



THE COURT OF APPEAL

Neutral Citation Number: [2017] IECA 274

Record No. 2014/1044

[Article 64 Transfer]

**Peart J.
Irvine J.
Whelan J.**

BETWEEN/

HANY BOLES

PLAINTIFF / RESPONDENT

- AND -

ABP IRELAND TRADING AS ABP CAHIR

DEFENDANT / APPELLANT

JUDGMENT of Ms. Justice Irvine delivered on the 25th day of October 2017

1. This is the appeal of the defendant, ABP Ireland, ("ABP") against the judgment and order of the High Court, O'Neill J., dated respectively the 25th October, 2013, and the 8th November, 2013, made in favour of the plaintiff, Mr. Hany Boles ("Mr. Boles") arising out of injuries allegedly sustained by him in the course of his employment with ABP on the 25th May, 2007.

2. In the High Court O'Neill J. found ABP liable in negligence for Mr. Boles's injuries and awarded him a total sum of €257,000 made up in the following manner:-

- (i) Pain and suffering to date: €60,000
 - (ii) Pain and suffering into the future: €30,000
 - (iii) Loss of earnings to date: €115,000
 - (iv) Loss of earnings into the future: €50,000
 - (v) Miscellaneous €2,000
- Total: €257,000

3. By notice of appeal dated the 29th November, 2013, ABP appealed almost all aspects of the High Court decision. That appeal has since been refined but nonetheless engages all of the categories of damages considered by the trial judge. That being so, it is necessary to engage briefly with the background facts.

Background facts

4. Mr. Boles is an Egyptian national who was born on the 11th July, 1964, and came to reside in Ireland in 2003, he became an Irish citizen in 2012. Whilst he had a university qualification in Art, at the time of the accident the subject matter of the proceedings he was working with ABP as a general operative. As noted by the trial judge, Mr. Boles was working at a level well below that of his academic attainment because his entitlement to stay in Ireland was dependant upon his continued employment. His job was principally to wash the knives, trays and aprons used by butchers in an abattoir.

5. On the day he sustained his injuries Mr. Boles was apparently assisting a Mr. James Guerin, a fork lift truck driver, to manoeuvre a seven yard long conveyer through ABP's premises in Cahir, Co. Tipperary. Mr. Guerin was in the process of transporting the conveyer, which was straddling the forks of his fork lift truck, when he encountered a narrow passage making it impossible to bring the conveyer further. Ultimately, Mr. Boles and Mr. Golek, another employee of ABP, were directed to assist Mr. Guerin at which point the conveyer was placed on two dollies. Regrettably, when it was then pushed from behind, it toppled off the front dolly. Mr. Boles then positioned himself underneath one end of the conveyor so as to guide it as it was being lowered onto the dolly and whilst in that position it struck him on the head allegedly causing him injuries to his head, neck, left shoulder and left arm.

6. Having been struck on the head by the conveyor, Mr. Boles was examined by ABP's in house medical doctor, Dr. John McCarthy, who noted acute tenderness on the left side of the patient's head after which he referred him to South Tipperary General Hospital for further evaluation and treatment.

7. In the aftermath of his accident Mr. Boles developed headaches and left sided pain in the area of his neck and shoulder of a type normally associated with soft tissue injuries. As a result of these symptoms he was unable to work. He was prescribed some pain killing medication and whilst also treated for anxiety at no stage was he considered to be clinically depressed. By the time his proceedings came to trial in 2013 Mr. Boles's treating doctors and medical experts were satisfied that as a result of sustaining a blow of some sort to his head he had, for perhaps as long as two years, suffered from symptoms consistent with a soft tissue injury to his neck and its adjacent structures. Thereafter, they were of the opinion that he had developed a somatic condition whereby he believed that he had pain in his neck, shoulder and arm when in fact this was not the case. As of the date of trial Mr. Boles had not been able to return to work and had been let go by his employer in November, 2011. Relevant in this regard is the fact that Mr. Boles's psychiatrist, Prof. Patricia Casey, considered he should improve with immediate effect after his litigation was concluded but was nonetheless satisfied that he would need therapy and intervention before he would recover fully and be able to return to work.

Judgment of the trial judge

8. As to the mechanism of the injury sustained by Mr. Boles, the trial judge was satisfied that the conveyer had come down on his head striking him on the left hand side while he was in a crouched position. He was satisfied that the front end of the conveyer had struck him from a height of one or two feet delivering a heavy blow to the left side of his head causing it to be severely jerked on that side. He also concluded that his injuries were inconsistent with any other scenario he had been invited to accept.

