THE HIGH COURT

2025 IEHC 59

Record No. 2022/1312P

BETWEEN

DEBORAH FITZGERALD

PLAINTIFF

AND

MADHY SAAD MIRABELLE, MOHAMMAD MAHADY, BROTHERS OF CHARITY SERVICES IRELAND AND DEBORAH O'HALLORAN

DEFENDANTS

JUDGMENT of Ms. Justice Emily Egan delivered on the 6th day of February, 2025

Introduction

1. The plaintiff, who was born on 20th August 1964, resides in Limerick with her husband and two children aged 20 and 28. For many years, the plaintiff has been a carer for her husband who is paraplegic and wheelchair dependent. On 10th October 2020, the plaintiff was a passenger in a car driven by her friend, which was involved in a four car collision at Childers Road, Limerick. The car in which the plaintiff was travelling was both rear ended and then pushed into the back of the car in front. Although the plaintiff was wearing a seat belt at the time of the accident which restrained her, she still recalls being flung forward and then backwards by the impact. Liability was not in issue and the action proceeded as an assessment of damages.

2. At the time of the accident, the country was in a Covid lockdown. Although she was shaken and sore, the plaintiff was initially reluctant to seek medical attention. However, when her husband became increasingly worried about her disorientation, poor memory and headaches, the plaintiff was persuaded to telephone her general practitioner. As advised, the plaintiff attended the Emergency Department of St John's Hospital on 12th October 2020. On taking a history, it was determined that the plaintiff had sustained a head injury. The plaintiff was therefore referred to the Emergency Department of University Hospital Limerick ("UHL"). The plaintiff attended UHL on the same day and was diagnosed with a concussion.

3. For reasons which I will shortly explain, I will commence by summarising the medical reports in this case. All of the medical reports were admitted without the necessity for formal proof and none of the doctors gave oral evidence to the court.

Report of Dr. Annemarie Dineen dated 4th December 2020

4. The plaintiff was examined by her general practitioner on 15th October 2020, five days after the accident. Although she had only a limited recollection of the accident, the plaintiff did not think she had lost consciousness. She complained of confusion, disorientation, memory loss, low mood and anxiety, together with right shoulder and neck pain. Examination of the plaintiff's spine revealed tenderness and limited flexion bilaterally. Examination of the right shoulder revealed tenderness and limited range of movement. Dr. Dineen diagnosed "*concussion post RTA, related to head injury*", "*post-traumatic stress*" and a "*musculoskeletal injury to the cervical spine [and] …right shoulder*."

5. The plaintiff reattended Dr. Dineen on 6th November 2020. Although some improvement was noted, the plaintiff's right shoulder remained very sore. She continued to feel disorientated, anxious and of low mood and complained of disturbed sleep. Dr. Dineen referred the plaintiff for physiotherapy for the cervical spine and right shoulder; MRI of the

right shoulder (if pain persisted); joint injections for the right shoulder(if indicated on MRI); MRI brain scan (if concussion failed to resolve) and counselling for post-traumatic stress.

6. The plaintiff attended for an MRI brain scan on 22nd January 2021, which revealed no relevant abnormality. The MRI of the cervical spine, on the same day, revealed C5/6 degenerative change with disc desiccation, annular disc bulge and disc space narrowing.

Report of Dr. Gareth Quin dated 27th September 2021

7. The plaintiff was next examined by Dr. Gareth Quin, consultant in emergency medicine, on behalf of the Personal Injuries Assessment Board on 23rd September 2021. The plaintiff reported no relevant medical or accident history to Dr. Quin.

8. Dr. Quin records that the plaintiff recalls being thrown forward at the time of the accident and being restrained by her seatbelt. She was unsure if she banged her head. Dr. Quin states that the plaintiff had considerable trouble with headaches and neck pain both of which he describes as rated at max, for periods of three- and four-months post-injury, respectively. He also notes that the plaintiff described psychological symptoms of flashbacks, problems sleeping and anxiety while in the car. The symptoms were at their worst for six months post-accident.

9. Dr. Quin notes that the plaintiff informed him that, at the time of his review - almost a year post-accident - she continued to experience intermittent pain in her neck, associated with pain at the back of her head every second or third week, as well as anxiety when travelling. The plaintiff informed Dr. Quin that she had been most restricted in her activities for up to four months after the injury.

