



# THE HIGH COURT

[2024] IEHC 19

[Record No. 2022/5980P]

**BETWEEN**

**DEAN KEOGH**

**PLAINTIFF**

**AND**

**MARIA BYRNE**

**DEFENDANT**

## **JUDGMENT of Mr Justice Paul Coffey delivered on the 16th day of January 2024**

1. The plaintiff is a married man with a ten-year-old daughter who was born on the 13th of May 1984. He is a Garda officer of fifteen years standing who, for the last five years, has been attached to the Traffic Unit of An Garda Síochána.
2. His claim is for damages for personal injury and arises from a road traffic accident which occurred on the morning of 18th of September 2021 at the junction between Drumcondra Road and Dargle Road in the city of Dublin. Immediately prior to the accident, the plaintiff was wearing full personal protective equipment and riding a high-performance

Garda motorcycle on Drumcondra Road towards the junction when suddenly and without warning the defendant drove her car out into the path of the plaintiff thereby compelling him to collide into the driver side of her car. Such was the force of the impact that the plaintiff was flung out of the seat of his motorcycle and propelled over the defendant's car landing on his back.

### **The issue to be decided**

3. Liability has been admitted by the defendant and special damages have been agreed at €5,138.78 so that the only matter for determination by this court is the quantum of general damages to be awarded to the plaintiff for his injuries.

### **Factual summary**

4. Neither the facts of the accident nor the extent of the plaintiff's multiple injuries are in dispute. The medical evidence is agreed and discloses that as a result of colliding with the defendant's car and landing violently on the ground approximately twelve feet away, the plaintiff suffered severe trauma to both his arms, testicular bruising from hitting the motorcycle together with other relatively minor soft tissue injuries including bruising to his inner thighs, chest and ribs.

5. Following his removal by ambulance from the scene of the accident to the Mater Misericordiae University Hospital, the plaintiff was found to have sustained a severely displaced and angulated fracture to the shaft of the radius and ulna of his non-dominant left forearm together with a severe intra-articular fracture dislocation of the wrist of his dominant right hand. He was taken to theatre the following day where under general anaesthetic the plaintiff underwent major orthopaedic reconstructive surgery for several hours in the course of which his broken bones were realigned and stabilized by open reduction and internal fixation using a metal plate, two twelve-inch rods and screws. The plaintiff was discharged from hospital the next day into the care of his wife.

6. In the lengthy recovery period which followed, the plaintiff was unable to use either of his arms and was totally dependent on his wife for washing, dressing and feeding. He also experienced acute but non-pathological psychological distress associated with nightmares and anxiety about his prognosis and ability to return to work. Using such capacity as he had, the plaintiff made diligent efforts to rehabilitate himself by engaging in home exercises and consistently attending numerous physiotherapy sessions, such that after twelve months post-injury he was able to return to work and resume his full duties. Although he has continued in his work to date without any significant difficulty, he is no longer as confident as he was previously in handling the weight of Garda motorcycles or in driving them at high speeds due to occasional fatigue in his left arm and difficulty in using his right wrist. In September of this year, he failed a test which would have qualified him for more prestigious VIP escort work, a test which he feels confident he would have passed had the accident not occurred.

7. At clinical review on the 26th of April 2023, the plaintiff's treating orthopaedic surgeon Mr. Mara found that apart from some persistent but moderate restrictions affecting his ability to lift and carry, the plaintiff had made "a remarkable recovery" from what he described as "a potentially life changing injury." It is clear from the medical reports of the defendant's orthopaedic expert, Mr. O'Flanagan, that although he has regained a good range of function in both his left forearm and his right wrist, the plaintiff is left with a residual and permanent feeling of weakness in both affected limbs together with intermittent pain, stiffness and a loss of motion at extremes of flexion and extension in his right wrist. He also has pain in his left arm if he attempts to lift anything weighing more than 10kg. Although he does not anticipate future treatment, Mr. Mara is of the view that the plaintiff is nonetheless at risk of developing post-traumatic arthritis in his right wrist which, if it should develop, could require bracing, medications, cortisone injections or in a worst-case scenario, surgery such as a wrist fusion. Mr. Mara estimates the risk of arthritis as less than 25%. The plaintiff is also left with an

unsightly soft tissue mass on his left arm together with three highly visible surgical scars, two on his left forearm each measuring 11cm and one further scar beside his right wrist measuring 7cm. The very considerable metal work that was inserted to hold the plaintiff's broken bones together during the recovery process will remain in place unless the plaintiff undergoes further surgery for its removal.

### **Applying the Guidelines to multiple injuries**

8. This case falls to be decided under the Personal Injuries Guidelines ('the Guidelines') adopted by the Judicial Council in 2021 whereunder a court when assessing general damages for personal injury is obliged to have regard to the Guidelines whilst at all times adhering to the principles for the assessment and award of damages for personal injuries as determined by the Superior Courts. At their core, these principles require the trial judge to arrive at an award that is fair to all parties and proportionate. The principle of fairness requires that the court must take full account of the impact of the relevant injury on the plaintiff but only to the extent to which their suffering is properly attributable to the wrongdoing of the defendant. The principle of proportionality requires that the award must be proportionate to the maximum and equivalent awards available under the Guidelines and to awards made by the courts where directly comparable.

