

THE HIGH COURT

[2013 No. 5577 P.]

BETWEEN

MIROSLAV SVAJLENIN

PLAINTIFF

AND

KERRY GROUP SERVICES LIMITED AND

DUFFY MEATS LIMITED

DEFENDANTS

JUDGMENT of Mr. Justice Barr delivered on the 21st day of July, 2016

Introduction

1. This action arises out of an accident which occurred on 24th March, 2011, when the plaintiff was acting in the course of his employment with the defendants, at the defendants' food processing plant at Shillelagh, Co. Wicklow. The plaintiff alleges that while standing on the floor of the processing plant, and while reading a docket, he was struck in the back by a large cylindrical drum known as a "massage", which was being transported by another employee, who did not take sufficient care of what he was doing and, as a result, the plaintiff was struck in the back by the massage. The plaintiff alleges that the massage which struck him was full of meat at the time.

2. The plaintiff alleges that as a result of the accident, he suffered a serious injury to his mid and lower back. It is the plaintiff's case that while he was able to work on in his position of employment for a period of ten months after the accident, thereafter, he was obliged to give up work due to severe back pain. He alleges that he has been rendered unfit for his pre-accident employment and remains so disabled to the present time.

3. In addition to his physical injuries, the plaintiff also alleges that he was caused to suffer severe stress, due to the fact his employer did not treat his injury as being serious and he alleges that the employer put him under pressure to return to work and that as a result, he suffered great stress and anxiety. This manifested itself in the onset of stroke-like symptoms in April 2012. The plaintiff alleges that at that time he was paralysed on the right side of his body and was unable to speak. After admission to hospital on 14th April, 2012, and following extensive testing, the doctors were satisfied that the plaintiff did not have a stroke as such, but had a "pseudo stroke", which is where a person has stroke like symptoms, but there is no organic cause for same. They were of the opinion that the source of his symptoms was psychological in nature.

4. The plaintiff alleges that he has been rendered unfit for his pre-accident employment as a butcher, and remains so disabled to the present time. His claim in respect of loss of earnings amounts to €123,521.91.

5. While the defence filed on behalf of the defendants put all matters in issue, during the course of the hearing the defendants conceded that they were responsible for the negligence of the plaintiff's fellow employee in causing the massage to strike the plaintiff on the back. However, it was the defendants' case that the massage was empty at the time of the accident and was not full as alleged by the plaintiff. The defendants also denied the injuries alleged by the plaintiff and the claim for special damages was also denied.

6. In the circumstances, the following questions arise for determination by this court:

- (a) Was the massage which struck the plaintiff, full of meat or empty at the time of the accident?
- (b) What personal injuries were suffered by the plaintiff as a result of the accident?
- (c) What damages is the plaintiff entitled to in respect of the personal injuries suffered in the accident and in respect of the items of special damage claimed by the plaintiff to have arisen as a result of the accident?

The accident – was the massage full or empty?

7. The plaintiff stated that at the time of the accident, he was working as a boner for the defendants at their meat processing plant at Shillelagh, Co. Wicklow. He had been working for the defendants since 2006.

8. The accident occurred at approximately 13.30 hours on 24th March, 2011. The plaintiff stated that at the time of the accident he was checking a docket for a full massage, prior to putting it into the meat cutting machine. He was standing at the massage with his arms resting on the top of the massage and was looking at the docket. He stated that suddenly and without warning, he was struck a blow to the right side of his back by a full massage, which was being pushed by one of his fellow employees.

9. The plaintiff was adamant that he had been struck by a massage which was full of meat. The plaintiff stated that just prior to the accident he was standing in the position as shown in photograph number 4 of the booklet of photographs prepared by Mr. Alan Conlon, Consulting Engineer. The plaintiff stated that as a result of being hit by the massage, he was extremely shocked and experienced severe pain in his back. He was prevented from falling onto the ground as his hands were on the massage which was in front of him.

10. The plaintiff stated that after a short period, he was brought by the first aider from the factory floor to see the nurse on duty in

the Occupational Health Department. There he was seen by Ms. Fiona O'Connor, who was on duty at that time. He said that he explained to her how the accident had occurred. He told her that he had been hit in the back by a full massager. In support of his contention, the plaintiff pointed to the note which had been taken by Ms. O'Connor at the time and which had been made available to the plaintiff on discovery. The relevant portions of her note were in the following terms:-

"24th/3/11, 14.30, brought to OHD by first aider Sean Murphy. Incident in boning hall – Miroslav hit in back by rolling massager weight – 650 kg. ...I attended boning hall to look at massages and incident location. Miroslav standing at massage locked into place – full massager (650 kg) rolled into Miroslav's back – his hands were on massager so this stopped his front from hitting off stationary massager."

11. In her evidence, Ms. O'Connor stated that to the best of her recollection, she got the information that the massager in question was full of meat, from the first aider and from the plaintiff, when he attended at the Occupational Health Department. She stated that after she had examined the plaintiff, he went to the canteen to rest and have a cup of tea. She went down to the boning hall and got descriptions of the accident and looked at the massagers.

12. Ms. O'Connor stated that having carried out her investigation into the accident she sent an email at 16.59 hours on 24th March, 2011 to two senior officers in the Kerry Foods Group in Co. Kerry. In that email she stated as follows:-

"Medical findings;

Miroslav attended the Occupational Health Department this p.m. following an incident at work in the boning hall. Miroslav was hit in the back by a rolling massager which was full. Felt weak after the incident. Attended the Occupational Health Department with first aider. Exam all vital signs normal, no bruising evident, feeling stiff and sore after incident, advice given.

Return to work. Advised to re attend the Occupational Health Department before going home this p.m. Attended, nil new. Advice given.

Recommendations;

Lighter duties for tomorrow as agreed with team leader. Review in Occupational Health Department if required."

13. Evidence was also given by Mr. Christopher Kelly, who was a supervisor in the plant at the time of the accident. He filled in an accident report form in relation to the plaintiff's accident. In the section of the report under the heading "Details of Accident/Incident and Injury", he had given the following description of the accident: "Miro was standing at gunther and was hit in the back by a full massager. 500 kg weight. The force of the massager pushed Miro forward."

14. Mr. Kelly stated that the description of the accident as put into the accident report form, was what he had been told by the plaintiff. He stated that he obtained statements from the other employee, Ivan Jordan, and from the first aider, Sean Murphy, and attached these to the accident report form.

15. The co-worker, who had been manoeuvring the massager, which struck the plaintiff on the back, was Mr. Ivan Jordan. He gave a statement to Mr. Kelly in relation to the circumstances of the accident. He did not state in the statement whether the massager was full or empty at the time of the incident. That statement was in the following terms:

"Ivan was working on line one (Topside line). Miro had his back to Ivan at Gunther and Ivan had his back to Miro. Ivan was putting out a massager and it got away due to the slope on the floor. Miro got caught between Ivan's massager and his own. Miro was doubled over on the floor. Ivan helped Miro up and Miro said he was ok after a while. Miro kept working for a while and then felt unwell."

