

THE HIGH COURT

[2021] IEHC 659

[2017 No. 8 SP]

BETWEEN:

LOUISE LEONARD

PLAINTIFF

AND

MINISTER FOR PUBLIC EXPENDITURE AND REFORM

DEFENDANT

Judgment of Ms. Justice Mary Rose Gearty delivered on the 11th day of October, 2021

1. Introduction

1.1 This case involves questions of fair compensation in respect of a serious, life-changing injury which was deliberately inflicted on a member of An Garda Síochána. This Applicant was the victim of a moderately serious assault, but the effects were devastating. Liability in the case and many of the categories of damages are agreed, but general damages for pain and suffering and the amount to be awarded in respect of future costs of care are disputed.

1.2 A further issue arises in circumstances where the Applicant's advisors acknowledge that there is a recommended treatment which has not yet been attempted due to the restrictions imposed by the global pandemic. The Respondent argues that this must reduce

the amount awarded by the Court as there is a prospect of improvement in the Applicant's condition.

1.3 An adjournment was sought by the Respondent in order to allow the treatment to take place and refused on the basis that the Applicant strongly urged the Court to consider the issue as it currently presents and to finalise the case, notwithstanding some level of uncertainty about future treatments. The age of the case, coupled with the ongoing and unpredictable nature of the global pandemic and its impact on travel made this an appropriate case to finalise, notwithstanding the prospect of future recovery. There is no immediate prospect of this Applicant travelling abroad for treatment and it is difficult to predict when such a trip may safely be undertaken. The fact that a future treatment may be successful, therefore, must be factored into the Court's award, albeit that any reduction must be estimated taking into account risks that are very difficult, if not impossible, to calculate with precision. While the Applicant agrees that the prospects of improvement cannot be ruled out, it is argued that this should not reduce the award significantly as treatments to date have proved ineffective.

1.4 Finally, the report from the Occupational Therapist submitted by the Applicant has been criticised by the expert in Occupational Therapy who gave evidence for the Respondent. The Applicant stands over her Therapist's estimate of the cost of future care in respect of general, as opposed to medical, needs and points to the fact that she had the advantage of assessing the Applicant in person, which the other expert did not. He was confined to reading the opposing expert's report and commenting on it. This situation was due to the urgency of the reports, both of which were sought this year, and is no reflection on either expert, it should be noted.

2. Outline of Facts

2.1 When this Applicant was 21 years old, she joined An Garda Síochána. While on duty on the 12th of April 2005, and still only 25 years of age, she was headbutted in the face during an arrest. The unexpectedly violent, but relatively moderate assault in terms of the force used, has had lasting and grave consequences for this young woman.

2.2 From initial pain caused by a split lip and the impact on her nose and teeth, mainly confined to one tooth, the tenderness spread to nerves across the face and the pain intensified over the years. Serious damage was caused to the Applicant's facial nerves and she has undergone many years of treatment and, over time, ever more invasive methods of pain relief.

2.3 The Applicant has not been pain-free for over a decade, including on her wedding day in 2008. There is no realistic prospect of her giving birth to children. She did return to work initially, for light duties, but could not remain at work. Until 2019, she still harboured the belief that she could return to work, having wanted to join the police force since she was a small child. In the context of these proceedings, her hope in this regard had to be relinquished.

2.4 The integrity of the Applicant is not in dispute. The factual background, therefore, up to and including the details of the daily effects on this Applicant and the special damages are agreed, to a very large extent. The Respondent has met the case with great respect for the Applicant and in circumstances where the only issues between the parties are the calculation of damages for pain and suffering and for occupational therapy needs, in circumstances where a potential treatment has been identified, but not yet undertaken.

3. Summary of the Medical Reports

3.1 Initially, only the Applicant's teeth and nose appeared to be affected by the blow but, over time, the sensitivity and pain caused did not dissipate, but grew worse. Two days after the assault, her General Practitioner, Dr John Barrett, diagnosed mild concussion and discomfort, certified that she could not work for a few days and referred her for an x-ray. The x-ray showed no fractures.

3.2 The Applicant suffered facial pain after the assault and her front tooth became blackened and discoloured. At an early stage, pulp necrosis (nerve damage) was diagnosed. Various dental treatments did not help. In early 2006, root canal treatment appeared to have alleviated the pain but, by October of that year, the Applicant was suffering continuous pain in the upper right central incisor whenever the tooth was touched. Further treatment with anti-inflammatory injections was ineffective. The Applicant's dental pain specialist referred her to a specialist for extraction and implantation of the tooth, using a bone graft, which was carried out in October 2007. In January of 2009, she attended a specialist in periodontology and oral surgery, as the pain persisted. She returned to her dental pain specialist and took all medical advice in terms of treatments and pain relief. Despite these efforts, the pain was persistent and deteriorating. For much of this time, the Applicant had attempted to remain available for work and had done some light duties at times. By July of 2008, this had become impossible due to the levels of pain she was experiencing and she has not worked since then.

