

THE HIGH COURT**1999 1214 P****BETWEEN****PATRICK WARD****PLAINTIFF****And****NIAL SHERRIDAN AND CHRISTINE QUINN****DEFENDANTS****Judgment of Mr. Justice Lavan delivered the 28th day of July, 2010****Issue**

1. This is an application by Mr. Patrick Ward to recover damages arising as a result of a vasectomy which he underwent following on from a road traffic accident in which his wife was injured in 1996. The Plaintiff is also claiming damages as a result of the loss of a baby which arose from the termination of his wife's pregnancy in the aftermath of the accident, which the Plaintiff argues was necessary for his wife's physical and mental health. The Plaintiff claims damages for pain suffered as a result of the vasectomy as well as for mental distress, depression, grief and anguish as a result of the vasectomy and the termination of his wife's pregnancy.

2. The substantive action for damages for personal injury, loss, damage, inconvenience and expense sustained by the Plaintiff's wife was settled in 2007. The Plaintiff's mother's claim for damages for nervous shock was also settled. No claim for damages was made by the Plaintiff arising from the road traffic accident in 1996 until the present action.

3. Essentially, what is at issue and what needs to be determined by this Court is whether the Plaintiff is entitled to recover damages as a result of his decision to undergo a vasectomy which he claims was necessitated following on from his wife's road traffic accident in 1996, or whether damages are unrecoverable on the basis that the Plaintiff elected to undergo such a procedure and any pain or suffering which he experiences as a result of it are not related to the said accident. In the event that the Court is satisfied that the Plaintiff is entitled to recover damages, the Court must also consider whether the Plaintiff is suffering from pain, in the form of the condition of post operative orchalgia since his vasectomy. Further, the Court must consider whether the Plaintiff can claim damages as a result of the loss of the baby which arose from the termination of the pregnancy which the Plaintiff's wife underwent in the aftermath of the accident.

Background

4. The background to the case is as follows: The Plaintiff was born on the 29th June, 1962, and is now forty-eight years of age. He is a business man and he resides at 8 Redford Court, Greystones, Co. Wicklow. He is married to Gráinne Ward since the 10th of August, 1989, and she is also forty-eight years old, having been born on the 30th July, 1961. The couple have two children, aged nineteen and sixteen years.

5. The Plaintiff's wife was involved in a road traffic accident on the 6th of February, 1996, at or near the junction of the Bray/Greystones Road and Redford Estate in Co. Wicklow. In the accident, her car was struck from behind by the first named Defendant's vehicle and was then struck by a vehicle driven by the second named Defendant. The Defendants' motor vehicle's registration numbers are 90D 44796 and YZS 142, respectively. The Plaintiff's wife suffered severe personal injury, loss, damage, inconvenience and expense as a result of the accident. More specifically, she suffered soft tissue injuries to her neck and back, a TMJ problem, tinnitus and a post traumatic stress disorder. Her claim was settled in 2007 and she received €325,000 damages.

6. The Plaintiff's mother, who was not in the Plaintiff's car at the time and who did not suffer injuries in the accident, instituted proceedings claiming damages in respect of nervous shock arising from having come across the accident scene after the accident had occurred. Her claim was also settled and the Defendants agreed to pay €45,000 damages to her for nervous shock.

7. The Plaintiff was not in his wife's car at the time of the accident. He did not suffer any injury in the accident or as a result of the accident. He did not suffer from nervous shock by reason of the accident or the effect of same on his wife and/or her injuries. No claim for damages for nervous shock is made by him in the proceedings.

8. Following the accident, the Plaintiff's wife became pregnant. Her medical consultant informed her of the difficulties which the pregnancy would create for her in the light of her physical injuries sustained in the accident and she decided to travel to England to have her pregnancy terminated. She was advised that any further pregnancies would be a danger to her health, both physical and mental. She was informed by her doctor that the best contraceptive method in the couple's situation would be sterilisation and the Plaintiff's wife was counselled about tubal ligation. The Plaintiff attended his wife's doctor in 1998 to discuss the possibility of a vasectomy as he wished to take more responsibility. It is further observed that all of the risks associated with this procedure were discussed with the couple. The Plaintiff had a vasectomy operation on the 6th March, 1998.

9. The Plaintiff alleges that as a result of undergoing his vasectomy procedure he suffers from a pain condition known as post operative chronic orchalgia. He contends that he would not have had a vasectomy if the accident which the Defendants caused had not happened. It was, he argues, necessitated because of his wife's injuries. The Plaintiff further contends that the loss of the baby which arose from the termination of the pregnancy and the inability of the Plaintiff to father any other children has caused him great mental distress, depression, grief and anguish. He contends that the Defendants, by reason of their negligent driving caused the said pain condition and are liable to him in damages for same.

10. The Defendants deny that the Plaintiff has suffered the alleged or any personal injury, loss, damage, inconvenience and expense.

