

## THE HIGH COURT

[2008 No. 1092 SP.]

## IN THE MATTER OF THE GARDA (COMPENSATION) ACTS

1941 AND 1945

BETWEEN

PETER MAGUIRE

APPLICANT

AND

THE MINISTER FOR FINANCE

RESPONDENT

**JUDGMENT of Mr. Justice Bernard J. Barton delivered on the 4th day of August 2016**

1. The Applicant was born on 10th August, 1958. He joined An Garda Síochána in January 1978. He was authorised by the Minister to bring these proceedings in respect of injuries and loss suffered by him as a result of an assault which occurred on 21st September, 2005.

**Background**

2. At approximately 10 pm in the evening, the Applicant was on duty with Garda Dónal Barry in a patrol car. As they were driving past Owenabue Car Park, Carrigaline, Co. Cork, the Applicant noticed a man, known to him as 'DOD', roaring, shouting and making abusive gestures at the Gardaí. The Applicant decided to arrest him for public order offences. 'DOD' resisted arrest and violently assaulted both officers, striking the Applicant a number of times on his chest before throwing him against the patrol car and then to the ground where the struggle between them continued. It ultimately took three other officers to bring the assailant under control. Of some significance to the issues in this case was the fact that the assault was not only vicious and violent but was also prolonged.

3. When the assailant was brought back to Togher Garda Station he continued to make threats of a violent nature against both the Applicant and the Applicant's son, whom he named. The assailant was charged with a number of public order offences to which he pleaded guilty on 16th December, 2005.

4. On the morning following the assault, the Applicant awoke with general soreness; he felt exhausted and was aware of pain in his back with radiation into his right hip and down into his right leg. Over the course of the succeeding days, the back pain worsened but he continued to work. He had hoped that his symptoms would gradually resolve, but they persisted. He went to see his GP, Dr. Anne Cronin Good. She examined him and prescribed anti-inflammatories and Valium to relax his muscles. He did not recover. Over time, his physical and psychological status deteriorated to a point where he felt compelled to retire. He seeks to visit all of the consequences on the Respondent, contending that they flow from the assault. Causation as well as the extent and nature of the injuries and loss were the main controversies between the parties.

**Pre-Assault Medical History**

5. The Applicant has a relevant pre-assault medical history. On 20th December, 2003, he was involved in a road traffic accident as a result of which he sustained injuries to his back. He made a claim through the Personal Injuries Assessment Board in respect of those injuries and accepted an Injuries Board award of €13,500 in respect of general damages. The Applicant attended Dr. Cronin Good following that accident. She prepared a report dated 7th March, 2006. He attended the GP on five occasions. His last clinical visit was some four months after the accident. The injuries were not such as to interfere with the Applicant's work or with enjoyment of his social and recreational life. It is clear from the medical report of the 7th March, and on his evidence which the Court accepts, that the Applicant made a full recovery from his injuries and that this recovery had taken place well before the assault giving rise to these proceedings.

6. Following her examination and assessment of the Applicant on 30th September, 2005, he was certified unfit for work from that date until 10th October. When he returned, he found himself unable to discharge normal policing duties and was again certified unfit for a number of days.

7. When the Applicant initially presented to Dr. Cronin Good, she had noted symptoms of right sciatica, marked lumbar spasm and a limited range of movement of the lumbar spine. Two subsequent MRI scans of the lumbar spine showed the proximal right sided S1 nerve root to be "markedly swollen".

8. The GP referred him to Dr. Brian Mulcahy, Consultant Rheumatologist, whom he attended on 17th October, 2005. Both Dr. Cronin Good and Dr. Mulcahy prepared a number of reports for the assistance of the Court which were admitted in evidence. Dr. Mulcahy's assessment of the Applicant in October 2005 disclosed stiffness and discomfort in the lower lumbar area as well as signs suggestive of lumbar nerve root irritation. He ordered a series of MRI scans which were carried out between October 2005 and March 2011. These initially showed mild to moderate broad-based posterior disc bulging in the central and right para-central position, likely contributing to traumatic nerve swelling at the S1 nerve root.