3.3 By 2009, the following treatments had been attempted and failed in terms of pain relief: injection treatments into the maxillary nerves and the infraorbital nerve; medication, including Trileptal, Amitriptyline, Gabapentin, Pregabalin, a Lidoderm patch, multiple anti-inflammatories, and opiates; intravenous lignocaine infusion; rhizotomy treatment to the

infra-orbital nerve using pulse electrical current; sympathetic nerve block; injection of the cervical facet joints.

3.4 By 2010, the Applicant had attended various specialists, including Dr. Dermot Canavan, a Specialist in Head and Neck Pain and Dr Declan O’Keeffe, Consultant Anaesthetist and Pain Specialist. In 2010, Dr O’Keeffe noted neuropathic pain involving either the nerve under her eye (infraorbital nerve) or the maxillary division of the trigeminal ganglion (a nerve supplying sensory functions to the face). The main area of pain was around the nose, upper lip and anterior teeth. On the right side, all these areas were tender to the touch. There was evidence of allodynia (increased response to light touch) and hyperalgesia (increased response to pinprick), typical of sensitivity in such a nerve injury. Given the lack of response to treatment, even then, the prognosis was bleak, with specialists advising that the pain was not likely to improve and might become more serious. In the event, this was what occurred.

3.5 Dr O’Keeffe diagnosed chronic pain syndrome which was a combination of pain, disability and psychosocial distress and he enrolled her in a pain management programme in St. Vincent’s University Hospital. She was advised to undergo peripheral nerve stimulation of her infraorbital nerve and/or trigeminal ganglion, which treatment was not available in Ireland. The Applicant was referred to a Professor Van Buyten, based in Belgium.

3.6 Professor Van Buyten installed a nerve stimulation system (gasserian ganglion stimulation implant) into the Applicant’s spinal cord. There were complications relating to the implantation which resulted in her travelling back and forth to Belgium from the date of first implantation, in November 2010, to dates in mid-2012. The second, specially designed lead, was inserted into her right cheek area in 2011. When assessed in 2012 by Dr. Van

Buyten, he noted that while the device was stimulating the correct area, there was a consequent muscle spasm in the right cheek and the level of amplitude had to be reduced to avoid this. She also had discomfort sleeping as the battery to operate the device was moving, perceptibly, when she lay down to sleep.

3.7 In August 2012, Dr O'Keeffe assessed the Applicant again and noted that the neuromodulation device was visible within her cheek and there was scarring on her neck and anterior chest wall where the device had been placed. Despite the implant, she had no sustained pain relief. He concluded that she had post-traumatic trigeminal neuropathy of the maxillary division of the trigeminal ganglion and also the infraorbital nerve. None of the multiple therapies, listed above, had given sustained pain relief and Dr O'Keeffe was unable to give a conclusive or optimistic prognosis.

3.8 In March of 2013, Dr O'Keeffe confirmed that the gasserian ganglion stimulation implant, installed in Belgium, had failed and had to be removed. In his opinion, the last option was a deep brain stimulation. He noted the impact the pain was having on Ms Leonard's life, specifically her ability to continue working, to have a family or to live any kind of normal life.

3.9 In April 2013, Ms Leonard travelled to Oxford for a consultation with a team led by Professor Aziz and based at the University of Oxford, Department of Neurosurgery, in the Radcliffe Infirmary. The neurostimulator was implanted on the 6th of March 2014, with a follow up operation on the 20th of March 2014.

3.10 After Dr Van Buyten's procedure, there had been an estimated 50% relief in the pain suffered but this did not last more than a few months and there was no sustained relief after any procedure. In February 2015, Dr O'Keeffe concluded that the current medical science had

failed to assist this patient, despite all efforts in treating her chronic pain. She was left with scars to the left and right of her face and neck from the various procedures which she had undergone. An assessment by Dr O’Keeffe, in 2015, concluded that the Applicant had a constant dull ache with occasional sharp pain. If anything, the recent treatments appear to have aggravated the Applicant’s condition.

