

THE HIGH COURT

[2010 No. 253 P.]

BETWEEN

FREDDIE O'RIORDAN

PLAINTIFF

AND

BERNARD DEMPSEY AND KEVIN BYRNE

DEFENDANTS

JUDGMENT of Mr. Justice Cross delivered on the 7th day of November, 2014

1. The plaintiff was born on 13th April, 1988 and was involved in a serious road traffic accident on 11th July, 2007, when travelling as a seatbelt restrained backseat passenger in a motor vehicle being driven by the first named defendant when it was struck from behind by the second named defendant's motor vehicle.

Assessment of Damages

2. The accident itself was frightening and significant. The impact resulted in the vehicle being shunted forward and spinning and hitting and rolling over a number of times. The plaintiff's head smashed the back window and as the car hit the ground notwithstanding his seatbelt he was thrown forward which resulted in his nose striking the car frame with such force that the window's steel frame was dented.

3. As a consequence of this, the plaintiff sustained a serious injury to his nose. The nose itself was split down the middle and there was little remaining. He was bleeding extensively and was taken to the Accident and Emergency Department of Beaumont Hospital and his pain was severe. A day or two later, the plaintiff unfortunately viewed what remained of his nose under the bandages prior to the operation and was shocked by what he saw.

4. The plaintiff was operated upon and his nose was completely collapsed with a comminuted fracture of the nasal bones. The bridge of his nose was severely injured and there was a degloved wound over the dorsum of his nose. The nasal septum was completely fractured off the spine and was deviated. He had fractures of both the alar and upper lateral cartilages on both sides and a very jagged wound at the tip of his nose with complex lacerations all over the cartilage and there was a question of the viability of the skin flaps.

5. The plaintiff was very skilfully and expertly repaired by Mr. Brian Kneafsey, Consultant Plastic and Reconstructive Surgeon, and was advised that further surgery would be necessary. Nasal packs were inserted but removed two days later and he was discharged on 15th July.

6. In relation to his physical injuries, the plaintiff underwent a minor revision surgery in April 2008 under local anaesthesia.

7. On viewing the plaintiff's face, it is quite possible on examination to see scars which remain and I note that the septum is not working as it should. Given the severity of the physical injury the plaintiff sustained, the surgical recovery must be seen to be remarkable.

8. The major injury the plaintiff has suffered is not the significant and serious injury he sustained to his nose with the resulting scar and some deformity. The major injury is in fact the psychological and psychiatric reaction that the plaintiff has underwent.

9. As previously stated prior to the operation, the plaintiff was aware of the extensive physical damage to his nose. As early as September 2007, the plastic surgeon noted that the plaintiff continued to massage the scars on his nose and this was explained to me and I accept that the plaintiff was from a very early stage, entirely dissatisfied with his physical appearance and he went on to develop a serious and significant psychiatric problem which has persisted and is persisting. The psychiatric problem that the plaintiff suffered and is suffering from is known as Dysmorphobia or Body Dysmorphic Disorder. He also developed Post Traumatic Stress Disorder and a significant depression.

10. The defendants' psychiatrist, Dr. Mohan stated, and I accept that this psychiatric condition is rare but that the plaintiff is clearly very disabled and the plaintiff's phobia is at the extreme end.

11. The plaintiff came under the care of Dr. Robert Daly, Consultant Psychiatrist, he initially suffered low mood with suicidal ideation, social withdrawal, anorexia, disinterest and depression and decrease in energy. He developed a obsessive difficulty with frequently and excessively scrutinising the appearance of his nose spending "hours" staring at the mirror, pulling and rubbing at his nose and examining its features. The plaintiff put great faith in the ability of plastic surgeons either in Ireland or the United States of America to "cure" his appearance but when he returned from Australia (of which more below), the plaintiff was devastated by the diagnosis (which he accepts) that there is nothing that can be physically done in future to repair his nose and that any further surgery would be likely to be detrimental to his appearance.

12. Despite repeated assurances to the contrary, the plaintiff believes that his nose is grossly misshapen and deformed and would bring attention to him in social or other settings.

13. The plaintiff underwent some therapy from Mr. Peter Ledden, Psychotherapist, but this was not persisted with and he remained on a cocktail of anti-depressant and other drugs.

14. The plaintiff had no other stressors other than the possibility that there is some evidence of bipolar disorder in one of his siblings and he was naturally distressed when his father passed away in 2006. In any event, the defendants must take the plaintiff as they

find him.

15. The plaintiff was, at the time of this accident, a young man who was cheerful and in good form and was doing reasonably well in his job as an apprentice plumber. He enjoyed socialising and was, I find in every way, a pleasant young man making his way in the world. I have heard the evidence from his mother and I have also viewed contemporary photographs showing a happy young man as far removed as is possible from his present disposition.

