

BETWEEN

JUSTIN BROWNE

APPLICANT

AND

THE MINISTER FOR FINANCE AND PUBLIC EXPENDITURE

RESPONDENT

JUDGMENT of Mr. Justice Bernard J. Barton delivered on the 30th day of January, 2017.

1. The Applicant was born on the 16th of May 1972 and resides at 10, Castle Glen, Newtownforbes, County Longford. He is married with three grown up children and is a serving police officer. On the 7th of November 2007, he was authorised to bring these proceedings in respect of an incident which occurred in the performance of his duties on the 17th of March 2002, when at approximately 1.30 am on the Granard to Edgeworthstown Road, near Cranly, Co. Longford, the patrol car in which he was sitting was struck by another vehicle (the accident / RTA).

2. At the time of the RTA the Applicant was making a radio call to Granard Garda station for the purposes of running a check on the number of a UK registered car which had crashed into a ditch; the driver of the vehicle had left the scene. The Applicant and a colleague went to investigate; the headlights and blue flashing beacon lights of the patrol car were left on as warning to motorists approaching the scene.

3. Moments before the RTA, the Applicant noticed that the headlights of an oncoming vehicle, which was travelling at high speed, were on a collision course with the patrol car. Realising that an impact was imminent he attempted to brace himself by grabbing the steering wheel; he had no time to get out of the patrol car. The violence involved in the impact between the vehicles was such that it caused the deployment of the airbag which struck the Applicant in the face.

4. He was dazed, shocked and was aware of pain in his neck, chest, arms, lower back and right leg. He subsequently developed a headache syndrome together with psychological sequelae of disturbed sleep, flashbacks, nightmares, ruminations, avoidance behaviour, nervousness and anxiety.

5. Immediately after the accident, the Applicant became aware of a burning smell from the vehicles which frightened him; he thought the patrol car was going to go on fire. Although in pain he jumped out of the car out and as soon as he did so he felt nauseous and ultimately vomited. A colleague who went to his assistance called an ambulance which removed the Applicant to the Accident and Emergency Department of the Midland Regional Hospital, Mullingar, where he was assessed and treated.

6. Following clinical examination and assessment the Applicant was discharged on analgesia and non steroidal anti inflammatory medication. The physical injuries sustained whilst essentially soft tissue in nature also involved a significant aggravation of a pre accident chronic lower back condition which had resulted from a very serious assault in 1998 (the assault), following which the Applicant had also suffered a post traumatic stress disorder.

7. The Plaintiff initially attended his GP, Dr Moran who prescribed pain killers and advised physiotherapy. Because of persisting symptoms he re attended

Dr. Slattery, Specialist Physician, in March 2003, who has examined, treated and reported on the Plaintiff in respect of the injuries resulting from the assault and the RTA.

Pre RTA medical history.

8. The Applicant brought proceedings arising out of the assault. The case was heard by Hanna J. in 2005, and an award of €100,000 was made. Prior to the hearing the Applicant's back injuries had been the subject matter of an MRI scan the result of which was contained in a report dated the 7th of February, 2001. This disclosed a small right paracentral disc herniation of the T8-9 intervertebral disc, a small central and right paracentral disc herniation of the T9-10 intervertebral disc and a small central and right paracentral disc herniation of the T10-11 and T11-12 intervertebral discs. Furthermore, a small to moderate sized right paracentral and lateral disc herniation indenting the thecal sac was seen at the L4-5 level.

9. At the time of the hearing in 2005, Dr. Slattery, gave an opinion that the Applicant would likely continue to experience problems with his lower back in the future, a prognosis which has been borne out in the intervening years.

10. He also prepared a medical report, dated the 9th September 2004, in respect of the assault proceedings. Given that the back injuries arising from the assault had been aggravated by the RTA, an issue arose as to the respective causative contributions of these events. The opinion he expressed on that question was that approximately 20% of the Applicant's ongoing back symptomology was attributable to the RTA. At the time of the hearing in this case he remained of that opinion.

11. It was noted by Dr. Slattery and by Dr. O'Neill, a specialist in Sports and Orthopaedic Medicine, who examined and reported on behalf of the Respondent, that the pre-existing degenerative changes confirmed by MRI prior to the RTA have, as expected, progressed with age and time to the extent seen in scans taken subsequently.

12. Of some significance, and with the benefit of having also treated the Applicant for the injuries arising as a result of the RTA, Dr. Slattery prognosticated in 2005, that despite the combined effect of the new and the old injuries, the Applicant would be able to perform his duties as a police officer until normal retirement.