16. In his evidence, Mr. Jordan stated that he had gone to the wash-room to obtain some clean massagers which were needed on the factory floor. He stated that he obtained two massagers from the wash-room and was pushing one and pulling the other. They were both empty. He stated that it simply would not have been possible to manoeuvre two massagers at the one time if they were full of meat. He stated that while he was putting the empty massagers into place, the first one rolled away from him and struck the plaintiff on the back. He heard a shout and looked over and then went over and saw that it had struck the plaintiff. Mr. Jordan was adamant that the massager which struck the plaintiff had been empty.

17. In cross examination, the witness accepted that the note which had been made immediately after the accident by Ms. O'Connor, stated that the massager had been full and that it weighed approximately 650 kg. He stated that while he accepted that that was what had been stated by the nurse in her note, his account was that the massager had been empty.

18. In relation to his own statement, he stated that this had been taken down by Mr. Chris Kelly straight after the accident. He accepted that it did not state whether the massager was full or empty. He accepted that the accident report form which had been filled in by Mr. Kelly stated that the plaintiff had been hit in the back by a "full massager. 500 kg weight". He stated that Mr. Kelly had completed that form with the plaintiff himself. He accepted that in the ARF Mr. Kelly had categorised the incident as being "serious" in nature. It was put to the witness that the documentation supported the plaintiff's account that he had been hit by a full massager. The witness stated that all he could say, was that it was an empty massager. He stated that he reported the accident straight after he got some ice for the plaintiff. He was never asked if the massager was full or empty.

19. In re-examination, the witness stated that he did not speak to Nurse O'Connor in relation to the incident. He could not recall if he spoke to her on the factory floor. He accepted that the massagers around the plaintiff were full. He stated that he had collected the massagers from the wash-room and there were no full massagers there.

20. When the plaintiff proposed calling Mr. Alan Conlon, Consulting Engineer, the defendants' counsel indicated that, with the exception of the issue as to whether the massager was full or empty, the defendants did not contest liability. It was accepted that the plaintiff should not have been hit in the back by a massager. Mr. Conlon's report was handed in and the court was told that it could have regard to the content of his report and the photographs attached thereto.

21. In his report, Mr. Conlon stated that the weight of an empty massager was 170 kg, while the total weight of a full massager was circa 694.5 kg. The massager is 1.102 metres high. The outside diameter of the top of the container is 1.02 metres. The internal diameter of the container was approximately 940 mm. The bowl was approximately 940 mm deep. The container was moved by virtue

of 360° nylon swivel castors each with a diameter of around 200 mm x 50 mm thick. The top rim projects out at approximately 32 mm. At the bottom of the container there was a projecting metal plate, which extended out 65 mm. The height to the top of the plate was 350 mm.

Conclusions

22. I accept that the plaintiff has done his best to give a truthful account of the accident. I accept that he genuinely believed that he had been hit by a full massage. He has been consistent in the account that he gave after the accident to both the nurse, Ms. O'Connor, and to the supervisor, Mr. Kelly.

23. I am satisfied that the statements contained in the nurse's note and in Mr. Kelly's ARF, were each based on the account which had been given to them by the plaintiff.

24. However, I prefer the evidence of Mr. Jordan. He struck me as being a truthful witness. As liability for causation of the accident had been conceded, there was no incentive for him to give any false evidence as to the nature of the container which hit the plaintiff.

25. I accept Mr. Jordan's evidence that he had obtained two massages from the wash-room. I accept his statement that all massages coming from the wash-room were by definition, empty, as they had just been put through the washing process. Furthermore, I accept his evidence that he was moving two massages at the same time, by pushing one and pulling the other. Given the weight of full massages at 694.5 kg, it simply would not have been possible for Mr. Jordan to manoeuvre two full massages at the one time.

26. I prefer the evidence of Mr. Jordan that he was manoeuvring two massages and that these were empty, at the time that one of them struck the plaintiff in the back. Accordingly, I hold that the plaintiff was struck by an empty massage. This may not be all that significant, as an empty massage was still of considerable weight, weighing approximately 170 kg.

The Plaintiff's Injuries

27. On the day of the accident, the plaintiff was seen in the Occupational Health Department at the defendant's factory, by Nurse Fiona O'Connor. She carried out an examination of him and recommended that he go down to the canteen and have a cup of tea. It appears that the plaintiff did that and was able to see out his work shift that day. Thereafter, he was out of work for a period of one week, which he took as annual leave.

28. The plaintiff stated that when he returned to work he was given light duties most of the time. He stated that the nurse had told him that he had a muscle sprain in his back and she advised him to take Nurofen and apply a topical gel. He stated that this did not help. He stated that he returned to the nurse, who told him that as it was a muscle problem, it would take some time to get back to normal. The next attendance noted at the OHD was on 19th April, 2011, when the plaintiff was complaining of right sided lower back pain, which he attributed to the incident at work on 24th March, 2011. The plaintiff stated that over the weeks which followed, the pain got worse. He stated that he told the nurse at work, but she did not really listen to his complaints.

29. On 27th April, 2011, the plaintiff almost fell due to the fact that his right leg had given way beneath him. He stated that his right leg had felt unstable a number of times. His supervisor told him to go and see the company doctor. The plaintiff said that he had to go to hospital. He stated that he was very stressed at that time, as the company was not paying any attention to him. When his leg was unstable, he did not actually fall to the ground but felt weakness in his leg and had to hold himself up on the conveyor line.

30. On that occasion, his team leader, Mr. Sean Murphy, brought him to see the nurse. He told her that he had to go to hospital. A taxi was arranged and he was brought to the VHI Swiftcare Clinic. He told the doctor at the clinic what had happened. He also showed him where he had been hit in the back by the massage. The plaintiff said that the doctor told him that there was nothing broken, but that his muscles had been extremely tightened. He recommended physiotherapy and also told him that if that did not help, he may need an MRI scan. He was given an injection to relax his muscles. After that incident, the plaintiff was out of work for two days and took a further two days as annual leave. The plaintiff stated that he felt better after having the injection.

31. When the plaintiff returned to work, he saw the company doctor, Dr. Deirdre Gleeson. There is some controversy about what happened at that consultation. The plaintiff stated that he told the doctor what he had been told in the Swiftcare Clinic. In particular, he stated that he had been advised by the doctor to have an MRI scan. The plaintiff initially stated that Dr. Gleeson laughed at this suggestion and said that if he wanted an MRI scan, he would have to pay for it himself. Later, in the course of cross examination, when it was put to him that Dr. Gleeson would deny that she ever laughed at him, the plaintiff changed his story somewhat and said that she did not laugh, but was smiling when she told him that he would have to pay for the MRI scan himself. The plaintiff stated that the doctor arranged for him to have physiotherapy treatment, of which he had one session per week for a period of four weeks in total. After the physiotherapy treatment, he was back to doing his normal work duties, but if he had pain, he would be given light work.

32. In the course of her evidence, Dr. Gleeson stated that she always treated patients with politeness and respect. She stated that she had never laughed at a patient. She stated that she did not laugh at the plaintiff when he said that he had been advised to have an MRI scan. She stated that she may have said that an MRI scan was not clinically indicated.