10. On clinical examination, there was no evidence of tenderness. The plaintiff had a full range of movement of her cervical spine, with a sensation of pulling at the extremes of

movement. Dr. Quin estimated that the plaintiff's ability to carry items, bend, lift and stoop remained moderately impaired at the time of his examination.

11. In Dr. Quin's opinion, the accident accounted for all of the plaintiff's symptoms. Dr. Quin attributed the plaintiff's intermittent headaches to muscle spasm caused by her acute cervical sprain. The principal effects of the injuries sustained, lasted for three or four months post-accident and significant recovery had occurred, although the plaintiff continued to experience intermittent pain. The plaintiff's psychological symptoms constituted a post-traumatic stress reaction which has significantly abated, albeit she continued to experience anxiety when travelling by car. Dr. Quin expected further improvement within the next six to nine months, leading to full recovery both physically and psychologically.

12. When cross-examined, the plaintiff accepted that Dr. Quin's account of her symptoms was a fair reflection of what she reported to him.

Report of Dr. Sean O'Sullivan dated 14th March 2022

13. The plaintiff was referred by her solicitor to Dr. Sean O'Sullivan, consultant neurologist, whom she saw on 14th March 2022, some seventeen months post-accident. The plaintiff did not think that she banged her head or lost consciousness but reported that she was dazed after the accident. The plaintiff reported no other relevant medical history to Dr. O'Sullivan. The plaintiff's presenting complaints were of headaches in the back of her head radiating down to her upper neck since the accident. This pain was noted to be present every day, with a baseline severity of four out of ten building to a severity of nine out of ten. These acute exacerbations could last for one to two hours, several days a week. The plaintiff's headaches were associated with nausea, photophobia and phonophobia (discomfort to normal environmental lights and sounds). She also experienced reduced concentration and memory when the headaches were severe.

14. From a functional perspective, the plaintiff reported that lifting objects exacerbated her headaches and neck pain, so she avoided lifting bags of shopping. In addition, both prolonged sitting and standing could exacerbate her neck pain and headaches.

15. Dr. O'Sullivan noted that the plaintiff had also experienced right upper arm weakness within a couple of days of the accident. She occasionally drops objects from her right hand, which had become clumsy for tasks requiring manual dexterity. She did not report pain in her arm.

16. In addition, the plaintiff reported mood problems, in particular, anxiety when travelling as a passenger by car, which limited her socially.

17. On examination there was tenderness to palpation over the posterior cervical muscles with a slight reduction in her range of neck movement. Overall, the neurological examination was normal. In particular, there was normal pin-prick sensation and power in the upper limbs. Dr. O'Sullivan concluded that the plaintiff experienced mild deficits in learning and intelligence, balance and coordination, vision, hearing, manual dexterity, reaching, standing and sitting. She experienced moderate deficits in mental health and in carrying objects.

18. Dr. O'Sullivan's opinion is that the accident accounts for all of the plaintiff's symptoms. The plaintiff sustained a traumatic brain and neck injury in the accident. Her symptoms are consistent with post-traumatic headache and whiplash associated disorder. He attributed the plaintiff's right upper limb weakness either to cervical radiculopathy (which as I understand it, occurs when nerve root compression in the neck causes pain, numbness, or weakness in the affected area) or post-traumatic carpal tunnel syndrome (caused by nerve compression at the level of the wrist). He also diagnosed post-concussion syndrome causing reduced concentration and memory.

19. Dr. O'Sullivan also comments on the imaging. He notes that despite degenerative disc disease being evident on the MRI of her cervical spine, the plaintiff did not have symptoms in

relation to this prior to the accident. He states that the symptoms emerged immediately after the accident and have persisted since. Dr. O'Sullivan also observes that the apparently normal brain MRI and neurological examination are entirely compatible with post-traumatic headaches and post-concussion syndrome. The injuries involved in post-traumatic headaches and post-concussion syndrome are often microscopic and affect the nerve cell functioning without necessarily altering their gross appearance on routine MRI scans.

20. In considering the prognosis, Dr. O'Sullivan notes that most patients suffering from post-traumatic headaches and post-concussion syndrome recover within a few months, but that a small but significant minority have persisting problems. Thus, almost 25% of patients have persisting headaches after four years.

