

THE HIGH COURT

[2023] IEHC 98
[Record No. 2019/8153 P]

BETWEEN:

IVOR BRODERICK

PLAINTIFF

-AND-

AIDAN ROBINSON

DEFENDANT

JUDGMENT of Mr. Justice Barr delivered *extempore* on 21st February, 2023.

Introduction.

1. In this action, the plaintiff claims damages, including aggravated damages, in respect of personal injuries, loss and damage suffered by him as a result of an assault perpetrated on him by the defendant on 27th October, 2017.

2. The defendant has not participated in the proceedings at all. In these circumstances, it is appropriate that the court should set out the various steps that have been taken in the action to date and the orders that have been made in the course of the proceedings.

Chronology of the Proceedings.

3. The plaintiff's proceedings were commenced by a plenary summons issued on 22nd October, 2019. That summons was personally served on the defendant on 24th October, 2019. An affidavit of service in respect of the plenary summons was sworn by Mr. Joe Nix on 24th October, 2019.

4. The plaintiff delivered a statement of claim on 29th January, 2020. A notice of motion issued on 31st January, 2020, in which the plaintiff sought judgment in default of appearance against the defendant. That motion was made returnable to 2nd March, 2020. In an affidavit which states that it was sworn on 19th January, 2020 (but which should probably read 19th February, 2020) Mr. Tom Costello stated that on 14th February, 2020 he personally served a true copy of the notice of motion and grounding affidavit on the defendant.

5. On 2nd March, 2020, O'Connor J. made an order whereby he extended the time for entry of an appearance by the defendant by a further period of four weeks from that date. The order further provided that unless the defendant filed an appearance within that period and furnished a defence within

the same period, it was ordered and adjudged that the plaintiff be entitled to recover against the defendant such amount as the court may assess in respect of his claim for damages and costs, to include the costs of the action and of the assessment, to be adjudicated in default of agreement, and that such assessment be had before a judge without a jury and be set down for hearing accordingly.

6. By an affidavit sworn on 31st July, 2020, Mr. Gerald Cronin stated that he personally served the order of the High Court made on 2nd March, 2020 on the defendant on 23rd July, 2020.

7. By letter dated 7th August, 2020, Ms. Rachel May, an official in the Central office of the High Court, confirmed that no appearance had been filed by the defendant as of that date.

8. By an *ex parte* docket dated 13th October, 2020, which was made returnable for 9th November, 2020, the plaintiff sought an order for substituted service on the defendant in respect of any future documents in the proceedings. That application was grounded on an affidavit sworn by Mr. Joseph Gavigan on 1st October, 2020.

9. By order dated 16th November, 2020, Murphy J. made an order that all pleadings and other documents in the action could be served by way of ordinary pre-paid post addressed to the defendant at an address at Gurtymadden, Loughrea, County Galway.

10. On 10th December, 2020, the plaintiff issued notice of trial. That was served on the defendant on 10th December, 2020 by leaving it at the stipulated address, in accordance with the order of Murphy J. An affidavit of service of the notice of trial was sworn by Mr. Joseph Gavigan on 20th September, 2022.

11. By letters dated 3rd February, 2023, addressed to the defendant at the stipulated address, the defendant was informed that the plaintiff's action against him would be heard in the High Court sitting in Galway on 20th February, 2023. The defendant was informed that it would be in his interests to attend at the hearing of the matter at 10.30 hours.

12. On 20th February, 2023, at the sitting of the court at 10.30 hours, the defendant's name was called. There was no appearance by the defendant, or by any person acting on his behalf.

13. The court is satisfied having regard to the steps taken in the proceedings to date, as evidenced in the documents outlined above, that the defendant has had full and ample notice of the proceedings. The court is further satisfied that he has been properly notified of the hearing of the action before the High Court sitting in Galway on 20th February, 2023. In the circumstances, the court is satisfied that it was appropriate to proceed with the matter in the absence of the defendant.