33. In the discovery documentation, Dr. Gleeson's note dated 3rd May, 2011, stated that the plaintiff was employed as a boner and the reason for his referral to the doctor was to assess his fitness for work. The relevant portion of her note read as follows:-

"Medical findings: complaining of back pain and leg symptoms, relates to an incident at work 3/52 ago. Seen at VHI Clinic – discharged, normal x-ray and physiotherapy x 4. Ex-boxer, high BMI.

Recommendations: fit for work. No evidence of serious back injury. Non-specific back pain. Expect full recovery with physiotherapy. No follow up required."

34. The significance of this episode lies in the fact that the plaintiff maintains that he was caused to suffer severe stress and anxiety after the accident, due to the fact that the medical personnel at the defendants' factory and the employers in general, were not taking his complaints seriously. It will be seen later on, that this is alleged by the plaintiff to have caused him severe stress and anxiety, which resulted in a physical manifestation of symptoms in the following year.

35. The discharge summary which had been issued by the Swiftcare Clinic noted that the x-ray showed a loss of lordosis, but no bony injury was noted. The plaintiff was advised to rest for 48 hours and to take pain relieving medication. He was to attend the physiotherapist at work the following week.

36. Having observed Dr. Gleeson give evidence, I am satisfied that she is a diligent and conscientious doctor, who provided an efficient service for the defendants. While the plaintiff stated initially that the doctor had laughed at him, he drew back from that assertion in cross examination and said that she had been smiling when she told him that if she wanted an MRI scan, he would have to pay for it himself. Dr. Gleeson stated that she may have told him that an MRI scan was not clinically indicated at that time, having regard to the discharge summary which had been issued by the Swiftcare Clinic. I am satisfied that the doctor did not act in any way inappropriately at that consultation.

37. It would appear that in or about this time, while the plaintiff was continuing to work at the factory, he was also able to participate in his hobby of course fishing. On the website of Fishing Ireland, there were a number of references to the plaintiff during this period. On 31st March, 2011, the plaintiff and his wife had "*cooked up a storm*" for children, who had been taking part in an angling competition. The plaintiff admitted in evidence that he had obtained and erected a barbeque and had also erected a marquee measuring 3m x 3m over it. He stated that he had prepared the food and cooked it with his partner. On 26th May, 2011, the website noted that he had obtained fourth place in a competition. On 2nd June, 2011, he was photographed with a competitor who had won a prize at a fishing competition. On 23rd June, 2011, he had finished in third place in another fishing competition. The plaintiff admitted that he had participated in the competitions which were shown on the website.

38. In terms of work, it seems that the plaintiff was able to continue with his work until January 2012. With the exception of the instances outlined above, he does not appear to have been reviewed at the OHD during this period. The plaintiff stated that he stopped working at the end of January 2012, due to severe pain in his back. He first attended with his solicitor on 3rd or 9th February, 2012. He first saw his GP, Dr. Mansour, on 9th February, 2012. The initial letter threatening proceedings was sent by his solicitor on 14th February, 2012.

39. From the receipts submitted to vouch the claim for special damages, it appears that the plaintiff saw Dr. Perry on 23rd January, 2012, and 27th January, 2012. However, this doctor did not give evidence and no report was submitted from her. It may be that she was providing locum services in place of Dr. Gleeson. In any event, the plaintiff subsequently attended Dr. Annas Mansour, his own GP.

40. In his medical report, Dr. Mansour noted that the plaintiff had attended him in February 2012. He was complaining of lower back pain, stress, anxiety and urinary incontinence. The doctor referred the plaintiff for an urgent MRI scan of his thoracic and lumbar spine. This was carried out on 18th February, 2012. According to Dr. Sharif, who subsequently reviewed the plaintiff, this scan showed no bony or soft tissue oedema. There was no disc prolapse. There was mild degeneration at T10 – T11 level but no major disc prolapse and no pressure on the nerve roots or thecal sac. It is not clear what treatment, if any, was directed by Dr. Mansour at this time. It appears that the plaintiff attended with his GP on nine occasions in 2012, being: 9th February, 14th February, 20th February, 12th March, 1st May, 24th May, 5th October, 12th November and 12th December. He also saw Dr. Mansour on three occasions in the following year being: 5th March, 10th June and 4th July, 2013. From the receipts submitted, it appears that he had physiotherapy treatment on the following dates in 2012: 23rd February, 28th February, 6th March, 13th March, 20th March, 27th March, 30th March, 3rd April and 10th April, 2012.

41. On 4th April, 2012, the plaintiff was reviewed by Dr. Thomas Roux at the VHI Swiftcare clinic. The plaintiff complained of right chest pain, lower back pain, right sciatica pain extending to his heel, and bilateral groin discomfort. He was unable to sit for more than 20 minutes. He had had six episodes of urinary incontinence in the previous few months. Examination revealed tenderness at T6 – T8 and at L1 – L3. He had a 10 cm loss of sensation around T6. He had limitation of movement of his lower back. He had pain in his chest when lying flat. He had decreased power in his right ankle and knee. He had decreased sensation on the right side at L5 – S2.

42. Dr. Roux understood that the plaintiff had had an MRI scan in February 2012, but he had not seen it. He recommended that if an MRI scan of his thoracic and lumbar spine had not been taken, it should be done urgently. Depending on the findings on the scan, a referral to an orthopaedic specialist or to a neurosurgeon might be necessary.

43. On 14th April, 2012, the plaintiff presented to St. Luke's Hospital in Kilkenny complaining of right sided arm and leg weakness and loss of speech. He was admitted to the Acute Stroke Unit and came under the care of Dr. Rory McGovern, Consultant Physician. This doctor gave evidence to the court and stated that the plaintiff had a number of CT scans of his brain, which showed no evidence of recent stroke. Other tests, such as ultrasound and ECG, were normal.

44. The plaintiff remained in hospital until 20th April, 2012. During this time he was examined by senior medical doctors, nursed by experienced nurses on the stroke unit and had stroke assessment with both the physiotherapy and occupational therapy staff. Dr. McGovern stated that the consensus diagnosis was that the plaintiff did not have a stroke, but that he had a pseudo-stroke. This meant that the plaintiff's symptoms were not caused by stroke related pathology, but were caused by an underlying psychological cause.

45. Dr. McGovern stated that while the plaintiff's stroke like symptoms were not based on an organic pathology, it was well recognised that a person could have symptoms, which did not relate to an organic pathology, but were nevertheless real to the plaintiff. In these circumstances, they looked for non-medical triggers. In this case, they thought that the plaintiff's symptoms were caused by an underlying psychological problem. He stated that such symptoms could be caused by underlying stressful life events.

46. Dr. McGovern stated that the plaintiff's main symptoms were speech loss and right sided weakness. The pattern of his speech loss was unusual. He was noted to be talking in the A&E Department when he arrived on 14th April, 2012, however, he was unable to speak when the doctors came to examine him later. On 15th April, 2012, he was unable to speak, yet on two occasions said "*thank you*" and "*no*" to nursing staff. On 16th April, he was noted to be talking in Polish or Slovakian to his girlfriend, while during the time 16th April to 20th April, he communicated to all hospital staff by typing out texts in English on his mobile phone.

