Neutral Citation Number [2006] IEHC 287

THE HIGH COURT

Record Number: 2004 No. 15270P

BETWEEN

JOHN DEVLIN

PLAINTIFF

AND

PETER CASSIDY AND THE MOTOR INSURER'S BUREAU OF IRELAND

DEFENDANTS

Judgment of Mr Justice Michael Peart delivered on the 31st day of July 2006

1. At a time of escalating numbers of fatal and other car accidents on our roads, and when there is ample evidence that many of these occur late at night on country roads after the consumption by drivers of copious amounts alcohol, it is hard to have any sympathy with someone such as the now-28 year old plaintiff herein.

2. He claims damages for the injuries which he sustained when, after a night's drinking with his friends, he agreed to be driven home at 3am. by one of those friends whom he knew to be drunk, and when that driver lost control of the car, causing it to leave the road and hit a tree. The driver himself was killed. Fortunately he neither killed nor injured any persons other than those in that vehicle. No other car was involved in the accident.

3. It is unsurprising for the Court to be informed that the driver of the car was not insured to drive the car on this or any other occasion, hence the inclusion of the second named defendant in these proceedings. Neither is it surprising to be told by the plaintiff, a front seat passenger, that he was wearing his seatbelt. There has been no objective or independent evidence of this, such as from an ambulance man who might have attended the scene and taken the plaintiff out of the car, or from the existence of seat-belt burn marks or other evidence of restraint being applied to his chest/upper body.

4. I have only the plaintiff's own assurance given in evidence that he was wearing his seatbelt, and this is in the face of the fact that in some of the medical reports the doctors state that the plaintiff told them that his last memory of prior to the accident and until he awoke in hospital, is of being outside the night-club. For some reason he now has complete recall of wearing his seatbelt. The Court is asked to accept the plaintiff's word for this, and as support for the proposition, to infer from the fact that his spleen was bruised, and from the absence of significant head or facial injuries, that he must be correct in his evidence in this regard, even though he remembers nothing else about the accident.

5. He was unconscious for some hours following the impact, which says something about the actual severity of any impact which occurred to the plaintiff's head. It is also urged upon the court that the defendant has not proven on the balance of probabilities that the plaintiff is guilty of contributory negligence by reason of not wearing a seatbelt. I will return to the evidence in this regard.

6. The first named defendant is the owner of the car being driven on this occasion, and the second named defendant is joined as a defendant since the person driving the car when this accident occurred, and who sadly died in the accident, was not insured to drive the car.

7. Liability is denied, and in addition both defendants plead that the plaintiff is guilty of contributory negligence by failing to wear a seatbelt, and by permitting himself to be driven in a vehicle when he knew or ought to have known that the driver was unfit to drive due to the consumption of alcohol.

8. In addition the second named defendant relies on s.5(2) of the MIBI Agreement dated 21st December 1998 to avoid liability to satisfy any judgment which the plaintiff might obtain, on the basis that the plaintiff knew and/or ought reasonably to have known that there was not in force an approved policy of insurance in respect of the use of the vehicle and the driving thereof by Stephen Gaffney, the driver on the occasion. Clause 5.2 of the 1988 MIBI Agreement provides as relevant to these proceedings:

> *"(2) Where at the time of the accident the person injured or killed…… knew or ought reasonably to have known, that there was not in force an approved policy of insurance in respect of the use of the vehicle, the liability of M.I.B. of I. shall not extend to any judgment or claim either in respect of injury or death of such person while the person injured or killed was by his consent in or on such vehicle……."*

Factual summary

9. This sorry story began when the plaintiff and a group of his friends got together in the early evening of Saturday the 13th July 2002. According to the plaintiff's own evidence he was twenty four years of age at the date of this accident which happened in the early hours of Sunday 14th July 2002. On the evening of Saturday the 13th July 2002 the plaintiff and a group of friends met up with the intention of going out for the evening together. At between 6.30pm and 6.45pm the first named defendant, Peter Cassidy arrived at the plaintiff's house in his car. It would appear that the group got into the car. Peter Cassidy was driving, Stephen Gaffney was seated in the front passenger seat, and the plaintiff and three other youth sat in the back of the car.