9. In a case involving 'multiple injuries' such as this, the Guidelines suggest that:

"The appropriate approach is for the trial judge, where possible, to identify the injury and the bracket of damages within the Guidelines that best resembles the most significant of the claimant's injuries. The trial judge should then value that injury and thereafter uplift the value to ensure that the claimant is fairly and justly compensated for all of the additional pain, discomfort and limitations arising from their lesser injury/injuries."

10. The Guidelines go on to state that it is of "the utmost importance" that:

“The overall award of damages made in a case involving multiple injuries should be proportionate and just when considered in light of the severity of other injuries which attract an equivalent award under the Guidelines.”

**11.** The Guidelines make it clear that the application of the method of ‘uplift’ is at all times subservient to the overarching duty of the trial judge to ‘fairly and justly’ compensate the plaintiff for ‘all’ of their suffering and to arrive at an overall award that is ‘just and proportionate’. These dual requirements of fairness and proportionality were emphasised by the Court of Appeal in *Zaganczyk v. John Pettit Wexford Unlimited Company* [2023] IECA 223, where after construing the Guidelines in the light of the earlier decision of the Court in *Meehan v. Shawcross* [2022] IECA 208, Noonan J. stressed that whatever initial approach is adopted, the trial judge must make an overall award which fairly compensates the plaintiff for “all the suffering they have endured, be it from one or ten discrete injuries at the same time” and must do so in such a way as to achieve proportionality. In the same judgment Noonan J. approved the practice of valuing each of the plaintiff’s injuries individually, an approach that was initially proposed and adopted in the interests of transparency by Murphy J. in *McHugh v. Ferol* [2023] IEHC 132.

**12.** It is evident from the foregoing that in a case where a court is required to assess general damages for multiple injuries having regard to the Guidelines, the trial judge should follow a two-stage process in order to ensure that the overall award is fair to all parties and proportionate. First, the court must ensure that the plaintiff is compensated for all their pain and suffering which results from their injuries. This requires the trial judge to consider the relevant guidelines for each injury and to apply the principles of fairness and proportionality in order to assign a value to each injury that is fair to all parties and proportionate. Secondly, and whether it is possible to do so by reference to the plaintiff’s ‘most significant injury’ or not, the court is obliged to ensure that the overall award is itself fair to all parties and

proportionate. This requires the trial judge to step back from the individual injuries and their corresponding assigned values in order to holistically evaluate the cumulative effect of all of the injuries on the plaintiff and to adjust the ultimate award in order to avoid over or under compensation. In carrying out this task, the trial judge must have regard to the overlap of injuries and the maximum and equivalent awards available under the Guidelines for suffering of similar gravity to that of the plaintiff's overall injury profile. Where a discount is applicable, the method of adjustment - whether it be by way of deduction from the value assigned to the plaintiff's lesser injuries or from the initial aggregate amount, or whether it is expressed as a percentage or a specified sum – appears to be of little practical consequence provided that the ultimate award of general damages is so measured as to achieve overall fairness and proportionality.

**13.** The severity of overlapping injuries can vary according to their effect. Typically, there will be a temporal overlap of injuries such that a discount will be appropriate to reflect the fact that the injuries arose from the same traumatic event and involved treatment and recovery at the same time. In some cases, however, the cumulative effect of multiple injuries may be worse than the sum of their parts where, for example, and as is reflected in the Guidelines, the plaintiff is caused to lose sight in both eyes and is thereby completely blinded, or because the interaction of the injuries significantly complicates or prolongs the recovery process.

#### **Significant features of the main injuries**

**14.** In order to be fair to the plaintiff and, therefore, to take full account of his suffering in this case, I take particular account of the potentially life threatening nature of the accident that gave rise to his injuries, the complex reconstruction surgery that was required to stabilise and treat his fractures, the distress experienced by the plaintiff when it initially appeared to him that his fractures were potentially life changing, the permanent and significant disfigurement that the injuries and their surgical treatment have caused to the appearance of

his arms, the fact that the said treatment involved the use of extensive metal work which remains in place, and the plaintiff's residual functional deficits as detailed above together with their occasional negative effect on the plaintiff's functioning and confidence at work. Insofar as I have not already done so I further take account of the considerations specified at 7.G of the Guidelines which by virtue of 7.H of the Guidelines affect the level of award that I am required to make in respect of the injury to the plaintiff's right wrist. In so doing I give due consideration to the plaintiff's relatively young age, the risk of degenerative changes and arthritis in his dominant right wrist, the fact that he was deprived of his capacity to work for a period of a year and the impact of his injury on his independence and ability to self-care for much of the recovery period. In order to be fair to the defendant, I take account of the fact that the plaintiff has to date made a substantial functional recovery from his injuries and the further fact that although the plaintiff remains at risk of arthritis in his right wrist, the evidence does not elevate that risk to a probability. I will in due course further take account of the overlap of injuries which I will measure by way of a discount when I come to deal with overall proportionality.