47. Dr. McGovern stated that the plaintiff's other deficit was right arm and leg weakness. There was no right facial weakness, which one would have expected in organic pathological stroke disease. On admission, the plaintiff had been unable to move his right arm or leg, however, it was noted on 15th April, and 16th April that he used his right hand to feed himself and also to use the urinal. He was reviewed by the physiotherapist in the gym and though he was unable to flex or extend his hand when requested by the physiotherapists, they noted that in performing upper limb exercises, he was moving his hand muscles. His right sided weakness gradually improved during his stay in hospital and by 19th April, he was self-caring. On discharge on 20th April, 2012, he was mobile with minimal assistance.

48. Having regard to these factors, Dr. McGovern formed the opinion that the plaintiff had suffered a pseudo-stroke, which was a recognised diagnosis. He stated that while they were not common, there would be five per one hundred thousand patients. He stated that he might see one perhaps every eighteen months. This would be for strokes which had a non-organic cause. In such cases,

there was often a psychiatric background. It was necessary to support patients in a different way. They would need care to deal with the psychological stresses. The plaintiff had told him that he was out of work due to an accident. He was not happy being out of work and this was causing him considerable stress. Dr. McGovern was of opinion that it was possible that the symptoms were caused by the underlying stressors as alluded to by the plaintiff to staff, in particular, his being out of work. The doctor stated that the plaintiff had been cooperative during his stay in hospital and had agreed to all the relevant tests. It was put to him that people who are malingering or feigning injury, could exhibit such symptoms. While that was possible, he stated that the plaintiff was very open about the stress in his life at that time. Dr. McGovern stated that he did not think that the plaintiff was malingering.

49. In cross examination, Dr. McGovern stated that if a person has a stroke, they would normally improve over time. If they are talking initially and then are unable to talk, this could be due to a bleed, which can cause varying symptoms. However, there was no bleed in this case. Thus, the inability to talk would indicate a pseudo-stroke. The fact that the plaintiff was able to say some words, such as "thank you" and "no", tended to indicate that it was a non-organic stroke. Dr. McGovern stated that at one time the plaintiff had been talking to his partner in Polish or Slovakian. He stated that it was well recognised that after a stroke, a person can go back to their original language. However, this was not the case here where the plaintiff talked in English and then subsequently in Slovakian.

50. It was put to the witness that if a person gave contradictory symptoms, this could be due to malingering. In this case, the plaintiff could not move his hand when asked, but did move it intermittently thereafter. Dr. McGovern stated that this could be a conversion disorder, where the plaintiff genuinely thinks that he is unable to move his arm in a particular way, but when he is asked to do a reflex action, such as by catching a set of keys that is thrown to him, he may move the arm instinctively. Or in the course of a day, he could instinctively pick up a cup of tea or other such object. He stated that such tests were not primarily designed to see whether a person was malingering or not, but to determine whether a stroke had an organic basis. They were satisfied by the time of discharge on 20th April, 2012, that the symptoms were as a result of a non-organic stroke. On discharge, the plaintiff was noted to be "mobilising with minimal assistance", which meant that there would be a nurse standing beside or behind him to ensure that he did not overbalance.

51. The notes also recorded that the plaintiff was safe on the stairs when moving slowly. It was noted that he was for discharge and to be followed up by physiotherapy to be arranged. The doctor stated that on discharge, the plaintiff had not fully recovered, he had difficulty walking and his speech had not returned to normal. However, by that time, they were satisfied that these stroke like symptoms were non-organic in origin. In these circumstances, they wanted to demedicalise the situation and he would need follow up in the outpatients' department to deal with the psychological issues. That would be a matter for a psychiatrist.

52. The plaintiff stated that he was unable to speak normally for a period of approximately nine weeks. He made a complete recovery from his symptoms over a number of months. It appears that the plaintiff then went to Slovakia to obtain further medical treatment. The date on which he left for Slovakia is not clear. There is reference to him being detained in hospital there for two weeks from 27th May, 2012, to 8th June, 2012. Elsewhere in evidence, the date of departure was given as 14th June, 2012. In any event, the plaintiff states that he remained in Slovakia for a total of seven months. During this time, he was treated first in hospital and thereafter in the outpatients' department. He received treatment from an orthopaedic surgeon, a neurologist, a psychiatrist, a neurosurgeon, a psychologist, an occupational therapist, a speech and language therapist and a physiotherapist.

53. On 4th June, 2012, the plaintiff had a further MRI scan of his thoracic spine. Having reviewed this film, Mr. Sharif noted that it showed degenerative changes around T6 down to T10 level. There was no disc prolapse. There was mild kyphosis at the lower thoracic vertebrae. It appears that as a result of the findings on the MRI scan, the orthopaedic surgeon in Slovakia recommended that the plaintiff should have facet joint blocks. He had three sessions of injection treatment to the facet joints. This provided some relief of a temporary nature in respect of his lower back pain. From the flight receipts submitted, it would appear that the plaintiff probably returned to Ireland on or about 4th October, 2012.

54. The plaintiff was reviewed by Dr. Mansour on 5th March, 2013, some two years post-accident. At that time, he complained of lower and upper back pain, low mood, lack of sleep and anxiety. On examination, Dr. Mansour noted that in respect of his lower back, the plaintiff could not bend fully, he had tender paravertebral muscles at L3-S1, power and tone were slightly decreased in both legs and straight leg raising test was decreased in both legs. In respect of his upper back, he was tender in the paravertebral muscles between T6-T11. Neurologically, he was stable, alert, conscious and speech perfect. He was noted to be significantly overweight. Before the accident, his weight was 104kg and he exercised regularly. After the accident, when his fitness was rapidly limited and he was on various medications, his body weight went up to 135kg. However, he had managed to reduce his body weight by 10kg in the previous three months. The doctor was of opinion that he would need to improve his psychological condition first, to get back to his normal body weight. Psychologically, he had low mood, poor sleep and a high level of anxiety.

55. Dr. Mansour was of opinion that the plaintiff needed to continue with psychological treatment. In addition, he needed to continue with the orthopaedic treatment in the form of facet joint blocks. He noted that the plaintiff would undoubtedly benefit from physiotherapy and regular exercise. In terms of a prognosis, he was hopeful that a full recovery would be made. However, the plaintiff remained undergoing psychological treatment, as well as orthopaedic treatment. Whether a full recovery would be reached was dependent upon medical treatment which was in progress. He did not expect a recovery earlier than six to twelve months from that date. In the opinion section of his report, he stated as follows:-

"This patient has suffered from two different types of injuries. The main problem appeared to be with his back pain and relevant physical injuries. His other injuries are of a psychological nature. It is believed that his psychological injuries have been caused by accumulated stress after the injury at work. This has been clearly expressed in the report of Mgr Maria Carchova (Clinical Psychologist in Central Military Hospital in Slovakia)."

