

THE HIGH COURT

CIRCUIT APPEAL

[2015 No. 98CA]

BETWEEN:

THOMAS MOORE

PLAINTIFF

-AND-

MARY CARROLL

DEFENDANT

EX TEMPORE JUDGMENT of Mr. Justice Twomey delivered on the 1st day of December, 2017.**Summary**

1. This is a case where a person who was involved in a car accident which led to the most minor of contact between the cars, is claiming damages of up to €60,000 (the limit of the Circuit Court jurisdiction) for personal injuries to his back and left hip, notwithstanding that he had a pre-existing history of serious left hip problems and also a number of previous claims for damage to his back which had been settled.

2. The case also considers the fact that despite the plaintiff's history of left hip problems and previous accident claims regarding his back, an expert medical opinion was given in this case to the effect that the car accident in this case was the likely cause of his left hip and back symptoms. In view of the Court of Appeal decision in *Byrne v. Ardenheath* [2017] IECA caution needs to be exercised by this Court in relying on experts that have been retained by one of the parties to litigation, particularly where the expert's opinion may be based on information provided by the plaintiff.

Factual background

3. The plaintiff, Mr. Thomas Moore, runs a mobile confectionary business and he resides at Dun a Rí, Tinryland in County Carlow. He is 43 years of age and is somewhat accident prone as this Court was advised of at least five accident claims that he has made, a combination of workplace accidents against his employers and car accidents against other motorists.

4. In the present matter, Mr. Moore is suing the defendant, Ms. Mary Carroll. Ms. Carroll is an elderly lady from Tullow, County Carlow. Mr. Moore is suing Ms Carroll for personal injuries which he alleges he suffered as a result of what he has described as a 'traffic accident' which occurred on the 12th November, 2013, on Pollerton Road in County Carlow, but which one would be hard pressed to describe as such.

5. A more accurate description of this incident might be that his car came to a stop right next to, but touching Ms. Carroll's car. This is because, insofar as Mr. Moore's car came into contact with Ms. Carroll's car, the resulting damage at the contact point between the two cars amounted to no more than scuff marks on Mr. Moore's bumper.

6. Mr. Moore claims that Ms. Carroll pulled out of a side road onto a main road upon which Mr. Moore was driving and this caused him to brake suddenly and come into contact with Ms. Carroll's car.

7. Somewhat concerning in this case is that it was put to Mr. Moore that after this most minor contact between the two cars, Mr. Moore jumped out of his car and that he shouted at Ms. Carroll, ordering her not to move and that he was calling the gardaí. Mr. Moore did not deny this happened but claimed that he cannot remember if he did do this after the shock of the 'accident'.

8. Mr. Moore claims that he injured his back and left hip as a result of the sudden braking and in particular because of the fact that tables and crates in the back of his van came crashing into his driver seat, thereby injuring him. There is a division between the back of the van and the driver seat and so tables and crates would have crashed into that division before impacting upon Mr. Moore. However, Mr. Moore made no claim of damage to the division, while he did claim for the very nominal repair to the front of his van.

9. It is relevant to note that counsel for Ms. Carroll sought to introduce details of Mr. Moore's accident claims in the past. Counsel for Mr. Moore argued that details of Mr. Moore's previous claim history were not relevant to this Court's analysis of the claim in this case. This was not accepted by this Court since it took the view that these matters were relevant to the credibility of Mr. Moore and his current accident claim. It is clear from Mr. Moore's claim history that he is a person who is well experienced at claiming for damages, since he has had several accident claims which have been settled by an insurance company or by a payment from PIAB.

10. In this regard, Mr. Moore received a settlement of €31,150 from AXA in respect of one accident relating, *inter alia*, to his back. He then received €16,229 from PIAB in respect of another car accident relating to, *inter alia*, his back. Subsequently he received €30,000 for another accident at work in relation to his back.

11. He also received €10,000 from another insurance company in relation to a separate car accident in 2015, which he did not disclose in Reply to Particulars which he completed very shortly after that accident. His reasons for failing to disclose to the defendant's solicitors details of this accident were inconsistent and unconvincing and this Court did not find them credible.