9. In September 2006, Dr. Mulcahy was hopeful that the Applicant would recover fully from his soft tissue injuries but with respect to the disc lesion and degenerative changes he thought these would render him more prone to episodes of mechanical back pain and perhaps bouts of nerve root irritation in the future. That prognosis has already proved to be correct.

10. The later scans showed that the swelling on the right S1 nerve root had gradually subsided; however, the degenerative changes were seen to have progressed, most noticeably with a decrease in the height of the L5/S1 disc. The scans also disclosed generalised disc bulging causing impingement on both exit foramina. The Applicant continued to suffer from back pain with continuing leg discomfort. Because of his ongoing symptoms, Dr. Mulcahy arranged for a course of epidural injections which were carried out in March and April 2007. When seen in July 2007, the Applicant reported that he had had a significant improvement in his back pain radiation. Although he continued to experience a restriction in lumbar movement, there were no signs on examination of lumbar nerve root irritation. A further scan carried out on 17th September, showed, in addition to the significant progression of the degenerative

changes at L5/S1 level, bilateral foraminal stenosis with a complete obliteration of the left exit foramen.

11. In the years subsequent to the assault, the Applicant suffered significant episodes of back pain which sometimes flared up to a point where he would have to be certified unfit for work. His absences from work varied in duration from two days to eight weeks at a time. Although the epidural injections had given him relief, he was advised in 2007 that the deterioration in the degenerative changes seen in the successive MRI scans was indicative of a rapidly progressive degenerative change which would likely result in ongoing symptomology which might require further medical intervention. Moreover, his deteriorating medical condition was likely to affect his capacity to discharge full policing duties. Nevertheless, it was clear from his evidence that the Applicant was anxious to remain in the force despite the effect which his injuries were having on him. .

12. Dr. Cronin Good corresponded with Dr. Collins, Chief Medical Officer at whose request the Applicant was reviewed by Dr. Pat O'Neill on 17th April, 2008. He found the interview with Dr. O'Neill particularly offensive – a matter to which he referred both in his grounding affidavit and also in evidence. He felt Dr. O'Neill was treating him like a criminal. He was upset and distressed by what he described as Dr. O'Neill's approach to him and which he likened to that of an interrogator; this view was not shared by Dr. O'Neill.

13. The ongoing symptomology had a profound psychological affect on the Applicant. His mood changed and relations with his wife deteriorated significantly. His continuing symptoms also interfered with his recreational pursuits including deep sea fishing. He had re-married in 2004. His new wife was a great support to him. Although he continued to discharge full policing duties, it was clear from his evidence that he was concerned that the discharge of such duties would expose him to a risk of further physical injury, especially as a result of potential confrontations. He described how his colleagues were very understanding and supportive of him as he struggled to persist with his career.

14. Nonetheless, he gradually developed a low esteem of himself and when he experienced flare ups in his symptoms, he experienced increased anxiety and low mood as well as pain. He described the combination of physical and psychological symptoms as taking the whole soul out of him in relation to work, social life, recreational activities and family relationships. He noticed himself becoming irritable, being short with people, losing his temper and lacking patience. Moreover, the poor medical prognosis contributed to feelings of depression.

15. Following a complaint made on the Applicant's behalf about the attitude of Dr. O'Neill, the Assistant Commissioner wrote to the Applicant's Chief Superintendent in November, 2008, complaining that he was obstructing usual procedures in terms of medical investigation, citing a refusal to attend further medical appointments with Dr. O'Neill. He was very upset by this correspondence and, in particular, by a threat that he would be subjected to disciplinary action.

16. At the request of the Respondent and in an effort to improve his medical situation, the Applicant underwent isokinetic tests under Elaine Grant. She advised that he undergo a course of physiotherapy and he subsequently attended a physiotherapist in Carrigaline on four or five occasions. However, these treatments, described as painful at the time, gave brief but no long-lasting relief.

17. His evidence was that from 2008 and into 2009, his symptoms deteriorated. This evidence was consistent with medical prognosis. The medical reports prepared on behalf of the Applicant showed that he had become disheartened, despondent, distressed and feeling depressed as a result of his deteriorating medical conditions.

