

THE HIGH COURT

[2011 No. 8474 P.]

BETWEEN

SANDRA PURCELL

PLAINTIFF

AND

ANTHONY LONG

DEFENDANT

JUDGMENT of Mr. Justice Barr delivered on the 15th day of May, 2015

1. This action arises out of a RTA which occurred on 26th October, 2009. In the accident, the plaintiff's son, Leigh Salkeld, was fatally injured. It is the plaintiff's case that as a result of the accident, she was caused to suffer an acute stress reaction and severe depression.

2. In her evidence, the plaintiff stated that she had been born in London of Irish parents. She grew up in London. She had a relationship with Mr. Salkeld and her son Leigh was born. She stated that her relationship with Mr. Salkeld was somewhat turbulent and that they split up when Leigh was still a child. His father did not have any major input in relation to his upbringing.

3. In 2007, the plaintiff married Mr. Purcell. Her son Leigh was 21 or 22 at this time. They moved to Waterford for a better life. The plaintiff stated that initially her son was not keen to travel over to Ireland, but that he did so after a number of months. He then got on very well in Waterford. He got a job as a security guard and he met his girlfriend, Ms. Kate Flynn.

4. At that time, the plaintiff's son, Leigh was working in a call centre. He and his girlfriend had a daughter, Sasha Leigh Salkeld, who was born on 26th May, 2009. The plaintiff said that she got on well with Kate Flynn and that they were all very happy that a daughter had been born.

5. The plaintiff recalled the events which occurred on 26th October, 2009. At that time, she was minding her son's daughter, Sasha Leigh. Her mother and father were travelling with friends to Cork Airport for a short holiday in Amsterdam. On the way to the airport, the defendant's vehicle was caused to travel onto the incorrect side of the road and as a result a severe impact occurred between the two vehicles. The plaintiff's son and another male occupant in the car were fatally injured in the accident.

6. The plaintiff recalled that on the day in question, at approximately 04.00hrs, she heard a knock on the front door. When she went there, she found Kate's mother standing at the door with two gardai. She was informed that her son and the other male occupant in the car had both been killed. The plaintiff stated that she was profoundly shocked by the news of the accident.

7. The plaintiff stated that she never recovered from the shock of being told of her son's death. She described going numb and not being able to concentrate on what was going on around her. In the days that followed, she was so upset that she was unable to go to see her son in the hospital.

8. She stated that she never recovered from the shock. Her marriage broke down and she returned to live with her sister in the United Kingdom. She was suicidal at that time and had made attempts to end her life by cutting her wrists. She stated that she wanted to end her life at that time. She returned to the United Kingdom to be cared for by her family. Her sister called the Mental Health Crisis Team in the United Kingdom. They helped the plaintiff get through this initial period. She was prescribed a lot of medication. The plaintiff stated that she returned to Ireland in May 2010, because she wanted to be with her granddaughter. She got a flat and stayed there for one year. However, she was very ill during this period. She was on extensive psychiatric medication at the time.

9. The plaintiff stated that if the accident had not happened, she would have been living in Waterford. She stated that she would have been a part of the family between her son and his girlfriend, Kate Flynn, and would have taken part in the upbringing of her granddaughter, Sasha. However, she had had to return to England because she was profoundly depressed and suicidal. She stated that she got on well with Kate Flynn and that if the accident had not happened, she would have shared a happy family life with them. She stated that her whole life was changed due to the accident.

10. She stated that she now resides in a flat in Bedfordshire. Her sister and brother are close by. She had been hospitalised on two occasions in relation to self harming incidents. She stated that she had terrible anxiety attacks and had some very dark days. She stated that the medication stabilises her moods. She works as a volunteer in a children's centre. She does six hours per week, but stated that the people running the centre are very accommodating to her if she is not able to turn up for work due to feeling depressed.

11. In cross examination, the plaintiff accepted that she had had psychiatric issues prior to the time of the accident. She had been treated by a psychiatrist in the 1990s. This aspect is dealt with in more detail later in the judgment.

12. Evidence was given by Dr. Mairead O'Leary, Consultant Psychiatrist on behalf of the plaintiff. She stated that she had consulted with the plaintiff in her rooms on 19th November, 2012, and had a follow up consultation by telephone with the plaintiff on 16th January, 2015. The doctor stated that the news of her son's death was extremely shocking for the plaintiff. It was very traumatic for her and she had had an acute stress reaction at that time. She stated that the plaintiff was not able to face seeing her son laid out. She became detached from reality. She could not engage with the pain of her grief. She had harmed herself on a number of occasions.