16. The plaintiff was "let go" from his job after the accident due to his absences from work and training due to his injuries. I accept that the plaintiff is likely to have been "let go" at some stage relatively soon thereafter, due to the downturn and the relocation of his employers in Cork in any event. I hold that the plaintiff would have qualified as a plumber were it not for the accident though his qualification as was the case with a number of his peers would have been somewhat later than otherwise due to the recession in the economy. However, the plaintiff has not been able to complete his apprenticeship as a plumber and apart from work he obtained in Australia has not, in effect, been able to work since ceasing his apprenticeship.

17. The plaintiff's condition deteriorated in autumn 2009 and in late 2009, he suffered increased social withdrawal, persistent and excessive self scrutiny and low mood. He was admitted to St. Patrick's Hospital following a referral from Dr. Daly on 2nd December, 2009 and discharged on 22nd December, 2009.

18. With the encouragement of his mother, the plaintiff went to Australia in March 2010. There he was able to engage in a number of jobs on agricultural holdings, ranches and in mining, each lasting no more than six months due to visa restrictions. He also was able to start a romantic relationship which lasted a few months. When asked about these matters, the plaintiff stated that at the time, two fractures were of assistance to him. The first matter was that he was in a foreign country where people did not know him and could not relate his present appearance to what he had been before and second, he was at that stage still consumed with the hope that plastic surgery would resolve the matter.

19. He was under medication in Australia and got medical assistance from time to time but generally, I accept that in this period, he was reasonably well.

20. The plaintiff returned from Australia when his visa ran out.

21. In the middle of his period in Australia he returned for the purpose of a number of medical examinations and Dr. Daly said at that stage he had not any significant depressive symptoms though he still had the dysmorphic disorder.

22. Sadly, since his return from Australia, the plaintiff's condition has deteriorated significantly. He had a number of self harm incidents including on one occasion booking himself into a hotel, turning off his mobile and he was only discovered by chance when his sister and mother saw his car parked outside the hotel and in effect forced entrance to his room. He was hospitalised in Beaumont Hospital and subsequently transferred to the Joyce Rooms, the in-patient psychiatric unit for North Dublin.

23. He came under the care of Dr. Pauline Devitt and he had substantial spells of suicidal ideation and self harm attempts while in the hospital.

24. Mr. O'Riordan's Post Traumatic Stress Disorder symptoms have resolved and this is no longer a problem but the plaintiff has ongoing depression and the Body Dysmorphic Disorder is continuing. The plaintiff was referred to counselling under Dr. Brid Tobin by Dr. Devitt and the plaintiff puts great faith in Dr. Tobin but unfortunately she went on maternity leave. It is not clear whether Dr. Tobin is still on maternity leave but in any event, it has not proved possible for the plaintiff for one reason or another to re-engage with her. Dr. Devitt has indicated Dr. Tobin is not available ordinarily to the plaintiff through the Health Service Executive as she administers to a different district.

25. In August 2013, the plaintiff was readmitted to the Joyce Rooms with depression and disturbed sleep. He was uncomfortable with going out of his house. He kept indoors and could socialise only with one or two very close friends. He had suicidal thoughts and he did not engage with the day hospital facilities or with the occupational therapist. He did engage with Dr. Tobin but was discharged from the hospital on 21st October, 2013.

26. At this stage, the plaintiff only attended medical appointments with either his mother or sister driving him to the clinics and booking a quiet time and his mother or sister ensuring that the waiting room was empty by the time the plaintiff was called and he remained in the car until this event.

27. In November 2013, he was admitted for two weeks to St. Brigid's Hospital, Ardee, following the serious overdose when he booked himself into the hotel as described above. The plaintiff has been unable to follow the advice to contact the Body Dysmorphic Disorder support group or other counselling apart from the aforementioned Dr. Tobin who was unavailable to him.

28. In late 2013, the plaintiff at the urging of his mother moved out of his home into a bed-sit. The purpose of this was to give the plaintiff some independence. Whereas doubtless this move, has given some relief to his mother, it has not been a success from the plaintiff's point of view. Unfortunately, the plaintiff's life at the moment consists of staying in his bed-sit 24 hours a day, seven days a week. He gets up, washes and watches television or DVDs or plays on his computer. He rarely goes out. He has indicated that he will be compliant with his medication regime and engage with the psychiatric services and he will go back to Dr. Tobin. If Dr. Tobin is not available to him on the public health system, it is hoped that she or somebody else will be engaged by the plaintiff in the future.