### **Injury to the left forearm**

**15.** I am satisfied on the evidence before me that the severely displaced and angulated fracture to the shaft of the radius and ulna of his left forearm was the most significant of the plaintiff's injuries. It is agreed that the category in the Guidelines which is relevant to the injury is that of 'Other arm injuries' which are described and classified at 7.F of the Guidelines according to whether they are 'severe,' 'moderate' or 'minor'.

**16.** The plaintiff's counsel contends that the injury is best described as a 'severe' injury within the meaning of 7.F(a)(ii) of the Guidelines which sets out a second tier of severe arm injuries that are defined as:

“Injuries resulting in permanent and substantial disablement. Serious fractures of one or both forearms where there is significant permanent residual disability whether functional or cosmetic - €50,000-€100,000.”

**17.** The defendant’s counsel contends that the injury is best described as a ‘moderate’ injury within the meaning of 7.F(b) of the Guidelines which is defined as:

“While there will have been significant disabilities, a substantial degree of recovery will have taken place or is anticipated - €20,000-€50,000.”

**18.** Subject to a maximum of €550,000 for the most devastating and catastrophic injuries, the general scheme of the Guidelines is to propose different ranges of damages depending on whether the characteristics of the relevant injury under consideration are such as to be classified as severe, serious, moderate or minor. Whilst it is accepted by both parties that the plaintiff’s injury to his left forearm was undoubtedly a serious injury, it is not readily classifiable as such under the Guidelines which under the heading ‘Other arm injuries’ does not offer a damages bracket in respect of ‘serious’ injuries but instead offers two graduated damages brackets for ‘severe’ injuries. In order to adhere to the principles of fairness and proportionality, I place the injury at the lower end of the second tier of the ‘severe’ category for which the damages bracket of €50,000-€100,000 is proposed and assign to it a value of €55,000. I have placed the injury in this category to take account of the cumulative effect on the plaintiff of the adverse consequences of the relevant injury as detailed above which include the permanent and substantial cosmetic disfigurement of his forearm by two unsightly scars and a very noticeable soft tissue mass. I place the injury at the lower end of the relevant damages bracket to take account of the fact that the plaintiff has made a substantial functional recovery from his injury.

### **Injury to the right wrist**



**19.** It is agreed that the category in the Guidelines relevant to the fracture to the plaintiff's right wrist is that of 'Wrist injuries' which are described and classified at 7.H of the Guidelines according to whether they are 'Severe', 'Serious', 'Moderate' or 'Minor'.

**20.** The plaintiff's counsel contends that the relevant injury is best described as a 'Serious' wrist injury within the meaning of 7.H(b) of the Guidelines which defines such injuries as:

"Injuries less severe than those at (a) above resulting in significant permanent disability but where some useful movement remains - €40,000-€60,000."

**21.** The defendant's counsel contends that the injury is best described as a 'Moderate' injury within the meaning of 7.H(c) of the Guidelines which defines such injuries as:

"Injuries less severe than at (b) above but where there is some permanent disability, such as a degree of persisting pain and/or stiffness - €20,000-€40,000."

**22.** Whilst the plaintiff has made a substantial recovery from what was a severe intra-articular fracture dislocation to his dominant right wrist, he remains at less than a 25% risk of developing degenerative changes and arthritis in his wrist in the future. In fairness to the defendant, I must recognise that although the risk is appreciable, it is not a probability and is relatively low. It is nonetheless a matter of relevance which the court is obliged to consider by virtue of 7.H and 7.G(vi) of the Guidelines. Taking account of the cumulative effect on the plaintiff of the serious adverse consequences of the relevant injury as detailed above but bearing in mind that he has made a good functional recovery to date, I am of the view that the injury straddles the divide between the 'moderate' and 'serious' categories for wrist injuries for which reason I assign to it a value of €42,000.

### **Other injuries**

**23.** By agreement of the parties, I will exercise a discretion in respect of the plaintiff's relatively minor but very painful soft tissue injuries including the bruising of the testicles (for which no guidance is given) to which I assign a value of €3,000.

**Award for general damages**

24. In order to achieve fairness and proportionality, I must further have regard to the overlap of injuries which arises from the fact that all of the plaintiff's suffering has arisen from the trauma of one accident and involved treatment, convalescence and recovery over the same period of time. I must also take account of the fact that I have already given credit for certain aggravating features that are common to both injuries. In this case, however, I must also have regard to the fact that the main injuries were to different arms which, if anything, combined to make the plaintiff more helpless and dependant on others during the period of recovery than he would otherwise have been if he had merely injured one of his upper limbs. In order to achieve fairness and proportionality so that the ultimate award takes proper account of the overlap of injuries and is proportionate when viewed in the context of the plaintiff's overall injury profile and the maximum and equivalent awards available under the Guidelines for suffering of similar gravity, I will apply a discount of €15,000 to the assigned values of the plaintiff's lesser injuries and will therefore measure an award for general damages of €85,000.

**Conclusion**

25. There will be judgment for €90,138.78 being €85,000 for general damages and €5,138.78 for special damages.