13. Although there have been occasional absences from work in the intervening years referable to his injuries, the Applicant has in general been able to perform his duties as a police officer and gave evidence that it was his wish and his intention to serve until retirement; an attitude which goes to his credit.

Vocational history.

14. The Applicant attended Rockwell Agricultural College for a year after he left secondary school. He then worked for approximately two years with Keypack before entering the Garda training college at Templemore in 1994, and from which he passed out in 1996. He was assigned to and served in different Garda Stations before taking up duty at Smeath Garda station, Co. Longford. He was serving there at the time of the RTA. Following that accident he was off work for a number of months before returning to duties. In this regard he told Dr. Slattery at the time of medical consultation for a report dated the 21st of May 2003, that he was not experiencing difficulty with or losing time off work although he had paid tradesmen to carry out tasks around his house which previously he would have done himself.

15. Under cross examination the Applicant accepted that the last time he had required medical treatment from Dr. Slattery was in October 2011, that he had essentially recovered from his neck and back problems and that he was able for his policing duties, though he still experiences intermittent residual symptoms of stiffness and discomfort.

16. Having regard to the medical evidence it is not surprising that the Applicant still experiences feelings of back and neck discomfort when he awakes in the morning time, during wet or cold weather, and when standing or sitting for long periods of time, particularly at work.

17. Depending on the nature of the duty, his evidence was that he could be considerably symptomatic, especially towards the end of his shift, though there would also be days when he might have very little pain or discomfort. He was generally able; however, although there had been no overtime since 2008, his evidence was that if he had he been offered overtime it was unlikely he would have been able to take that up because of his ongoing symptoms. Furthermore, there were occupational courses which he was required to undertake over the years which he had found were problematic for him at the time though he no longer had to attend for these.

The injuries and their consequences.

18. In the months subsequent to the accident, apart from suffering from ongoing neck pain with limitation of neck movement, chest, back and right leg discomfort as well as frontal headaches, one episode of which were very severe, the Applicant developed psychological sequelae of fatigue, sleep disturbance, nightmares, flashbacks, a tendency to ruminate, and anxiety.

19. His reaction to his psychological problems was to minimise these and although he had taken medication prescribed by his GP to help him sleep he didn't like taking such medication. He described himself as being a born optimist although following the RTA he had become very nervous when travelling by car or in circumstances and situations where he perceived a risk of confrontation.

20. In the past he had experienced psychological problems following the assault but they had long since abated and resolved; he considered that the same type of symptoms experienced following the RTA to be somewhat worse in degree. Apart from medication to help him sleep on occasion he had at one stage been prescribed an anti depressant. Other than that he had dealt with the psychological issues himself.

21. With regard to his physical injuries, he considered his back to be the most problematic injury overall though for a time following the RTA it was his neck and upper back which particularly bothered him. He accepted that he had benefited from manipulation and other medical treatments afforded over the years and that, apart from some stiffness and discomfort on awakening and at the end of his shift, he now considered himself not to have any real problems with his neck or back.

22. His evidence concerning the aggravation of his back problems was that these had worsened significantly for some time post the RTA before settling back significantly, principally as a result of having taken up jogging as a form of rehabilitation and as a result of which he had also lost about two stone in weight. He hadn't had to attend Dr. Slattery for any form of medical treatment since 2013.

23. He had become very careful about the activities in which he would engage and tries to avoid any activity which might provoke pain or discomfort. He gave up contact sports, including soccer and golf, because he found these activities tended to aggravate his back condition in particular.

24. The Applicant's psychological sequelae were described by Dr Slattery in reports dated 26th May 2003 and 14th August 2004 as being 'very small' and 'very minor elements'. Although the symptoms featured more prominently in reports dated 18th December 2007 and 26th November 2009, Dr. Slattery did not consider it necessary to refer the Applicant for psychological counselling or psychiatric assessment nor did he offer any treatment or prescribe any medication in relation to the psychological sequelae except for a sleeping pill and an antidepressant on occasion.

25. The Applicant had complained of discomfort and a diminished "fizzing" sensation in the base of his neck when he attended Dr. Slattery as recently as October 2015, however, under cross examination he fairly accepted that it had been a long time since he had experienced that sensation. He also fairly accepted, I thought, that he had essentially recovered well from any injuries caused as a result of the RTA, that such problems as he had were low grade and that these principally related to his back.

Conclusion.

26. Having regard to the medical evidence then available, the 2005 assessment of damages in respect of the injuries resulting from the assault proceeded on the premise that the Applicant's back injuries and the consequences of those both in the past and for the future were attributable as to 10% to causes which were not trauma related, 70% to the assault and 20% to the RTA. As stated earlier Dr. Slattery confirmed in evidence that he remains of this opinion.