21. Dr. O'Sullivan noted that the plaintiff had experienced post-traumatic headaches for over seventeen months and was therefore likely to become one of the 25% of people with refractory or persisting headaches. Most patients in this refractory group have residual symptoms that never fully resolve. In all likelihood, the plaintiff's headaches would therefore persist for at least a further two years despite the treatment measures recommended. In Dr. O'Sullivan's view, the plaintiff's neck pain and upper limb disturbances were also likely to persist for at least a further one to two years from the date of his report, despite treatment.

22. In Dr. O'Sullivan's view, the plaintiff was likely to require ongoing treatment with regular analgesia, physiotherapy and massage. He also recommended referral to a consultant pain specialist together with psychological support and treatment.

23. It is evident from the above that the plaintiff appears to have reported significantly more serious, intrusive and persistent symptoms to Dr. O'Sullivan than reported to Dr. Quin. As described to Dr. Quin, the plaintiff's symptoms of neck pain and headaches were at their worst for several months after the accident but had settled to a level of intermittency. By contrast, when seen by Dr. O'Sullivan, six months later, the plaintiff reported headaches and neck pain,

present every day since the accident with regular, severe exacerbations. It is difficult to reconcile these two accounts given by the plaintiff some six months apart. There is no suggestion in Dr. O'Sullivan's report that any of the conditions he has diagnosed, for example, post traumatic headaches or post-concussion syndrome, can appear late in a patient's recovery arc and this in any event would be inconsistent with the history the plaintiff gave to Dr. O'Sullivan.

24. In circumstances where two medical reports recording the plaintiff's history are substantially out of alignment, it is reasonable to have regard to the overall sequence of medical reports to assess which of the two is most consistent therewith. However, in carrying out this exercise, the court must be guided by the principle that the onus of proof in relation to the nature and impact of her injuries remains at all times on the plaintiff.

Report of Mr. Brian O'Keeffe dated 21st March 2022

25. On 16th March 2022, the plaintiff saw Mr. O'Keeffe, consultant clinical psychologist, on the recommendation of her solicitor. The plaintiff complained of intermittent pain in her neck and right shoulder and difficulties with her right dominant hand, which had developed a tremor after the accident. She also reported feeling depressed for about six months after the accident. The plaintiff complained of disturbed sleep, describing episodes in which she awoke at night "*bolt upright*" in the bed, feeling very frightened. These had also fortunately faded a few months post-accident. However, the plaintiff continued to experience significant anxiety when travelling by car. In Mr. O'Keeffe's view the plaintiff experienced a psychological shock in the accident and suffered from an adjustment disorder. He advised that the plaintiff would benefit from psychological counselling.

26. The plaintiff was also troubled by memory problems which Mr. O'Keefe states are consistent with post-concussion syndrome and may persist indefinitely.

Report of Mr. Aidan Gleeson dated 15th October 2022

27. The plaintiff attended Mr. Gleeson, accident and emergency consultant, on the defendant's behalf on 11th October 2022, two years post-accident. The plaintiff reported pain and stiffness in her neck and shoulders, headaches and feelings of disorientation together with pins and needles in her right hand. Mr. Gleeson noted that the plaintiff had a normal brain MRI, that the MRI scan of the cervical spine showed degenerative changes and that nerve conduction studies on the plaintiff's right hand were normal. The plaintiff also outlined that she had suffered psychologically and had developed anxiety, particularly when travelling by car. She had also suffered from flashbacks and nightmares for a period of months.

28. On clinical examination, the plaintiff had a full range of neck flexion and extension. Lateral flexion was approximately 50% of normal and there was no complaint of pain. There was no complaint of impingement-type pain on shoulder movement, and sensation was normal in both upper limbs. General neurological examination did not reveal any localising or lateralising neurological signs.

29. In Mr. Gleeson's view, the plaintiff's injuries were consistent with the accident. He viewed the plaintiff's history as consistent with a concussion, a soft tissue injury to the cervical spine and subsequent psychological upset with anxiety. Mr. Gleeson noted the plaintiff's treatment had been limited due to funding issues. In light of her ongoing symptoms, he recommended physiotherapy and cognitive behavioural therapy. Mr. Gleeson's view was that the plaintiff's neck symptoms and related occipital headaches should settle in a further six to nine months with appropriate treatment, i.e. within three years post-accident.

Report of Mr. Brian O'Keeffe dated 19th April 2023

30. When the plaintiff was reviewed by Mr. O'Keeffe on 17th April 2023, she reported ongoing sleep disturbance, anxiety with car travel and continuing difficulties with her memory.

