

THE HIGH COURT

[2012 No. 10000 P.]

BETWEEN

SASHA LEIGH SALKELD, A MINOR

(SUING BY HER MOTHER AND NEXT FRIEND, KATE FLYNN)

AND

ANTHONY LONG

PLAINTIFF

DEFENDANT

JUDGMENT of Mr. Justice Barr delivered on the 15th day of May, 2015

1. This action arises out of a RTA which occurred on 26th October, 2009. The infant plaintiff is the daughter of one, Leigh Salkeld (hereinafter "*the deceased*"), who was fatally injured in the accident. She brings this claim on her own behalf and on behalf of the deceased's statutory dependants.

2. In assessing the losses suffered by the plaintiff, it is necessary to have regard to the earnings of the deceased and of his partner, Ms. Kate Flynn, at the time of the accident. The deceased had gross annual earnings of €20,000, giving a net weekly take home pay of €360.00. The deceased's mother, Kate Flynn, was due to return to work following maternity leave at the time of the accident. She was intending to work on a part-time basis. She was due to be paid €8.90 per hour for a twenty hour week, giving a gross weekly earning of €178.00. Given the level of income earned, there would have been no deductions for tax from her earnings.

3. This gives a total net weekly income of €538.00. The plaintiff's actuary has given a breakdown of how this amount might have been expended as follows: overhead/transport costs: €200.00; deceased's support and maintenance: €130.00; support and maintenance for Kate Flynn: €130.00; and support and maintenance for Sasha: €78.00.

4. Of the €200.00 per week assumed to have been spent on household overhead and transport costs, the plaintiff's actuary has allocated a loss of €170.00 to Sasha as she had the benefit of all of the household overheads and part of the transport costs. The actuary had allowed €30.00 per week in respect of transport costs of the deceased and Kate Flynn when Sasha was not travelling with them. Adding the plaintiff's own support and maintenance estimated at €78.00 per week gives a total weekly loss to her of €248 per week.

5. However, this is before making a deduction in respect of the continuing income of Kate Flynn. Assuming her income of €178 net per week continues, this amount covers all of her own support and maintenance costs of €130 per week and leaves a balance of €48 per week to be applied to the losses suffered by her daughter, Sasha. Deducting €48 per week from the weekly dependency loss estimated above at €248 per week, leaves a net weekly dependency loss to Sasha of €200.

6. Assuming a real rate of return of 2.5 per cent, the capital value of the financial dependency loss to Sasha is €212,200.00.

7. The plaintiff's actuary has calculated this sum as a payment which would have continued until the plaintiff reached the age of 23 years. It can be argued that this age is the correct age to use, having regard to the fact that many children now pursue some form of third level education, which would leave them financially dependent on their parents until the age of 23. However, this takes no account of the fact that the child might not progress to third level education, or may pursue a shorter course of study, which would leave her financially independent at an earlier age.

8. The defendant's actuary noted that the figure of €212,200 covered past maintenance and interest thereon at 8 per cent. If there was no interest component, the figure became €200,000. He stated that if the payment was made to age 18 with a real rate of return of 2.5 per cent, this would give a capital value of €176,000. If the payment was continued to age 21 on the same rate of return, the capital value would be €198,000.

9. I think that there has to be some reduction in the amount suggested by the plaintiff's actuary continuing to age 23. I prefer the valuation given by the defendant's actuary continuing to age 21, giving a capital value under this heading of €198,000.

10. It is also necessary to assess the value of the services carried out by the deceased in respect of his daughter Sasha and in respect of maintenance around the home and in respect of services carried out for his mother, Sandra Purcell.

11. The plaintiff's actuary has allowed the sum of €100 per week in respect of the care of Sasha to the age of 16 years. This gives a capital value of €80,700 assuming a real rate of return of 2.5 per cent. The defendant's actuary has valued the loss under this heading at €35 per week for childcare and €20 per week for general services. In cross examination, the defendant's actuary accepted that the deceased could have minded the plaintiff for four hours at night and for four hours at the weekend. This would be eight hours per week at the minimum wage of €8.65 which would amount to €69 per week. If the deceased provided ten hours' service at the minimum wage this would equate with €86. This was closer to the amount allowed for by the plaintiff's actuary. The defendant's actuary stated that the amount allowable under this heading was a matter for the court.