The Defendants say that any personal injury, loss, damage or distress suffered by the Plaintiff as a result of the termination of the pregnancy is not amenable to damages, as the award of same would be contrary to public policy. The Defendants argue that if, contrary to what the Defendants contend, the Plaintiff is entitled to damages for the personal injury, loss, damage and distress caused to him as a result of the termination of the said pregnancy, the Plaintiff was guilty of contributory negligence in impregnating the Plaintiff.

11. Thus the issue before this Court is whether the Plaintiff is entitled to recover damages as a result of his decision to undergo a vasectomy which he claims was necessitated as a result of his wife's road traffic accident in 1996, or whether damages are unrecoverable on the basis that the Plaintiff elected to undergo such a procedure and any pain or suffering which he experiences as a result of the vasectomy are not related to the said accident. The Court must also consider the Plaintiff's wife's termination of the pregnancy which has caused the Plaintiff great mental distress, depression, grief and anguish and the link to the road traffic accident in 1996.

Submissions of the Plaintiff

12. Counsel for the Plaintiff outline that the road traffic accident in 1996 was caused by negligence and breach of duty by the Defendants to this case, Niall Sheridan and Christine Quinn. The Particulars of Negligence and Breach of Duty on the part of the Defendants include *inter alia* driving at an excessive speed, failing to keep any proper lookout, failing to give any adequate warning or signal of approach, failing to have any adequate brakes or to apply same, failing to stop or swerve so as to avoid collision and breach of Bye Law 18 of the Road Traffic Bye Law 1964 in driving too close to the Plaintiff's wife's vehicle.

13. Counsel for the Plaintiff submit that following the said accident, the Plaintiff and his wife decided not to continue with the pregnancy because of the risk to the health of the Plaintiff's wife. The Plaintiff's wife subsequently travelled to England to have her pregnancy terminated. She was also informed that as a result of her condition, it would not be advisable for her to have a sterilisation process. Consequently, the Plaintiff had a vasectomy operation on the 6th of March, 1998.

14. Counsel for the Plaintiff submit that the Plaintiff would not have had a vasectomy if the accident which the Defendants caused had not happened. The vasectomy was, however, necessitated because of the Plaintiff's wife's injuries. Counsel also contend that the loss of the baby which arose from the termination of the Plaintiff's wife's pregnancy as well as the inability of the Plaintiff to father any other children has caused the Plaintiff great mental distress, depression, grief and anguish. Further and other adverse sequelae are also noted as a distinct possibility. As a result of this, Counsel submit that the Plaintiff claims damages, including unascertained special damages such as doctors' fees, hospital fees, medication and miscellaneous.

Submissions of the Defendants

15. Counsel for the Defendants submit that the Court must first decide whether or not it accepts the evidence of the Plaintiff that he is suffering from pain, in the form of the alleged condition of post operative chronic orchalgia, since his vasectomy. Counsel puts forward a number of factors for the Court to consider including the fact that the Plaintiff did not contend that he was suffering from pain as a result of the vasectomy until the 26th May, 2000, which was more than two years after the procedure took place and the pain was mentioned for the first time in a Reply to Notice for Particulars.

16. Counsel also submits that the Plaintiff's allegation, that his wife's termination of a pregnancy was necessitated because her life was in danger, is not supported by evidence.

17. Counsel also outline that the Plaintiff asserted in evidence that he could not recall the amount of damages that he had been paid on the settlement of claims relating to two road traffic accidents, in which he was involved, that occurred subsequent to the accident in 1996. The Plaintiff also asserted in evidence that he could not recall the amount that his wife received on settlement of a claim brought by his wife relating to a road traffic accident in 1987. The Plaintiff's wife stated that she had received £84,000 compensation for this.

18. Counsel argues that the Plaintiff accepted that prior to undergoing his vasectomy he was fully advised as to the risks of same, including the risk of the pain condition complained of. Ms. Deborah Orr, the surgeon who performed the vasectomy, states in her report dated the 14th February, 2002, that prior to undergoing the procedure, the Plaintiff informed her that he had no concerns or questions regarding the warning given to him and had no doubt about his decision to proceed with the surgery. She records that she had not, at the time of her report, seen the Plaintiff since his operation. The Plaintiff was also advised that a vasectomy could be reversed. A reversal could remove any pain condition. The Plaintiff has not, at any point in time, taken any step with a view to reversing the vasectomy and/ or his pain condition, if same exists. Counsel also note that no objective, independent evidence was tendered to establish or support the existence of the Plaintiff's alleged pain condition. Overall, Counsel argues that the Court should not accept the evidence of the Plaintiff to the effect that he is suffering from the pain complained of. If the Court accepts the Plaintiff's evidence to the effect that he is suffering from pain relating to the vasectomy, legal issues arise for determination.

