

THE HIGH COURT**[2006 No. 2595 P]****BETWEEN****PETER FAGAN****PLAINTIFF****AND****GERARD GRIFFIN****(AS PERSONAL REPRESENTATIVE OF NORA DALY, DECEASED)****DEFENDANT****JUDGMENT of Mr. Justice Cross delivered on the 31st day of July, 2012**

1. The plaintiff was born on 3rd July, 1980. He is the second of four children. His father died tragically of suicide when Peter was aged seven and the children were brought up by Peter's mother.
2. Peter's eldest sister, is married and a qualified teacher, his younger brother is a qualified architect in regular employment and his youngest sister is a barrister working as a judicial fellow.
3. Peter himself achieved some 450 points in his Leaving Certificate and qualified with a double degree in engineering and mathematics from TCD with a 2.1 honours.
4. After graduating he easily found work, first of all in Dundalk and then in a firm called Finn Heat in Dublin. He had a steady girlfriend. He got on well in work and handled many problems, dealing with every quotation leaving the office and communicating with customers who would be architects or engineers on a regular hourly basis. He was well thought of in that job.
5. Peter had a wide circle of friends from his school and college days which he maintained.
6. On 2nd May, 2005, Peter was travelling from Dublin northwards to pick up his girlfriend to go for dinner with his eldest sister and her husband when near Navan, Co. Meath, a motor vehicle apparently crossed onto its incorrect side of the road and collided head on to the plaintiff's vehicle.
7. The circumstances of the accident are such that liability is not an issue and unfortunately the driver of the other vehicle died and the matter has been defended in a representative capacity.
8. The plaintiff has no memory of the accident last recalling jogging some hours previously in the Phoenix Park and initially believed that he had been involved in a hit and run accident in the Park. He also suffered from amnesia for a number of weeks post accident and I am advised and accept that this amnesia is permanent. Peter has suffered multiple injuries in the accident. He was rendered unconscious and after the accident registered 8/9 on the Glasgow Coma Scale which indicates a serious head injury. He was conveyed by ambulance to Our Lady of Lourdes Hospital, Drogheda, a CT Scan revealed significant cerebral oedema and a small subdural haematoma. A CT of the thorax revealed a fracture of the body of the sternum together with some minor lung contusion in the left base of the lung. A CT Scan of the abdomen revealed a small splenic contusion and a moderate amount of free intra peritoneal fluid and the possibility of free intra peritoneal air in the peri umbilical area just right of the mid line. The plaintiff was intubated and ventilated and was admitted under the Intensive Care Unit. Calls were made to the neuro-surgical team at Beaumont and no bed was available there and Our Lady of Lourdes had to keep the plaintiff ventilated in the ICU and repeat the CT Scan the following morning.
9. An emergency laparotomy was performed which revealed free peritoneal blood and two tears of the small bowel with bleeding from the inferior pole of the spleen and a torn piece of greater omentum line free of the pelvis.
10. Subsequently, a splenectomy was performed and the non-viable segment of his small bowel was resected.
11. On 6th May, 2005, the plaintiff was extubated when his Glasgow Coma Scale had risen to 14/15 but he was noted to be neurologically very confused.
12. An MRI Scan was carried out on his brain on 20th May which was normal.
13. The plaintiff remembers waking up in hospital, was unaware of what had occurred to him and the his account of what occurred will be stated later.
14. After a trial discharge, the plaintiff was ultimately discharged from Our Lady of Lourdes Hospital on 27th June for a follow up care in the Rehabilitation Centre in Dun Laoghaire.
15. The psychological consequences of this accident are not in dispute. The plaintiff required the emergency operations as described

above. He is left with some scarring which he did not remark upon and the court has not seen. He suffered double vision which persisted for some time and then healed itself but which was suggestive of a significant closed head injury which lead to fourth cranial nerve palsy on the right hand side which improved.

16. The plaintiff is left with some clicking sensation to his ankle and to some difficulty with his gait. We have discussed the scars above and there was also some soft tissue injury to his back.