56. The plaintiff was seen by Mr. Imran Sharif, Consultant Orthopaedic Surgeon, on 22nd April, 2013, some three years after the accident. The plaintiff stated that the back pain did improve after the injections, but the pain was recurring at the time of the examination. He had not been able to return to work. The pain had stopped going down his legs after the first injection. Examination of his lumbar spine revealed a restricted range of movement. He complained of pain on flexion. He could bring the tips of his fingers to just below his knee joints and there was tenderness noted in the right SI joint area. Examination of his thoracic spine showed that there was tenderness over the T7 - T8, T8 - T9 and T9 - T10 facet joints on the right side. There was no other neurological deficit. In his report, Mr. Sharif noted that the plaintiff had been assaulted approximately ten years previously when he had suffered an injury to his head. However, he did not suffer any injury to his back before the accident. The plaintiff stated that his personal and social life had been markedly affected since the accident. He had not been able to return to his pre-accident employment. He could not sit or walk for long periods of time. He could not do any heavy work. He had put on a significant amount of weight since the accident. In the previous three months he had managed to reduce his weight by 10kg. He felt depressed and felt a lot of stress and had been put on antidepressant medication for that condition.

57. The plaintiff told Mr. Sharif that driving for long distances caused pain. He would have to break any long journey so as to ease off the pain. He was not able to lift any heavy objects and even lifting shopping bags was painful for his back. The only thing that gave him relief were the injections, which he had received in Slovakia. He complained of a clicking sensation in his back and, when this happened, the pain eased off. He tried to do exercises on the treadmill, but could only last for about seven to eight minutes; after that he had to stop.
58. Mr. Sharif was of opinion that the plaintiff had suffered an injury to his back. Clinically the signs and symptoms were suggestive of a strain to the facet joints and the SI joint ligament on the right side. He noted that both MRI scans showed degenerative changes from T6 down to T10 level which were longstanding and were not caused by the accident. There was no disc prolapse, nor was there any pressure on the nerve roots. He had developed some incontinence with some mini-stroke symptoms on the right side, for which he was seen in Kilkenny Hospital and was told that this was related to stress. He noted that the plaintiff felt depressed since the accident and had been placed on antidepressant medication. He advised that a report from a psychiatrist should be obtained.
59. Mr. Sharif noted that the plaintiff remained symptomatic and only got temporary relief from physiotherapy. Because of this, he had had facet joint blocks in Slovakia, which had given him good relief from his symptoms, but this had been temporary and the pain was recurring. The doctor noted that the degenerative changes that were seen on the MRI scans were not caused by the accident, but had been flared up because of the injury. He felt that the treatment that the plaintiff had had was the best choice of treatment. He would need to get further facet joint blocks, which would hopefully control his symptoms. He felt that the plaintiff was not fit to return to the work that he had been doing before the accident. He considered that the plaintiff was only fit to do light work, as his back symptoms could flair up easily if he returned to heavy work. He was of opinion that the plaintiff would probably remain symptomatic for a long time, but should improve with the help of facet joint blocks. He stated that consideration should be given to having him seen by an occupational physician regarding his ability to return to light work.
60. In the course of cross examination, the plaintiff was asked whether he had engaged in any form of work since the time of the accident. He stated that, with the exception of a period spent working as a chef in 2014/2015, he had not worked. However, when it was put to him that entries on his Facebook showed that he had been working as an agent for a company based in Russia which sold products that were designed to be added to petrol so as to reduce excessive remissions and improve engine performance; the plaintiff accepted that that was true. He accepted that on the Facebook page, he had been described as an "*Independent Distributor and Global Manager*" and operated under the trade name, "*Green Ireland FFI*". The plaintiff stated that during 2013, he had developed an interest in marketing. He had been told of an opportunity to act as an agent for this Russian company in Ireland. In fact, he was not an agent or distributor in the usual sense, but instead he would purchase the product from the Russian company and would then sell on the product at a profit to Irish customers. The plaintiff stated that he had taken up this activity, because he was somewhat bored of remaining idle at home. He stated that he had given himself the title "*Independent Distributor and Global Manager*", so that customers in Ireland would be impressed by his status in the company and would purchase the products. He stated that this venture did not turn out to be a profitable one. He had spent approximately €1,000 purchasing products from the parent company in Russia, but found that there was very limited interest in the products in Ireland. Eventually, in order to limit his losses, he had had to sell the product at cost price. He stated that in total he made approximately €400/€500 as profit.
61. The plaintiff accepted that he had attended a three day conference in Kiev in September 2013, where he had learnt more about the products and had picked up marketing skills. The plaintiff stated that he had undertaken this activity for approximately two and a half years from 2011 and into part of 2013. He stated that the company had been dissolved a short time after the conference in September 2013.
62. It appears that the plaintiff saw his GP on three occasions during 2013 and saw Mr. Sharif on one occasion. He did not have any treatment in the form of physiotherapy or facet joint blocks during 2013.
63. On 23rd May, 2014, the plaintiff took up part time employment, working as a chef in a restaurant in Kenmare. He was employed to work three nights per week from 17:00 to 22:00hrs. He was paid the weekly sum of €150, which was paid in cash. During this time, he was also receiving social welfare payments in the sum of €107 per week. This gave the plaintiff combined earnings at that time of €257 per week.
64. The plaintiff stated that while in Kenmare, he rented one room from a friend and would sometimes stay there for two to three weeks at a time. He stayed there because the restaurant owner had told him that he would give him full time work. However, he never followed through on this promise. The plaintiff remained working at this job until 8th July, 2015. It appears that he gave up this job when it became apparent that he was not going to be given full time hours and due to the fact that he found the accommodation and travel expenses, too expensive. He stated that during his free time, he sometimes fished on a lake which was nearby. This was just a hobby for him. Any fish he caught, he released back into the lake.
65. The plaintiff was reviewed by Mr. Sharif on 10th November, 2014, some three years and eight months post accident. In his report, he stated that since he had last seen the plaintiff, he had had more facet joint block injections which had given him good, but temporary, relief from his symptoms. I am not sure that this statement is correct. It appears that the only facet joint blocks that were administered to the plaintiff were given when he was attending doctors in Slovakia in 2012. This was prior to Mr. Sharif's first examination of the plaintiff on 22nd April, 2013. There was no evidence that the plaintiff had received any further facet joint blocks on his return to Ireland.
66. The plaintiff stated to Mr. Sharif that he felt 50% to 60% improved since the accident. He told Mr. Sharif that he had started working as a chef about five months prior to the examination. Mr. Sharif thought that this was much better for him, because as a chef, he did not have to lift anything heavy. He was able to cope with the demands of this work much better. He told Mr. Sharif that two to three times a month, the pain would go down into his legs, but this was improving gradually. However, he continued to have problems with his middle back. He felt uncomfortable when sitting for long periods.
67. On examination, it was noted that the plaintiff walked without a limp. In relation to his lumbosacral spine, his range of movements were full. There was no tenderness in the lower back. Straight leg raising bilaterally was normal and there was no neurological deficit. The plaintiff told Mr. Sharif that that was one of his good days.
68. In relation to his thoracic spine, he was tender on the T8-T9 and T9-T10 facet joints on the right side. Other than that, there was no neurological deficit.
69. Mr. Sharif noted that compared to his last examination, the plaintiff had improved considerably. He was of opinion that the symptoms in the facet joints had improved with the help of injections. These gave him about three to four months relief, which Mr. Sharif thought was a good outcome from the treatment. Mr. Sharif recommended that the plaintiff should continue with his

employment as a chef, because if he were to return to heavy work then his symptoms may get worse and it would take much longer to recover fully.