She also complained of ongoing pain in her neck and right shoulder, together with difficulties with her right wrist in the form of a tremor. In Mr. O'Keeffe's opinion, the plaintiff's condition remained the same as when he first examined her. He was further of the view that the plaintiff's psychological recovery was possibly being delayed by the presence of chronic pain. He noted that she would benefit from psychological counselling but had received none to date.

Report of Dr. Sean O'Sullivan dated 2nd May 2023

31. The plaintiff was reviewed by Dr. O'Sullivan on 2nd May 2023, who noted that the plaintiff had seen her general practitioner approximately four times in the last year due to her symptoms. He also noted that she was on a waiting list for physiotherapy and took anti-inflammatory medication and anxiety and muscle relaxant medication (albeit that this medication was partly related to the accident and partly related to hip pain). The plaintiff's most troublesome symptom was cognitive disturbance in the form of memory impairment. She described reduced concentration e.g. losing the train of conversations, inability to follow plots of books and general forgetfulness. Her sleeping pattern remained poor, which had a further negative effect on her concentration. The plaintiff also complained of ongoing problems with anxiety regarding car travel. She experienced headaches and upper neck pain about four days a week on average and reported that since the accident she suffered from right upper limb weakness and clumsiness causing her to drop things.

32. Clinical neurological examination was very similar to that of March 2022. Dr. O'Sullivan continued to take the view that the plaintiff's symptoms were consistent with post-traumatic headache, post-concussion syndrome and whiplash associated disorder with possible mild cervical radiculopathy or post traumatic carpal tunnel syndrome. Dr. O'Sullivan stated that the plaintiff had engaged with all reasonable steps to alleviate her remaining symptoms including analgesics, muscle relaxants and attending psychology. This however was not the

case. At the time of this examination, the plaintiff had not attended physiotherapy and had attended psychology only for medico-legal purposes.

33. Dr. O'Sullivan noted that the plaintiff experienced post-traumatic headaches and post-traumatic neck pain for over 30 months. Whilst he was encouraged by the slight improvement in her headache symptoms, full recovery was unlikely. Therefore, although gradual improvement in headaches and neck pain over the next two to three years could be expected, residual symptoms were likely to persist indefinitely.

Report of Dr. Catherine Corby dated 15th November 2022

34. The plaintiff was seen on behalf of the defendant by Dr. Corby, consultant liaison psychiatrist on 15th November 2022. Dr. Corby records that the plaintiff was diagnosed with post concussional type symptoms of headaches, perceptual difficulties and slight memory changes but states that these had resolved over time. The plaintiff's evidence was that she does not recall reporting this to Dr. Corby.

35. In Dr. Corby's view, the plaintiff did not fulfil the criteria for post-traumatic stress disorder either when she examined her or as I infer, prior to that. Dr. Corby accepts that the plaintiff was psychologically affected by the accident, particularly in the form of anxiety when travelling by car, but she views the plaintiff's psychiatric prognosis as positive and did not anticipate long term sequelae.

Report of Mr. Aiden Gleeson dated 5th December 2023

36. Mr. Gleeson re-examined the plaintiff on 5th December 2023. The plaintiff reported seeing her general practitioner on three or four occasions since the accident. She complained of continuing neck pain. She continued to report memory difficulties, disorientation and light headedness. She remained a very nervous passenger.

37. The plaintiff's clinical examination was essentially normal.

38. Mr. Gleeson stated that he had not seen the engineer's report in relation to the collision and would be interested to know the level of vehicle damage, as an indicator of the level of force involved in the rear end impact. He noted however, that the plaintiff's car was drivable which would suggest that the impact was not of high velocity.

39. Although it is possible that the plaintiff sustained a posterior head injury when her head struck the headrest, Mr. Gleeson states that concussion is uncommon with this type of accident. In any event, post-concussion symptoms of headaches, dizziness and forgetfulness would usually settle within a short period of weeks. Therefore, whilst he accepts that the plaintiff could have sustained a soft tissue injury to her spine and a minor head injury, Mr. Gleeson is unconvinced by her reported ongoing difficulties. He does not believe that a diagnosis of concussion is the most probable explanation for the plaintiff's ongoing complaints of disorientation and forgetfulness.