18. Vocationally, it was the Applicant's evidence that his intention was to continue in the force until he reached the age of 60, notwithstanding that he would have been entitled to retire after 30 years service in 2008. The Court was made aware that there was a long family tradition of service in policing both in the RIC and in the Garda Síochána; a tradition about which the Applicant was understandably proud. I am satisfied that this background fortified the Applicant's desire to continue to serve. His undoubted preference was to perform outside operational duties. His worsening condition threatened that disposition. During his career he applied unsuccessfully on a significant number of occasions for promotion.

19. At a medical review of the Applicant in March, 2010, Dr. Cronin Good discussed the possibility of retirement on medical grounds. His evidence was that he did not want to retire. However, as a result of medical opinion and advice, he reluctantly decided to explore the possibility of retirement and wrote to his superiors in April, 2010, enquiring as to how he could retire on the basis of a special ill-health pension. He heard nothing further. The matter was not pursued until the Spring and Autumn of 2011. The medical response of the Respondent's advisors resulted in his being assigned to restricted duties which he found particularly demeaning having regard to his definite preference for performing full outside duties.

20. Dr. Cronin Good was concerned about the Applicant's psychological status; she referred him to Dr. Mairead O'Leary, Consultant Psychiatrist, who saw him in June 2010. She recommended that he engage in psychotherapy and in this regard he attended Ms. Joan Long, Psychologist. The Applicant found that his continuing station duties resulted in feelings of increased irritability and anxiety. He re-attended Dr. O'Leary in April 2011. Dr. O'Leary concluded that he was suffering from an Axis I psychiatric condition – namely, an adjustment disorder – which was interfering with his social functioning and vocational performance. Her view was that if he was able to retire that that would benefit him psychologically. She was concerned that if he did not retire, his psychological condition would likely deteriorate and that he was at risk of developing an anxiety depressive disorder.

21. Dr. Mulcahy wrote a report dated 30th April, 2011, in which he commented on recent MRI scanning. He expressed the opinion that the Applicant's condition precluded him from carrying out his duties as a Garda and that he should be considered entitled to a special pension.

22. Of some significance having regard to the pecuniary claims made in these proceedings, Dr. Mulcahy also stated that he considered assignment to office duties would not preclude the continuing occurrence of the back problems. It is also clear from his opinion that he considered the Applicant's chronic back condition to be inextricably linked to his psychological status and that the combination of these features led to the conclusion that the Applicant would also be unable to function properly in a Garda office environment.

23. Not having had a response in 2010 to his enquiry concerning retirement on a special pension, the Applicant decided to make an application in 2011 to retire on health grounds with a special pension. There was a long delay in dealing with his application. On his evidence, he was distressed by the absence of a decision by the Minister. His medical situation had deteriorated to the point that he was certified unfit for work even for office-based duties on 31st August, 2011 and, not having received a response to his application to retire on a special pension, he decided to exercise his entitlement to retire from the force on an ordinary pension. His retirement took effect on 25th November, 2011.

24. In this regard, the Applicant's solicitors wrote to the Department of Justice on 22nd November, 2011, stating that he was not abandoning his claim for a special pension and that his retirement on an ordinary pension was made pending resolution of his special

pension application. On 16th March, 2012, the Applicant received a letter from the Financial Shared Services Section of the Department of Justice, which relied upon the opinion of the Chief Medical Officer to the effect that he was fit for restricted duties and advised that as he did not fulfil the criteria set out in Article 10(1) and 10(2) of An Garda Síochána Pension Orders 1925, as amended, there was no basis for acceding to his application to retire with a special Garda pension. The Applicant was extremely disappointed with the decision and felt that it did not take into account the views of his own physicians.

25. In a report dated 26th May, 2011, Dr. Cronin Good took issue with certain opinions offered by Dr. Pat O'Neill, in particular with his view that the MRI scans had shown what he described as a long standing underlying degenerative condition. Dr. Cronin Good referred to a letter from Dr. E. Fitzgerald, Consultant Radiologist, reporting on the scan. In essence, Dr. Fitzgerald's opinion was that the assault had caused a prolapse of the L5/S1 disc and had also caused a swelling of the S1 nerve root. The scans established that the disc disease had progressed significantly from a disc bulge to a disc prolapse. He prognosticated that the speed of the deterioration in the degenerative changes and seen by reference to the subsequent MRI scanning meant that the Applicant was likely to experience further back and leg pain and that he would have this problem for the remainder of his life.