3.11 By 2017, the ongoing pain and physical restrictions were described by the Applicant herself as pain in the centre of the right cheek in a “C” shape, from the jaw, along the side of the nose and into the right eyebrow area. The pain remained constant, at level 8, on a scale of zero being no pain and ten being excruciating pain. The pain intensified with any facial movement, such as eating or speaking, and was increased by vibrations from walking or being driven in a car. Such a journey could produce such pain that the Applicant would vomit as a result. It is a stabbing pain dragging down her face, as she put it.

3.12 The later report of her Occupational Therapist, in March of 2021, noted this ache as being still constant and at a very high level; again, measured at 8 on the same scale.

3.13 When the Applicant gave evidence in July of 2021, there was no significant change in terms of the extreme sensitivity of her face to any movement or touch. The pain she described in 2017 remains a constant presence in her life, despite the various procedures she has undergone. In more recent times, the interventions have all focused on medication and ways of delivering medication which might be less damaging to her and to her liver, specifically. She now wears a device, a pump effectively, fitted in 2020, which administers medication internally so that she no longer has to take an array of tablets.

4. Effect on Life

4.1 The Applicant gave evidence in person and, before reciting any of the material from the medical reports, it is appropriate to record my impression of the witness and some of the evidence she gave. It was clear even from the moment she took up the Bible to take the oath that most movements are difficult for her. Not mentally, in that she has a strength of purpose, that is apparent, but her physical fragility was clear. Every movement was very, very carefully undertaken, this caution was understandable once the medical reports had been opened.

4.2 The Applicant could not raise or modulate her voice as the area of most sensitivity is around her face. The phrase “walking on eggshells” can only give an approximation of how this witness must behave in order to avoid pain. Her head must be protected at all times, including when she is outdoors where a moderate wind might cause a severe migraine. The ground was swept from under her by this injury, the witness confirmed. Everything had gone, she said, from socialising and exercise, to working at the job she loved. Her life was not on hold, she said, it had just stopped. She was put on opioids for pain relief and, after some years, her oral medication had to be substituted for a pump due to the effects of the medication on her system. This pump is inserted into her body. Every 3 weeks, she attends the cancer unit at her local hospital in order to have the pump filled and, unless a successful treatment is found, this will continue for the rest of her life, unless some future treatment is vastly more effective than any she has undergone to date.

4.3 At one point, the Applicant recalled undergoing surgery with Dr Aziz, to stimulate the nerves in her face, and described how she had to be conscious during this procedure so that the surgeon could know which area to focus on. This she described, simply, as *horrendous*. She recounted how, on her wedding day, she had to hide in the bathroom to take her

medication as she did not want anybody to see this. In respect of the pump now inserted, the Applicant's evidence was that she is "always, always aware of it". It is in her body. She has to wear elasticated trousers and baggy shirts as a result.

4.4 Sometimes the Applicant's knees buckle and she shakes and collapses. She has had some bad falls, including in the shower, so she has help in the shower. She must have help to wash her feet or her hair as there is a catheter, a needle and a stimulator, reaching into her neck and head, which can pull or catch when she raises her arms.

4.5 The Applicant finds it difficult to sleep and usually just dozes, waking "with a jolt, as if drowning, as if there is an elephant on my chest", as she put it. She spends most of her day in bed. She has medication to help her to sleep but, nonetheless, her sleep is poor. She must sleep on her back as other positions aggravate the pain. Due to her poor sleep, she spends much of the day tired. Her memory and concentration have deteriorated as a result. She no longer has sufficient concentration to enjoy television or reading. The Applicant is "always shattered, always drained".

4.6 The Applicant described how she had many friends, but these have dwindled away. It was hard to hear their good news as their lives carried on, and hard for them to continue to see her, when the Applicant could not enjoy their visits. She was very fragile, she said, as she described the effect of this gradual loss of her social circle, and felt as if she was crumbling inside. The Applicant has become increasingly socially isolated, due in part also to her inability to speak comfortably. When in pain, her words slur. She avoids talking on the phone due to the pain caused by facial movements generally and this has further reduced her social contact with others.

4.7 The Applicant's teeth have been badly affected and this, together with the facial pain, means that her diet is one of soft foods and liquids. She brushes her teeth while sitting down as the pain is excruciating. This is one thing she tries to do herself, however. She insisted that the couple not build a bungalow as she did not want everything in their lives to be dictated by this injury. Sometimes her husband has to push her up the stairs to bed. She can prepare a light snack but not a cup of tea, for instance, as the shaking sometimes caused by the pain makes handling very hot food or water dangerous. Because she knows how much pain it can cause to eat a meal, she has little appetite for food.

4.8 The Applicant's husband, Declan, is a fire officer. His life has been completely transformed by the injury to his then girlfriend. Together since she was 21, he has been her carer since she was 25; they married in 2008. He brings a tray of food to her and then goes to work. There is a revolving door, as she described it, with one of her parents usually coming for some part of the day.