9. In relation to liability the trial judge was satisfied that ABP was negligent in either permitting the conveyer to be dropped on Mr. Boles or in failing to allow him sufficient time to get out from underneath it as it was being lowered. He was also satisfied that there was no evidence to support any finding of contributory negligence.

10. The High Court judge allowed Mr. Boles his claim for loss of earnings to the date of trial in full, and in so doing rejected as "farfical" his employer's efforts to establish that he had likely been exaggerating his symptoms so as to allow him remain out of work whilst claiming social welfare and pursue other interests. Likewise, the trial judge rejected as unmeritorious and unreasonable the efforts made by ABP to establish to his satisfaction that Mr. Boles was a malingerer. The trial judge was satisfied that Mr. Boles could not be criticised for not going back to work prior to trial.

11. As to his injuries the trial judge accepted Mr. Boles's evidence that he did indeed suffer from physical injuries including headaches, pain in the left side of his neck radiating to his shoulder and altered sensation to his arm for a period of eighteen months to two years post accident. In doing so he relied upon the consistent nature of Mr. Boles's complaints whilst attending Dr. O'Regan, general physician, in South Tipperary General Hospital.

12. What the trial Judge found unusual was Mr. Boles's failure to recover from his physical injuries, a difficulty he ascribed to the fact that he had gone on to develop a somatic pain disorder whereby he was convinced he was still physically symptomatic even though his physical injuries had subsided. It was in such circumstances that he awarded Mr. Boles €60,000 for pain and suffering to date.

13. Insofar as the future was concerned, the trial judge was satisfied that over "the next number of years" Mr. Boles would recover from his somatic condition and that in such circumstances, a sum of €30,000 should be awarded for future pain and suffering. For similar reasons, having regard to the fact that Mr. Boles would need intervention before he would recover from his symptoms he was satisfied that he would suffer some future loss of earnings and in this regard award him the sum of €50,000.

The Appeal

Submissions on behalf of the appellant

14. Mr. Michael McGrath S.C. submits that the trial was unsatisfactory insofar as the trial judge failed to take into account Mr. Boles's own evidence as to how he sustained his injury. He had stated that the conveyer struck him on the top of his head and in the course of cross-examination had pointed to the top of his head when asked to demonstrate the point of contact between his head and the conveyer. Counsel submits that the preponderance of the evidence favoured a finding that the conveyer had struck Mr. Boles on the top of the head and that the trial judge had placed undue emphasis upon the referral letter of Dr. John McCarthy wherein he noted the area of sensitivity to the left-hand side of his head. This erroneous finding on the part of the trial judge had, according to Mr. McGrath, had significant consequences for ABP as it permeated the claim for both general and special damages. This was obvious from the fact that the trial judge relied upon an injury sustained to the left side of the head to justify awarding Mr. Boles compensation in respect of injuries to his neck, left shoulder and left arm. The trial judge had impermissibly failed to analyse or explain how he had rejected Mr. Boles's evidence that the conveyer had struck him on the top of the head, a finding which had he made it could not have supported the injuries contended for or the loss of earnings consequent on such injuries.

15. As to the quantum of damages awarded by the trial judge in respect of pain and suffering to date and into the future, counsel submits that the award was overly generous having regard to the evidence and was disproportionate to the extent that it should be set aside. Mr. Boles's physical injuries had cleared within two years and were of a minor nature. Thereafter he had suffered from a somatic condition rather than any physical condition causing actual pain. Even accepting that an award of damages was warranted in respect of his somatic condition and taking into account the guidance provided by the Book of Quantum (2004 edition) the award of €60,000 was excessive to the point that it should be considered a legal error. Likewise, the extent of Mr. Boles's somatic injury provided no justification for an award of €30,000 in respect of pain and suffering into the future.

16. Concerning the award made in respect of loss of earnings, counsel submits the trial judge failed to have regard to the evidence of Dr. Gleeson, a specialist in occupational health acting on behalf of ABP, to the effect that following her assessment of Mr. Boles in 2011 she considered him fit to return to some level of administrative work and had offered to provide him with a rehabilitation programme and had written to his general practitioner to this effect. Mr. Boles had refused her proposal outright at a time when she considered he was functioning normally in his activities of daily living. Further, he had refused to co-operate with efforts made by ABP to assist his return to work in September, 2011. Counsel submits that the trial judge failed to address the evidence relied upon by ABP in support of its complaint that Mr. Boles had failed to mitigate his loss with the result that he was ultimately awarded a sum which was excessive in respect of loss of earnings to date and into the future.