17. The plaintiff also suffered an injury to his front tooth which was knocked out in the accident. A root canal treatment was performed and he will require further dental treatment. As things stand, his tooth sometimes clicks down and is uncomfortable.

18. He has suffered some diminution in the sense of taste and smell which relate to the head injury and the double vision which cleared up.

19. There is no contest in relation to the plaintiff's physical injuries and it is agreed that the plaintiff made a remarkable recovery thanks to the good offices of the medical team in Our Lady of Lourdes Hospital in Drogheda.

20. The issue in this case is the extent if any that Peter's personality has changed since the accident. It is this matter that has dominated the discussion of this case over its eight days of hearing.

21. It is contended by the defence that the plaintiff prior to the accident was already the subject of a personality condition and it is alleged that the accident had little or any effect on him in relation to any personality change.

22. It is contended by the plaintiff that the plaintiff had a major personality change with impaired concentration and depressive mood and cognitive difficulty and is unable to sustain relationships at work, he developed significant family and work relationship difficulties and that his mental state dominate his life.

23. The plaintiff was able to successfully obtain a number of jobs since the accident as he impressed at interview and was able to commence a Masters Degree (which he hopes to complete towards the end of this year) but he has been let go by all of his employers in turn essentially because, it is alleged that, he could not cope with relationships at work. It is stated that this mental state is permanent and that he has a severe head and brain injury which has caused the personality change. It is alleged that he will have ongoing difficulty in competitive employment and that he will be unlikely to maintain any jobs he obtains and has a pattern of less and less satisfactory employment followed by periods of unemployment.

24. It is alleged that his life expectancy has been reduced and that he will need ongoing monitoring, psychological support, visits from brain injury specialist, ongoing physiotherapy and ongoing medication.

25. Prior to the accident, the plaintiff had never consulted any doctor about any psychiatric or psychological problems. His mother apparently noted one period of low mood about a month before the accident. His siblings recount that he was a happy and cheerful young man who got on very well with the family.

26. It is undoubtedly the case that when the plaintiff gave evidence he stated that he was never happy as a child, that he wanted to play football but was never allowed to do so and that he was "beaten up on a daily/weekly basis to play a lot of music". He stated that he did not enjoy music but because he was keeping the equilibrium in the family stable, he did not put up a fight. He stated that if he ever did put up a fight he was reprimanded with a lot of "wooden spoons".

27. This account of the plaintiff's childhood is important. It was accepted by Dr. John O'Connor who treated the plaintiff from 2006 – 2010 as psychiatrist and who gave evidence for the defendant on subpoena.

28. Originally, a number of the therapists treating the plaintiff recounted the plaintiff saying that he had difficulties in his childhood with his family. It is true to say that on some occasions, the plaintiff recounted difficulties confined to his mother and eldest sister and on others, difficulties in relation to all of his family and still on another occasion to Dr. Sinanan, the defendant's consulting psychiatrist that he had "an excellent childhood".

29. The plaintiff's present treating doctors, some of whom had been treating him since his initial referral to Rehab have referred to these differences in the plaintiff's perception and have indicated that the problems that the plaintiff suffers from as a result of the accident include a present perception from time to time that his childhood was extremely difficult. These experts do not accept that that the plaintiff's perception accord with the reality.

30. I have observed the plaintiff who was present in court on many of the eight days of the hearing and I have witnessed his anger which was frightening at times. All doctors indicate that Peter is a very nice young man and I have no doubt but that this is so.

31. I have also had the benefit of hearing from the plaintiff's mother and his siblings as well as the plaintiff's brother-in-law.

32. I have watched the plaintiff's family members sitting in court throughout much of the case unfortunately at a distance removed from Peter but showing obvious concerns for him and his wellbeing which cannot be motivated by any financial considerations.

33. I accept that Peter now feels that his family and indeed his mother may have been too controlling and that his youth was "horrific". I do not believe that that is the case.