4.9 The Applicant's periods stopped and, although she and her husband hoped to conceive a baby and she has sought advice from her GP in this regard, the couple are resigned to the fact that it is highly unlikely that this will be possible due to her advancing age and the effects of the past two decades on her general health and, as a result, on her fertility. They had both hoped to have children and this has been a source of great emotional pain for the Applicant and her husband.

4.10 As described above, the Applicant has tried several experimental treatments; anything that was advised as potentially helpful. None have alleviated the pain. Each time, she had high hopes and all hopes were dashed. There is a further option, currently only available in France. Due to travel restrictions, only recently lifted in Ireland, this has not yet been

attempted and it may be some time before it can be undertaken. The Applicant will take this treatment as soon as she can safely do so.

4.11 Before these events, the Applicant was a fit and active young woman. She had been a keen athlete and enjoyed running. She was a member of Dunleer Athletics and a regular at her gym. She was happy at her job and enjoyed a fulfilling life, both at work and at home, with a wide circle of friends and a loving boyfriend. While her family and the man who is now her husband have been a magnificent support to her, all other aspects of her life have changed completely.

5. Reflecting the Prospects of Future Successful Treatment in an Award of Damages

5.1 Where the recovery from future treatment is uncertain, it seems the Court must make its own assessment of the effect this may have on the compensation for future pain and suffering and future costs of care. No relevant Irish authority was cited to the Court in respect of estimating a prospective improvement. Comments by the Chief Justice in *Morrissey v H.S.E. and others* [2020] IESC 6 are of assistance, however. There, considering the limit on damages in cases of catastrophic injury, Clarke C.J. held, at para 14.24:

“...it seems to me to be important to note the difference between the proper approach to financial damages which are capable of reasonably precise assessment, on the one hand, and general damages for pain and suffering, on the other. The course of action adopted in Russell (A Minor) v Health Service Executive [2015] IECA 236, [2016] 3 I.R. 427 did involve detailed economic and other evidence which enabled that court to conclude that it was appropriate to calculate future pecuniary loss on the basis of an assumption that the real rate of return on monies

invested would be 1.5% (with an exception in respect of the calculation of the cost of future care, where the real rate of return was set at 1% to account for future wage inflation). But such an exercise was required precisely because such damages are capable of at least being approached on the basis of a calculation. As already noted, there is a significant subjective element to the calibration of compensation for pure pain and suffering. In those circumstances, it does not seem to me that a detailed evidence based approach to a change in circumstances is necessary or required when identifying the limit on general damages for pain and suffering. Rather, a court is entitled to take a broad approach based on its own experience, just as some of the courts which have set and varied the limit have done to date."

5.2 The same broad, subjective approach to the quantification of risk seems the appropriate way to determine a figure in which there is an element of general estimation, in terms of putting a financial or numerical value on a risk that cannot be more precisely quantified. There would be an air of unreality in trying to calculate a figure, based on detailed evidence, which would accurately represent the prospects of a future event occurring when, as here, there are so many unknown variables in terms of timing and medical prognosis alone.

5.3 The Applicant's pain specialist, Dr O'Keeffe, gave evidence that on the 30th of September 2020, he wrote to Dr Barrett, the treating GP, to advise that once the patient's stimulator was removed, if the catheter was relocated at C1/2, the Applicant should get total pain relief. In direct evidence, he conceded that in retrospect he had been over-enthusiastic or over-optimistic. He withdrew that assessment saying that he would prefer to see his patient in intensive care with a trial before making that kind of statement. He described the proposed treatment in France as "the last hope we have" but agreed that he "wouldn't dream of sending her back" unless he was hopeful of a good response. He could not guarantee that there would

be a recovery but finished that aspect of his evidence with the comment that he was hopeful, that he would advise her to go back. He said that the difficult part had been done, she had been unlucky in respect of her reaction to one of the drugs administered, but that it would be a 3-day procedure to try the C1/2 re-location of the device to see if it provided pain relief.

5.4 This is the crucial evidence from the point of view of assessing the likelihood of any future pain relief. It is clear that this treatment is one that has some prospect of success. The initial assessment, that it would result in total pain relief, may be seen as a statement which (as the doctor himself conceded) was overly optimistic and one that perhaps was intended also to keep his patient's hopes alive. It was reduced to a more cautiously optimistic prognosis in evidence. What was clear was that the treatment does provide some reason, however slim, to hope. It is this prospect of success which must be measured, insofar as that is possible, and the assessment of future damages adjusted accordingly. In this context it must be recalled that the Respondent suggested an adjournment to await the potential treatment but, at the Applicant's request, the Court agreed to finalise the case for two reasons: Firstly, it was by no means clear in July of 2021 whether or when travel would resume. Secondly, it will be greatly in ease of the Applicant and her family to conclude this case.