10. They proceeded to go into Carrickmacross to a pub called "The Fiddlers Elbow". The plaintiff says that when they got there they all sat together and remained there for between an hour and an hour and a half. He thinks that he had two pints of Carlsberg there and some sandwiches, and that Peter Cassidy and Stephen Gaffney also had pints of Carlsberg and some sandwiches. It was decided apparently that they should leave the Fiddlers Elbow at about 9pm and that they should take themselves to a disco bar called Zanzibar where more drink was consumed by all, including the plaintiff and Stephen Gaffney. The plaintiff thinks that they stayed in that premises until about midnight and that he may have consumed three or four more pints of Carlsberg there. He also stated that while in the Fiddlers Elbow they had all been seated in a group, it was different in Zanzibar in as much as they moved in and out of each others company.

11. This band of brethren then repaired to yet another premises, namely Oasis, where they remained until about 3am. The plaintiff states in his evidence that Peter Cassidy drove them in his car to Oasis where they all paid in. The plaintiff was of the view that in spite of the quantity of alcohol which Peter Cassidy had consumed up to that point he was fit to drive them all to Oasis. Needless to say, more pints were consumed by all in Oasis. The plaintiff thinks that he himself consumed maybe three or four pints of Carlsberg during the three hours he was in Oasis. Others were drinking pints also, but he says that he only saw Stephen Gaffney drinking one pint in Oasis. He was not in Stephen Gaffney's company throughout the time in Oasis, as they were all up dancing or chatting to others.

12. It was put to him by Mr O'Hagan for the defendants that a report on Stephen Gaffney had showed that after the accident he had twice the permitted level of alcohol in his body as well as evidence that he had taken 'ecstasy'. The plaintiff said that he had not seen Stephen Gaffney taking 'ecstasy'. He thinks that he had seen him consume about five pints earlier in the evening but only one pint in Oasis. In answer to Mr O'Hagan, he stated that Stephen Gaffney "looked sober",

13. The plaintiff stated that when they all exited Oasis, he himself was "rightly drunk", and that his friends Colm and Liam and also Peter Cassidy (the owner of the car) were "very drunk", but that Stephen Gaffney was "sober enough". It appears that a decision was made collectively that it should be Stephen Gaffney who should drive the men home to Carickmacross - he being regarded as "the soberest of us".

Awareness of insurance

14. In relation to his awareness or otherwise of whether Stephen Gaffney was insured to drive Peter Cassidy's car, he stated that he himself does not drive at all, and that he has never held a driving licence and has never driven a car. But he had been driven in a car before by Stephen Gaffney. It appears that Stephen's girlfriend and the plaintiff's girlfriend were friends and that they had all been driven by Stephen in his girl-friend's car on a number of occasions. He stated that he thought that Stephen had a driving licence. In fact it turns out that Stephen had only a provisional licence. But he states that he never had any conversation with Stephen about car insurance, though he recalled Stephen at one time discussing with him the fact that he wanted, with the assistance of a credit union loan, to buy his own car. But he stated also that on the night of the accident he never even thought about insurance.

15. When cross-examined by Mr O'Hagan he stated that he had known Stephen Gaffney for about seven years. They had apparently grown up in the same area. He had also known him when both of them spent time in the United States, but he stated that while there he had never been driven in a car by Stephen Gaffney. He recalled that the first time he had seen him driving a car was in March 2002. He never asked him about when he had learned to drive, but that he had thought that he had a driving licence, and thought also that he had car insurance. He stated to Mr O'Hagan that he had never discussed matters such as the cost of insurance, and had never discussed whether he had car insurance.

Contributory negligence by reason of not wearing a Seat-belt

16. The plaintiff stated that he recalls getting into the car and putting on his seatbelt, but he recalls nothing else until he regained consciousness in the hospital. He was unconscious for between four and six hours. To Dr Marion Carragher he is noted as having stated that "*his last memory was sitting outside a disco in a car and then wakening up in hospital*". This appears in her report. Dr McDonough's report dated 31st December 2002 records also that the plaintiff's "*last memory was sitting outside the disco and then he woke up in hospital*".

17. I am extremely doubtful that he can now recall putting on his seatbelt, and given the obviously self-serving nature of that statement, and the amount of alcohol which he admits that he had consumed, I am not accepting it at face value. I cannot see how he can say that given the state of his memory of anything else from the time he was seated outside Oasis until he awoke some hours later in hospital.

18. The defendants have pleaded contributory negligence on the basis that the plaintiff was not wearing a seatbelt. The onus is on them to satisfy the court on the basis of a probability that the plaintiff was not wearing a seatbelt in spite of his evidence that he was. The defendants have not called as a witness any person who may have been at the scene of this accident in its immediate aftermath, such as a Garda or ambulance witness, who might have been able to say that the plaintiff, who was unconscious at the time, was belted when they came on the scene. Presumably if there was such evidence it would have been called.

