

THE HIGH COURT

[2016 No. 39 C.A.T.]

BETWEEN

KEVIN DARRAGH

PLAINTIFF

AND

GARETH FEENEY AND RYANS INVESTMENTS (N.I.) LIMITED T/A HERTZ RENT A CAR

DEFENDANTS

[2016 No. 40 C.A.T.]

BETWEEN

IVAN HUNTER

PLAINTIFF

AND

GARETH FEENEY AND RYANS INVESTMENTS (N.I.) LIMITED T/A HERTZ RENT A CAR

DEFENDANTS

[2016 No. 37 C.A.T.]

BETWEEN

AARON KEELY

PLAINIFF

AND

GARETH FEENEY AND RYANS INVESTMENTS (N.I.) LIMITED T/A HERTZ RENT A CAR

DEFENDANT

[2016 No. 34 C.A.T.]

BETWEEN

MARTIN FEENEY

PLAINTIFF

AND

GARETH FEENEY AND RYANS INVESTMENTS (N.I.) LIMITED T/A HERTZ RENT A CAR

DEFENDANTS

[2016 No. 36 C.A.T.]

BETWEEN

MARTIN LAFFERTY

PLAINTIFF

AND

GARETH FEENEY AND RYANS INVESTMENTS (N.I.) LIMITED T/A HERTZ RENT A CAR

DEFENDANTS

[2016 No. 35 C.A.T.]

BETWEEN

THADDEUS DEAZLEY

PLAINTIFF

AND

GARETH FEENEY AND RYANS INVESTMENTS (N.I.) LIMITED T/A HERTZ RENT A CAR

DEFENDANTS

[2016 No. 38 C.A.T.]

BETWEEN

NEIL LAFFERTY

PLAINTIFF

AND

**JUDGMENT of Mr. Justice Meenan delivered on the 31st day of July, 2017.**

**Background**

1. The above claims arise out of a traffic accident that took place on the night of 28th/29th June, 2011, on a roundabout near Lifford, Co. Donegal. There were two motor vehicles involved in the collision. The first vehicle was a Ford Fiesta, Registration No.: CRZ 9289 ("the Fiesta") and the other vehicle was a Peugeot Registration No.: XAZ 9289 ("the Peugeot"). The collision occurred when the Fiesta struck the rear left-hand side of the Peugeot. Prior to the collision, the Peugeot was already on the roundabout but the Fiesta failed to give way and thereby caused the collision.
2. The first four named plaintiffs above were passengers in the Fiesta. The fifth named plaintiff was the driver of the Peugeot and the remaining plaintiffs were passengers in this car.
3. The first named defendant was the driver of the Fiesta but entered neither an appearance nor defence to the claims of the various plaintiffs. I understand that he did make some statement in the course of the Circuit Court proceedings and was present in court for much of the hearing of the appeal.
4. There was no precise evidence given as to the time of the collision but, based on the report of members of the gardaí who were called to the scene, would appear to have taken place sometime between 23:30 and midnight on the 28th June, 2011.
5. Arising out of the collision there was damage to both vehicles. The Fiesta had damage to the front bumper area but was still driveable. The Peugeot sustained more serious damage as a result of which it was not possible to drive it from the scene of the accident and so it was moved to a nearby roadway.
6. The two gardaí who arrived, Garda Hardiman and Garda O'Donnell, gave evidence as to the position of the vehicles following the collision. As a result of the collision the Peugeot had turned around and was facing the direction from which the Fiesta had come. The gardaí noted that there were no complaints of injuries from the occupants of either car. Indeed the plaintiffs had remained in their cars until the gardaí arrived.
7. The Fiesta was rented from the second named defendant (Hertz) so Hertz is sued in its capacity as owner of the Fiesta.
8. The above entitled actions were heard in the Circuit Court at Letterkenny, Co. Donegal and, by judgments given on 16th June, 2015, the Circuit Court judge found the defendants liable and made awards to each of the above named plaintiffs. The judgment and orders of the Circuit Court are appealed to this Court.
9. In both the Circuit Court and this Court it was not contested that a collision had taken place but the circumstances of the collision and the nature and extent of injuries sustained were hotly contested.
10. Hertz claimed that the collision was a "set up" and that the plaintiffs had significantly exaggerated the extent and effects of their injuries. In this regard, Hertz relied upon s. 26 of the Civil Liability and Courts Act 2004.