Submissions on behalf of the respondent

17. Mr. Counihan S.C. submits that it is not open to counsel for ABP to claim that the High Court judge attached excessive weight to the evidence of Dr. John McCarthy as to the circumstances in which the conveyer struck Mr. Boles. The weight to be attached to any particular aspect of the evidence was a matter for the trial judge. It was up to ABP to establish that there was no credible evidence to support the trial judge's findings as to where the conveyer had struck Mr. Boles. Dr. John McCarthy, who was employed by ABP, had made a note shortly after the accident recording that Mr. Boles was very tender on his scalp in the left posterolateral area which he considered to be the area likely struck by the conveyer. The trial judge was live to the dispute as to whether the conveyer had struck the top or in the alternative the left side of his head, as was clear from the transcript of the evidence. Ultimately the trial judge preferred, as he was entitled to do, the evidence given by Dr. John McCarthy generated on the day of the accident rather than the evidence of Mr. Boles given six years after the event.

18. Mr. Counihan submits that Mr. Boles's injuries should not be considered to be of minor significance. Insofar as his head injury was described as "minor", that was a specific medical term used to distinguish the injury sustained from one which might in medical parlance be described as major and which routinely involved loss of consciousness, the need for intervention and possibly permanent injury. Dr. O'Regan had made clear that Mr. Boles had suffered from symptoms typical of a soft tissue injury following a whiplash type injury. He had also suffered from a serious mental condition which had had a debilitating effect on his life. Insofar as his somatic condition was a psychological as opposed to a physical injury that did not mean that it should not attract substantial compensation having regard to its effect on his client. The compensation awarded for pain and suffering to date was, counsel submits, proportionate to the severity of the injuries sustained and their likely duration. He emphasised the fact that the trial judge had concluded, as he was entitled to do on the evidence that Mr. Boles's symptoms might endure for a number of years post trial.

19. Counsel submits that there was no evidence to support ABP's complaint that the trial judge erred in law in failing to address the issue as to whether or not Mr. Boles had mitigated his losses. While Dr. Gleeson may have been of the opinion that Mr. Boles was fit to return to work on a phased basis there was credible evidence to support the trial judge's findings that he was not fit to return to work as of the date of trial and would require intervention and therapy before that could occur. While Ms. Brenda Keenan, the occupational therapist retained to assess Mr. Boles for the purposes of his claim, had advised that it would be in his interests for him to return to work she did so subject to the proviso that he himself felt fit to do so.

20. Finally, Mr. Counihan submits that the evidence did not establish that ABP offered to take Mr. Boles back part time in an administrative capacity. It had done no more than invite him to come to a meeting to discuss the report of Dr. Gleeson. When his solicitor wrote to state that Mr. Boles was undergoing medical treatment at the time this offer was made by ABP, and was thus not available to attend such a meeting, he was sent his P 45 in November, 2011.

Principles

21. As there is no real dispute concerning the principles to be applied on this appeal, it is unnecessary to refer to them in any great detail. Suffice to say that when it comes to interfering with the findings of a trial judge, such as that made by O'Neill J. in this case, when he determined that the conveyer struck the side of the plaintiff's head rather than the top of his head, the well-worn principles set out in *Hay v. O'Grady* [1992] 1 I.R. 210 apply. If the findings of fact made by the trial judge are supported by credible evidence, an appellate court is bound by those findings, however voluminous and apparently, weighty the testimony against them may be. As was stated by McCarthy J., the truth is not the monopoly of any majority. Further, an appellate court should be slow to substitute its own inference of fact where such depends upon oral evidence or recollection of fact and a different inference has been drawn by the trial judge. In the drawing of inferences from circumstantial evidence, an appellate court is in as good a position as the trial judge to draw such inferences.

22. As to the circumstances in which an appellate court will interfere with an award of general damages, two of the most regularly quoted decisions are those of Fennelly J. in *Rossiter v. Dun Laoghaire Rathdown County Council* [2001] 3 I.R. 578 and that of McCarthy J. in *Reddy v. Bates* [1983] 1 I.R. 141. The former judgment advises that the test to be applied by the appellate court is to decide whether there is any "reasonable proportion" between the actual award of damages made by the trial judge and what the court, sitting on appeal, would be inclined to give and that an appellate court should only interfere with an award of general damages if it considers that there is an error in the award of damages which is so serious as to amount to an error of law. The latter decision advises, *inter alia*, that a general rule of thumb would require a discrepancy of 25% in order to justify intervening with the award earlier made.