26. Dr. Cronin Good considered that the nature of the Applicant's physical injuries alone were such as would rule him unfit for other occupations. She also questioned his capacity to work in a solely administrative capacity. In her view, a desk job would not solve his problems. She, like Dr. Mulcahy, considered that certain aspects of a desk-bound occupation could exacerbate his symptoms. Given the clear medical opinions which had been expressed by his own physicians, the Applicant was at a loss to understand a conclusion to the contrary arrived at by the Respondent's medical advisors.

27. Having regard to the Applicant's evidence that it was his intention to serve in An Garda Síochána until he reached the age of 60, I consider it appropriate to observe that he would, in the ordinary way have been entitled to retire after 30 years service in 2008; a right he chose not to exercise despite his medical problems which by then had become chronic.

28. Ms. Mary Feeley, Vocational Rehabilitation Consultant, assessed the Applicant on 22nd June, 2009. That report was prepared before he applied to retire. It was also compiled at a time when the international and domestic financial crisis was becoming manifest in all areas of the economy; a matter which was commented upon by Ms. Feeley in her report. For the reasons given, she thought it improbable that the Applicant would be able to offer consistent attendance at any work into the future because of his ongoing and deteriorating back and psychological problems. She emphasised the reluctance that most employers would have to take on anybody that had a significant history of back trouble. An inability to offer consistent attendance at work would be unacceptable to most employers. Even if the Applicant attained some alternative occupation, she found it very difficult to envisage him being able to retain such an employment.

29. In his evidence, the Applicant described the level of his physical pain most days at being four or five on a scale of one to ten but that the pain can get worse and, when that occurs, he takes painkilling medication. On good days he said he was able to do household chores and a small bit of gardening. He had attempted to return to deep sea fishing approximately three years previously but the rocking of the boat at sea caused a significant aggravation of his symptoms. He tried to go back fishing last year but, again, that caused his pain to become worse. He tried to walk about half an hour every second or third day. Standing or sitting can cause an exacerbation of his back problems. He described why he felt that he would be unable to engage in the kind of occupations which Mr. Roger Leonard, Vocational Consultant considered might be appropriate. He was not sufficiently computer literate and he could not envisage himself at a desk job or a job involving driving. In essence, even if he were to secure one of the occupations suggested by Mr. Leonard, his continuing back problems would most likely result in his having to absent himself from work on medical certificates – simply put he would not be able to give any employer an assurance as to his capacity to provide continuous service.

30. Apart from one or two enquires about alternative employments to which he had no positive response, the Applicant has not pursued the possibility of any form of paid employment or self-employment. He has not returned to have epidurals since 2011 despite the fact that these gave him good symptomatic relief, sometimes lasting for several months at a time. When questioned as to why he had not returned for this treatment, the Applicant said he just got fed up having to go back to hospital and the doctors. The epidurals only gave temporary relief; his symptoms would always return irrespective of how long the relief would last. The duration of relief was also variable.

31. Dr. Patrick Devitt, Consultant Psychiatrist, examined the Applicant on 14th June, 2011 and 24th February, 2015 following which he prepared reports which were made available to the Court. Dr. Devitt also gave evidence.

32. Whilst it was Dr. Devitt's opinion that the Applicant had experienced a decrease in his psychological wellbeing in the years following the assault, the deterioration was attributable to a combination of factors, including his resentment at the way he perceived that he had been treated by his superiors. The continuation of his physical symptoms contributed to feelings of low mood and irritability. He did not consider the assault to be significantly traumatic; rather he described it as being an ordinary run-of-the-mill type of confrontation often experienced by members of An Garda Síochána. In his view, the nature of the assault was not such as would qualify it for a description of being psychologically traumatic. Whilst the Applicant was tense at assessment on his review, his cognition was entirely intact and he did not appear depressed or anxious. There was no evidence of psychosis.