40. Mr. Gleeson's second report is therefore quite different to his first. In his first report, Mr. Gleeson appeared to accept that the plaintiff's ongoing headaches two years post-accident were consistent with concussion and a soft tissue injury of the cervical spine. His more recent report, doubts this because such symptomology would usually resolve within a short time. Dr. O'Sullivan would agree that this is usually the case. However, there are certain patients whose symptoms will not resolve and Dr. O'Sullivan deals with this in some detail in his report. Overall, I find the opinion of Dr. O'Sullivan, both more fulsome and more convincing on the issue of post-concussion syndrome.

Medical report of Mr. John Rice dated 12th December 2023

41. Mr. Rice, consultant orthopaedic surgeon, examined the plaintiff on referral from her solicitor in December 2023. At that stage, the plaintiff reported that she was stiff and sore upon

waking in the morning and had to do exercises to loosen up. She described lingering pain above the clavicle. The plaintiff stated that she found that housework involving the use of her dominant right upper limb made her symptoms worse and that she experienced difficulties carrying bags of shopping or laundry with this hand. The plaintiff also reported intermittent pins and needles affecting the tips of her fingers on her right hand and was conscious of a hand tremor, particularly when her neck pain was most prominent. On examination of the plaintiff's cervical region there was a normal range of movement. There was provoked neck pain with stretching of the right trapezius muscle and with rotation of the head towards the left side. In Mr. Rice's view, the plaintiff had sustained a significant soft tissue injury to the cervical region in the road traffic accident. She reported chronic pain in relation to the cervical region since that time. Notwithstanding the MRI demonstrating pre-existing degenerative change, Mr. Rice's view is that the plaintiff's chronic pain resulted from the injury sustained in October 2020. He recommended consultation with a pain specialist with a view to injection therapy for cervical and right trapezius muscle pain.

Report of Dr. Alexander Stafford dated 29th January 2024

42. Dr. Stafford, consultant radiologist, confirmed that the injuries diagnosed by Dr. O'Sullivan are of a microscopic nature, not visible on conventional MRI imaging. Indeed, he states that, some of the changes post-concussion are not visible structural abnormalities because they are of a chemical nature. Dr. Stafford confirmed that the pre-existing degenerative changes evident on the MRI predated the accident and that there is no evidence of nerve root compression within the cervical spine. Overall, he opines that assessment by a neurologist and a psychologist were the best way to diagnose the plaintiff's injuries.

Report of Mr. Brian O'Keeffe dated 30th January 2024

43. Mr. O'Keeffe re-examined the plaintiff in January 2024. His assessment is essentially in line with his earlier report. The plaintiff suffered from an adjustment disorder, which together with her anxiety associated with car travel, he regarded as ongoing. He also noted that the plaintiff reported problems with memory and concentration, consistent with post-concussion syndrome. Mr. O'Keeffe recommended psychological counselling and noted that the plaintiff had undergone no counselling to date.

Report of Dr. Sean O'Sullivan dated 3rd October 2024

44. Dr. O'Sullivan's updated report noted that the plaintiff had seen her general practitioner seven times in the last eighteen months because of her symptoms. She was still on the waiting list for physiotherapy. Her memory impairment remained her most troublesome symptom. She also complained of neck pain and headaches about three days a week on average. She continued to experience mood symptoms, anxiety and right upper arm weakness.

45. The plaintiff's neurological examination was very similar to that of May 2023, as was Dr. O'Sullivan's opinion in relation thereto. In short, she continued to experience post-traumatic headache and post-traumatic neck pain over forty-three months after the injury with no significant improvement in the last sixteen months. Dr. O'Sullivan expected gradual improvement in the plaintiff's neck symptoms and headaches over the next three years but noted that she is likely to experience residual symptoms indefinitely. The same position was outlined in relation to the plaintiff's upper limb symptoms, which are expected to keep improving but not to fully resolve.

Report of Mr. John Rice dated 1st November 2024

46. Mr. Rice provided an updated report on foot of a clinical examination on 1st November 2024. The plaintiff displayed normal range of movement. Neck pain was provoked by stretching of the right trapezius muscle and rotation of the head and neck towards the left side. Dr. Rice's opinion was as before. The plaintiff suffered a significant soft tissue injury over four years ago which was super-imposed on a pre-existing, but asymptomatic degenerative disc disorder of the cervical spine, resulting in chronic pain. Mr. Rice's view is that these symptoms were provoked by the accident and that the plaintiff will continue to suffer from them in the long term. He encouraged the plaintiff to continue with rehabilitation exercises to help her cope better with her long-term symptoms.