34. Unfortunately, Dr. O'Connor who had previously treated the plaintiff and was not asked until the last day of the trial to make a judgment as to the accuracy of the plaintiff's complaints, never sought to interview either the plaintiff's mother or his siblings. I believe that that is a fatal error in Dr. O'Connor's analysis of the case and insofar as Dr. O'Connor, though undoubtedly a very caring and helpful treating psychiatrist of the plaintiff over a number of years, differs in his evidence from the other doctors who gave evidence on behalf of the plaintiff, as relates to the plaintiff's family situation, I prefer the other witnesses, who all had the important benefit of collateral interviews with the plaintiff's mother and his siblings and also I accept the evidence of the plaintiff's mother and his siblings and brother-in-law.

35. I have no doubt that being left a widow at an early age with four young children who she educated to a very high degree was a source of difficulties for both Mrs. Fagan and her family but I accept that they had a good happy relationship even if Mrs. Fagan might be seen to be overambitious for her children.

36. An important aspect in this case is the plaintiff's pre-accident history and whether the plaintiff was at the time of the accident suffering from a personality defects or disabilities that essentially have not altered since the accident.

37. It is common case that prior to the accident that Peter was a young man who was in the first stages of a successful engineering career who had very many friends which he kept and a steady girlfriend and was able to handle the many events of a young life very well.

38. This happy situation has changed radically since the accident. The issue before me is whether the change was caused by the accident or was coincidental with it.

39. This assessment is supported by the plaintiff's current treating professionals and indeed the defendant's psychiatrist, Dr. Sinanan who stated in his most recent conclusion:-

"While he has had a reasonable work record since his head injury in 2005, his work record would suggest that in future he may have difficulty in holding down jobs."

40. As well as the plaintiff's doctors and those of the defendant's team who have been referred to above, I was also given the evidence of Prof. Jack Phillips, Consultant Neurosurgeon on behalf of the defendants.

41. Prof. Phillips indicated that in his opinion that while the plaintiff had contusion and significant head injury, he did not have any serious brain injury. Prof. Phillips did not interpret the psychometric tests but indicated essentially that in the absence of a significant frontal lobe injury that he could not accept the contention of Dr. Delargy or Dr. O'Driscoll that the plaintiff suffered a severe brain injury which resulted in an Organic Personality Disorder.

42. Prof. Phillips was of similar view to Dr. O'Connor to the effect that the plaintiff likely had a pre-accident condition which has affected his ability at work and his relationships with his family and with friends subsequent to the accident.

43. Prof. Phillips in response to a question for the court did indicate that if it was accepted that the plaintiff did not demonstrate prior to the accident, any significant behavioural problems that this might affect his opinion. As stated above, it is the opinion of the court that indeed the plaintiff did not suffer from any pre-accident problem that was in any way affecting him. The temporal coincidence of the plaintiff's inappropriate behaviour which was noted at Our Lady of Lourdes Hospital and which, with some ups and downs over the years, has continued and has had a devastating effect on the plaintiff in relation to his relationship with his family, his friends, his workmates, girlfriends and employers all in my opinion stem from the accident.

44. I was impressed and accepted the evidence of Dr. O'Driscoll who is an expert attached to the Rehabilitation Centre in Dun Laoghaire who works mainly in the United Kingdom.

45. It is my view that Dr. O'Driscoll's speciality directly accords with the plaintiff's condition. Initially, it was hoped that the plaintiff was making a good recovery but the plaintiff's enthusiasm for work masked an underlying situation. It is agreed by all the experts to the fact that no brain injury was disclosed in the MRI Scan is not indicative that there was no brain injury at all. Brain injuries can occur and do occur that never show up in the MRI Scan.

46. I accept the evidence of Dr. O'Driscoll that the plaintiff's personality has been profoundly affected and that he is unable to sustain satisfactory employment or indeed relationships.