12. In addition, he had at least one other accident claim against a different employer in relation to a back injury.

13. It is relevant to note that many of the previous claims related to injuries to Mr. Moore's back and he alleges that his back injury was exacerbated by the accident with Ms. Carroll. It is also relevant to note that he has a history of chronic left hip pain going back over many years prior to the accident in this case which hip injury he claims was exacerbated by Ms. Carroll's negligence.

14. There is another reason Mr. Moore's claim history is relevant. This is because this Court finds on the balance of probabilities that the division in the van would have been damaged by the flying tables and crates if they had hit Mr. Moore as he alleges. If the division had been damaged, Mr. Moore, as a person who is very experienced at making personal injury claims, would have claimed for that damage. Since no such claim was made by Mr. Moore this Court finds it improbable that Mr. Moore suffered the alleged injuries to

his left hip and his back by the flying tables and crates as he alleges.

15. This Court also concludes that it is highly improbable that Mr. Moore suffered any personal injuries from the contact between the two cars that resulted in scuff marks on his bumper.

16. If Mr. Moore continues to be accident prone in the workplace and in his car, it is relevant to note that Judge Aylmer in the Circuit Court dismissed his claim and the High Court dismissed his claim, on the grounds that he was not credible.

17. The only regret regarding this alleged accident from this Court's perspective is not the plaintiff's alleged injuries, but rather the fact that Ms. Carroll had to attend court on at least two occasions, in Carlow Circuit Court and in the High Court sitting in Kilkenny, to face what is at best an exaggerated claim and at worst an opportunistic attempt to manufacture a personal injury claim against an innocent motorist.

Caution required when dealing with expert retained by one party

18. Finally, it is relevant to refer to the fact that in this case there was expert evidence dated 26th August, 2014, from Mr. Khan a consultant rheumatologist in Kilkenny Hospital which states:

"As regards to your question whether Road Traffic Accident would have caused his symptoms. It is quite likely that the sudden impact of sheel (sic) forces of stress and strain on his lower back and hip was likely linked to his road traffic accident."

19. Thus, Mr. Khan is in essence saying that on the balance of probability Mr. Moore's left hip pain was caused by the accident. This is a key issue for determination by this Court and therefore it is a very significant statement by Mr. Khan.

20. It should be noted that this statement is given despite the fact that only weeks previously, on the 23rd June, 2014, Mr. Khan had received a letter from Mr. Moore's GP stating that in relation to Mr. Moore that:

"He is experiencing chronic left hip pain going back as far as 2004. The pain is aggravated by sleeping on the left side, walking or occasionally when sitting."

21. It is however possible that Mr. Khan based his conclusions regarding the cause of the hip injury on the evidence which was provided to him by his patient, Mr. Moore, regarding the nature of the accident and it is possible that Mr. Moore did not mention any pre-existing left hip problem to Mr. Khan. If this is the case then it is perhaps understandable why Mr. Khan might reach the foregoing conclusion. However, if this is the case it does illustrate the importance of this Court exercising caution in dealing with expert evidence from an expert who is retained by one of the parties to litigation, particularly since his view will be informed by the facts which are provided to him by the party that is retaining him. Mr. Khan's opinion is perhaps an example of what Irvine J. described as an *"instance of an expert opinion all too often appearing to correspond too favourably with the interests of the parties who retained them"*. At para. 31 of *Byrne v. Ardenheath* [2017] IECA 293 Irvine J. stated:

"It was my experience as a trial judge that the effectiveness of the assistance offered by expert witnesses in almost all disciplines, whether that evidence was in respect of the standard of care proposed or a party's compliance therewith, was frequently compromised by the fact that, all too often, their opinions all too often appeared to correspond too favourably with the interests of the parties who retained them. I continue to remain of that view as an appellate court judge where the transcript may lead one to the conclusion that a given expert had become so engrossed in their client's position that they were clearly incapable of providing truly independent guidance for trial judge."

It follows from Irvine J.'s statement that considerable caution needs to be exercised by the Court in relying on opinions from experts that have been retained by one of the parties to litigation.

22. For all of the foregoing reasons, this Court would have no hesitation in dismissing the Mr. Moore's claim and in awarding 100% of the costs of the Circuit Court action and 100% of the costs of the High Court action against Mr. Moore.