13. The doctor stated that the plaintiff received very good treatment in the United Kingdom. She was given a lot of medication. She

had been on antidepressant medication and on a drug for bipolar depression. The doctor stated that the plaintiff's depression was severe. She was also given an anti-psychotic drug, which was given to augment the antidepressants.

14. Dr. O'Leary stated that at the most recent review, she did not think that the plaintiff was at risk of suicide, but she could be so if a stressor was involved. She noted that the plaintiff had good and bad days. She stated that the plaintiff had severe depression from which she had not recovered. The plaintiff was still very vulnerable. She had good family support in the United Kingdom, so it was reasonable for her to live there. However, this prevented her seeing her granddaughter as much as she would like.

15. The plaintiff had told the doctor that pre-accident she had suffered from depression. She had had some depression as a teenager. However, the plaintiff did not consider the pre-accident depression as being significant. Dr. O'Leary was of the view that a past psychiatric history would render the plaintiff vulnerable to depression. Her depression before the accident was moderately severe, but she was not on ongoing medication. The doctor was of the opinion that subsequent to the accident, the plaintiff's depression was much greater than it had been prior to the accident.

16. In January 2015, Dr. O'Leary felt that the plaintiff was getting better but noted that she had spent Christmas of 2014 on her own, as she could not face going out to spend time with her family. The doctor stated that she had not yet come to grips with her son's death, which was not unusual. She found the court action stressful as she does not like to talk about the accident.

17. In relation to the future, Dr. O'Leary stated that she will always be on antidepressants and will not get back to her pre-morbid position. She has lost the ability to be in a relationship. Dr. O'Leary stated that she would be concerned for the plaintiff's long term future. Her granddaughter is in Ireland and this is her only contact with her deceased son, but she needs family support in the United Kingdom.

18. Under cross examination, Dr. O'Leary stated that the plaintiff had made marginal improvement and had received excellent care in the United Kingdom. In relation to her past history, the plaintiff had said that she had had depression as a teenager. She did not tell Dr. O'Leary about any psychiatric treatment on other occasions.

19. Dr. O'Leary was of opinion that the plaintiff was predisposed to developing psychiatric illness due to her father's history of bipolar disorder and the early deaths of her parents and brother and her depression as a teenager.

20. The doctor stated that the plaintiff was a vulnerable person. She did not see any note of acute stress reaction pre-accident. She had been given normal dosages of medication prior to the accident. Subsequent to her son's death, the depression has become resilient to the medication.

21. Dr. O'Leary accepted that the plaintiff may have suffered depression without the accident, but stated that after the accident the depression was much more severe than it had been before the accident. She noted that the bond that the plaintiff had with her granddaughter was a good sign. She stated that the pre-accident depression was mild and was treated with antidepressants. She was only seen by a psychiatrist on one occasion. She was not on the same amount of medication as after the accident. The anniversary of her brother's death was a very stressful time for her.

22. Dr. O'Leary stated that she saw the plaintiff's pre-accident depression as being mild in nature. She accepted that the plaintiff's drinking of three to four bottles of wine a week, while a problem, was not severe. She stated that a person with moderate depression would be someone who could not function or go to work, had suicidal thoughts and a bleak outlook for her future life.

23. Dr. O'Leary stated that the plaintiff had had depression for a long time, but her depression after the death of her son was much greater than before the accident. There was a family history of depression and this rendered her likely to be predisposed to suffering depression. She accepted that the plaintiff was a vulnerable person before her son's death.

24. The doctor noted that the plaintiff was still on major doses of medication. She was not able to be with her family on Christmas day as she could not face going out. She was capable of doing volunteer work, but the owners of the centre gave her space if she was not able to go to work. The doctor was of opinion that the plaintiff will require medication for the rest of her life. If the accident had not happened, she would probably not have been so dependent on medication.

25. In her medical report dated 19th November, 2012, Dr. O'Leary gave the following opinion:-

"In conclusion, this woman has suffered very significant psychiatric illness as a result of the tragic death of her son. Immediately after his death, she suffered an acute stress reaction. This is a transient disorder of significant severity which develops in an individual in response to exceptional stress. It usually subsides within hours or days. In Sandra's case the stressor was the traumatic experience of hearing about her son's death. She had typical symptoms including an initial state of daze with constriction in her field of consciousness and narrowing of attention. She was unable to comprehend stimuli and she felt disorientated. She was also quite agitated and over reactive and had autonomic signs of panic and anxiety. Her symptoms resolved within three days, I would say. It is not uncommon to have partial or complete amnesia for the episode and certainly this is the case with Sandra.