19. I have been asked to infer from the nature of the plaintiff's injuries that he must have been wearing a seatbelt, and that if he was not, his injuries would have been much worse, especially given that the driver of the car died. It is not in controversy that the plaintiff sustained a head injury said to be "mild in degree" judging by the duration of the post traumatic amnesia. He was unconscious for 4-6 hours post accident. He also sustained a laceration of the scalp which was closed with staples. He also received an injury to spleen, which was treated conservatively. Mr Pidgeon notes some chest bruising occurred, and there was a small laceration adjacent to left eye stitched. In addition to these injuries there were injuries to his back i.e. a compression fracture of two bones which have healed very well, and in addition he sustained a right ankle fracture which was treated by the application of a steel plate and screw which are still in situ. The plaintiff remained in plaster for 8 weeks, and thereafter was on physiotherapy.

20. On the basis of these injuries I am prepared on the balance of probabilities to conclude that the plaintiff was wearing his seatbelt, even though I retain some doubts about the matter. I think that given the severity to be inferred from the fact that the car impacted with the tree, that the driver was killed, and the fact that the plaintiff was in the front passenger seat, it is more likely than not that he was restrained by a seatbelt. There is no evidence that his head came into contact with the windscreen, and while he obviously sustained a heavy knock to the head since he was unconscious for four to six hours, the laceration was to the back of his head and not the front, and the cut to his left eye was small.

21. If he was unrestrained in this impact it would be fair to assume that in all probability he would have been violently thrown forward; and his injuries do not appear to be consistent with that. He sustained an injury to his spleen, and while this could be consistent with other possibilities, it is certainly consistent also with the lap part of the seatbelt coming under pressure against his abdomen after the plaintiff was thrown forward in the impact against the seatbelt.

Contributory negligence by permitting himself to be driven in a vehicle when he knew or ought to have known that the driver was unfit to drive due to the consumption of alcohol

22. I have set forth the evidence which has been adduced in relation to the consumption of alcohol by Stephen Gaffney on this night. The plaintiff was in or about the company of Stephen Gaffney throughout this night from about 7pm until 3am. The plaintiff has stated in his own evidence that he was aware that Stephen Gaffney consumed some pints of alcohol. It must be remembered that Stephen Gaffney was not the owner of the car. He was a passenger just like the plaintiff. He would not have been the intended driver of the car after the night's drinking came to an end. The plaintiff, again rather self-servingly, gave evidence that while he knew that he, Peter Cassidy and some of the others had consumed a lot of drink, he had seen Stephen Gaffney consume only one pint while they were in Oasis from midnight until 3am. He says that when they all exited Oasis it was decided that Stephen Gaffney was the soberest of them all. Another way of putting that would be to say that he was the least drunk. Neither description satisfies me that the plaintiff was unaware that the late Stephen Gaffney was unfit to drive due to the consumption of alcohol. I must deal with this question on the balance of probabilities. The plaintiff's evidence is unreliable. He has no recall of anything that evening until it comes to evidence which could benefit him in these proceedings. I do not accept his evidence even of his own consumption of pints that evening. He has been at pains to say how drunk he was getting into the car. I presume that this is in order to absolve himself in some way from any culpability in the decision to allow himself to be driven home by a person he would otherwise know to be drunk. On the balance of probability, I am satisfied that this plaintiff knew very well that the late Stephen Gaffney was drunk, or to put it more

appropriately for these proceedings, unfit to drive due to the consumption of alcohol, as was he himself and all the others who entered the vehicle. The testing carried out on Stephen Gaffney confirms this also as a fact. By allowing himself to be driven by Stephen Gaffney on this occasion, the plaintiff has failed in the duty of care which he owes to himself. In fact the plaintiff along with the others appears to have encouraged the late Stephen Gaffney to drive the car. He seems to have been part of the decision that he was the soberest of them all.

23. The breach of that duty has caused him to suffer foreseeably, both in terms of the likelihood of an accident occurring in the first place, and the injuries themselves. It is perfectly foreseeable that a drunken driver is going to lose control of the car, and that in whatever impact occurs that the plaintiff would suffer an injury. The plaintiff's own drunken state is no rebuttal of the allegation of contributory negligence.

24. In these circumstances I have no hesitation in finding the plaintiff to be guilty of contributory negligence to the extent of 50% in relation to any injury which he has sustained.

