

BETWEEN**DOLORES O'DOHERTY****PLAINTIFF****AND****ANNE CALLIAN AND TOM CALLIAN****DEFENDANTS****JUDGMENT of Ms. Justice Reynolds delivered on the 12th January, 2018**

1. In these proceedings, the plaintiff seeks damages for personal injuries, loss and damage sustained as a result of a road traffic accident on the 14th June, 2014. Liability has been conceded on behalf of the defendants and the matter proceeds before this Court by way of assessment of damages only.

Background

2. The plaintiff is a secretary by occupation, who was born on the 8th of March, 1970.

3. On the occasion in question, she was the driver of a motor vehicle which was stationary in a line of traffic when she was rear ended by the first named defendant's motor vehicle, being driven on the occasion in question by the second named defendant. Due to the severity of the impact, the plaintiff's car seat was broken and the damage to the vehicle was such that it was a write-off.

4. The plaintiff sustained multiple soft tissue injuries to her neck, back and knee which fortunately resolved within a number of months after the accident. More significantly, she sustained an injury to her coccyx bone and has subsequently developed a condition known as coccydynia.

Treatment for Injuries

5. The plaintiff was initially treated by her General Practitioner, Dr. Kenny, who referred her for x-rays of her neck and back which revealed no abnormalities. Some days after the accident, she complained of severe coccygeal pain and reported that she was unable to sit for prolonged periods resulting in her remaining out of work since the accident. The plaintiff was further constrained in carrying out her day-to-day activities in circumstances where she was unable to drive for long periods, had difficulty with daily domestic chores (such as lifting, hoovering, etc.), suffered sleep disturbance and had difficulty with bowel movements requiring her to maintain a high fibre diet.

6. Dr. Kenny prescribed anti-inflammatory, relaxant and pain killing medication and referred the plaintiff for orthopaedic assessment.

7. The plaintiff attended with Mr. Paddy Kenny, orthopaedic surgeon, on the 24th March, 2015 and underwent three procedures under anaesthetic by way of manipulation in an attempt to alleviate ongoing pain in the coccygeal area. She was further treated with two injections to the site of the pain and whilst it is clear that she received some interim benefit by way of reduction in her levels of pain, she continues to remain in constant pain.

8. Mr. Kenny thereafter referred the plaintiff to Mr. Synnott, consultant spinal surgeon, in circumstances where he opined that coccydynia is "a notoriously difficult condition to treat" and sought his views in relation to any further treatment plan.

9. The plaintiff attended Mr. Synnott on the 23rd December, 2015 and continued to complain of pain in the tail bone area. She advised that she continued to encounter difficulty in her daily chores and used a rubber ring to sit and while driving to help alleviate her symptoms. Clinical examination revealed that the plaintiff had a prominent coccyx with tenderness at its tip. Having reviewed the plaintiff's x-rays and scans, Mr. Synnott opined that the plaintiff had some increased signal intensity on her MRI scan which indicated some instability of the sacrococcygeal disc. Whilst it is clear that surgical intervention is an option for the plaintiff, this is contra indicated at this time in circumstances where one of the associated risks is double incontinence. However, the plaintiff in her evidence indicated that this is a matter which she may reconsider in the future having regard to her ongoing symptoms.

10. Whilst it is clear that it was initially anticipated that the plaintiff's symptoms would fully resolve in the long-term, the plaintiff is now some three and half years post-accident and it is accepted by all of the medical advisors that she remains in constant pain. Indeed, one of the somewhat unique features of this case is that there is no suggestion whatsoever that the plaintiff is in anyway exaggerating or overstating her symptoms and her evidence remained unchallenged in that regard.

11. In Mr. Kenny's most recent report dated 29th August, 2017, he noted the plaintiff's ongoing difficulties and was of the view that her symptoms were unlikely to resolve completely at this stage. It is clear that there are no further treatment options available to the plaintiff. Mr. Mulvihill, consultant orthopaedic surgeon, who also examined the plaintiff, is of the view that it may take another few years for her complaints to fully resolve.

12. The plaintiff continues to attend her G.P. on an ongoing basis and in her view, despite the plaintiff's best efforts to adopt her lifestyle and manage her situation as best she can, it is likely that the plaintiff will remain symptomatic for the foreseeable future.

13. Having considered all of the evidence in this case, I am satisfied, on the balance of probabilities, that it is likely the plaintiff will continue to suffer ongoing pain and discomfort in the short to medium term. Having heard the evidence in relation to the equipment and services which will assist the plaintiff in managing her symptoms going forward, I have no doubt that this will improve her quality of life and assist her in returning to many of her pre-accident activities. The plaintiff is clearly a well-motivated individual who will no doubt continue to manage her symptoms as best she can.

14. In addition to the complaints as already outlined, the plaintiff's marital relations with her now estranged husband were clearly curtailed in the aftermath of the accident. The plaintiff has advised that the marital relationship was already under strain at the time of the accident due to the necessity for her husband to move abroad for employment purposes. However, in the months post-accident, he returned home for a short period. During that time, the plaintiff was unable to engage in marital relations due to the

nature of her injuries. Dr. Boylan, consultant obstetrician and gynaecologist has advised that having regard to her ongoing symptoms, she will be unable to engage in intercourse for the foreseeable future.

Quantum

15. Having considered the foregoing, this Court is satisfied that the plaintiff has sustained a nasty and severe coccygeal injury which has proved to be notoriously difficult to treat and where surgical intervention is contra indicated at this time. The plaintiff's normal enjoyment of life has been significantly curtailed and diminished and she is to be commended for the manner in which she has adjusted her lifestyle in an effort to deal with her injury.

16. For general damages in respect of pain and suffering to-date, I award the sum of €120,000.00. For general damages, in respect of pain and suffering in to the future, I award the sum of €30,000.00.

Special Damages

17. The plaintiff has been unable to return to her pre-accident employment as a secretary at the local school, a job which required her to put in a 6/7 hour day, 5 days a week and involved work of a sedentary nature. Dr. Kenny has stated that at present she is unable to certify her as fit to return to work.

18. It is further clear from the evidence that even if her work environment was adapted to suit her needs, it is unlikely that the plaintiff would be in a position to resume work on a full-time basis.

19. The plaintiff has made efforts to engage in other types of employment to date and is well motivated in that regard. I am satisfied that with the provision of aids and appliances to facilitate her returning to the work environment combined with her strong work ethic, that she will soon be in a position to resume employment, albeit that it is likely that this will be in the nature of part-time work.

20. For past losses, including Court's Act interest, I award the agreed sum of €70,860.00. For future losses, where this Court is of the view that the plaintiff is likely to resume employment of a non-sedentary nature on a part-time basis only, I award the sum of €250,000.00. This figure takes account of some small deduction having regard to the decision in *Reddy v. Bates*.

21. In respect of the claim for future medication and treatment costs and the position whereby the plaintiff will now lose her medical card, I assess this loss at €20,000.00, taking into account the evidence of Dr. Kenny of the necessity to reduce the plaintiff's dependency on medication, having regard to the potential adverse effect on her kidneys.

22. With regard to the occupational therapist's report and the provision of aids and appliances designed to assist the plaintiff in undertaking her daily activities and managing her pain levels to enable her to live a more independent and fulfilled life, it was clear from the plaintiff's evidence that many of the items suggested by the occupational therapist were over and above her specific requirements. In all the circumstances, I award the sum of €40,000.00 in this regard.

23. The total award therefore is the sum of €530,860.00.