5.5 Not only is this treatment a real prospect, but, as all parties agreed, medical science is constantly developing. This advancement must, however, be set against the protracted period of over 16 years during which the Applicant's condition has proved resistant to treatments which have given relief to other patients with similar conditions.

5.6 Bearing all of these factors in mind, the extent to which a purely theoretical treatment might be expected to take effect at some point in the future, as medical science develops, might be set, reasonably, as low as 1 or 2%. This treatment is not only identifiable but is one in which

a medical doctor expressed confidence, albeit that he moderated that view substantially in his evidence. The doctor's reasons for later caution are understandable. This patient has not benefitted from any treatment undertaken so far. The measure of confidence anyone might have that a future, similar treatment might be wholly successful in eliminating her pain must be slim. This proposed solution, even if successful, nonetheless involves a pump to administer palliative medication by a catheter. Anticipating this and 3 visits to hospital every week for the pump to be replenished, appears at this time to be the best-case scenario. Even if successful, the Applicant's lifestyle will not be as it was before but will remain restricted to some extent.

5.7 Yet the prospects of that limited success must be measured as a percentage for the purpose of assessing the final award in this case. Given the unusual circumstances of the case and taking into account the series of interventions already attempted with no sustained success whatsoever, an appropriate deduction to make in this case is one of 20%, in my view. To deduct any more is unfair to the Applicant where total pain relief appears unlikely but to deduct any less would not be fair to the Respondent, who has met the case generously in other respects and who, correctly, points out that an early, substantial improvement would render a full award in respect of future damages and costs wholly unreasonable. The award comes from the public purse and must be one which is reasonable in the unusual circumstances where a treatment with a chance of success has been recommended but where it cannot immediately be undertaken and where the finality of these proceedings will in itself be of great benefit to the Applicant. This calculated deduction also arises in circumstances where the treatment advised may not be undertaken without further risk to the patient, let alone the distress that travel and invasive surgery will entail for her.

6. Special Damages – Expenses and Loss of Earnings

6.1 The following items of damages are agreed: vouched medical expenses, travel expenses and future loss of earnings (including pension and gratuity). The total sum agreed in this regard is €504,550.77.

6.2 Special Damages which were queried comprise of: a claim for Miscellaneous Clothing/Luggage, €3,857.989; prescriptions from 2010 in the amount of €18.00; a doctor's receipt dated 04/06/2021 in the amount of €2,100 which was not vouched or in the form of an invoice.

6.3 In respect of future special damages, ongoing dental treatment assessed at €35,521 and future medication at €51,037 has not been agreed. The cost of the removal of the deep brain stimulator has been estimated at between €4,915 and €14,016, which is a large margin, with no evidence as to which is the more likely realistic cost. Similarly, the relocation or removal of the catheter pump has not been quantified and the Respondent points out that it is dependent on future treatment.

6.4 Very little argument was addressed to these issues, perhaps unsurprisingly, as the more significant disputed sums involve the awards for general damages and for the cost of future care. The latter has been assessed by an actuary retained by the Applicant as €1,193,502.

6.5 This Court will not include the very small number of items which have not been agreed as part of the award of special damages for costs incurred to date. It is important that such items be carefully vouched and, where no evidence addressed any specific item, the burden

of proof being carried by the claimant in such a case, it is appropriate to make an award for vouched or agreed special damages to date only in the amount agreed, €504,550.77.

6.6 In respect of future dental care, there is evidence that the Applicant will need such care and a sum of €35,000 will be awarded in that respect, likewise a sum of €50,000 for future medication which is very likely to be necessary. While the Court will deduct 20% of the future damages and cost of future care to reflect the possibility of significant improvement, the evidence did not suggest that such improvement would obviate the need for dental treatment and even an improved condition will probably require ongoing medication, so no deduction will be applied to these figures.

6.7 Finally, in this case there has been some evidence adduced in respect of the prospect of the particular future treatment which the Applicant would like to undertake, should it be possible. The overall sum of damages and the cost of future care must be reduced due to the prospects of this treatment being successful. Bearing in mind the cost of such treatment in the past and the travel costs associated with it, the sum of €14,000 is a reasonable one to award in respect of this treatment. It is not speculative to accept the evidence that the Applicant will do as she said in evidence and continue to accept all treatment recommendations; she is likely to expend such a sum on this treatment. If she does not, she has received a very modest extra amount but her overall award has been significantly reduced to account for the prospect of such an intervention reducing her pain. This seems to be a fair resolution of the issue in respect of the cost of this proposed treatment.