47. I accept that the personality change and its consequences are likely to be lifelong which require ongoing professional support by a brain injury Rehabilitation community service.

48. I accept the evidence of Dr. Carton when she highlighted significant cognitive impairment effecting executive functioning, planning, organisation, modifying and moderating and sustaining attention and the learning of new information as well as memory.

49. I accept that this "executive syndrome" is likely to be lifelong and need Rehabilitation by a brain injury Rehabilitation team.

50. I accept that the plaintiff has manifest anxiety in the present. He has a risk of developing and significant anxiety or depressive disorder in the future.

51. I do not believe that prior to the accident, the plaintiff was suffering from any personality disorder. If he was suffering from such, I am clearly of the view that it was not apparent to anyone.

52. Dr. Salvatore Giangrosso, the Senior Clinical Neurophysiologist, who treated the plaintiff at the Headway Clinic and who gave evidence on behalf of the defendant having been flown over from Italy to that effect stated his opinion that Peter had such a personality trait pre-accident but that it might have only been apparent to a psychiatrist or other medical professional on examination. If such a disorder did exist then all the evidence suggests that up to the road traffic accident disorder was not manifest and was not giving any trouble to the plaintiff.

53. If that is the case, and Dr. Giangrosso is correct and Peter's psychological and psychiatric difficulties stem from a state that was dormant prior to the accident and which accident make symptomatic then little difference will be seen in the task I have to undertake. Whatever the plaintiff's pre-accident state, I believe he was functioning well socially from a work point of view, friends, family and girlfriends. I accept that for whatever reason the plaintiff is by now in a very different and less attractive situation. I accept that the plaintiff's present situation is as a result of the accident, the subject matter of the proceedings. Were it not for his accident, I believe that the plaintiff would have gone on to progress in his career, probably achieve his Masters earlier and have had the skills to diversify away from the building industry after its collapse or follow the significant numbers of his class who have found employment abroad in the engineering field. Indeed, I note that, there are more engineers now employed in Ireland than were so when the plaintiff graduated.

54. Had the plaintiff been suffering from any syndrome prior to this accident which is the cause of his present symptoms, I accept the evidence from the plaintiff's treating doctors that this would have become manifest. Accordingly, on a balance I accept the opinion of the plaintiff's present treating doctors and in particular, Dr. Delargy and Dr. O'Driscoll that the plaintiff is still suffering from the effects of a significant brain injury he sustained in the road traffic accident and I do not accept that he had even a dormant pre-accident condition.

55. When cross examined as to his view as to the seriousness of the plaintiff's brain injury, Dr. Delargy stated that he would rate the brain injury as one out of ten in respect of physical consequences, three to four out of ten in respect of cognitive consequences and six to seven out of ten in respect of personality consequences.

56. The plaintiff states that he woke up in Our Lady of Lourdes Hospital to "World War 3" being a row between his mother and his girlfriend. Undoubtedly, there were tensions in the hospital as the plaintiff's mother believed that his girlfriend and her family were "taking over" and tensions resulted in matters the plaintiff would undoubtedly have "picked up". It seems that the plaintiff's girlfriend was very attentive to Peter at the time but sometime while in Our Lady of Lourdes Hospital, her father indicated to Peter that the relationship would not last. Peter then while still in hospital obtained employment from a firm in Northern Ireland near where his girlfriend lived but while at the time, he seemed to blame his mother for the break up he now accepts that she had in fact found somebody else.

57. On admission to Rehab in Dun Laoghaire which was for a short period because the fact that the plaintiff was taking up the new employment, the plaintiff came under the care of the team there consisting of Dr. Mark Delargy, Consultant in Rehabilitation Medicine, Dr. Simone Carton, Clinical Neuro-Psychologist, who discharged the plaintiff in 2007 to the care of Dr. Giangrasso who acted as the plaintiff's counsellor up to his departure to Italy who referred the plaintiff to Dr. O'Connor.