29. The plaintiff does not go out of his house except some times rarely at night to the local shop when it is about to close and when there is nobody there. If the plaintiff attends his doctors, he only does so after been driven by his mother or sister and waits in the car until they advise him that the waiting room is free of other patients. He lives as the experts have agreed, the life of a hermit. His hermitage is not, however, a voluntary one. The plaintiff accepts readily that the main problem is not with his nose but with his mind but despite this insight, which is a good thing, he remains in the state has been just described. He has no social outlets. The plaintiff has grown his hair long and has a beard, in order, he feels, to disguise the appearance of his nose and to stop people looking at him.

30. In point of fact, at least to any stranger, apart from his hair and beard his appearance is unremarkable. His hair and beard do give him the appearance that can only be characterised as a Christ like face as interpreted by 1960s "hippy" musicals.

31. As well as hearing the evidence of Mr. Kneafsey, the Plastic Surgeon, Dr. Daly and Dr. Devitt and Dr. Mohan (on behalf of the defendant), I have also had the benefit of the evidence of Susan Tolan, the Vocational Therapist.

32. The plaintiff's prognosis is difficult, to say the least. It must be noted that it is now seven years since the road traffic accident and despite the interlude in Australia, the plaintiff is now in a far more serious position than he ever was. His social isolation is such that he did not feel able to attend his younger sister's 21st birthday party. He is reluctant in the extreme to interface with people. He has no formal job qualifications. He left school at the age of 15 after passing his Junior Certificate. Apart from his stint in Australia, his work history is virtually non-existent. His current appearance is likely to deter employers. He is suffering from a significant depression and other psychiatric problems.

33. From the defendants' point of view, the best that can be said is when Dr. Mohan says that with counselling and continuing of his medication, he would hope that he will not have a permanent disability at today's level. He does agree that he has a chronic relapsing condition but hopes for intervals of better functioning and followed by more withdrawal. Dr. Mohan says that in these better intervals, the plaintiff should be fit for some kind of work that does not involve meeting people.

34. The plaintiff's own doctors do not wish to rule out hope and that is very proper. Hope does not always equate with the balance of probabilities. I also would hope for the plaintiff that he would engage with his psychiatrist and psychologist and would continue the medication as he has promised. My task is to assess on the balance of probabilities what his future will actually be.

35. I believe that even if the plaintiff does engage with counsellors, and he is to be encouraged at every stage to do so, that it is unlikely that the plaintiff will ever be able to attain any meaningful work on the open market. I do not see that the type of work suggested by Dr. Mohan as being a realistic possibility. I believe, at best, as indicated by Dr. Mohan, that he will have intervals of social engagement that will bring him out of his bed-sit to engage in some socialisation. I accept Ms. Tolan's report that the plaintiff is not now fit for open employment and while his present behaviour persists he will not be fit for open employment. The longer he is out of work, the less likely he is to return. Sadly, I do not see the plaintiff ever returning on any significant way to the workforce. I hope I am wrong in this but as a matter of probability, I do not believe that there will be any real likelihood of work in the open market in the future.

36. I accept that had the accident not occurred, the plaintiff would have completed his apprenticeship but not, due to the economic downturn in the time that he had hoped for. I believe that had he not found work in Ireland, he would have found work abroad in either Australia, New Zealand or Canada as a number of his friends in the plumbing trade did. With the trade the plaintiff had obtained, I believe he would with his pre-accident engaging personality have maintained employment either in Ireland or more probably abroad on a full time basis.

Damages

37. The out of pocket special damages to date for medical bills etc. amount to €9,431.92. The loss of earnings to date amount to €52,796.67 including a loss of €3,684.67 as an apprentice plumber from July to September 2007. There is a loss claimed of €18,720 from June 2008 to June 2010 being 104 weeks at €368 less Department of Social Protection payment of €188 per week and a loss of €30,392 from July 2012 (when he returned from Australia) to date being 116 weeks at €450 less Department of Social Protection payment of €188 per week.

38. Given that I believe the plaintiff probably would have been "let go" shortly after the accident due to the economic downturn, I will disallow the sum of €3,684.67 from that total leaving a loss of earnings to date at €49,112. I believe that the plaintiff's post accident earnings would have been relatively steady as described above but I will discount a number of weeks to represent some unemployment and possible moving abroad and will assess the recoverable loss of earnings to date at €45,000 being a total of special damages to date at €54,431.92.

Future Special Damages

39. The plaintiff will be in receipt of a lump sum and will not qualify for the medical card.

40. I believe and this is common case that the plaintiff is going to require medication for the rest of his life and the actuarial figure for this sum is €14 per week for the rest of the plaintiff's life is €23,002, say €23,000.