19. Counsel for the Defendants also argues that the claim made by the Plaintiff is not a recognisable cause of action under Irish law. The Plaintiff was not in his wife's car when the accident occurred. He did not suffer any physical injury as a result of same. He did not suffer any mental injury, in the form of nervous shock or a recognised psychiatric illness, as a result of same. He does not advance a claim for damages for loss of consortium resulting from the injuries to his wife. He does not advance a claim for damages for nervous shock suffered by him arising from the proximity of his relationship to his wife. Counsel submit that his cause of action, being one for pain resulting from an independent event, namely his vasectomy, that occurred over two years following the date of his wife's accident, is not an action that is recognised under Irish law.

20. As Counsel outline, subject to two exceptions, recovery of damages for injuries resulting from a tort can only be made by the person against whom the tort has been committed. The tort in the present case was committed against the Plaintiff's wife, not against the Plaintiff. Counsel argues that the Court should refrain from extending Irish law as a matter of policy. In arguing this, Counsel referred to the case of *Devlin v. National Maternity Hospital* [2008] I.R. 222 to support the fact that Irish courts, as a matter of policy, are not prepared to readily, or at all, extend categories of causes of action on policy grounds.

21. Counsel argue that if the Plaintiff satisfies the Court that the cause of action on which his claim is based exists under Irish law, he must then establish that the tort complained of caused the injury that is alleged. Counsel submits that the Plaintiff has not established that the pain suffered by him was caused by the tortious acts of the Defendants in the proceedings. In particular, Counsel argue that the Plaintiff made a decision himself to undergo the vasectomy and that it was not necessitated as a means of contraception as the couple had other options open to them. For example, the Plaintiff's wife could have undergone tubal ligation, despite the Plaintiff's arguments to the contrary, as no medical evidence was produced to counter this. Further, it was argued that the evidence has established that the Plaintiff was fully advised in relation to the vasectomy and in relation to the risks associated with the procedure. Counsel also observed that the Plaintiff had an opportunity to reverse his vasectomy and he decided against

doing this.

22. According to Counsel, if the Court takes the view that the Plaintiff has a cause of action and has surmounted the causation hurdle, the question then arises as to whether or not the damage suffered by him is too remote. The Plaintiff cannot recover damages for injury that is not reasonably foreseeable. Counsel relied on the dicta of Barrington J. in *Condon v. CIE & Ors*, High Court, 16th November, 1984, as follows:

"I accept that in determining liability for the consequences of a tortious act of negligence the test to be applied is whether the damage is of such a kind as a reasonable man should have foreseen. I also accept that if the damage is of such a kind as a reasonable man should have foreseen it is quite irrelevant that no one foresaw the actual extent of the damage".

23. Counsel outlined a number of factors which the Defendants would have had to have reasonably foreseen, including *inter alia*, that the Plaintiff's wife would travel to England to terminate the pregnancy that occurred following the accident notwithstanding the fact that her life was not in danger by reason of the pregnancy; that subsequently the Plaintiff's wife would decline to undergo tubal ligation; that the Plaintiff would undergo a vasectomy notwithstanding the fact that a condom was used for sexual relations with his wife on at least two occasions following the termination; that the Plaintiff would undergo the vasectomy notwithstanding having been fully warned as to the possible consequences thereof, including the pain condition complained of; that the Plaintiff, because of a dislike of medical procedures, would decide not to undergo a reversal of the vasectomy, thereby causing or permitting the alleged pain to continue.

24. Overall, Counsel submit that on the facts of this case, it was not reasonably foreseeable by the Defendants and that the continuing pain which the Plaintiff is complaining of is too remote to enable an award of damages to be made in his favour.

Conclusions

25. The Plaintiff in this case made a decision himself to have a vasectomy. It is evident that the couple had other options available to them in terms of contraception. For example, the Plaintiff's wife was counselled about the possibility of undergoing tubal ligation. Instead, the Plaintiff attended his wife's doctor in 1998 to discuss the possibility of a vasectomy as he wished to take more responsibility. Further, all of the risks associated with this procedure were discussed with the couple and the Plaintiff was aware of the risk of pain. In this regard, it is not necessary for this Court to consider whether the Plaintiff is suffering from pain. The Plaintiff seeks damages for pain, mental distress, depression, grief and anguish suffered as a result of the vasectomy as well as for unascertained special damages such as doctors' fees, hospital fees and medication costs arising as a result of the vasectomy. I find as fact that the Plaintiff has failed, on the balance of probability, to establish causation on the part of the Defendants. I therefore must dismiss the Plaintiff's case. No damages are awarded in respect of this claim.

26. The Plaintiff is also claiming damages as a result of the loss of a baby which arose from the termination of his wife's pregnancy in the aftermath of the accident, which the Plaintiff argues was necessary for his wife's physical and mental health. The Plaintiff claims damages for mental distress, depression, grief and anguish as a result of this. Again, I find as fact that the plaintiff has failed, on the balance of probability, to establish causation on the part of the Defendants. I therefore must dismiss the Plaintiff's case. No damages are awarded.