27. There were some inconsistencies and conflicts between the histories recorded in the various reports prepared by Dr. Slattery. In the report of the 9th of September 2004 prepared for the purposes of the assault proceedings no psychological sequelae were recorded; in fact the Applicant did not report any such features at that time and was also able to garden whereas in 2007 and 2009 he was reported as being unable to do so and to be suffering from psychological sequelae, however, I don't consider these differences to be significant in terms of credibility. The medical evidence clearly establishes a natural progression of degenerative changes which have had and may continue to have an impact on the Applicant's back condition in particular.

28. Dr. O'Neill expressed the opinion that the underlying degenerative changes in the Applicant's cervical spine shown on MRI were not unusual for a man of his age although Dr Slattery thought that these would have been accelerated to some extent. At the time of the RTA the Applicant had sustained moderate soft tissue injuries to the cervical spine which were superimposed on pre-existing but asymptomatic degenerative changes. In Dr O'Neill's opinion, symptoms referable to soft tissue injuries alone would have been expected to have resolved over a period of eighteen months to two years post accident although it had to be accepted that in the presence of underlying degenerative changes such symptomology could persist for three or four years; after which, if symptoms were

still experienced, the accident was no longer causative.

29. Dr. O'Neill drew attention to the MRI scan of the 18th of August 2004. He considered the degenerative changes described as 'minor changes in the C5-6 disc' to be essentially normal for the Applicant's age; moreover, on clinical examination in 2010, there were no objective signs of continuing trauma evident. The Applicant's complaints concerning his neck were considered by Dr. O'Neill to be subjective and not supported by objective clinical findings or on the basis of the MRI. I accept that evidence.

Submissions

30. It was submitted on behalf of the Respondent that any ongoing problems in relation to the Applicant's neck and upper thoracic spine were, after a period of three or four years, attributable to the progressive nature of the degenerative changes and that thereafter these had nothing to do with the RTA. The headaches, chest and leg injuries were relatively minor and had long since resolved. The Court had also to take into account the 2005 assessment and apportionment between the contributory causes of the back injury which remained valid. It was not contested otherwise.

31. The Applicant submitted that in so far as there was a conflict on the medical evidence between Dr. O'Neill and Dr. Slattery that should be resolved in his favour; Dr. Slattery had treated him for years both before and after the assault in 1998 as well as since the RTA; he was in the best position to assess the Applicant's problems and express a medical opinion upon them.

Decision.

32. Whereas the nature and extent of the injuries are recorded in the reports of Dr. Slattery as being very significant and continuous in terms of symptomology, I am satisfied having regard to the x-ray reports and MRI scans as well as to the evidence of Dr. O'Neill, that in relation to the back injuries there has been no significant causally related development since which would warrant a departure by the Court from the assessment and causative apportionment made in 2005 save that allowance should properly be made for the small amount of inflation which has occurred in the intervening years.

33. Insofar as the injuries both physical and psychological referable solely to the RTA are concerned, I would attribute the Applicant's ability to cope with the psychological sequelae to his personality; a born optimist. That this is so is corroborated in part by his preference and determination to do without medication and in part by the absence of any referral to or treatment by a psychiatrist or psychologist for psychological issues.

34. So far as the physical injuries are concerned, the soft tissue injuries to the chest and lower right leg resolved relatively quickly. The soft tissue injuries superimposed on pre existing but asymptomatic degenerative changes involving the neck and upper thoracic spine are, on my view of the evidence, properly categorised as moderate in degree.

35. Accepting the evidence of Dr. O'Neill in this regard I am satisfied that while the degenerative changes in the cervical and thoracic spine most likely present in March 2002 were aggravated and delayed recovery they were not otherwise adversely affected, accordingly, the contribution of the injuries caused by the RTA to any symptomology experienced three to four years after that event is minimal. Therefore I am satisfied and find that the soft tissue injuries are in the past and that any sequelae experienced thereafter are more likely attributable to the progressive nature of the underlying degenerative condition.

36. Having due regard to the findings made, the conclusions reached and applying the well settled principles of Tort law to the assessment of general compensation, the Court considers that a fair and reasonable sum commensurate with the soft tissue back injuries and aggravation of the pre existing back condition together with the soft tissue and psychological injuries otherwise arising as a result of the RTA is €50,000 to which will be added the sum of €2,556.59 agreed between the parties in respect of pecuniary expenses. And the Court will so order.