41. I believe that the plaintiff is going to require ongoing counselling. I do not believe that this counselling is going to be permanent.

42. If the pessimistic scenario is correct, the counselling will be discontinued as worthless if the optimistic scenario is correct, the plaintiff will have periods when he does to require counselling.

43. Accordingly, I think that even the figure provided on the basis of two occasions per month are probably excessive and I will allow half of the sum of €26,000 (€13,000) for counselling.

44. I do not believe that counselling figures are of the sort as envisaged by O'Sullivan J. in *McEaney v. Monaghan County Council* when he allowed an additional 3% medical inflation and accordingly, I will use the figures on the standard basis.

Future Loss of Earnings

45. I believe that the plaintiff would now be earning the rate of €24,901.88 gross per annum as a qualified plumber which is the lower rate and is suffering a loss of €531 per week which based upon a retirement age of 68 years which I think is the appropriate figure allows for a sum of €708,885.

46. I believe that the plaintiff will not earn any significant money in the future over and above the social welfare, I will have to take account of the *Ready v. Bates* deductions and accordingly hoping that I am not being unfair to the plaintiff, I will award a figure of €600,000 for loss of earnings into the future.

General Damages

47. The damage to the plaintiff's nose was extensive, serious and one cannot merely add one injury to another without any account of the injury to the plaintiff as a whole, I will for the purposes of this decision, differentiate between the nasal and psychiatric injuries and award the plaintiff €60,000 damages for his nasal injury to date and €40,000 into the future.

48. In relation to the plaintiff's psychiatric injuries, unfortunately this young man is now and is likely to be for the foreseeable future, a shell of his former self. He is living a life of utmost misery and the fact that he has certain insight into his disability has not alleviated his problem. Dr. Mohan is in agreement that in no way can the plaintiff be described as malingering. He suggests and I agree that the plaintiff should, if at all possible, be encouraged into counselling but I have little faith that the counselling will produce any lasting cure and indeed, Dr. Mohan does not envisage such a cure. Even while the plaintiff was engaged with Dr. Tobin, he suffered relapses and I suspect that her benefit to him has been magnified by her absence. Notwithstanding that fact it is of vital importance

that the plaintiff engages with any counselling that is available to him.

49. I believe that the plaintiff has been injured and damaged just as significantly as someone who lost the use of all their limbs. The PIAB Book of Quantum is of not assistance to me.

50. I will assess general damages to date under the psychiatric heading in the sum of €200,000 to date and €150,000 into the future.

51. In *Sinnott v. Quinnsworth Limited* [1984] 4 ILRM 523, the Supreme Court put in effect a "cap" on general damages at then £150,000.

52. In *Yun v. MIBI & Tao* [2009] 1 IEHC 318, Quirke J. extensively reviewed economic arguments with the value of awards and stated "that with upward adjustment 'increases' the equivalent value in 2008 of the 1984 'cap' of IR£150,000 was €500,000". Quirke J. then in 2009 indicated that due to the then reduction in wealth and living standards commenced in 2008 that the sum of €500,000 should be reduced to €450,000. I am conscious that the total of my general damages to date and into the future totalling the physical and psychiatric injuries amount to €450,000. I believe that that total is fair and reasonable to both sides.

53. Whereas the figure of €450,000 has been used in catastrophic injuries since the *Yun* decision delivered on 17th July, 2009, with the recent improvement in the economy it is quite possible that the sum should now be €500,000.

54. I am aware, however, that the "cap" in relation to catastrophic injuries applies usually in cases where considerable sums far in excess of €450,000 are payable to a plaintiff for future care needs *etc.* This is not the case with Mr. O'Riordan other than relatively modest sum for future counselling and medical expenses. It is at least arguable that accordingly the cap does not apply in Mr. O'Riordan's case. It is further, of course, the case that the sum of €450,000 (or €500,000) is a "cap" or ceiling on the upward level of damages in such cases. It follows it is not a yardstick to reduce all other damages accordingly.

55. In any event, as I have stated above, I am of the view that Mr. O'Riordan has been as catastrophically injured by this accident as someone who has lost the use of his limbs and I believe that the figure of €450,000 is fair and reasonable.

Summary

Special damages to date including loss of earnings €54,431.92

Medical expenses into the future €23,000

Counselling into the future €13,000

Loss of earnings into the future €600,000

General damages to date including his physical and psychiatric injuries €260,000

General damages into the future €190,000

Total €1,140,431.92

56. I will round down that to an award of €1,140,000 which sum I think I believe is fair and reasonable in the plaintiff's circumstances.