33. On his second review, the Applicant was altogether more relaxed. Dr. Devitt disagreed with the assessment and conclusions of Dr. O'Leary and Joan Long. In his opinion, the Applicant did not satisfy the criteria for diagnosis with any psychiatric disorder. In particular, he did not agree that he had developed an adjustment disorder. Accepting that he had received 7 to 10 sessions of counselling from Joan Long, Dr. Devitt noted that the Applicant had not returned for further sessions since his retirement in 2011. In his opinion, the Applicant was resilient and was a psychologically robust individual who had learnt to manage his pain; psychological prognosis was excellent.

34. He felt that the views of Dr. O'Leary and Joan Long were not altogether objective; as treating specialists they would find themselves in the position of having to advocate for their patient. Insofar as there was a negative psychological impact, this was attributable to a number of factors, including continuing pain rather than because of the traumatic event itself. Psychiatrically, there was no good reason why the Applicant could not undertake office-based administrative duties.

35. Dr. Pat O'Neill, Fellow of the Faculty of Sports and Exercise Medicine, examined the Applicant on a number of occasions at the request of the Chief Medical Officer. He last examined the Applicant on 25th February, 2015. He prepared reports for the assistance of the Court and gave evidence at the hearing.

36. In contrast to the views expressed by Dr. Devitt, he accepted that, from a physical perspective and as described in his reports, the assault involved a significant amount of violence. He had also had an opportunity to review the various x-rays and scans, including an x-ray of the Applicant's back taken on 15th March, 2004 following the road traffic accident. He accepted that the

degenerative changes shown on that x-ray were consistent with the type of changes which would be expected in a man of the Applicant's age at that time. In his opinion, the assault caused musculoskeletal soft tissue injuries which were superimposed on what were then quiescent degenerative changes seen in the L4/L5/S1 level of the lumbar spine. It was clear from successive scans taken in the years following the assault that the pre-existing degenerative changes had not only been aggravated but, significantly, had progressed much more rapidly than would otherwise have been expected. He fairly accepted that the assault was the substantial cause of the aggravation and rapid progression of these changes.

37. While there could be no medical certainty with regard to the onset of symptoms, he thought it reasonable to conclude that while the degenerative changes would have progressed with age, they were unlikely to have become symptomatic for at least another 10 to 15 years and that the Applicant would most likely have reached retirement age without experiencing much if any difficulty.

### **Conclusion**

38. Both Dr. Devitt and Dr. O'Neill expressed the view that there was no exaggeration by the Applicant and that he presented in a straightforward manner. I have no reason to doubt his evidence in relation to the violence which accompanied the assault. Indeed, the nature of the physical injuries sustained, as reported and assessed on medical examination and confirmed by objective radiological reporting, is consistent with the seriousness of the assault. While the Court understands Dr. Devitt's reasoning for his view that the Applicant did not qualify for and that it was not appropriate to make a diagnosis of a specific psychiatric disorder or illness, I am satisfied, having regard to the evidence of the Applicant and of his treating physicians that he developed an adjustment disorder and that it was a combination of his ongoing physical symptoms and the diminution in his psychological wellbeing that ultimately led to his retirement from the force – a decision which the Applicant made reluctantly having regard to the unqualified medical advice which he had received.

39. Although the Applicant appears to have applied to retire on ill-health grounds with a special pension on the basis of advice which he had received, he frankly admitted in evidence that he had not made any enquiry at the time as to the pecuniary benefits attributable to such a pension, if granted, over and above the benefits which he would have received once he became entitled to retire after completing 30 years of service. Nevertheless, I am satisfied that it was his overall medical condition which had prompted him to retire on an ordinary pension basis while awaiting a decision from the Minister which, in the event, was to reject his Application.

40. Although Dr. Devitt in particular was critical of the Applicant for not giving his assignment to purely administrative duties a fair chance, it is quite clear from his evidence and that of his physician's that persisting in such a role was not likely to result in an amelioration of his problems; rather the contrary. I reject the suggestion that the Applicant's physicians may have felt it necessary to advocate for their patient. This is especially so in circumstances where they, as treating physicians, are professionally bound where requested by or on behalf of their patient to give an honest and fair opinion and over which they are bound to stand. The Court accepts their evidence and finds that it was entirely reasonable in the interests of his health that he should seek to retire from the force and that he did so by reason of his continuing injuries.