70. Mr. Sharif was further of the opinion that the plaintiff's symptoms would gradually improve and settle down but this may take some time to resolve. He noted that the last injection that the plaintiff had was in Slovakia, which gave him good relief and since then he had had no other treatment. He noted that the plaintiff tries to avoid taking painkillers, but would do so if the pain was bad. This happened a few times a month. He stated that the plaintiff required further physiotherapy treatment. He noted that at three years post injury, the plaintiff continued to be symptomatic, but was much improved. He recommended a further course of physiotherapy and a referral to a local pain clinic, where he could get injections to the facet joints. This would hopefully ease off his symptoms, otherwise he would be symptomatic for a longer period. Mr. Sharif stated that if the pain settled, one could slowly build up one's level of activity at work.

71. It was put to Mr. Sharif that there was an error in his first report wherein he had stated that the plaintiff had been assaulted ten years earlier and had received a head injury. In fact, it was the plaintiff's case that while working in Scotland, he had been kicked in the head by a cow. Mr. Sharif accepted that this could be an error, and stated that he was not really concerned with any head injury. His only concern was to rule out any previous back injury. He further stated that when seen in 2013, the plaintiff had said that he had had physiotherapy treatment but he could not afford to continue it. It was put to him that in 2011, the plaintiff's employer had sent him for four sessions of physiotherapy. Mr. Sharif accepted that. He also accepted that the plaintiff had had physiotherapy treatment while in Slovakia. He stated that when he had reviewed the plaintiff in 2014, he had obtained work as a part time chef. He got the impression that this was light work, but that the plaintiff did continue to have some pain.

72. In 2015, the plaintiff continued to work as a part time chef for the first seven months down to 10th July, 2015. He does not appear to have seen any doctor, or had any physiotherapy or other treatment during that year.

73. It does not appear that the plaintiff was seen by any doctor or received any other treatment in 2016. As to his present condition, the plaintiff stated that he had very poor sleep due to back pain. He stated that he did not tend to go out. He would stay at home. He stated that he could not do much fishing. Before the accident, he had done competitive fishing to a high standard, but does not do so any more. Prior to the accident, he was able to train seven times per week, now he is only able to go out twice per week. He stated that due to his injuries, his sexual relations with his wife had gone down greatly. He also used to be keen on photography as a hobby and had an amount of photographic equipment, but he was not able for that now, as he could not lift the equipment. He stated that he did feel a bit better at the present time. He does exercises in the morning and also goes swimming and walking. He stated that he had tried to get work, but was not attractive to employers due to his medical history and continuing symptoms. He stated that he had tried to get jobs in restaurants, but to no avail.

74. Evidence was given on behalf of the plaintiff by Ms. Katarina Timulakova, Senior Clinical Psychologist at St. Vincent's Hospital, Fairview, Dublin. She saw the plaintiff on one occasion on 3rd May, 2013. She took a detailed personal and medical history from him. She administered a number of tests relating to his mental state. She was of opinion that he had suffered moderate distress leading to anxiety, depression and somatization. These psychiatric difficulties could translate into physical symptoms such as the pseudo-stroke in 2012, which was consistent with her diagnosis. The behavioural examination showed that he was motivated and engaged with the tests. She felt that he was trying to be balanced. His mood was euthymic and optimistic but tearful.

75. She stated that it was her opinion that the plaintiff seemed to be trying to get back to work. She felt that his problems were genuine and that he was trying to get better.

76. Ms. Timulakova stated that initially his psychological functioning had been reasonably good, but after a while due to the pressure to return to work, he developed psychological problems, which was a new aspect. She felt that there was a psychogenic or somatic component to his presentation. She stated that the plaintiff may have a tendency to have psychiatric problems which would be expressed through physical symptoms such as the pseudo stroke. This was consistent with her diagnosis. The plaintiff felt that he was not being believed by his employers in relation to his injuries and was being rushed back to work. She recommended a collaborative approach to the question of his returning to work.

77. In cross examination, she stated that she had recommended counselling and the plaintiff had told her that he had had twelve sessions of counselling when in Slovakia. She did not know whether he had had any counselling sessions since he had seen her. She stated that in the period March 2011 until the end of 2011, the plaintiff had said to her that he was under pressure to return to work and as a result, his psychological functioning had worsened. It was put to her that he had in fact worked on throughout 2011 to the end of January 2012, so that there was no pressure on him to return to work, as he was actually at work during this period. She stated that she thought that the plaintiff had said that he was expected to do too much at work. When it was put to the witness that he had, in fact, been on light duties for much of this time, she stated that he must have meant that there was a fear of being asked to do full duties. She stated that she did not know specifically what the plaintiff meant by saying there were "*financial pressures to return to work*". She stated that the plaintiff's partner told her that he had been the butt of jokes at work. It was put to the witness that Mr. Curran of the defendant's company had met with the plaintiff with a view to getting him rehabilitated and this was in 2013, when he asked the plaintiff when he would return to work and the plaintiff said that he would do so in April 2013. The witness said that this tied in with what he had told her.

78. Ms. Timulakova stated that the plaintiff had said that he had seen a psychiatrist in Slovakia, who told him that he was psychiatrically stable. However, when he returned to Ireland he stated that the stress built up again. He stated that he had had problems with concentration and memory, however, his testing in these areas was satisfactory.

79. In her report, Ms. Timulakova stated that she was of opinion that the majority of his psychological problems were related to his accident at work, when his experience of constant and severe pain began. She stated that the build up of stress due to his problem with pain was common among people with psychogenic pain, where malingering is very often suspected or pain is considered to be manageable. This can lead to other people minimising the level of impact, a psychogenic pain can have on a person. She stated that the plaintiff was disappointed by the attitude of occupational health staff, who were satisfied that there was no sign of serious physical injury after the first incident and remained dealing with his situation in a standard way.

80. Ms. Timulakova stated that on the other hand, reports and notes from his occupational health professionals stated that there had been some previous problems with work related pain, fainting and back pain. There was an indication of appropriate dealing with his complaints by suggesting standard dealings with psychogenic pain such as physiotherapy, pain management and continuous working when deemed fit to work. The fact that his pain was increasing over time and not immediately after the first incident might suggest more of a psychogenic basis to the pain. The plaintiff's perception of the minimising of his pain and limitation at work, as well as perceived pressure to work to his pre-injury level, contributed to increasing distress.

81. Ms. Timulakova noted that the plaintiff had showed long standing interest in butchery work, which he had pursued since completing secondary school. He also appeared to have genuine problems with the experience of pain and attempts to get help. In this regard, he had attended all appointments by his occupational health team, his own GP and specialist treatments and had paid for a number of these treatments himself.