23. As to the calculation of general damages, the jurisprudence in this area of law demands that damages for pain and suffering be both just and fair. An award must be (i) fair to the plaintiff and the defendant; (ii) objectively reasonable in light of the common good and social conditions in the State; and (iii) proportionate within the scheme of awards for personal injuries generally. (see for e.g. Denham J. in *M.N v. S.M* [2005] 4 I.R. 461 and my own judgment in *Nolan v. Wirenski* [2016] IECA 56). It is important as I stated in *Nolan v. Wirenski* that minor injuries should attract appropriately modest damages, middling injuries moderate damages and more severe injuries damages of a level that are clearly distinguishable in terms of quantum from those that fall into the other lesser categories of injury. Further, the fact that a judge describes an injury as significant does not mean that the damages must be substantial. How significant the injury is for the purposes of assessment damages should be assessed in the context of the whole spectrum of potential injuries to which any individual might be exposed.

24. As to how a judge at first instance might make a fair and just assessment of the damages to be awarded in respect of pain and suffering in any case, commencing at para. 43 of my judgment in *Shannon v. O'Sullivan* [2006] IECA 93 I stated as follows:-

"43. Most judges, when it comes to assessing the severity of any given injury and the appropriate sum to be awarded in respect of pain and suffering to date, will be guided by the answers to questions such as the following:-

- (i) Was the incident which caused the injury traumatic, and if so, how much distress did it cause?
- (ii) Did the plaintiff require hospitalisation, and if so, for how long?
- (iii) What did the plaintiff suffer in terms of pain and discomfort or lack of dignity during that period?
- (iv) What type and number of surgical interventions or other treatments did they require during the period of hospitalisation?
- (v) Did the plaintiff need to attend a rehabilitation facility at any stage, and if so, for how long?
- (vi) While recovering in their home, was the plaintiff capable of independent living? Were they, for example, able to dress, toilet themselves and otherwise cater to all of their personal needs or were they dependent in all or some respects, and if so, for how long?
- (vii) If the plaintiff was dependent, why was this so? Were they, for example, wheelchair-bound, on crutches or did they have their arm in a sling? In respect of what activities were they so dependent?
- (viii) What limitations had been imposed on their activities such as leisure or sporting pursuits?
- (ix) For how long was the plaintiff out of work?
- (x) To what extent was their relationship with their family interfered with?
- (xi) Finally, what was the nature and extent of any treatment, therapy or medication required?

44. As to the court's assessment as to the appropriate sum to be awarded in respect of pain and suffering into the future, the court must once again concern itself, not with the diagnoses or labels attached to a plaintiff's injuries, but rather with the extent of the pain and suffering those conditions will generate and the likely effects which the injuries will have on the plaintiff's future enjoyment of life."

Decision

25. Having considered the submissions of the parties and the evidence relied upon by ABP for the purposes of the appeal, I am satisfied that there is no basis upon which this Court could interfere with the trial judge's finding that the injury sustained by Mr. Boles was to the left side of his head.

26. It is clear from the transcript of the evidence that ABP was keen to establish that if the conveyor had in fact struck Mr. Boles on the head, a fact it had denied, the point of contact was to the top rather than to the side of his head. In the course of cross examination Mr. Boles, when asked to point to that part of his head that was struck by the conveyor had pointed to the top of his head. On the other hand, it could be inferred from Dr. John McCarthy's referral note to South Tipperary General Hospital, which recorded that on examination Mr. Boles was noted as having a very tender spot on the scalp in the left posterolateral area, that the point of contact had involved that area of the head.

27. Whilst it might have been preferable if the trial judge had referred to Mr. Boles's evidence as to the point of contact between the conveyor and his head and gone on to state that he considered it more likely that the injury had been to the left side of his head, having regard to Dr. John McCarthy's evidence, the fact that he did not do so in no way invalidates his finding or renders the trial unsatisfactory. All trial judges are required to do is explain how it is they came to their conclusion. They do not have to state why they reject each and every alternative possible finding even if there is weighty evidence in support of it. (See for example the decision of Clarke J. in *Doyle v. Banville* [2012] IESC 25).