41. The Court is also satisfied that the Applicant's intention was to serve in the force until he reached the maximum retirement age of 60 and that he would most likely have done so. Consistent with this conclusion, he did not retire having completed 30 years of service notwithstanding his ongoing symptoms; indeed, he persisted in renewing his applications for promotion, the most recent of which was in 2010. While he was unsuccessful in this regard it is, nevertheless, indicative of a continuing intention not only to serve but to serve at a higher rank, albeit that on such a promotion a greater portion of time towards administrative duties would be required.

42. Having come to these conclusions I consider it pertinent to observe that the Court is conscious that there were other factors at play which undoubtedly had some role in the Applicant's decision to retire, particularly his resentment which arose from his perception that he was being treated unfairly by the authorities. However, having had an opportunity to observe his demeanour whilst giving evidence and having heard and considered the medical evidence which was given, I am quite satisfied that ultimately the decision to retire was substantially based on the medical evidence which he had received as well as on the physical and psychological effect which the injuries were having on him. Furthermore, he had also been advised that the injuries would not be abated by working in restricted administrative duties. The suggestion that the problems he was experiencing were not causally related to the assault is not sustained on my view of the evidence and nor is the suggestion that the Applicant would have retired anyway when he did so.

43. As to his claim with regard to past and future loss of earnings, the Court is not satisfied that the Applicant is so disabled by his injuries as to be unable to contemplate or engage in any form of remunerative employment. In my judgment, the medical and vocational evidence does not warrant such a conclusion. The fact that the Applicant did make a number of enquiries about alternative employments after he retired suggests that, at least initially, he did not consider himself unfit to work outside the force in some capacity.

44. The economic environment has altered and substantially improved since the time when the Applicant was vocationally assessed by Ms. Feeley. The assessment by Mr. Leonard took place much more recently against this improving environment. Whilst the Applicant took issue with some of the vocational options suggested by Mr. Leonard, his overall rationale was not that he might not be able to do the particular job but, rather, that because of flare-ups in his condition, he would not be able to offer an employer consistency in his ability to perform his duties.

45. Moreover, he did not seek out any form of retraining to secure alternative employment, including self employment. My impression from observing him and listening to his evidence is that he has come to terms with and has settled into his retirement with psychological benefit. In the context of this aspect of the Applicant's case it is significant, in my judgment, that he has not returned for active medical intervention in respect of his physical symptoms, especially when he experiences flare-ups. The medical evidence establishes (and indeed it was his own evidence) that the treatment which is available to him results in significant symptom relief and that such relief, although temporary, can be maintained for up to several months at a time.

46. The Applicant is obliged to take reasonable measures to mitigate his loss. His claim for full loss of future earnings is grounded on the proposition that he possesses no reasonable residual earning capacity as a result of his injuries. The onus of proof to establish that claim rests with the Applicant. The Court is not satisfied on the evidence that his injuries are such as would render him incapable of working or unable to obtain any form of remunerative employment.

47. In circumstances where there is a residual earning capacity which may reasonably but is voluntarily not exercised thus giving rise to a pecuniary loss, such must be taken into account by the Court in the determination of a claim for loss of earnings, such as was made here, on a full loss basis.

48. Mr. Leonard expressed the opinion that, having retired, the Applicant had a potential to return to work but acknowledged that had

he attempted to do so at the time, he would have encountered very difficult economic conditions. His report states that in January 2012, the seasonally adjusted standard unemployment rate was 15%. Work options were very limited. However, he also commented on the improvement in the economy which has taken place since. Recognising that the Applicant's employment options were limited, he noted the Applicant had not undergone any training programmes after his retirement. Pursuing such a course would have allowed him to acquire modern office skills which he could have utilised to secure office-based employment. Having considered the various expert reports made available to him and having carried out his own assessment, Mr. Leonard's view was that the Applicant would most likely have sought work generally available to semi-retired people. He gave some examples of the rates of pay applicable to a number of varied employments in administrative and non-administrative occupations.