7. Occupational Therapy – Evidence as to the Cost of Future Care

7.1 As regards her future care needs, the Applicant's Occupational Therapist has described, in detail, the various recommendations she makes for her care. She assessed the Applicant for the purposes of the report and also provided a written response, handed into the Court, to the report of the Respondent's Occupational Therapist.

7.2 While the expert for the Respondent disagrees with her conclusions, this is mainly on the basis of his theory that the Applicant, like many who suffer chronic pain, must be encouraged to be as independent as possible and his view is that the patient in this case might have responded better to a different treatment regime. Notwithstanding this evidence, there was no specific basis in this young woman's case for supposing that she should have or could have done anything other than what she was advised to do. The expert gave evidence that all the treatments must have contributed to her current state. This is a case in which there is no causal break between assault and injuries and no issue on liability. There is no suggestion of inappropriate treatment in this case, indeed the treating doctors have been assiduous and thorough in their exploration of any remedy for the Applicant's pain.

7.3 This Court does not accept, on the balance of probabilities, that there is evidence that her ongoing chronic pain could be alleviated by requiring that she rely less on third party assistance or that she will become more dependent if she is helped to live more comfortably. The Court notes, as the expert himself conceded, that he did not have the opportunity to assess the young woman himself. This is clearly a key difficulty both for the witness and for the Court. He correctly points to the fact that she was able to attend in the court-room and to give evidence, which must be considered in the context of the general damages but, in this context, there is little to substantiate the view, expert though it may be generally, that this patient would require less assistance if she was treated differently from this point on.

7.4 While the Respondent's Occupational Therapist did offer a specific reasoned criticism on the basis that his colleague did not appear to have carried out physical tests, when asked, the Applicant confirmed that her Occupational Therapist had asked her to try to squat and go on one foot and her report does detail some physical tests. The Applicant confirmed that she could go up and down the stairs and, as noted, she could attend court and give evidence for two hours. The Applicant agreed that four hours of help a day was sought, saying that she relied on her husband and her family far too much. It should be noted in this context also that the integrity of the Applicant was never in issue and she was generally accepted as having been a stoical and very compliant patient, undertaking all treatment advised including the most painful surgical interventions. In those circumstances, there being no question of her exaggerating any element of the claim and no claim for retrospective care, the Court considers that her estimate supports her own Occupational Therapist's view: four hours of care a day is a reasonable estimate of the required assistance in her case, even allowing that her husband will be undertaking some housework in the normal way, as pointed out by the Respondent's expert.

7.5 It is clear from the Applicant's Occupational Therapy Report that it was written after a physical assessment relying on the Applicant's own description of pain and noting no inconsistencies in relation to her account. Nothing said in evidence suggests that her conclusions were incorrect. I have also read the Occupational Therapist's letter in response to the report of the Respondent's expert. Here, it is clarified that she also based her conclusions on the consistent functional performance observed by this expert and not based on any objective measure of functionality which, she points out, is difficult in a case of chronic pain which is subjective in nature. Her letter also explains some of the matters queried by the

Respondent's expert. In particular, she justifies the sums advised in respect of a physical trainer, counselling, protective face coverings, special bedding and aids to drying herself and to walking.

7.6 Four hours of care a day is a reasonable allocation for this Applicant, taking into account her need for assistance to be fed, washed and dressed, with as little pain as possible, and taking into account that the Applicant's husband should be facilitated in continuing his life as a husband and not as a carer. I consider it significant that there is no claim for retrospective costs of her care in this respect, a burden shouldered by her husband and parents. The usual household chores, even for a small family of two when both are in good health, include at least an hour a day. Personal care and food preparation involve at least another two hours. Taking into account the extreme caution which the Applicant must use in all tasks, the hours and other costs estimated by the Applicant's therapist appear to this Court to be a reasonable assessment of what is required in order to help the Applicant to live with this injury.

7.7 I am also satisfied that the various recommendations made by the Occupational Therapist for the Applicant represent a reasonable estimate of the cost of various practical measures to assist her. The individual queries of the Respondent's expert as to the value of a certain type of mattress, or pillow, suggesting that she can sleep on the other side, do not persuade me that the cost of such bedding is exorbitant. The Applicant's muscle tone and general wellbeing will, it seems to me, be improved by physical exercise which will have to be carefully supervised, given her current condition. Likewise, her vulnerability and mental distress would, it seems to me, benefit enormously from regular counselling. While the experts disagree on setting a final date for such counselling, in a case of ongoing chronic pain

such as this, it is not unreasonable to provide for ongoing mental health support for the Applicant. For the same reasons, it seems appropriate to provide for ongoing support by way of personal physical training. Given her concentration levels and levels of pain, the Applicant will need assistance and support to maintain such a programme. In line with the deduction in respect of future damages, this total in respect of future costs will also be reduced by 20%.