Clause 5.2 of the MIBI Agreement

25. I have set forth the evidence such as it is about the plaintiff's awareness or otherwise about whether the late Stephen Gaffney was insured to drive this car which he did not own. It can be summarised, I believe, by saying that the plaintiff had seen him drive his girlfriend's car some time previously, and also had had a conversation with him on another occasion to the effect that he wanted to buy a car with the aid of a credit union loan. In addition, he says that he believed (wrongly as it happens) that he had a driving licence, but that at no time had he ever had any conversation with him about whether or not he had insurance.

26. He admitted in evidence that on this particular night the question of insurance had never entered his head. Nevertheless the plaintiff submits that he was entitled to assume, as he did apparently, that Stephen Gaffney was covered by insurance to drive this car which was owned by Peter Cassidy.

27. I am satisfied that the plaintiff gave no thought whatsoever to whether or not Stephen Gaffney was or was not insured to drive this car on this occasion. Clause 5.2 excludes liability where "*at the time of the accident the person injured or killed…… knew or ought reasonably to have known, that there was not in force an approved policy of insurance…etc*".(my emphasis)

28. His knowledge of the insurance matter is as of *the time of the accident*. It is not a question of the plaintiff later on before the action in respect of his injuries comes on for hearing dredging up from the deep recesses of his memory a conversation or two which might be seen as entitling him to credit himself with knowledge as of the date of the accident.

29. The question is did he know that the driver had no insurance, or ought to have so known, at the date of the accident. In this regard we know that he made no inquiry at the date of the accident. He did not give it a moment's thought. The fact that Stephen Gaffney may have driven his girl-friend's car some time previously is hardly reason to believe that some time later he was insured to drive yet another car which he did not own. The same can be said of the supposed conversation about Stephen Gaffney about his desire to borrow money from the credit union to buy a car. But that is the best that the plaintiff can put forward as to the basis of his evidence that he did not know and ought not to have known, that there was no policy of insurance. All one's instincts are against finding for this plaintiff in this regard. It seems wrong that a plaintiff who in a drunken state gets into a car which he knows is being driven by another drunken man who he knows does not own the car, and to whom he addresses no inquiry about whether or not that drunken man is insured to drive, can nevertheless recover damages for his injuries under the Agreement on the basis that he did not know, and ought not to have known, that the driver was uninsured.

30. Nevertheless the plaintiff submits that the law is that provided that he can demonstrate that he was never told by Stephen Gaffney in as many words on this particular night that he was not insured to drive, the Court must hold that at the time of the accident he neither knew nor ought reasonably to have known, that there was not in force an approved policy of insurance in respect of the use of the vehicle. He submits that the fact that he did not bother to make appropriate enquiry of Stephen Gaffney is neither here nor there, and that this failure to even enquire does not bring into play the concept of whether he ought to have known. The plaintiff submits that the bar is almost as high as requiring that the plaintiff having made enquiry and having been actually told by the driver that he had no insurance, nevertheless agreed to be driven by him, before the exclusion provision in clause 5.2 of the Agreement kicks in. I accept as a fact that the plaintiff did not know as a fact that Stephen Gaffney was not covered by a policy of insurance. The question is confined to whether he ought to have known.

31. Counsel for the plaintiff has referred to the judgment of Finlay C.J. in *Kinsella v. Motor Insurers' Bureau of Ireland* [1997] 3 I.R. 586 which, it is submitted, supports a finding in favour of the plaintiff. In that case the facts were very different indeed to the facts of the present case. The plaintiff sought to recover under the Agreement in circumstances where he had lent his own car, for which he himself was insured to drive, to his aunt, having been encouraged to do so by some other members of his family so that she could see whether the car was one which suited her, as she was contemplating purchasing a car at the time. The plaintiff, aged 28 years at the relevant time, knew that his aunt already drove her husband's car - her husband apparently being a disabled person. He has also seen his aunt driving a car which belonged to his own father. He admitted in evidence that he knew that she was not covered by his own insurance policy, but had stated that he believed that she was covered by virtue of the policy under which she drove her husband's car. His aunt also gave evidence to the effect that she believed at the time that she was covered to drive the plaintiff's car by virtue of her husband's policy, and went further and stated that if the plaintiff had asked her whether she was insured to drive his car (accepting that he had not done so) she would have told him that she was. The learned Chief Justice concluded that considerable weight would have to be given to the uncontested evidence that the plaintiff had a bona fide belief that she was covered to drive his car, even though he had not made specific enquiry.