Subsequently, she went on to develop a very severe depressive disorder with both biological and cognitive symptoms of depression including anergia, sleep disturbance, anhedonia, bleak and pessimistic views regarding the future, suicidal ideation and in fact suicidal intent. She also had poor concentration agitation and inability to settle. Throughout this time, Sandra was unable to look after herself and her sister had to come and collect her and bring her home to England. She was admitted to a psychiatric hospital on a number of occasions and also made several suicidal attempts.

At the time of my assessment of her, fortunately she was improved albeit she was taking very significant doses of psychotropic medication.

The precipitant of this depressive disorder was the death of her son, Leigh. She is predisposed to developing depression because of her traumatic childhood and also she reported having episodes of depression as a teenager.

There were other stressful events in her life including the death of her parents, her brother and subsequently her nephew. Thus, this trauma will also have predisposed her to developing depression. Sandra did not, however, decompensate subsequent to any of these events.

This is an extremely sad case and clearly Sandra is a very brave woman who, because of her granddaughter, is making

every effort to look after her health. I anticipate, however, that she will always be on medication and that she will always be at high risk of developing further episodes of depression."

26. Dr. O'Leary had a telephone consultation with the plaintiff on 16th January, 2015. The doctor came to the following conclusions in relation to the plaintiff's current medical situation:-

"In conclusion, Sandra is still very significantly affected by the death of her son and certainly has not come to terms with it at all. She has a recurrent depressive disorder and I anticipate that she will be on medication long term.

In my opinion, she will not be able to go back to her pre-accident work as she would not be able to commit herself to being at work every day.

Even though she has made some progress, also this accident has had an effect on her ability to stay in relationships and thus it is likely that it will be quite lonely for Sandra in her later years.

In all, therefore, she has improved marginally although is by no means well and the very tragic loss of her son is still having a huge psychological impact on Sandra."

27. Evidence was given by Dr. Paul O'Connell, Consultant Forensic Psychiatrist, on behalf of the defendant. He noted that the plaintiff had a background family history of mood disorders. Her father was a manic depressive and there was also a dysfunctional family background. The father had excessive drinking and was abusive to the plaintiff's mother. Thus, there were stressors during her upbringing. She did not have a settled childhood. There had also been relationship difficulties in that her mother and father had split up when the plaintiff was 14 years old.

28. He also noted that the plaintiff herself had had relationship difficulties. Her son's father had left soon after he was born and the plaintiff had had to raise her son as a lone parent. She could have had a post-partum depressive disorder as this was a risk factor for depressive illness. The plaintiff had given a significant past history of depressive illness over a number of years. She had periods on medication.

29. Dr. O'Connell noted that the plaintiff described clear symptoms of depressive illness. The continuance of medication can reduce the risk of relapse. However, he noted that she was not keen to stay on medication due to her father's experiences. Dr. O'Connell gave the opinion that the plaintiff had established depression before her son's death. At interview, she had become distressed when she spoke of the accident. The death of her son was the factor that exacerbated the subsequent course of her depression.

30. In the medical records, there was a history of taking anti-depressive medication. She had had suicidal thoughts prior to the death of her son. He noted that at given points, the plaintiff had been presenting with moderate depression at different times. The accident was a very traumatic incident for a person who had a history of prior depression. The plaintiff would have remained liable to recurring depression even without the accident. There were factors predating the accident which could give rise to depression, being misuse of alcohol and coming off antidepressant medication.

31. The accident had a severe impact on her health, giving a severe acute effect on her depressive disorder. She had an adjustment disorder and recurrent depression. When the symptoms persist, the symptoms can become PTSD. The doctor noted that when he saw her in November 2012, she had been very distressed when she saw Dr. O'Leary. She was also distressed but to a lesser extent when she saw him. He was of opinion that the plaintiff was prone to depression even without the death of her son.

32. In cross examination, Dr. O'Connell stated that the plaintiff had a recurring depressive disorder and it was difficult to separate out different elements leading to a diagnosis. She had never presented with bipolar depression as her father had. There was no unequivocal evidence that she had bipolar disorder. However, she was a vulnerable person at the time of the incident. She was in an "egg shell skull" type condition.

33. The doctor accepted that she did not have a lot of medical visits in the period 2007 to 2009. At that time, she seemed to be doing reasonably well. If the accident had not happened, she would still have been at risk of suffering episodes of recurrent depression.