58. On Dr. Giangrasso's return to Italy, the plaintiff again came under the care of the team from Rehab and more recently under the additional care of Dr. Ciaran O'Driscoll, the eminent Consultant Neuro-Psychiatrist.

59. Dr. Delargy whose expertise is renowned believes that Rehab essentially discharged the plaintiff too early and accepted the plaintiff's account, which was optimistic as to his progress, too readily. In any event, Dr. Delargy noted that the plaintiff was complaining of fatigue, double vision and was depressed and had difficulty in analysing and judging events. A collateral history which was important was taken from the plaintiff's mother and various siblings which indicated a significant personality change since the accident.

60. In assessing the relevance of the accident to the plaintiff's present personality disorder, it is important to note that the therapists in Our Lady of Lourdes Hospital noted significant impairments and indeed inappropriate behaviour and personality difficulties while he was still in Drogheda.

61. A number of cognitive defects were ascertained by the psychologist in Rehab in Dun Laoghaire and he was found to be very vulnerable.

62. The plaintiff was, as stated, discharged from Rehab to commence work as an engineer in a company in Omagh. While there, he was referred to the local mental health team because of significant difficulties in relation to his inability to function with individuals. He indicated that he had a mental breakdown in Tyrone. He was unable to keep this employment.

63. Dr. Delargy went on to diagnose the plaintiff suffered a traumatic brain injury and had a significantly reduced level of consciousness and a swollen brain which required major surgery. He made a good physical recovery but his mental state was complex.

64. Throughout the remainder of 2006 and 2007, the plaintiff's condition stabilised somewhat.

65. I do not accept that his inability to hold onto the job in Omagh was due to fact that he was unable to learn the skills of it, as suggested by the defendants. The skills to be learnt were relatively basic to someone of his intellectual abilities. The plaintiff's difficulties in holding down this job and indeed in later jobs relate to his anxiety, stress and his inappropriate behaviour and inability to function with ordinary relationships at work.

66. It is not the function of this judgment to recount all of the evidence of the plaintiff's career since discharged from hospital. The plaintiff was able to complete certain education courses, though some quite simple courses he failed to complete. He commenced a Master's degree in 2009 which he obtained a deferral of one year and has apparently achieved a 2.2 mark in his exam questions bordering on a 2.1 and hopes when his thesis is submitted towards the end of the year to achieve a 2.1 in his Masters.

67. While in Tyrone he was earning a salary that worked out at €31,000 per annum though this lasted only six months. He was unemployed between April 2006 to July 2006. He got a further job in Drogheda in July 2006 at €34,000 and he remained in employment as the identity of his employer changed and he followed particular directors from firm to firm but was made redundant in November 2010, being the only one who was so made. The firm who employed him was taken over by a multinational firm which has now ceased operation in Ireland but has plenty of positions worldwide but the plaintiff was not offered any such job no fellow workmates were.

68. In August 2010, he worked with a firm J.B. Tierney at a salary of €24,000 which was a basic introductory level position in engineering and again he could not hold onto this job and he was offered a job selling in Peat's Electronics but was made redundant in October prior to their Christmas rush. Though that firm has since closed down, it subsequently reopened and the plaintiff has not found work there.

69. I have heard the evidence from Pauline Coughlan, the plaintiff's Rehabilitation consultant which essentially confirmed by the evidence of Ms. Ciara McMahon, the defendant's vocational consultant and the effects of this evidence to quote Ms. McMahon's report that the plaintiff reported ongoing difficulties with multitasking and stress with meeting deadlines, communication and interpersonal issues and difficulties in sleeping, difficulties in sustaining work since his accident as he had been made redundant and Ms. McMahon stated and I accept:-

"Theoretically with his degree in mechanical engineering, Mr. Fagan could seek alternative employment outside the construction industry in areas with more opportunities at present such as design engineering or production/manufacturing industry.

However, his ongoing cognitive difficulties which affect his ability to acquire new knowledge may restrict him in terms of the types of alternative employment he seeks to possibly less complex areas of engineering and related work.