12. I am satisfied that it was reasonable to value the deceased's child minding services at €100 per week. The defendant's actuary only allowed the amount claimable under this heading to age 14. The plaintiff's actuary allowed the payment to age 16. I think that the defendant's actuary is correct. The payment should only be allowed for child minding up to age 14. In the circumstances, the sum of €65,000.00 is the appropriate sum to be allowed under this heading.

13. The plaintiff's actuary allowed the sum of €50 per week in respect of services provided by the deceased in respect of maintenance around the house. The capital value of this sum to age 23 was €53,050.00.

14. The defendant's actuary has only allowed €20 per week for these general services. In evidence, he accepted that this may be at the lower end of what might be reasonably allowed in the range of €20 - €50.00. He justified this figure on the basis that the deceased and his partner were living in rented accommodation at the time of the accident. As such, repair and maintenance would normally be the responsibility of the landlord. He accepted that if the deceased and Kate Flynn had married and got a place of their own, this would have changed matters. It was for the court to decide how much would be likely to have been spent on home maintenance.

15. I accept that it was likely that had the accident not occurred, the deceased and his partner would have married and would have obtained a place of their own. In these circumstances, it was reasonable to allow a figure of €50 per week for maintenance of the house. The plaintiff's actuary allowed this figure until the infant reached the age of 23 years. I think that this is reasonable as many children nowadays remain living with their parents until that age. Accordingly, the appropriate figure allowable under this heading is €53,050.00.

16. There was also a claim for services provided by the deceased for his mother, Sandra Purcell. The plaintiff's actuary allowed the sum of €20 per week under this heading. This gave a capital value of €27,840.00, assuming a real rate of return of 2.5 per cent. This figure includes the sum of €6,820.00 in respect of past losses. In argument, the defendants accepted that the deceased did provide some services for his mother. It was for the court to decide if €20 was a reasonable amount to allow in the calculations done in this regard.

17. I am satisfied that the amount allowed, being €20 per week, was a reasonable and fair amount to allow in this regard. Therefore, I allow the sum of €27,840.00 under this heading.

18. In addition to the foregoing amounts, the court has to allocate the correct amount that should be allowed for solatium to each of the statutory dependents. It was indicated to the court that the family would be agreeable to the deceased's half sister, Tia Ryan, receiving the sum of €5,394.76 as she was very close to her half brother. This approach seems reasonable and I allow the sum of €5,394.76 to Ms. Ryan.

19. It seems to me that the proper approach to adopt in relation to this heading of damages is to award €10,000 each to the infant plaintiff and to the deceased's mother, Sandra Purcell. While it may be argued that the infant plaintiff was too young to suffer mental distress at the death of her father, I am satisfied that that as she got older she has felt the loss of her father quite significantly. In the circumstances, it is reasonable that she should receive a share of the solatium damages.

20. It does not appear that the deceased's father, Russell Salkeld, had any meaningful interaction with the deceased. I am told that he did not appear for the funeral. In the circumstances, it is appropriate that he should not receive any of the amount payable for solatium.

21. The remaining statutory dependant, Hilary Salkeld, is the grandmother of the deceased. She has furnished a waiver in respect of the damages to which she may be entitled through her granddaughter, Stephanie Salkeld.

22. There are agreed special damages in the sum of €4,591.00.

Conclusions

23. Applying the figures sets out above, the infant plaintiff is entitled to the following damages:

(i) in respect of loss of financial dependency: €198,000.00;

(ii) loss of care services: €65,000.00;

(iii) maintenance of home: €53,050.00; and

(iv) damages by way of solatium: €10,000.00;

This gives a total award to the infant plaintiff of €326,050.00.

24. In addition, the sum of €27,840.00 in respect of services provided by the deceased for his mother and the sum of €10,000.00 for solatium are to be paid to the deceased's mother, Sandra Purcell. This gives her a total award of €37,840.00.

25. The sum of €5394.76 for solatium is to be paid to the deceased's half sister, Tia Ryan.

26. The sum for special damages of €4,591.00 can be paid to the plaintiff's solicitor for dispersal to the parties who made the various payments under this heading.

27. The total amount of damages is therefore €373,875.76.