32. It will be appreciated immediately from the above factual summary how very different are the facts arising in Kinsella. But in his said judgment, the learned Chief Justice set forth a number of general principles which should apply to the interpretation of Clause 5(2) of the Agreement. At page 588 of his judgment he states as follows:

> "Firstly, it is clear to me that the onus is upon the defendant to prove that a person claiming on foot of the a judgment in the circumstances in which the plaintiff is claiming in this case, either knew, or should reasonably have known, that the use of the vehicle on the occasion was not covered by insurance.
>
> *Secondly, I am satisfied that having regard to the terns of clause 5(2) that the question as to whether the claimant "should reasonably have known" of the absence of insurance is essentially a subjective question. The issue is not: would a reasonable person have known?", but rather: "should the particular individual, having regard to all relevant circumstances have known?". For example, obviously, a person with defective reasoning or mental powers, or a young child could not possibly be defeated by this clause.*

> *It is also, in my view, relevant that a person who travels in a vehicle which he knows is being used by a person who is not covered by insurance under the Road Traffic Act is, essentially, blameworthy for he is clearly condoning, though probably not technically participating in the commission of a serious offence. Having regard to that principle, I am satisfied that a court in reaching a conclusion as to whether a person claiming under the agreement should reasonably have known of the absence of insurance, is to some extent at least concerned to assess as to whether the attitude or conduct of the person concerned at the time of the accident was in this particular sense blameworthy."*

33. Dealing with this final point first, it will I hope be abundantly clear at this stage that my view of the plaintiff is that he displayed at the time of this accident an attitude or conduct which was blameworthy. In my view the plaintiff has shown little to redeem himself on this particular occasion, no matter how changed a person he may subsequently have become. What he did is utterly irresponsible, and in these days of appalling carnage on our roads, it is appropriate that the Court speaks bluntly in this respect.

34. The second named defendant in my view has discharged the onus found to be upon it of proving that this plaintiff ought to have known that the driving of Stephen Gaffney was not covered by any policy of insurance. It has done so by the eliciting of evidence in this regard from the plaintiff himself, which is sufficient for the Court to reach a conclusion on the balance of probabilities.

35. The test to be applied to the question is a subjective one - in the words of Finlay CJ: "*should the particular individual, having regard to all relevant circumstances have known?*" In contrast to the plaintiff in Kinsella, the present plaintiff had absolutely no rational or reasonable basis for believing that the driver was covered on this occasion. I accept that he did not actually know as a fact, and therefore just about in my view escapes from a finding that he "knew". But I have to say that I find it difficult to believe him when he says he did not know. But giving him the benefit of the doubt as to that, one has to ask what does "should reasonably have known" mean if it is not to permit of something short of actual knowledge gained by a false answer given to a specific enquiry by the plaintiff. It is a subjective test, but I feel that it must mean that given what this particular plaintiff knew about Stephen Gaffney, and I refer to these facts in the following paragraph, it is neither credible nor rational or reasonable for him to say that he did not know. Again, accepting the subjectiveness of the test, there is nothing about the plaintiff in the nature of the disability referred to by Finlay CJ in Kinsella, which would excuse his lack of knowledge that Stephen Gaffney was uninsured. It is not reasonable or credible for someone in the position of the plaintiff, with his characteristics and his knowledge of the relevant facts, to conclude that Stephen Gaffney was insured. In other words, he must be taken as having known, even if he did not in fact know.

36. The plaintiff was a friend of the driver's for some years, had been to America with him, had socialised with him and their respective girl-friends for some time, knew each other well, and lived together in the same town. In fact the plaintiff in his evidence stated that he was closer to Stephen Gaffney and another friend in the car named Colm, than he would have been to the other occupants. He was therefore what one could reasonably call "a good friend" of Stephen Gaffney's. He also knew that he did not own a car. He - that is this particular plaintiff- therefore "should have known" that Stephen Gaffney was not covered on any policy of insurance to drive Peter Cassidy's car that night. No other sensible interpretation can be given to the concept of "should have known" in this case. In my view he should or ought reasonably to have known that there was no policy covering the driving. In all the circumstances of this case this plaintiff had reason to know, if he did not actually know, that the driver was not covered by insurance. I believe that to so hold is consistent with the judgment in *Kinsella v. M.I.B.I [supra]*. I do not believe that the plaintiff can be excused in this regard by pleading that he was so drunk that the question of insurance never entered his mind, the more so where he entered the vehicle voluntarily and was part of the joint decision that Stephen Gaffney would drive the car which, it was known, he did not own.