Mr. Fagan's difficulties in accepting criticism coupled with his reduced ability to deal with stress, multitasking and interpersonal relationships are likely to negatively impact on his career progression.

At senior management level in any profession, there is an expectation that one is capable of planning, organising and multitasking at the highest levels. Managers also need to build and maintain a team and effectively delegate. Mr. Fagan's

current reporting which suggests he is likely to have major difficulties in these areas.

Mr. Fagan is, however, articulate and educated to a high standard. He has also gained circa five years experience within the building services engineering; therefore he is likely to impress potential employers at interview level and indeed to go on and secure employment. However, despite securing employment he is likely to find his ability to stay and progress in same is affected by the aforementioned issues of coping with stress, criticism dealing with people.

In my opinion, Mr. Fagan would continue to secure employment either within his field of engineering or alternative areas of his choosing, however, he is unlikely to progress to roles which carry significant responsibilities i.e. senior positions. His history post accident would suggest that retaining employment could present him with problems."

70. That report differs not from Ms. Coughlan's conclusions:-

"Peter Fagan was involved in a road traffic accident on 2nd May, 2005, in which he suffered serious injuries to his head, sternum, lungs, small bowel and spleen. Medical reports indicate that while he recovered well from his psychical injuries, his brain injury has left him with significant changes to his neuropsychological functioning including changes to his cognitive ability as well as marked changes to his personality. Reports go on to indicate that he suffered an organic personality disorder that affects his ability to (*sic*), the workforce and continues to affect his vocational and social and personal lifestyles. It is now over seven years since his accident and Mr. Fagan's cognitive and neuropsychological problems have persisted continuing to impact his lifestyle. It is unlikely at this stage that he will recover further and he will acquire ongoing long term psychotherapy support and medication to help him on a day-to-day basis in the future.

Mr. Fagan has lost out on the possibility of having a successful and rewarding career that could potentially have reached the highest levels within his profession. The quality of his life and his ability to work in his chosen field of engineering have been remarkably damaged and he remains vulnerable and at risk as a result.

His ongoing cognitive difficulties which affect his ability to acquire new knowledge may restrict him in terms of the types of alternative employment he seeks limiting his possibly to less complex areas of engineering related work...."

71. It is common case that the plaintiff made a remarkable psychical recovery from serious and potentially from life threatening psychical injuries which themselves would entitle the plaintiff to significant compensation.

72. The contest in this case centres around the extent if any the plaintiff suffered a psychological or psychiatric injury or a brain injury with result in significant behavioural problems.

73. The plaintiff is undergoing counselling from a person who do not have experience in brain injury but I accept the report of Dr. Gibney that it would probably be unwise to interfere with the therapeutic relationship the plaintiff has developed with this person but that the support that ought be provided should strive not to duplicate what is already being provided by this counsellor and the psychological support recommended should be focused on the plaintiff developing the issues that arise directly from his brain injury and to improve his overall awareness of how the brain injury may continue to impact on this judgment particularly his social judgment.

74. Accordingly, the expert he is currently seeing as a therapist should continue and the expert that Dr. O'Driscoll has recommended should be there but on the more limited basis as suggested by Dr. Gibney.

75. In this regard, the court is merely anticipating the likely expenditure of the plaintiff and of course, the plaintiff has indicated that he will be guided by Dr. O'Driscoll in his therapeutic recommendations and that is for the good.

76. Dr. O'Driscoll has indicated that the plaintiff should have long term physiological support in terms of a home visit monitoring initially twice weekly and then reducing by a non-family member.

77. Dr. O'Driscoll stated that the plaintiff should be encouraged to get advice from family members which would be encouraged and it is hoped with therapy that this will improve in the future.

78. I accept also that Dr. O'Driscoll's evidence that the plaintiff would benefit from supportive psychotherapy with or without cognitive behavioural therapy from a team experienced in brain injury Rehabilitation. He will also require ongoing medication as stated.