49. With regard to potential employment after retirement at the age 60, Mr. Leonard reported that the Applicant would not have considered work in the security sector but was unable to indicate what alternative work he would have undertaken except to say that he would have considered any work including packing shelves in Dunnes Stores.

50. The Court accepts that it is not unusual for members of the Gardaí, if retiring in their mid to late 50s and on compulsory retirement at 60, to seek further employment on a full or part-time basis in relatively unskilled occupations until 65 or thereabouts. However, given that he retired at age 53, it is not surprising that the Applicant hadn't given much thought to the kind of employment which he would have sought out after retirement at age 60. Suffice it to say that his response to Mr. Leonard suggests that he would have considered almost any occupation outside the security sector. Having regard to his evidence and the evidence of the Vocational Consultants, the Court finds that it is likely the Applicant would have sought out employment in an occupation suitable to retirees at the age of 60 until he had reached the age of 65.

51. Actuaries were retained on behalf of both parties. They prepared reports for the assistance of the Court. Very helpfully, they were able to reach agreement in relation to the figures in respect of the claim for past loss of earnings, as well as in relation to the capital value of the claims for future loss of earnings to age 60 and from 60 to 65 on the basis of certain specified and stated assumptions which were set out in a report of Mr. Tennant, dated 2nd March, 2016 who also gave evidence at the hearing.

### **Conclusion on General Compensation**

52. The Court is required to apply the well settled principles of tort law to the assessment of general compensation in respect of the Applicant's injuries which, in the circumstances of this case, require an assessment of compensation to date and compensation into the future.

53. The purpose of an award of compensation is to put the Applicant into the same position, insofar as that can be done by a money award, which he would have been in but for the wrong committed against him. Justice requires that such award must be fair, reasonable and commensurate with the injuries sustained. Having regard to the evidence, to the findings made and the period of time which has elapsed since the date of the assault, the Court considers that a fair and reasonable sum to compensate the Applicant in respect to his injuries to-date is €65,000 and in respect of the future is €35,000, making in aggregate the sum of €100,000.

### **Conclusion in respect of Special Pecuniary Loss**

54. A measure of agreement was reached between the parties in relation to pecuniary expenses other than the claim for loss of earnings. The significant difference between the parties in relation to this aspect of the Applicant's claim concerns the date on which the Respondent considered it did not have a liability to meet ongoing medical and other related expenses. In essence, the Respondent considered that the cut-off date was November, 2008 after which, it was submitted, such expenses incurred were not causatively connected to the assault.

55. Having regard to the findings already made, the Court is satisfied that the medical treatment and travelling expenses incurred after November 2008 are causatively connected to the assault and are therefore recoverable.

56. The figure agreed between the actuaries in respect of past loss of earnings is €52,746. Having regard to the finding that, but for his injury, the Applicant would have remained in employment as a serving member of An Garda Síochána until he reached the age of 60, the Court will allow the Applicant's claim in respect of past loss of earnings to which Courts Act interest – which has been agreed in the sum of €9,500 – will be applied, making in aggregate the sum of €62,246 under this head of claim.

57. Turning to the claim for future loss of earnings from now to age 60, having regard to the findings already made and to the fact that employment in An Garda Síochána may properly be described as relatively secure and therefore not subject to the same degree of risk in respect of Reddy & Bates contingencies which would apply to what I shall describe as a civilian occupation, it seems to me on the evidence that it would be reasonable for the Court to approach the assessment on the basis of an income representing the midpoint between full and part-time minimum wage employment and in respect of which the actuaries have agreed a figure of €12,875. However, as Reddy & Bates contingencies cannot be altogether excluded, the Court will allow the sum of €11,000.

58. As to the Applicant's claim for future loss of earnings from age 60 to 65, the Court considers it reasonable on the evidence to apply the same rationale as has been applied to the claim for future loss of earnings to age 60 save that different considerations apply in relation to Reddy & Bates contingencies, not the least of which would be the absence of security in employment. Accordingly, the Court considers it appropriate to make a deduction of 30% in this regard. The actuaries agreed a figure of €31,178 which, allowing a 30% deduction, gives a net figure of €21,824.60 under this head of claim.

59. The Court will make an award for the aggregate of the general and special compensation and in this regard I will discuss with counsel the form of the final Order to be made.