37. Finally on this particular topic, It is interesting to note the comments of Lord Nicholls in the House of Lords in *White v. White* [2001] 2 All ER. 43 at p.48. He was considering, in the context of the same exclusion clause appearing in the MIBI Agreement in the United Kingdom, the question of what constitutes knowledge for the purpose of the exclusion clause. He states in this regard at p. 48:

> *"There is one category of case which is so close to actual knowledge that the law generally treats the person as having knowledge. It is the type of case where, as applied to the present context, a passenger had information from which he drew the conclusion that the driver might well be uninsured but deliberately refrained from asking questions lest his suspicions should be confirmed. He wanted not to know ('I will not ask, because I would rather not know'). The law generally treats this state of mind as having the like consequences as would follow if the person, in my example the passenger, had acted honestly rather than disingenuously. He is treated as though he had received the information which he deliberately sought to avoid. In the context of the directive that makes good sense. Such a passenger as much colludes in the use of an uninsured vehicle as a passenger who actually knows that the vehicle is uninsured. The principle of equal treatment requires that these two persons shall be treated alike…"*

38. There is nothing to distinguish the present plaintiff from the category of person referred to in this passage. The reference to collusion towards the end of the passage has a resonance of what Finlay CJ states in Kinsella , about the blameworthiness of the passenger who is at least condoning the commission of a serious offence, and that a court should accordingly be concerned "*to assess as to whether the attitude or conduct of the person concerned at the time of the accident was in this particular sense blameworthy*."

39. For the sake of completeness, I need to assess damages for the plaintiff, since he is entitled to an award against the first named defendant, subject to the deduction of 50% in respect of the contributory negligence found against him. He lost consciousness, suffered a fracture dislocation of his ankle. Although quite a serious injury treatment assured that there were no long-term complications.

40. There may have been also a compression fracture at L5 of the lumbar spine, but Mr McQuillan viewed this essentially as soft tissue in nature and considered that it would improve with exercise.

41. He had a laceration to the left eyelid as well as to the back of the head, as well as some bruising of the spleen.

42. He suffered some amount of dental damage for which he received appropriate treatment.

43. He alleges that he was also suffering from depression following the accident, and was prescribed anti-depressants, and attended a counsellor.

44. As far as work is concerned the plaintiff has stated that were it not for this accident he would have had the wish and ambition to work in the construction industry, but that he cannot now do so because of difficult he would have lifting heavy weight due to the injury to his back and the stiffness associated with it. He is working now and there is not much difference in money terms between

what he is doing now and the sort of work he was engaged upon at the time of the accident. But he does feel that he has lost the opportunity of gaining more remunerative employment in the building industry. I have received a report from a vocational rehabilitation consultant who states in her summary conclusions:

> *"he [the plaintiff] should be fit for a range of alternative work however, but unfortunately he has not been making any great effort to return to the labour market, or to retrain, and he was advised very strongly to explore what might be available to him, and given relevant information."*

45. She does not believe that this accident has relegated the plaintiff to a lower category of work or earning capacity that whet he had pre-accident. According to another report (Mr Vella's) the plaintiff informed him that he had not looked for work. The plaintiff was out of work for some time after the accident, and I have been informed that Special Damages have been agreed in the sum of €35000.

46. For general damages I find that a sum of €50,000 is a sum adequate for the bad ankle injury sustained, as well as the other more minor injuries described. I do not find it necessary to assess any sum for future pain and suffering as none has been established. I am not impressed by the plaintiff's lack of motivation as far as finding work is concerned. He has not struck me as the sort of person who would have availed of any opportunity which he might have had to work in the construction industry as he claims. He certainly had taken no steps in that direction pre-accident, and has shown no intent to even explore the possibility that he might join that industry in some capacity commensurate with his abilities. I have no basis for compensating him under this heading.

47. Neither do I feel that it is reasonable to assess any sum in relation to depression. I have formed the view that the plaintiff is and has been for many years a heavy drinker. There has been evidence also of a predeliction for gambling. I do not believe, and there has certainly been no evidence in this regard or suggestion made, that these characteristics of the plaintiff result in any way from the accident. It is to be hoped sincerely that now that this case is behind the plaintiff, he will adopt a more purposive and responsible approach to his life so that he can participate fully in society in a manner appropriate to his talents.

48. Having made the deduction of 50% for contributory negligence, I give judgment in favour of the plaintiff as against the first named defendant only, being the owner of the car, in the sum of €45,250, and dismiss the claim as against the second named defendant.