82. As to his psychological functioning at the time of the examination, Ms. Timulakova noted that the plaintiff had been struggling with his experiences of pain related to his accident and possibly exaggerated by scoliosis and mood problems. He was getting moderately distressed by perceived mistreatment at work in relation to co-workers and supervisors, his HR Manager, Ms. Darlington and Occupational Health Doctor, Dr. Gleeson, which resulted in phobic and depressive symptoms and somatization. His verbal and non-verbal abstract reasoning was within average range. The level of his global distress was over the clinical range and in moderate levels in the areas of depression and anxiety. At times, he had been having suicidal plans with the belief that he would be believed as to how much he was suffering if he went through with that plan, but he said that he would not carry out such plans. She advised that a collaborative plan of duties and gradual exposure to work should be encouraged. The plaintiff would also benefit from counselling as this would help him not to accumulate distress over time and would help encourage his return to work. She recommended sensitive dealing with the plaintiff to ensure respectful and objective evaluation of his needs and capabilities.

The Defendants' Medical Evidence

83. Evidence was given on behalf of the defendants by Dr. Deirdre Gleeson, who was the principal in the occupational health practice known as Medwise. She stated that her company was employed by the defendants to do a monthly clinic at the Shillelagh plant. Workers could also be sent to her offices in Naas, if an examination was needed between clinics. She stated that the plaintiff had attended with the Occupational Health Department at the factory on a number of occasions with varying complaints prior to the time of this accident. On 12th June, 2007, the plaintiff attended the OHD complaining of wrist pain. He was provided with alternative duties. He was offered physiotherapy, but declined this. On review in July 2007, the pain in his right arm had resolved.

84. In October 2007, the plaintiff attended the OHD complaining of pain in his sides. He was advised to attend his GP for further treatment. In November 2007, the plaintiff stated that he had suffered an injury to his head whilst at work and felt light headed and dizzy. He declined to see a doctor and was reviewed by the nurse the following day. His symptoms resolved. Also, in November 2007, the plaintiff attended complaining of pain in his left hand which was found to be bruised and swollen. This was caused by a piece of metal coming down onto his hand. He did not require transfer for medical care. The condition resolved.

85. In March 2008, the plaintiff attended the OHD saying that blood had splashed from meat into his mouth. He subsequently attended the factory GP, who advised that he had a viral infection in his mouth. He was given a tetanus injection and antibiotics. He was certified unfit for work due to an oral infection. Blood tests were negative, there was no further follow up required.

86. In May 2008, the plaintiff attended complaining of pain in his right shoulder. He was assessed by the occupational health physician. There was no particular precipitating factor for this shoulder pain. There was a good range of movement in the shoulder. He was redeployed from boning for one week and given medication. He advised the doctor on that occasion that he was involved in the sport of boxing.

87. In January 2009, the plaintiff suffered an episode of collapse in the workplace and was given medical attention by the occupational health advisor. He was transferred to the local hospital. Extensive investigations were carried out, but no cause for the collapse was determined. He subsequently attended the occupational health physician in Medwise and was deemed fit for work. A drug screen was negative at that time. He advised the doctor that he attended a gym two to three times per week. In December 2009, he attended the OHD complaining of pain in both wrists. He was referred for physiotherapy and the problem resolved.

88. In October 2010, he attended the OHD complaining of pain in his left hand. The issue resolved without treatment. In March 2011, he attended complaining of pain in his left hand and arm. He was facilitated with modified duties. On further review, his symptoms had resolved.

89. After the accident on 24th March, 2011, the plaintiff was reviewed on 1st March, 2012, when he was complaining of back pain which he related to the incident at work in March 2011. He apparently told the Occupational Health Nurse that an MRI scan had been reported as normal. He also complained of urinary incontinence which he believed was related to the back pain. He was taking medication. He had been on sick leave for a two week period and was not willing to consider modified duties. He had not been assessed since that time.

90. Dr. Gleeson stated that following the incident in March 2011, the plaintiff complained of back pain. There was no bruising or bony injury and he received appropriate treatment. Clinical examination was essentially normal and an MRI scan had been reported verbally as normal. There was no reason why he should not have made a full recovery from this episode. She noted that he was deemed fit for normal duties and returned to work for several months after the accident without raising any issues.

91. Dr. Gleeson noted that back pain had multifactorial aetiology with predisposing, precipitating and perpetuating factors, which may be further subdivided into biological, psychological and social influences. There was no objective clinical evidence from the occupational health notes or collateral medical reports to indicate that the plaintiff had a serious underlying spinal condition or that he sustained serious injury during the incident at work in March 2011. There was no evidence that this incident was responsible for his current complaints.

92. Dr. Gleeson stated that on the evidence before her at that time, she could see no medical reason why the plaintiff should not be at work, at least, performing modified duties, if not full normal duties. Evidence based medicine indicated that remaining active and engaged in normal activity including work, was beneficial for back pain. She recommended management intervention to resolve the situation and facilitate the plaintiff's return to the workplace.

93. In cross examination, Dr. Gleeson stated that in her report she had said that it may be necessary for the plaintiff to have independent orthopaedic opinion. She said that if something had shown up on the MRI scan, it may be necessary for the plaintiff to see an orthopaedic surgeon. She would defer to that consultant.

94. Finally, evidence was given by Dr. Donal Costigan, Consultant Neurologist, on behalf of the defendants. He noted that after an unspecified amount of time off, allegedly punctuated by frequent calls from the employer to ask when he was coming back, the plaintiff experienced a "stroke". He experienced the onset of weakness in the right extremities and loss of speech, which persisted for some nine weeks. Although the plaintiff told him that a number of scans of the head showed no evidence of a stroke, he seemed to believe that he had had a stroke or cerebral infarction. The plaintiff believed that this had been triggered by the stress engendered by phone calls from the employer as to when he was going to return to work. Dr. Costigan noted that whatever the nature of the

strange illness, the plaintiff pursued rehabilitation at some considerable personal expense, returning to Slovakia. He made what sounded like a complete recovery within a number of months. The Doctor was of the opinion that one could not exclude a major element of psychogenic illness and it was notable that the plaintiff stated he had collapsed in 2005 as a result of stress.

95. In summary, Dr. Costigan thought that it was unlikely that the plaintiff experienced a stroke with hemiplegia and aphasia occurring in view of his excellent recovery and his own statement that no abnormality had been detected on scans. It was possible that he had a new onset of meralgia paresthetica as a consequence of compressive force. This condition was rarely disabling to any degree and was often associated with obesity. It improves with time and he usually advised patients to avoid pressure over the inguinal region perhaps by changing from belts to braces and above all by weight loss.

96. In view of the fact that the plaintiff's medical experts accepted that he did not suffer a stroke, but suffered a pseudo-stroke, where there was no organic cause for these stroke like symptoms, but the cause was probably psychological in nature; in these circumstances, it is not necessary to deal with Dr. Costigan's report any further, as he is largely ad idem with the plaintiff's medical experts.