79. It is to be hoped that the plaintiff will be able to sustain good relationships with his family who are clearly highly supportive of him and were clearly pained by his evidence. His family attended for substantial periods of the trial in what can only be described as care and affection for Peter and no clear ulterior motive. They would have heard at times, evidence that would have been very distressing for them and clearly they have an understanding that what Peter recounts does not correspond to the son and brother they knew prior to the accident.

80. I note and accept Dr. O'Driscoll's view that there is a hope that the plaintiff's relationships with his family may improve with time and that there may be a more reliable support system for him. Accordingly, I do not believe that the plaintiff will require home visiting and monitoring for the rest of his life.

Damages

81. An actuary gave evidence on behalf of the plaintiff and the defendant and there was thankfully no real difference between them as to the figures.

82. The future loss of earnings to date have been agreed at €30,950.

83. Other special damages including medications to date have been agreed at €68,851.97.

84. Dental fees have been agreed at €7,300.

85. Future treatment has been set at €3,025. A greater figure arises if the rate of 2.5% for medical inflation allowed by O'Sullivan J. in *McEaney v. Monaghan County Council* is allowed. In this case, Mr. Tennant indicated that the nature of the medical treatment will probably not engage the reasoning of O'Sullivan J. in the above case and accordingly I will accept the standard figure of 3% and that the cost of €3,025 is correct.

86. In relation to the future care of the plaintiff, I accept fully that the role of an actuary be advisory only. However, I found Mr. Tennant's report most helpful. In relation to the issue of home visits which I note have been a cost at €500 per week for the year and €250 per week thereafter comes to a figure of €408,750 on a lifetime basis.

87. I believe that the plaintiff may not in fact need home visits for all of his life and hoping that I have not been doing the plaintiff a disservice, I calculate that figure as €300,000 which is the figure I shall allow under this heading.

88. The plaintiff has ongoing psychotherapy costs stated to be €250 per week for the next year and €250 thereafter for life. This amounts to €101,327. I accept that sum is reasonable.

89. I think that the plaintiff will need that amount of psychotherapy as recommended by Dr. O'Driscoll. In addition, the plaintiff has indicated that it is accepted that his current psychotherapy costs should be maintained and this is payable at €50 per week for a year and €50 per month thereafter which has been calculated €20,265.

90. I think that this is a service that may not be required for the plaintiff's life and should be a cost at €10,000 into the future which is the figure I shall allow for the continuation of the existing psychotherapy.

91. In relation to the plaintiff's ongoing GP fees which will be required to be paid and once the plaintiff ceases to be on a medical card, this has been a cost without assuming medical inflation at €9,133 which I accept as correct.

92. The plaintiff's additional medication take into account the Drugs Payment Scheme was costed by Mr. Tennant at a sum of €28,341 and €48,221 and I accept these figures.

93. The next matter to be considered is the plaintiff's loss of earnings.

94. I believe that were the plaintiff not involved in the accident, he would by now have achieved his Masters Degree and would be in a position to earn a figure of at least €70,000 per annum. I believe that the plaintiff will, especially with counselling, be able to get employment but will not be able to function at anything like the level that he functioned before and that this will even with counselling cause him frustration. I think that the sort of earnings he was getting from Tierney at a relatively modest engineering position are, however, open to him. This is at a sum of €24,000 per annum.

95. Based on this gross figure per annum and allowing the plaintiff an earning capacity to the new retirement age of 68, it represents a net weekly loss of €460 coming to the sum of €593,400.

96. Mr. Tennant indicated that no reduction has made in *Ready v. Bates* in this calculation. A deduction in relation to *Ready v. Bates* is, of course, a matter for the court and assumes that in the general course of events, a person in work is unlikely to be able to secure that work at a salary throughout his life.

97. It might be argued that somebody in engineering would be at more risk than most but I note that even in Ireland there are now more engineers in employment than there were at the time the plaintiff commenced work as an engineer and that his classmates have jobs in construction engineering in other jurisdictions.