**The Collision was a "Set Up"**

11. In order to establish this, as a matter of probability, Hertz relied upon a number of factors:-

(i) Evidence was given that a number of the plaintiffs, in both cars, were members of the Joseph Plunkett Society or the Charles D'Arcy Society or other related society's. From photographic evidence given in court these societies could be termed "Republican" who commemorate certain events. Evidence of membership of these societies was put to some of the plaintiffs from which the court was asked to infer that a number of the occupants of both the Fiesta and Peugeot knew each other prior to the collision. The most that the various plaintiffs would admit to was that they knew some of the other plaintiffs "to see".

(ii) When the Fiesta was returned to Hertz at Derry Airport, the Hertz manager Mr. William McGeehan gave evidence of the first named defendant filling out an incident report form. Mr. McGeehan gave evidence of overhearing a telephone conversation between the first named defendant and Martin Lafferty, the fifth named plaintiff and driver of the Peugeot, which was jovial in nature. The purpose of this call was for the first named defendant to obtain from the fifth named plaintiff details of the Peugeot for the purpose of filling out incident report form.

(iii) It was suggested that the various accounts given by the plaintiffs of their activities prior to the collision left lengthy periods of time unexplained.

(iv) It was unlikely that two such vehicles would be present on the same roundabout at the same time on the night of 28th/29th June, 2011.

12. In assessing this evidence I would make a number of observations. Though I believe the evidence of the plaintiffs concerning their prior knowledge of other plaintiffs was, in some instances, less than forthright I do not believe such evidence went so far as to establish the collision was a "set up".

13. Hertz relied on the overheard telephone conversation between the first named defendant and the fifth named plaintiff. I do not think that this evidence goes so far as to establish a "set up". One would have thought that if the collision was a "set up" the information being sought by the first named defendant in the telephone call would already have been firmly fixed in his mind prior to returning the Fiesta. This information would be an essential part of the whole operation.

14. As for the "lost hours" the fact remains that there was a collision, the aftermath of which, was witnessed by two gardaí.

15. It is not at all clear to me what weight can be attached to having two vehicles on this particular roundabout on the date and time in question.

16. Therefore, in conclusion, I cannot conclude that, as a matter of probability, the collision was a "set up".

## **Section 26 of the Civil Liability and Courts Act 2004**

17. Section 26 enables the court to dismiss a plaintiff's personal injuries action where the plaintiff gives or adduces, or dishonestly causes to be given or adduced, evidence that is false or misleading in any material respect that he or she knows to be false or misleading.

18. Hertz alleged that each of the plaintiffs considerably exaggerated the nature, extent and effects of their various injuries. Evidence was adduced of a number of the plaintiffs engaging in dancing, skiing, running and skydiving in the years following but not immediately after the collision.

19. On hearing the evidence given by the various plaintiffs on their injuries I noted that each of the plaintiffs indicated that a full recovery was achieved within a short period after the collision and none claimed any ongoing ill effects. There was no claim in respect of medical expenses or loss of earnings.

20. Further, and in my view significantly, Hertz admitted in to evidence the medical reports furnished by each of the plaintiffs. These medical reports were consistent with the evidence given by each of the plaintiffs as regards their respective injuries. Hertz has not established a basis upon which I could make an order under s. 26 dismissing any or all of the plaintiffs' claims.

21. It therefore follows that each of the plaintiffs are entitled to damages arising out of the injuries complained of.

## **Damages**

22. In assessing damages, I have had regard with the recent book of quantum.

### **Kevin Darragh**

23. Mr. Darragh has a date of birth of 22nd April, 1985. He sustained muscular injuries to his neck and back as well as an exacerbation of a previous knee complaint. By 27th August, 2011, the knee injury appears to have settled. According to the report of Mr. N. Simpson FRCS based on an examination of 27th August 2011 Mr. Darragh would continue to improve, may have some occasional low level difficulties for a further four to six months. There was no risk of any long term damage or complications. I would assess general damages as being €8,050.00.

### **Ivan Hunter**

24. Mr. Hunter has a date of birth of 27th November, 1969. Mr. Hunter was examined by Mr. Simpson on 20th August, 2011. On examination there was some tenderness in the lower lumbar sacral part of his spine with associated paralumbar muscular tenderness bilaterally but there was no muscle spasm present. Flexion of his back was limited to about 60° beyond which he experienced aching in his lower back. This plaintiff's neck symptom had improved but he had still had ongoing lower back problems. According to Mr. Simpson Mr. Hunter may have some sporadic complaints for up to a year following the accident but that these should become less significant with time and ultimately a full recovery was expected. In the course of giving his evidence Mr. Hunter confirmed that his injuries had improved to the extent that he was able to take part in a charity run within a number of weeks after the accident. I would assess general damages as being €6,550.00.