28. It is clear from the judgment of the trial judge that he decided that the conveyor struck Mr. Boles on the left side of his head based on three factors. First, the note of Dr. John McCarthy noting an area of significant tenderness to the left side of Mr. Boles's head. Second, the fact that in the aftermath of the accident Mr. Boles went on to develop left sided symptoms in his neck, shoulder and arm. Third, the trial judge considered his position at the time of the incident was consistent with the conveyor striking him in that manner.

29. Insofar as it may be said that the trial judge's finding that the conveyor struck Mr. Boles on the left side of his head was based on an inference he drew from Dr. John McCarthy's evidence, and to that extent this court would be free to depart from that inference, I see no reason why it would do so even if it be the case that it was Mr. Boles's evidence was that he was struck on the top of his head. The evidence of Mr. Boles concerning the precise part of his head struck by the conveyor was being given by him some six years after the event had taken place and was based on memory alone. Dr. John McCarthy on the other hand had available to him a clear and detailed note of the examination which he carried out on the day of the accident which specifically recorded an area of extreme sensitivity to the left side of Mr. Boles's head.

30. In light of the contemporaneous and independent nature of the evidence of Dr. John McCarthy, who after all was the company doctor at the time, and in light of the complaints made by Mr. Boles of left-sided neck, shoulder and arm pain, I see no evidential or logical basis upon which this Court would substitute the inference drawn by the trial judge and replace it with its own conclusion that the conveyor struck Mr. Boles on the top rather than on the left side of his head.

Quantum of general damages award

31. Having considered the judgment of the trial judge, there can be no doubt but that he was fully satisfied that Mr. Boles was a credible and sincere witness who had not sought to exaggerate his injuries or symptoms. However, that fact notwithstanding, I find it difficult to accept that an overall award of general damages of €90,000 on the evidence in this case can be sustained as just, fair and proportionate.

32. In coming to this conclusion I have taken into account the fact that Mr. Boles undoubtedly had injuries for a period of approximately eighteen months or two years which caused him actual physical pain and suffering. He suffered *inter alia* from headaches, neck and shoulder pain. He also had some symptoms of paraesthesia in his left arm and hand. However, he was not an inpatient in hospital at any stage. He did not require anything by way of surgical intervention. He was not receptive or in a position to tolerate treatments of any nature with the result that he was principally treated with pain killing medication. Mr. Boles's physical symptoms had abated within a period of two years at which stage he continued to suffer from a somatic pain disorder. As was the case in respect of his physical injuries, he did not receive any treatment for this condition, perhaps due to the fact that it was not diagnosed until such time as he saw Prof. Casey in 2012. According to Prof. Casey's evidence this was a condition that could be brought under control by cognitive behavioural therapy. That being so his treatment would not subject him to any physical pain or discomfort, as is often the case with treatment. Neither was there any evidence that he would need to alter his lifestyle or limit his activities by reason of his condition or treatment.

33. Whilst it is of course a relevant factor to be considered that Mr. Boles's injuries kept him out of work and the High Court judge concluded that he was fully justified in remaining out of work up to the date of trial, his life does not appear to have been curtailed in any dramatic sense over that period of time unlike most persons who sustain physical injury or are in pain. He was in a position to participate in almost all activities of everyday living, enjoy the company of his family and participate in his leisure pursuits.

34. There was certainly no evidence to suggest that the consequences for Mr. Boles of his somatic injury were any more significant than his physical injuries had been over the first eighteen months to two years post accident. It may well be the case that what he suffered in terms of "pain and suffering" as a result of his somatic condition was less significant than what he endured as a result of his physical injuries. However, even if that were not the case and his injuries are to be valued on the basis that his somatic condition exposed him to pain and suffering equivalent to that experienced as a result of his physical injuries in the first eighteen months to two years post accident, I would still not be satisfied that an award of €60,000 in respect of pain and suffering to the date of trial could be considered fair, just and proportionate.

35. Further, in light of the evidence to which I have already referred and the fact that Prof. Casey was of the opinion that Mr. Boles should improve once the trial was over as he would no longer be involved in the legal process and the medical evaluations necessary for such purpose, the trial judge should have treated Mr. Boles as someone whose symptoms would reduce with relatively immediate effect even if it were to be the case that they would not fully resolve without cognitive behavioural therapy. In such circumstances, I consider the award of €30,000 for future pain and suffering is not just, fair or proportionate such that it should be considered a legal error.