Report of Prof. Michael Hutchinson dated 20th September 2024

47. Prof. Hutchinson, consultant neurologist, examined the plaintiff on 20th September 2024. The plaintiff reported to Prof. Hutchinson that her neck was stiff and sore, and that she suffered from headaches and problems with her memory. She further reported a tremor in her right hand which she never had before the accident. The plaintiff reported that, because of tingling in all of the fingers of the right hand (except the thumb), her general practitioner had arranged nerve conduction studies which were normal. The plaintiff reported that she tends to drop things from the right hand, cannot write for long and finds heavy work with the right arm difficult. On examination, the plaintiff had a full range of painless movement of the neck and shoulders. She had reduction of pin-prick sensation in the right hand affecting the thumb, index, middle and ring fingers but not the little finger. Prof. Hutchinson also formed the view that the plaintiff had a mild fine essential tremor bilaterally. This, I understand, is a movement disorder which can cause involuntary shaking.

48. Prof. Hutchinson accepted that the plaintiff had neck pain for some months after the accident. He took the view, that her complaints of tingling in the right hand and the evidence

of mild right carpal tunnel syndrome did not relate to the accident. Prof. Hutchinson did not express any opinion on the cause of the plaintiff's headaches or difficulties with memory. Overall, Prof. Hutchinson's view was that the plaintiff would not have had significant symptoms for more than a few months post-accident.

The plaintiff's evidence

49. I have taken the unusual step of summarising the numerous medical reports in this case before setting out the evidence of the plaintiff. This is because the plaintiff herself was a peculiarly reticent witness. I should say that I did not attribute this reticence to a wish to be uncooperative or unforthcoming with the court. Rather, I gained the impression that the plaintiff's memory and concentration difficulties were impeding her ability to differentiate between, or to give an accurate description of her past or present symptomology. One must add to this the fact that the plaintiff's affect was, as Mr. Gleeson noted, *"flat."* She was therefore uncommunicative and often monosyllabic.

50. The plaintiff's counsel brought her through her own medical reports, and, in each case, the plaintiff confirmed her history and symptomology as per their contents. Aside from that, the plaintiff expanded slightly on her memory and concentration difficulties which clearly bother her greatly. These memory and concentration difficulties tend to present *"without any rhyme or reason"* and are not necessarily coincident in time with her neck pain or headaches. The plaintiff described incidents in which her husband would say to her *"remember yesterday I told you"* and unfortunately, it would be *"a total blank"* which was very disturbing for her. The plaintiff confirmed that her memory and concentration issues never occurred prior to the accident.

51. Under cross-examination, the plaintiff agreed that her neck symptoms and headaches, together with her symptoms of disturbed sleep and bad dreams were at their worst in the six

months post-accident The plaintiff explained that she did not attend a pain specialist or, a physiotherapist because she could not afford it and she does not like her neck being interfered with or manipulated. She also accepted that although she had been referred for cognitive behavioural therapy, she is a very private person and does not like talking about herself. Now, however, the plaintiff has signed up for counselling and is also on a waiting list for physiotherapy.

52. There is an important omission in the plaintiff's replies to particulars. The plaintiff had been asked whether she had suffered any previous injuries, accidents or medical conditions prior to the accident. The plaintiff's replies to particulars had described two road traffic collisions which had occurred over 35 years ago and ten years ago, respectively. The plaintiff did not, however, reveal that she had presented to her general practitioner on 22nd October 2019, with intense neck pain radiating up to the head and down her back in respect of which she was referred by her general practitioner to the Accident & Emergency Department of UHL. Examination in the Accident & Emergency Department on 24th October 2019, was essentially normal, save for mild tenderness in the trapezius muscle. A diagnosis was, therefore, made of musculoskeletal pain and the plaintiff was prescribed anti-inflammatories and advised to follow up with her general practitioner if the pain was not relieved. No further follow-up occurred. When asked by her counsel about this pre-accident presentation for neck and head pain, the plaintiff was unable to recall it at all.

53. Certainly, the plaintiff ought to have referred to this presentation in replies to particulars. She ought also to have discussed it with the various medical practitioners who examined her, all of whom asked for her prior medical history. On the other hand, whilst I have no doubt that the medical practitioners who examined the plaintiff would have considered this information to be of some relevance, it is important not to make too much of this presentation. It was a single presentation a year before the accident, on foot of which no follow-up occurred.

