. While carrying out this work, the plaintiff was holding a piece of piping on a machine, when the bracket that was holding the piping broke as a result of which, the pipe moved, and his left hand received the force of the blast from the sandblasting machine.

2. As a result, the plaintiff suffered a severe injury, in the form of a deep laceration, which cut into the extensor tendon on the index finger of his left hand.

3. It is the plaintiff's case that he had never been trained to work with a sandblasting machine, nor had he been provided with any protective gloves to wear while carrying out the operation.

4. The plaintiff commenced proceedings against his employer by the issuance of a personal injury summons on 8th March, 2021. When no appearance was filed by the defendant to that summons, the plaintiff obtained judgment in default of appearance against the defendant by Order of the High Court on 29th November, 2021.

5. A notice of trial was served by the plaintiff's solicitor on 12th May, 2022. By letter dated 9th November, 2022 the defendant was informed that the matter had been listed for hearing before the High Court sitting in Dundalk on 28th November, 2022. An affidavit of service of that letter on the defendant was sworn by Ms. Shirley Scott on 15th November, 2022.

6. There was no appearance by or on behalf of the defendant at the hearing of this action in the High Court, sitting in Dundalk, on 28th November, 2022. The court is satisfied, having regard to the Order made by the High Court on 29th November, 2021 and the affidavit of service sworn by Ms.

Scott on 15th November, 2022, that it is appropriate to proceed to assess damages in this case, notwithstanding the failure of the defendant to appear at the hearing of the action.

7. The plaintiff is a married man. He turned 40 years of age on 29th November, 2022. As a result of the accident, the plaintiff suffered a deep and painful laceration to the index finger on his left hand. When he was not able to stop the bleeding from the wound, he attended with his GP, who referred him to the accident and emergency department in Cavan General Hospital. There, the wound was irrigated and explored and some material was removed from it. X-rays taken at that time revealed no further material was present in the finger. Due to the depth of the laceration the plaintiff was referred on to our Lady of Lourdes Hospital in Drogheda.

8. On examination it was evident that there had been a laceration to the extensor tendon in the affected finger. A repair operation was carried out under local anaesthetic on the following day, 17th October, 2019. The plaintiff's finger was placed in a splint until December 2019. Thereafter, he had 8/10 sessions of physiotherapy treatment in order to regain some movement in the finger.

9. The plaintiff was seen by Mr. Ashraf Butt on 18th February, 2020, some four months post-accident. At that time, the plaintiff stated that he experienced near constant pain in the finger, with a pain score of 4/10. He stated that the finger was painful 90% of the time. It was more painful during cold weather. The plaintiff stated that if he accidentally hit his finger against anything, he would experience sharp pain in the finger.

10. On examination, there was a surgically extended scar, which measured 4.5 cm long. The plaintiff was not able to flex his left index finger fully. There was at least a 50% deficit in flexion of the finger.

11. The plaintiff was reviewed by Mr. Butt on 29th July, 2022, some two years and nine months post-accident. He complained that the finger remained stiff and painful at times, particularly in cold weather. He stated that he had been doing exercises to improve the range of movement in his finger, but if he overbent the finger, he would experience a shooting pain in it. If he accidentally hit the finger against anything, he would also experience a sharp pain in it. He stated that on occasion he would forget about the injury and would grab an object in his left hand, which would cause a shooting pain in the finger. He stated that prior to the accident he had worked as a spray painter, but he was unable to do that work because it required bilateral manual dexterity, which he did not have.

12. Examination revealed a faint surgically extended scar of 4.5 cm long. There was a loss of approximately 66% of flexion in the finger. The doctor was of opinion that the plaintiff had sustained a significant injury, including laceration of the extensor tendon, due to the accident. The plaintiff's left index finger remained stiff and painful. The plaintiff was advised to continue doing exercises for the finger. However, the doctor was of opinion that there was very little chance of further improvement in the symptoms.

13. In a subsequent communication, the doctor confirmed that it had been reasonable for the plaintiff to be unfit for his pre-accident employment for a period of one year, due to the injuries sustained in the accident.

14. The court was impressed by the evidence given by the plaintiff. His complaints to the court, mirrored the complaints that he had made when seen by Mr. Butt. The court is satisfied that the plaintiff has not tried to exaggerate either his symptoms of pain, or his level of disability.

15. The plaintiff very candidly conceded that, while he had not worked since the date of the accident, it was only for the period of one year post-accident that his inability to work was due to his injuries. Thereafter, he had reached a decision with his wife that he would stay at home to mind their children, as she was working full time. Accordingly, the plaintiff was limiting his loss of earnings claim to one year post-accident.

16. The court is satisfied that the plaintiff suffered a painful injury at the time of the accident; he continues to experience pain in his left index finger, particularly during periods of cold weather and if he should grab anything in his left hand, or if he should bang the hand against an object. The court is satisfied that the plaintiff has a significant limitation of his range of motion in the affected finger. The court accepts the evidence from Mr. Butt that that limitation of movement and function will be permanent. The court notes that the plaintiff is right hand dominant.

17. In relation to the issue of general damages, Mr. Kilfeather SC for the plaintiff referred the court to the provisions of the Book of Quantum (2nd edition) at p. 47, which dealt with an injury to the finger, which was not dissimilar to the injury which the plaintiff had suffered. This related to dislocation of a joint in the finger. Moderate dislocations, which were described as being injuries which would have required manipulation of the joint back into normal position and would have taken longer to recover with extensive treatment, but with a full recovery expected, were valued in terms of general damages at €17,300-€40,700.

18. Dislocations giving rise to severe and permanent conditions, were described as those which required manipulation of the joint back into normal position and may have included more invasive treatment, or even surgery to keep the joint in position. They may also include ongoing pain and stiffness with some loss of movement in the joint and be more susceptible to future dislocation. Such injuries were valued at between €29,300-€51,900. Counsel submitted that, while not on all fours with the present injury, they were reasonable comparators.

19. Having regard to the evidence of the plaintiff, which is consistent with the evidence given by his medical consultant, and having regard to the range of damages outlined in the Book of Quantum, the court awards the plaintiff €25,000 for pain and suffering to date; together with €22,500 for pain and suffering and disablement into the future.

20. In terms of special damages, the court is satisfied that the amounts claimed for sundry medical expenses and travelling expenses in the sum of €1,680 are correct. In addition, the court finds that the plaintiff was unfit for work for a period of one year post-accident due to the injuries sustained in the accident, which, net of the deductible social welfare benefits, amounts to a loss of earnings of €14,924; giving a total award for special damages of €16,604.

21. Accordingly, the plaintiff is entitled to judgment against the defendant in the total sum of €64,104.