36. For my part, the overall damages which I consider would be fair, just and proportionate would be an overall award of €60,000 broken down as to €45,000 in respect of pain and suffering to date and €15,000 into the future. Based on that assessment and the guidance provided by the decision of McCarthy J. in *Reddy v. Bates*, I would propose that the award for general damages made by the High Court judge be adjusted accordingly.

Loss of earnings/failure to mitigate

37. It is clear from the judgment of the High Court judge that he fully accepted that Mr. Boles would have stayed working if he felt he was physically able to do so. He made clear in no uncertain terms that it would be illogical to come to any other conclusion. He rejected out of hand ABP's assertion that he might have stopped his work to obtain social welfare payments and a medical card or that he had done so because he was dissatisfied with the nature of his employment and wished to pursue other interests. He pointed to the fact that Mr. Boles had every reason to want to stay in work because of the risk to his work permit of doing otherwise and to the fact that he was earning good money. The trial judge made clear that he was satisfied that Mr. Boles was justified in remaining out of work for all of the period prior to trial. That being so it is difficult to see how the trial judge can be faulted for awarding him his full net loss of earnings up to the date of trial.

38. Further, in light of Prof. Casey's evidence that Mr. Boles would need to undertake therapy before he would be able to return to work and that his symptoms might take some further time to resolve fully, it seems to me that there was credible evidence to support his award in respect of future loss of earnings. The sum awarded of €50,000 represents approximately 27 months net loss of earnings and that award is sustainable on the basis of Prof. Casey's evidence.

39. I am also satisfied that there is no basis for any complaint to be made that the trial judge erred in his failure to reduce the award for loss of earnings based upon Mr. Boles's failure to mitigate his loss. It is true that he did not endeavour to return to work prior to trial, but the trial judge was satisfied on the basis of Prof. Casey's evidence and that of Ms. Brenda Keenan, that he was unfit to work for that period. Ms. Keenan said that whilst it would be in Mr. Boles's interests to return to work that was dependant on Mr. Boles considering himself fit to work, which was not the case prior to trial.

40. Finally, I should say that I agree with the submission made by Mr. Counihan to the effect that ABP did not offer to take Mr. Boles back in an administrative role at any stage post accident, even if it did offer to meet him in light of Dr. Gleeson's report to assess whether this might be possible. Even if it had made such an offer and the same had not been accepted by Mr. Boles, based upon the evidence of Prof. Casey, the trial judge would have been fully entitled to conclude that it was reasonable for him to reject such an offer.

41. Accordingly, I would not interfere with the sums awarded in respect of loss of earnings.

Conclusion

42. For the reasons earlier set out in this judgement, I reject ABP's submission that the trial judge's finding to the effect that Mr. Boles was struck to the left side of his head by ABP's conveyor, cannot be sustained. Whilst his conclusion was based on inferences he drew from the evidence given by Dr. John McCarthy and the left sided complaints made by Mr. Boles in terms of symptoms, although entitled to do so, I would not be prepared to draw an alternative inference not having had the opportunity of hearing and assessing the witnesses.

43. I also reject ABP's submission that the award made for loss of earnings to date and into the future was excessive, having regard to the evidence. I am fully satisfied that the award made was indeed supported by credible evidence. Likewise, I reject ABP's submission that the sum awarded in respect of loss of earnings is excessive by reason of the failure of the High Court judge to consider whether or not Mr. Boles complied with his obligations to mitigate his loss by seeking to return to work. For the reasons earlier stated and based on the trial judge's findings of fact, he did not need to address the issue as to whether or not Mr. Boles had mitigated his losses.

44. Having considered the submissions of ABP and the evidence before the Court concerning Mr. Boles's injuries, I am satisfied that the total sum awarded in respect of pain and suffering to date and pain and suffering into the future of €90,000 is excessive and cannot be considered to be an award which is just, fair and proportionate, as is required. For the reasons already stated, I am satisfied that a just, fair and proportionate award for the injuries sustained by Mr. Boles would be a sum of €60,000 or thereabouts. Having regard to the discrepancy between that figure and the award made by the High Court judge, I consider his award to be sufficiently excessive such that it must be considered to be a legal error. For that reason, I would propose that the High Court award would be varied to allow a sum of €45,000 in respect of pain and suffering to date and a sum of €15,000 in respect of future pain and suffering with the result that the overall award be reduced to €227,000.