### **Aaron Kelly**

25. Mr. Kelly was examined by Mr. Simpson on 20th August, 2011. On that date he was found to have some tenderness of the lower lumbar sacral part of his back and the adjacent soft tissues. His movements were satisfactory but had some discomfort in his lower back on flexion beyond 80°. Mr. Simpson anticipated that this plaintiff's difficulties would continue to gradually settle down within the following nine to twelve months. In giving his evidence Mr. Kelly confirmed these injuries had no impact on his work and little impact on his social life. I would assess general damages as being €5,050.00.

### **Martin Feeney**

26. Mr. Feeney was examined by Mr. Simpson on 20th August, 2011. On that date Mr. Simpson could not illicit any obvious tenderness on palpation of the spine or the adjacent muscles. Movements of his head and neck were satisfactory. However, there was some tenderness on palpation of the mid lumbar area and also paralumbar muscles on either side of his spine with no associated spasm. The only on-going problem which this plaintiff seemed to have is that his back became quite stiff after periods of inactivity. I would assess general damages as being €5,050.00.

### **Martin Lafferty**

27. Mr. Lafferty, date of birth 14th April, 1962, was the driver of the Peugeot. On behalf of Martin Lafferty two medical reports were furnished from Mr. Zola Mzimba dated 21st November 2011 and 21st November 2013. There was also a report from Dr. Fleming, dated 31st August 2011, General Practitioner. This plaintiff sustained a musculoligamentous injury of his right shoulder girdle and cervical spine namely centred to the right of the midline. He also sustained a similar injury in his sacroiliac joint. By November, 2013, some two years after the accident, this plaintiff still had on-going right sided symptoms. Mr. Mzimba expected these to be on-going. According to Mr. Aidan Lynch, Consultant Orthopaedic Surgeon who saw this plaintiff on behalf of the defendants, there is no reason for him to have any persisting problems into the future. I will assess general damages as being €9,050.00.

### **Thaddeus Deazley**

28. Mr. Deazley had a date of birth of 24th April, 1960. Two medical reports by Mr. Mzimba, Consultant Surgeon, 21st November, 2011, and 21st November, 2013, were furnished on behalf of this plaintiff. In November, 2013, this plaintiff was complaining of pain in his left arm and shoulder. Reflexes were found to be diminished globally but were symmetrical. Power was reduced to four/five on flexion extension and grip. According to Mr. Mzimba this plaintiff may have sustained a more severe injury to his shoulder girdle than had been originally anticipated. He may have sustained a peripheral nerve injury. A medical report from Mr. Lynch, Consultant Orthopaedic Surgeon was furnished on behalf of the defendants. This report, following an examination of this plaintiff on 25th February, 2015, found some restriction of movement to the left shoulder. Mr. Lynch advised this plaintiff to have an MRI scan given his on-going symptoms. I would assess general damages as being €9,550.00.

### **Neil Lafferty**

29. Mr. Lafferty, date of birth 22nd December, 1987, furnished medical reports from Dr. Gallagher of 1st September, 2011, Mr. Mzimba, Consultant Surgeon the 1st November 2011 and Mr. A.P. Charlewood, Consultant Orthopaedic Surgeon 3rd December 2013. Mr. Lafferty attended his G.P., Dr. Gallagher, on 4th July 2011. He complained of an onset of pain in his lower back and across his upper shoulders and neck region. Subsequently on examination by Mr. Mzimba in November, 2011, there appeared to be a laxity around the right shoulder and greater movement of the head of the humerus than would have been expected. At that stage the plaintiff had demonstrably laxity in his right shoulder. Subsequently, in December, 2013, this plaintiff was seen by Mr. Charlewood. Mr. Charlewood found full a range of movement, normal shoulder contours and no weakness or muscle problems. Mr. Charlewood found it difficult to correlate the on-going degree of pain which the plaintiff was complaining of with his findings. Further the plaintiff was examined by

Mr. Lynch on behalf of the defendants. Mr. Lynch found, clinically, this plaintiff had only a minor degree of restriction of extension rotation of lumbar spine.

30. On being cross-examined by the defendant's evidence was put to this plaintiff of dancing, which would require considerable flexibility in September, 2012, sky diving in January, 2013, and skiing in January, 2015. This range of energetic physical activity does not indicate any on-going symptoms. I would assess general damages as being €9,050.00.