The Evidence.

14. The plaintiff gave evidence in this case. He is a married man and is almost 50 years of age. He is the owner of a stud farm. He is actively involved in the management of that business, which both rears horses and trains them.

15. The plaintiff stated that on the evening of 27th October, 2017, he met by arrangement with his brother at Harney's Bar, Tynagh, Galway. He and his brother were sitting at the bar in the company of two other friends. In the course of the evening at approximately 22.30 hours, the plaintiff went into the toilet. While he was in the toilet area, the defendant followed him into the toilet. The defendant stood at the door and placed his hands on the handle, thereby preventing the plaintiff's exit from the room. The plaintiff asked him three times to remove his hands from the handle, but he refused to do so. When the plaintiff approached the door, he stated that the defendant lunged at him and kicked him forcibly on the left ankle, causing him to lose his balance and fall to the ground. Whereupon, the plaintiff stated that the defendant kicked him in the head and proceeded to jump on his left leg three times. On the third occasion, the plaintiff heard a loud crunching noise and experienced severe pain in his left ankle.

16. The plaintiff stated that the defendant then jumped onto him and proceeded to punch him in the head. The defendant then got up and went back to the toilet door and placed his hands on the handle, to prevent others entering the toilet area. The plaintiff stated that he could hear some noise outside the door.

17. The plaintiff stated that the defendant then jumped on him again and recommenced punching him in the head. At that stage, the plaintiff's brother and others managed to gain entry to the toilet. They pulled the defendant away from the plaintiff.

18. The plaintiff stated that he was in very severe pain after the assault. His brother and others, tried to get him to stand, but he was unable to place any weight on his left leg, due to severe pain. He telephoned for his wife to come to the pub. She came and took the plaintiff to Portiuncula Hospital, where a CT brain scan was carried out and x-rays were taken of the left ankle. The CT scan did not reveal any skull fracture or traumatic brain injury. The x-rays revealed a severe fracture to the left fibula and ankle. The plaintiff was taken by ambulance to University College Hospital, where he was admitted under the care of Mr. Fergus Byrne, consultant orthopaedic surgeon.

19. Mr. Byrne confirmed that the plaintiff had a severe comminuted Weber C fracture of the left fibula, which was consistent with a stamping type mechanism. The syndesmotomic joint was disrupted.

The plaintiff required surgery in the form of open reduction and internal fixation, which was carried out on 28th October, 2017.

20. The plaintiff was discharged from hospital on 29th October, 2017. He had to remain totally free from weight bearing on the leg for a period of six weeks. During this time, he was required to use crutches and had to wear a boot. Upon the removal of the boot, the plaintiff commenced extensive physiotherapy treatment on the ankle, which he obtained both publicly and privately.

21. The plaintiff was unable to work for a period of six months post-accident. This was due to the fact that when riding horses, he was required to place weight on his ankle in the stirrups and he was not able to do that. He is severely restricted in the work aspects of his life, as he cannot ride horses to any great extent, due to the fact that he has lost considerable flexibility in the left ankle joint. This has required the plaintiff to hire additional part-time riders, to exercise horses and also to send some of the horses to other stables for exercising. Both of these, have cost the business money, which the plaintiff estimated could amount to €1000 per week, for the weeks that the horses are sent out for exercising.

22. The plaintiff stated that he continues to experience pain and discomfort in his left ankle. He treats this with anti-inflammatory medication as necessary. He also uses ice baths to reduce the inflammation and pain.

23. The plaintiff also experienced psychological sequelae as a result of the unprovoked and frightening nature of the assault. His GP, Dr. Roderick Fahey has stated in a medical report dated 10th July, 2019, that the plaintiff still had flashbacks and sleep disturbance and was quite depressed about his current situation both physical and financial. The disability that he experienced at work had led to stress related problems. He stated that the plaintiff had obvious post-traumatic stress syndrome.