8. Compensation and Proportionality

8.1 The purpose of compensation is to put the plaintiff in the position they would have been in but for the occurrence of this assault. To paraphrase the conclusion set out in the seminal text, McMahon and Binchy on Torts, in cases of serious injury, monetary compensation is insufficient to adequately rectify the situation, but an award of money is better than nothing. Intangible losses such as pain and suffering, the loss of any opportunity to have a family and the kind of daily indignity suffered by this Applicant are hard to quantify in monetary terms. The calculation of a reasonable award of general damages must be achieved by comparison with other cases insofar as these indicate a scale.

8.2 The upper limit of damages permitted is reserved for the most serious of personal injury cases where the plaintiff is severely incapacitated. Such catastrophic injury cases include injuries such as tetraplegia and paraplegia. The current guide in this respect is one of €500,000, according to the Supreme Court in *Morrissey*, cited above.

8.3 Sections 22-24 of the Civil Liability and Courts Act 2004 require the court to have regard to the Book of Quantum when quantifying damages. The Book of Quantum was introduced by the Personal Injuries Assessment Board with the aim of bringing consistency

and uniformity to the award of damages in personal injury cases, but it is, of course, only a guide. Looking at facial injuries in the Book of Quantum, for instance, damages for the most severe facial injuries are suggested, in respect of a permanent injury to the jaw requiring multiple surgeries, at €80,200. Such an injury is described as one which might require a change in diet. This is clearly a wholly inadequate sum in a case such as this one, but it does give some guide as to a starting point for an injury which has affected far more than just diet.

8.4 I do take into consideration the view of the Respondent's Occupational Therapy expert in assessing the overall function of the Applicant when it comes to assessing general damages. His evidence in respect of this not being a catastrophic injury was persuasive, based on the comparison between a woman who can attend in a courtroom, can prepare very simple meals for herself and one who can receive guests, if only for a limited period with a woman who cannot move or speak, for instance. It is difficult to make direct comparisons in such serious cases, but it must be done. In the Morrissey case, for instance, the upper limit of €500,000 was awarded in circumstances where the plaintiff was living with an aggressive terminal illness with a drastically shortened life expectancy.

8.5 It is difficult to imagine living as the Applicant now lives. While short of a catastrophic injury insofar as that may confine a plaintiff to a bed, for instance, this patient lives a life devoid of many of the small pleasures that make life enjoyable. While she has been truly blessed in her family and, in particular, her husband, it is clear that the injury inflicted back in 2005 has had devastating consequences for this young woman. She has gone from a happy, independent, working woman to being a patient, almost totally dependent on others, with significant scarring caused by her various treatments and without the prospect of having her own family.

9. Assessment

9.1 The quantum of damages must be gauged by comparison with other cases. Clearly, this Claimant is not in the same category as one who is without motor function and completely dependent on others for all personal care and nutrition. Looking at the principles in such cases, Irvine J. (as she then was) noted in *Shannon v O’Sullivan*, [2016] IECA 93, para 37:

It cannot, in my view, be correct that a plaintiff can have their general damages reduced on the basis that they are to be awarded a very large sum in respect of their claim for special damage to cover matters such as loss of earnings, future care, aids and appliances, assistive technology etc. That cannot be correct in principle; an injured person is entitled to be compensated in full for all losses flowing from the injuries he sustains. Special damages represent the calculation of actual losses, past and future, which leaves the matter of general damages to be assessed entirely separately.

Ms. Justice Irvine went on, at paragraph 42, to hold that:

... where on the spectrum of awards ... injuries should be located depends upon [the] extent to which... they have suffered and will continue to experience, inter alia, pain, suffering and loss of enjoyment of life. While it is important to understand the nature of their injuries and the relevant medical diagnoses, far more important is the evidence concerning the extent to which those injuries have already and may in the future adversely affect their lives. The value of an injury cannot be determined by the label attached to it.

The learned Judge went on to list a series of factors which will be considered in the context of the present case.

9.2 The incident itself was traumatic, though not as much as other injuries inflicted on other members of An Garda Síochána acting in the course of their duties. Nonetheless, it is always important to note the circumstances in which this young woman was assaulted: she was acting as a police officer and was arresting a suspected criminal, who headbutted her in the face.

