

THE HIGH COURT

[2015 No. 827 P]

BETWEEN

MARCIN SZCZUROWSKI

PLAINTIFF

AND

ANDREA NOONAN

DEFENDANT

EX TEMPORE JUDGMENT of Mr. Justice Tony O'Connor delivered on the 5th day of February, 2018**Introduction**

1. This is an application pursuant to O. 36(9) of the Rules of the Superior Courts, ("RSC") as amended by Statutory Instrument No. 254 of 2016, directing that the issue of the defendant's liability be heard and determined separately from the trial concerning the issue of quantum. Statutory Instrument No. 254 of 2016 merely set out the rule more clearly while deleting "that one or more questions of fact be tried before the others". The rule now reads:-

"(1) Subject to the provisions of the preceding rules of this Order, the Court may in any cause or matter, at any time or from time to time order:

(a) that different questions of fact arising therein be tried by different modes of trial;

(b) that one or more questions of fact be tried before the others;

(c) that one or more issues of fact be tried before any other or others."

Pleadings

2. The plaintiff, who now resides in Poland, alleges that on 2nd March, 2013, the defendant drove her car into the path of his motorcycle on the R226 roadway at Salthill Galway. The plaintiff has had significant sequelae according to the personal injury summons issued on 3rd February, 2015. The defence, delivered on 7th April, 2016, constitutes a traverse defence while alleging eleven particulars of contributory negligence. Para. [6] of the defence carefully pleads:-

"The Plaintiff is on proof that he minimised his loss and has not exaggerated same."

while it does not plead exaggeration specifically. Particulars of further losses dated 3rd January, 2017, were included in the booklet of pleadings which I have read. Loss of earnings and the plaintiff's low level of education are mentioned in that notice.

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3. Seven witnesses as to fact were identified in the plaintiff's schedule under O.39(46) of the RSC dated 7th December, 2017, while seven witnesses, including three witnesses in common with those listed by the plaintiff, were listed in the defendant's schedule dated 21st August, 2017. Included in the defendant's schedule is mention of a report from Mr. Mooney, Engineer, dated 25th March, 2015. Nine medical witnesses and four other experts have been listed in the schedules of the plaintiff and the defendant respectively.

4. The proceedings have been set down for trial in Galway in accordance with the guidelines for setting a case down; they certainly suit a Galway listing because all of the Garda witnesses, other witnesses as to fact and experts (excluding the plaintiff and perhaps a member of the plaintiff's family) are based in Galway. Usually cases which are estimated to last longer than three days are transferred to Dublin from a provincial venue. Counsel for the plaintiff indicated to me that the liability issue can be heard and determined within three days. On the other hand, a trial involving quantum will not only last more than three days but it will also involve the commitment of medical witnesses who practise in Galway.

5. Mr. Savage, counsel for the defendant, submitted that the onus is on the applicant to establish the desirability for a split trial and to address the potential for undermining the plaintiff's credibility by reference to potential inconsistencies about his injuries. He cited the judgment of Clarke J. (as he then was) in *Cork Plastics Manufacturing & Ors v. Ineos Compound UK Limited* [2008] IEHC 93, when emphasising the obligation of the plaintiff to satisfy the court about the complexity of the issues. He also submitted that the default position is that all matters are heard together. In addition, he submitted that the trial on liability may go into a fourth day.

6. Counsel for the plaintiff stressed that there is no necessity for the same trial judge to determine liability and quantum although he did not demur from the fact that it may be best to have the same judge who can determine all credibility issues. This Court is aware that a transcript may alleviate any tactical difficulty for the defendant in having a split trial.

7. Counsel for the plaintiff referred the Court to the judgment of Ryan J. (as he then was) in *Burke v. McKenna* [2011] IEHC 449, which is quite relevant to this application because it concerned a personal injury claim also. I quote specifically from the last paragraph of that judgement:-

"I have no doubt that in most cases it is more convenient to have all the issues determined at the same hearing. However, anybody with experience of personal injury litigation knows that complex brain injury cases, especially when they give rise to causation issues as well as sequelae questions, very often involve detailed technical evidence by busy experts who may have travelled far to testify. Such witnesses find it difficult to understand how their evidence cannot be scheduled for a precise time. The Court can have difficulty accommodating them. It is not very professional to lump all the witnesses whether they are lay or technical together in the hope that somehow the arrangements will work out. It seems to me to make sense to direct separate trials of liability and damages in cases involving complex or lengthy technical, scientific or medical questions. In fact, the difficulty is to explain or justify why any other arrangement should be made."

8. A further point which this Court notes is that the provincial sessions are preferable for local Gardaí, engineers and factual witnesses. The three-day trial rule should not hinder the administration of justice and a trial judge in a provincial venue may be able to accommodate witnesses better than a trial judge in Dublin.

9. The judgment of Clarke J. concerned multiparty litigation and did not involve the same issues about provincial venues. Although the plaintiff's medical case may not be as complex as that in *Burke v. McKenna*, I take the affidavit of the plaintiff's solicitor, Mr. D'Arcy who is an officer of the court, and weigh that against the affidavit of Mr. Ennis, solicitor for the defendant, sworn on 31st January, 2018, who is also an officer of the court. On balance, I believe that a trial judge in Galway can accommodate any disadvantage mentioned by Mr. Ennis if the need arises.

10. In the circumstances, and given the policy to have personal injury cases tried in a venue which facilitate witnesses, I grant the application. It makes sense to have the liability issue tried first and I shall leave it to the trial judge to give further directions concerning the assessment of quantum.