24. The plaintiff confirmed that he had obtained treatment to help with his psychiatric difficulties, in the form of CBT. He conceded that he had experienced mental health difficulties prior to the accident, in the form of anxiety, which had developed following a protracted viral illness. However, he stated that his psychiatric symptoms were considerably worsened by the traumatic nature of the assault in October 2017.

25. As well as the report from the plaintiff's GP, the court also had the benefit of two medical reports from Mr. Fergus Byrne, the first dated 24th July, 2019 and the second, dated 26th November, 2021. It was noted that at the date of the second report, which was some four years and one month post-accident, the plaintiff continued to complain of persistent left ankle stiffness. He was unable to work.

The surgeon noted that the syndesmosis screw remained in place. He stated that it would need to be removed in due course. The plaintiff has been reluctant to have the surgery to date, due to a fear of experiencing nerve injury; however, he accepts that he will have to have this operation at some time in the near future.

26. In relation to special damages, the plaintiff handed in a detailed claims history in respect of all medical expenses incurred by him in the period 3rd November, 2016 to 10th November, 2022. He accepted that of the total sum of €11,388.33, that approximately €7,000, would be attributable to the assault.

Assessment of Damages.

27. While this case predates the introduction of the Personal Injuries Guidelines, the court is satisfied that the methodology outlined therein in relation to the assessment of damages where there are multiple injuries, is the appropriate methodology to use in this case. Using that methodology, the court is required to assess quantum on the basis of the most significant of the injuries and then add an uplift for the secondary injuries.

28. The court is satisfied from the evidence given by the plaintiff, that he was subjected to a vicious and terrifying assault at the hands of the defendant on 27th October, 2017. The court accepts the plaintiff's evidence in relation to the nature of that attack.

29. The court is satisfied from the medical reports furnished by Dr. Fahey and Mr. Byrne, that the plaintiff suffered a serious comminuted fracture to his left ankle, which required surgical intervention, in the form of open reduction and internal fixation. The court accepts the plaintiff's evidence in relation to his post-operative rehabilitation.

30. This was a most serious ankle injury, which has given rise to permanent sequelae, in the form of loss of function and range of movement in the ankle joint. There is also a permanent scar at the site of the surgery.

31. In addition, the court accepts the evidence given by the plaintiff, which is supported by the medical report furnished by his GP, that the plaintiff has suffered significant psychiatric injuries as a result of the assault. The court accepts his evidence that this required treatment by medication and by CBT.

32. The court accepts that as a result of the injury to his left ankle, the plaintiff has been disabled in the work aspects of his life. The court also accepts his evidence that he is unable to go jogging, as he had done prior to the accident. These are significant disabilities for the plaintiff.

33. Having regard to the nature of the plaintiff's injuries and their effect on him to date, the court awards general damages to date of €65,000 for the ankle injury and €30,000 for the psychiatric aspects, making a total of €95,000 for pain and suffering to date.

34. In relation to the future, the court accepts the evidence of Mr. Byrne, that the plaintiff will require further surgery for removal of the screw from his ankle joint. It appears unlikely that the plaintiff will regain full movement in the ankle joint. Therefore, the court finds that on the balance of probabilities, he will remain disabled in the work and leisure aspects of his life. The court awards €40,000 for future pain and suffering and disablement.

35. To these figures, the court feels that it is appropriate to award the sum of €7,000 in respect of medical and treatment expenses incurred by the plaintiff as a result of his injuries.

36. In reaching the figures for damages in this judgment, the court has taken account of the claim for aggravated damages and in that regard has taken account of the circumstances of the injuries, which were occasioned to the plaintiff as a result of an intentional and unprovoked attack. The court also accepts the plaintiff's evidence that following the conviction of the defendant in the District Court, where a fine of €750 was imposed, the defendant smirked at the plaintiff, when he saw him sometime later in a restaurant. The court has taken account of these factors in reaching its award of damages herein.

37. The court awards the plaintiff judgment against the defendant in the sum of €142,000.