9.3 The Applicant did not require immediate hospitalisation but has since undergone numerous surgical procedures. The initial pain was sharp and shocking but the really serious and traumatic effect of this injury was the sustained pain and the increasing sensitivity of the right side of her face, culminating in a state of affairs in which she cannot move suddenly or freely, cannot eat or sleep normally and can no longer expect to have children. The indignity of the various implanted devices has been described eloquently by the Applicant. The interventions have left scars on various sites on her body, photographs of which the Court has received. This disfiguring scarring is also a factor in determining the final award of general damages. While not obvious facial scarring, it is not discreet and is a significant burden for any claimant to bear.

9.4 The Applicant has done everything that was asked of her in terms of medical advice and intervention. While she is able to dress, go to the toilet and prepare simple foodstuffs, personal hygiene is difficult, without assistance. She needs regular personal care in order to have basic quality of life. Even with this assistance, due to her lack of deep sleep and the deterioration in her concentration levels, her life has been greatly reduced. Her work life has ended and leisure activities have been almost eliminated. The prospect of her working again in any capacity depends entirely on the success of the next treatment proposed. If matters continue as they are now, there is no such prospect. Finally, her relationship with her husband

has been drastically affected. With the award of appropriate compensation, to include damages into the future and the cost of care in these proceedings, it is to be hoped that this will rebalance their relationship, reducing his role as carer and allowing both to return to some semblance of the couple that they were.

9.5 Finally, though this Applicant still has not recovered, there is a prospect, albeit slim, of future treatment. Having assessed the appropriate amount of general compensation and the award for future care, the Court must then reduce both amounts by a proportion sufficient to reflect this prospect of recovery after prospective treatment, already determined at 20%.

9.6 In terms of general damages, these must be assessed by looking at the limitations on the lifestyle of a claimant. While nowhere near the kind of injury that is suffered in a case of paraplegia, for instance, there is nonetheless a comparison to be made in that anyone who suffers such an injury becomes completely dependent on others. While there is no complete dependence here, there is effective dependence for many basic tasks. There are many senses in which this injury can truly be said to have been life-changing. It goes beyond even the kind of serious injury, for instance, which severely or permanently reduces the mobility of one part of the body. Such an injury might attract general damages in the region of €100,000 but this Court is satisfied that this would be insufficient to compensate this young woman for the years of pain and the severely reduced lifestyle she now endures. Equally, the suggested cap of €500,000 is for a more serious case of immobility without even the limited movement and speech of which this Applicant is, thankfully, still capable.

9.7 Taking these two indications as a guide, and the submissions made by both Counsel in the case, it is my view that an award of €220,000 is a just and reasonable one to compensate this Applicant for her pain and suffering to date, in the circumstances of this case. It reflects

not only the severity of the consequences of this injury and the various invasive surgical interventions, but also the traumatic circumstances and the context in which the injury was inflicted, the scarring inflicted by various treatments and where on the body this is located, and the indignity of her condition. As to damages into the future, the Court (mindful of the cap of €500,000 for the most serious cases) will award a further €100,000. This brings general damages to €320,000 before the relevant deduction.

10. Conclusion

10.1 The Court awards €220,000 in general damages for pain and suffering to date, reflecting the ongoing pain for 16 years and the multiple surgical interventions in particular. A further €100,000 is appropriate for pain and suffering into the future. However, reflecting the fact that there is a likelihood of some reduction in pain over the years as treatments advance and a chance of a prospective treatment being successful insofar as the pain may be reduced, that award will be reduced by 20%, leaving an award of €80,000 for damages into the future and a total of €300,000 in general damages, after that reduction.

10.2 The full figure, just short of €1.2 million, advised by her Occupational Therapist is close to that which the Court considers appropriate. The Respondent's expert has made a number of criticisms of this total, one of which was accepted by the Applicant's expert but, in large part, the various recommendations of the latter are appropriate for a patient in the Applicant's position. In this regard, the Court will award €1.1 million, reduced by 20%, to reflect the fact that the advised treatment is likely to be undertaken in due course and may succeed in

reducing her pain to some, or even to a large extent. The total award for future cost of care, therefore, is €880,000.

10.3 As set out above, the special damages that have been agreed amount to €504,550.77. In respect of future dental care, a sum of €35,000 is awarded and €50,000 for future medication. Finally, €14,000 is awarded to cover the cost of the prospective treatment involving the relocation of the spinal stimulator.

10.4 The total award, therefore, is one of €1,783,550.77 and the Applicant is entitled to the costs of this application.