34. He accepted that her presentation after the accident was much more significant than before the accident. Looking forward, her life now was in the United Kingdom. He accepted that this was much less enjoyable than would otherwise have been the case if the accident had not occurred. He agreed that she had a somewhat bleak future.

35. In his report dated 15th August, 2013, Dr. O'Connell reviewed the plaintiff's medical history as set out in her medical records. He came to the following conclusions in relation to her current condition:-

"3.1 Having reviewed the above records Mrs. Purcell has a history of depression dating from her early adult life. A diagnosis of depression was made by Dr. Howard Sergeant in 1995 and there are records of her attendance at psychiatric services in 1991 and 1984.

3.2 The primary care records indicate that she was depressed proximate to and before her son's tragic death.

3.3 It would appear that her depression in the mid 2000s was exacerbated by her brother's death, but that there was some evidence of improvement in 2007 after an increase in the dose of her antidepressant treatment.

3.4 In the immediate aftermath of her son's death she was prescribed sedation. A week later she was admitted for psychiatric treatment after a self-harm incident. A diagnosis of adjustment reaction was made.

3.5 In the interval since her son's death and this assessment, she has had treatment with psychotherapy and psychotropic medication. The course of her depression has been protracted and there were periods of increased symptom severity and self-harming behaviour. Her illness has been complicated by increased alcohol consumption.

3.6 At the interview with me she presented as a discursive and personable interviewee who did not appear obviously depressed but who became distressed when the interview explored the circumstances of her son's death. In that respect, her effect and emotional tone was in my view appropriate in the context of her bereavement.

3.7 At that time, Mrs. Purcell was receiving treatment with two antidepressants namely Sertraline and Mirtazapine and an antipsychotic Quetiapine, which also has an evidence base for antidepressant effect. On reviewing her past history, the evolution of this complex prescription is understandable as the development of a treatment strategy for a refractory and severe depression. Given her presentation at this assessment, it appears to be effective.

3.8 Of note, Mrs. Purcell has a family history of manic depression a.k.a. bipolar disorder. This confers a genetic liability for bipolar disorder and it may be this which has resulted in the complex or difficult to treat course her depression has taken and led to the evolution of this prescription.

3.9 In my opinion, the natural history of her depressive illness describes a deterioration in the aftermath of her son's death with the emergence of self-harming behaviour and suicide attempts.

3.10 That component which exacerbated her depression was the depressive adjustment disorder that followed the news of her son's death, a characteristic of which is in my opinion 'shock induced'. With reference to the definition (see footnote) of an adjustment reaction it is noteworthy that the circumstances of the tragic death of her son had an immediate and irreversible effect on the integrity of her social network and identity as a mother.

3.11 In all probability Mrs. Purcell would have remained prone to depressive episodes irrespective of the tragic loss of her son. However, the proximity of her bereavement to the emergence of suicidal behaviour supports the effect of that bereavement (as distinct from the loss of her brother and parents) as the factor that exacerbated the subsequent course of her depression."

36. It is against this background, that it is appropriate to assess damages in this case. I am satisfied that the plaintiff suffered a severe nervous shock reaction when she was told of the death of her son. It would appear that she was a vulnerable person having regard to her prior psychiatric history. I am satisfied that she suffered an acute stress reaction which lasted for a relatively short period of time. However, of more concern was the depressive reaction which set in thereafter. I am satisfied that she suffered a severe depression as a result of learning of her son's death.

37. This depression has resulted in her making attempts on her own life in the period after the death of her son. She is required to take a significant volume of medication to deal with her condition. The future would appear somewhat bleak for her. She is required to live in the United Kingdom so that she has the support of her brother and sister. This has the unfortunate result that she is not able to see her granddaughter as often as she would like.

38. I accept the evidence given by Dr. Mairead O'Leary that the plaintiff will require medication for the rest of her life. It would also appear to be the case that she will be unfit for gainful employment on the open market. She is currently doing volunteer work with a children's charity and she is able to manage this because the organisers of the charity are prepared to give her time off whenever she does not feel up to doing the job.

39. The plaintiff's prior psychiatric history rendered her vulnerable to further injury when she received the distressing news of the death of her son. In the circumstances, it would appear that her current symptoms of depression will remain for the foreseeable future.

40. Taking all of these factors into account, I award the plaintiff general damages to date of €125,000; general damages for the future of €100,000; and special damages of €150. This gives an overall award of €225,150.00.