I accept that the plaintiff did not deliberately conceal this presentation but simply forgot it. It must be borne in mind that this prior presentation could only be relevant to the plaintiff's complaints of neck pain and perhaps headaches. However, it could not realistically impact the plaintiff's primary complaint of reduced memory and concentration.

54. In cross-examination, the contents of Dr. Quin's report and Mr. Gleeson's report were put to the plaintiff. Once again, she was virtually monosyllabic in her answers to the questions. She did, however, agree that these reports were *"fair."* She effectively said that, if that is what the reports recorded, then that is what she must have told the relevant doctors at the time.

55. Therefore, insofar as concerns the plaintiff's neck pain and headaches, she has both agreed with Dr. Quin's record that, by September 2021, they were occurring only intermittently, but also with Dr. O'Sullivan's record that headaches and neck pain have been a constant and unremitting symptom from the day of the accident onwards. It is impossible to reconcile these two accounts. Granted, the plaintiff has great difficulty articulating her symptoms and, I accept, suffers from memory and concentration difficulties. However, one would still expect her to know whether she experienced these debilitating symptoms every couple of weeks or every day.

56. The plaintiff bears the onus of proof. I cannot be satisfied that the plaintiff has experienced, and continues to experience, neck pain and headaches every day since the accident, without some reasonable explanation as to why she gave a different account of these symptoms to Dr. Quin. It must also be recalled that, after the initial stages of her recovery, all clinical examinations of the plaintiff's neck and head have been objectively normal.

Assessment and conclusions

57. In all of the above the circumstances, I must therefore find that the plaintiff's symptoms of neck pain and headaches had resolved to the level of intermittency by approximately one

year after the accident. As such, these symptoms would appear to fall into the range of a reasonably minor neck injury for which the Personal Injury Guidelines ("the Guidelines") recommend compensation in the region of €6,000 to €12,000. Leaving aside for the moment any question of overlapping injuries, I would be inclined to allow a figure of €10,000 for this injury.

58. It seems to me that the plaintiff's most significant complaint and, indeed, her dominant injury, is her post-concussion syndrome causing memory and concentration difficulties. The only medical witnesses to comment upon the causation of these symptoms in any detail are Drs. Gleeson and O'Sullivan. I read Mr. Gleeson as accepting that, initially at least, these memory and concentration difficulties can be viewed as post-concussion symptoms. Whilst Mr. Gleeson is sceptical that such symptoms could continue so long post-accident, this is convincingly explained by Dr. O' Sullivan, who, as a neurologist, is well within his aera of expertise. I therefore accept the opinion of Dr. O'Sullivan that these difficulties are caused by post-concussion syndrome which has not resolved and, furthermore, is now unlikely to resolve.

59. Such an injury does not fit neatly into any of the categories set out in the Guidelines. Section 3 of the Guidelines deals with head injuries which are subdivided into the following categories: 3(a) "most serious brain damage;" 3(b) "severe brain damage" (both of which are clearly inapplicable here); 3(c)"serious and moderate brain damage" and 3(d)"minor brain damage or head injury."

60. Category 3(c) "Serious and moderate brain damage" is itself split into four subcategories:

> (i) Moderate to severe intellectual deficit.
>
> (ii) Modest to moderate intellectual deficit.
>
> (iii) [Injury] from which a good recovery will have been made. Claimant will be able to…return to some form of work, but restoration of all normal function is not implicit.

(iv) brain damage similar to (iii) where the claimant is able to return to a level of work materially similar or the same to that which they were able to carry out prior to the injury.

61. Counsel for the plaintiff observes that category 3(c)(iii) specifically mentions poor concentration, memory and disinhibition of mood. He therefore suggests that one might place the plaintiff in this bracket which would merit an award of €60,000 to €140,000. However, the considerations outlined as impacting on the level of award for "serious and moderate brain damage" (such as the extent and nature of treatment or medication, the extent of any continuing and possible permanent disability, the extent of personality change, impact on education and/or work, interference with quality of life and leisure activities, and impact on familial and other relationships) all suggest that both category 3(c)(iii) and category 3(c)(iv) are concerned with injuries of greater functional significance than the memory and concentration difficulties described by the plaintiff.

62. Having said that, the plaintiff could not, in my view, be said to have suffered only a category 3(d) "minor brain damage or head injury," because substantial recovery has not taken place.