98. Mr. Tennant argued that taking into account that he had not allowed figures for any loss of pension and because of the fact that the medical evidence suggested that the plaintiff will have significant periods of unemployment which will mean that the figure of €24,000 achievable in Tierney's is not going to be one that the plaintiff will earn every week of every year or anything like that and that no deduction should be made in respect of *Ready v. Bates*.

99. Mr. Byrne on behalf of defendants indicated that the top level of engineering, a greater reduction should be made in respect of *Ready v. Bates* though I did not follow his logic in that regard and while he accepted Mr. Tennant's views, he still believed that some deduction should be made for *Ready v. Bates*.

100. I hope that I am not doing the plaintiff any disservice in this but I think that it is fair to say that were it not for the accident, the plaintiff is likely to have been unemployed for sometime, though as a result of the accident he is likely to be unemployed for significant periods into the future in any event. Taking into account, Mr. Tennant's observations and accepting them in theory, I think a 10% reduction for *Ready v. Bates* is not unreasonable giving a total sum for loss of earnings into the future at €532,160.

101. Accordingly, in my calculation, the special damages in this case being past and other medications together with the costs of future care and medication as well as future loss of earnings, come to a total of €1,139,308.90.

Summary of Special Damages

- (a) Loss of earnings to date €30,950
- (b) Other special damages to date €68,851.97
- (c) Dental fees €7,300
- (d) Future treatment €3,025
- (e) Cost of future care €300,000
- (f) Cost of continuation of current psychotherapy €10,000
- (g) Ongoing GP fees €9,133
- (h) Additional medication (a) €28,341
(b) €48,221
- (i) Loss of future earnings €532,160

General Damages

102. The purpose of damages in a tort action is to put the plaintiff in the same position, insofar as money can do so, as he would have been had the wrong not been committed. The figure for special damages as outlined above may seem significant. However, as juries used to be advised in personal injury actions once the above figures have been achieved, the plaintiff has been awarded not a single cent in respect of the compensation for the injuries he has sustained.

103. On any view of the matter, the plaintiff's injuries are very significant indeed.

104. I will not outline these injuries again but prior to the accident, the plaintiff was on course for a significant career as an engineer with a good circle of friends to whom he related with good family relationships and a steady girlfriend. He has been left in the position of having a substantial insult to his life which is likely to be permanent.

105. His physical injuries alone are very significant. The effects on the plaintiff's life might indeed be described as catastrophic. The Supreme Court in *Sinnott v. Quinnsworth Limited & Ors* [1984] 4 ILRM at 523 indicated that a cap should be placed on general damages in circumstances in which a plaintiff has been awarded substantial sums for his past and future expenses.

106. In a comprehensive review of recent developments, Quirke J. in *Maggie Yang Yun v. Motor Insurers Bureau of Ireland & Tommy Xing Bia Tao* [2009] IEHC 318 indicated that in all the circumstances in taking into account the recent considerable downturn in the economy, the appropriate present "cap" and general damages was €450,000.

107. It is of course important to note that what was decided in *Sinnott v. Quinnsworth* was that there was a cap on general damages not that general damages in cases that fail to reach the standards of being the most extreme should suffer pro rata diminution.

108. Of course, as there is a "cap" in general damages, many cases may be entitled to a figure up to the level of that "cap".

109. In this case, however, while in many ways catastrophic the injuries do not represent such an insult to the plaintiff that they can be categorised in the most extreme grouping.

110. While I am obliged to have regard to the book of quantum, I find that nothing in this book is of great assistance to me. This having been said, the plaintiff's injuries are very serious indeed and hoping that I am not doing him a service, I will assess the general damages in the sum of €150,000 for pain and suffering to date and €100,000 for pain and suffering into the future being a total of €250,000.

Conclusion

111. The total of the general damages and special damages on my calculation amounts to €1,389,308.90 for which sum the plaintiff is entitled to a decree.