63. In the absence of a category neatly encompassing the plaintiff's post-concussion syndrome causing memory and concentration difficulties, the plaintiff's injury may be treated by analogy as falling within category 3(c)(iv). This would attract potential damages in the order of €25,000 to €60,000. Once again, leaving aside any question of overlapping injuries, I will allow €20,000 general damages to date and €20,000 general damages for future pain and suffering; i.e. €40,000 for the plaintiff's post-concussion syndrome.

64. The plaintiff also complains of weakness and tremor in her right hand which has been diagnosed by Dr. O'Sullivan as either cervical radiculopathy or post-traumatic carpal tunnel syndrome. The plaintiff did not complain of weakness or tremor in her right arm for some time

after the accident. She did, however, complain of pain in her right shoulder to her general practitioner, Dr. Dineen, within a matter of days of the accident and clinical examination at that stage revealed tenderness and limited range of movement in the shoulder. The plaintiff's right shoulder remained *"very sore"* when re-examined by her general practitioner on 6th November 2020. It is clear that Dr. Dineen viewed these complaints of arm pain and pins and needles as sufficiently serious to merit referral for nerve conduction studies. The plaintiff also complained of pins and needles in her right hand to Dr. Gleeson when she saw him on 11th October 2022. Overall, the plaintiff's reporting of weakness, tremor and pins and needles in her hand is, therefore, reasonably consistent.

65. When examined by Prof. Hutchinson, the plaintiff demonstrated objective signs of carpal tunnel syndrome in the form of reduced pinprick sensation. Prof. Hutchinson accepts that the plaintiff has carpal tunnel syndrome but does not appear to have considered whether same could be post-traumatic in origin. This in all likelihood is explained by the fact that the plaintiff does not appear to have given Prof. Hutchinson a history of shoulder and arm pain post-accident. Yet, as just discussed this is reasonably well documented elsewhere.

66. Overall, I accept that the plaintiff has developed carpal tunnel syndrome, and I also accept Dr. O'Sullivan's view that same is post-traumatic and results from the accident. Section 7.K of the guidelines deals with *"other upper limb disorders"* including at (d) *"carpal tunnel syndrome."* I would place the plaintiff's injuries in sub-category (b), which covers injuries with continuing but fluctuating symptoms. This suggests general damages in the range of €12,000 to €20,000. Overall, leaving aside any question of overlapping injuries, I would assess this aspect of general damages at in or around €17,000.

67. Finally, the plaintiff also experienced a psychiatric injury in the form of either an adjustment disorder as per Mr. O' Keefe or anxiety as per Dr. Corby. I would place the plaintiff's psychiatric injury in category 4.A(c) which covers moderate psychiatric damage.

This would suggest that damages in the order of €15,000 to €40,000 might be appropriate. The plaintiff has not received any treatment to date despite continuing recommendations to this effect. I conclude that the plaintiff's failure to mitigate this aspect of her injury means that an assessment at the lower end of category 4.(A)(c), is appropriate. Again, leaving aside any question of overlapping injuries, I would assess damages at €15,000 for this injury.

68. The parties invited me to approach the overall assessment of general damages in this case in the same manner as Noonan J. approached quantum in *Collins v. Parm* [2024] IECA 150. In other words, I am invited to compensate the dominant injury in full and to add to that two-thirds of the value of the non-dominant injuries.

69. Applying that approach, I award the plaintiff €40,000 general damages in respect of her dominant injury, which is the post-concussion syndrome. I will award two thirds of €10,000, i.e. €6,600, for the plaintiff's non-dominant injury of neck pain. These two awards total €46,600. An award at this level is consistent with the defendant's submissions that compensation in the order of €35,000 to €50,000 would not be an unreasonable award for the plaintiff's headaches, neck pain and memory and concentration difficulties .

70. To this figure of €46,600, I will add two-thirds of the figures indicated above for the plaintiff's carpal tunnel syndrome and psychiatric difficulties, i.e. a further €11,300 and €10,000, respectively.

71. Therefore, the appropriate award for general damages is, in my view, €67,900. I am satisfied that such an award would be fair to the plaintiff and also to the defendant, having regard to all relevant matters, including pain and suffering to date, and the plaintiff's residual symptoms, which are unlikely to improve further. I am also satisfied that this award is proportionate within the legal scheme of awards made for other injuries.

72. Special damages are agreed at €2,990. The total award will therefore be, €70,890.