Conclusions

97. The plaintiff is almost 37 years of age. He suffered injury on 24th March, 2011, when he was struck in the back by an empty massage, which weighed some 170 kg. While it is not exactly clear as to how much time he took off work as a result of the accident, it seems that he was not out for more than a week. He returned to the OHD at the defendant's factory on 19th April, 2011, complaining of right lower back pain. On 27th April, 2011, he again attended at the Occupational Health Department, as a result of his leg giving way and causing him to almost fall to the ground. He was sent to the VHI Swiftcare Clinic, where X-rays revealed no boney injury. It appears that he may have missed two days from work as a result of this incident and took a further two days' annual leave. Thereafter, he appears to have been able for the demands of his work, as he continued to work in the factory until the end of January 2012.

98. It appears that the plaintiff had to stop work in January 2012 due to severe back pain. He stated that in the days and weeks following his leaving work, he was subjected to numerous phone calls from his employer inquiring as to when he would be fit to return to work.

99. A large part of the plaintiff's case is that he believed that his employer did not treat his injury seriously and that they put him under undue pressure to return to work. Furthermore, it is his belief that once he consulted with his solicitor, the attitude of the medical staff in the OHD and of his employers in general, changed considerably. I do not think that this accusation is well made as against the medical staff. They had treated him following the accident in March 2011 and treated him on the two further occasions that he had attended at the OHD subsequent to the accident. This treatment was given to him long before the time that he consulted with his solicitor on 3rd or 9th February, 2012, and also before the solicitor's letter which was dated 14th February 2012. Thus, the medical staff did not know that he had consulted a solicitor at the time that they gave him treatment, because he did not do that until the days after he left the factory.

100. The plaintiff suffered a distressing episode in April 2012, when he developed stroke like symptoms in the form of paralysis of his right side and loss of speech. Following extensive investigations in Kilkenny Hospital, he was diagnosed as having suffered a pseudo stroke. This meant that there was no organic cause for his symptoms, but that the origin of the symptoms had a psychological cause.

101. Ms. Timulakova, clinical psychologist, who examined the plaintiff on one occasion on 3rd May, 2013, was of opinion that the build up of stress due to the plaintiff's problem with pain and with what he perceived to be the unsympathetic attitude of the occupational health staff at the factory and of his employers in general, caused him to suffer the stroke-like symptoms. As such, they had a psychogenic cause. The plaintiff was detained in hospital from 14th April, 2012 to 20th April, 2012, while extensive investigations were carried out to discover the origin of his symptoms. At the conclusion of those investigations, the consultant, Dr. Rory McGovern, was of opinion that the cause of the plaintiff's symptoms was psychological in nature. It appears that the plaintiff was discharged from hospital when he could mobilise independently and was able to utter some words. The plaintiff states that it took nine weeks for his speech to recover fully. However, it appears that the plaintiff went on to make a full recovery from the stroke like symptoms within a number of months.

102. In the latter half of 2012, the plaintiff returned to Slovakia where he was treated by a multi-disciplinary team of specialists. He received three facet joint block injections during the course of his treatment in that country. The court notes that during 2012 and 2013, the plaintiff paid medical and travel expenses of approximately €2,696.17. The majority of these medical expenses arose during 2012. This indicates that the plaintiff was symptomatic during this period.

103. In 2013, the plaintiff remained out of work. However, since some time in 2011, he had been pursuing a line of business, acting as an agent or distributor for petroleum products made by a company in Russia. On his Facebook page, the plaintiff described himself as an *"Independent Distributor and Global Manager"* for Green Ireland FFI. This business was not an agency or distributorship in the usual form. Instead, the plaintiff would purchase the petroleum products from the manufacturer and would sell them on in Ireland at a profit. However, according to the plaintiff this was not a particularly successful venture. He stated that in all he purchased approximately €1,000 worth of products, but had to sell some of these at cost price due to lack of interest in the Irish market. He attended a conference in Kiev for three days in September 2013. He states that shortly after this, the company went into liquidation.

104. The plaintiff has maintained a claim for loss of earnings against the defendants for the entire period that he was out of work from 14th February, 2012, to 13th May, 2016. He did make some allowance for a period of 64 weeks, when he worked as a part time chef in Kenmare.

105. Any plaintiff is perfectly entitled to embark on a business venture if he so wishes. However, he is not entitled to work at that venture on his own account and, when the business venture does not turn out to be successful, seek to have his employer pay his wages for the entire period that he was engaged in that business venture. The court noted that in the course of cross examination, the plaintiff initially denied that he had undertaken any employment for the period that the loss of earnings was claimed, save for the period when he worked as a chef. It was only when the content of the Facebook pages were put to the plaintiff, that he admitted that he had set up in business on his own account for a portion of this period. As the plaintiff was engaged in this business throughout 2013, I am going to disallow the loss of earnings claim for this period.

106. In the period 25th April, 2014, to 10th July, 2015, the plaintiff was claiming Social Welfare payments and was also working part time as a chef in a restaurant in Kenmare. The fact that he was only working part time was not due to any incapacity on his part, but was due to the fact that the restaurant owner, while promising him full time hours, failed to deliver same. Accordingly, the court must conclude that the plaintiff was, in fact, fit for full time duties at that time.

107. While Mr. Sharif noted that the plaintiff was doing part time light work as a chef, it does not appear that he was told that, in fact, the plaintiff was looking for full time work as a chef. If a person is fit to carry out long hours as a chef in a busy kitchen, this does not appear to be all that different to the work which one would carry out as a butcher in a meat processing plant. In these circumstances, it seems to me that the court must conclude that the plaintiff was in fact physically fit for full time employment for the entirety of the year of 2014 and down into 2015. That his employment ceased in July 2015, was not due to any physical incapacity on his part, but appears to have been due to the fact that the plaintiff found it too expensive to travel to and reside in Kenmare, when he was only being given part time hours.

108. With the exception of seeing Mr. Sharif in November 2014 for the purposes of an up to date medical report, the plaintiff does not appear to have seen any other doctor, or had any treatment in 2014. It does not appear that he saw any doctor or received any treatment during 2015 or 2016. There is no evidence that he was unfit for his pre-accident employment during these periods. There is no evidence that the plaintiff tried to return to work as a butcher, either in the defendants' meat processing plant, or as a retail butcher in a shop. In these circumstances, I do not propose to allow any of the plaintiff's loss of earnings claim for 2014, 2015 or 2016.

109. In summary, I am satisfied that this relatively young man suffered an injury to the facet joints in his mid and lower back as a result of the accident on 24th March, 2011. It appears that apart from one very short period when he may have been unfit for work for a week after the initial accident and for four days subsequent to the incident on 27th April, 2011, he was able to continue with his normal work duties for a period of approximately ten months after the accident. On balance, I accept the plaintiff's evidence that he was obliged to give up his work at the end of January 2012, due to ongoing severe back pain. Not unreasonably, his employers were somewhat dismayed by this turn of events, as there was no evidence before them that the plaintiff had suffered a significant injury as a result of the accident in 2011. Given that he had worked on for ten months after the accident, it was not unreasonable for them to inquire of him as to when he would be fit to return to work.

110. I accept the plaintiff's evidence that as a result of the persistent inquiries by his employer, he was caused to suffer an increase in stress and anxiety. However, his assertion that the attitude of his employers and the nursing staff changed once he had consulted with a solicitor, is not well founded, due to the fact that the nursing treatment had been given to him before the solicitor's letter had been sent to the defendants. Nevertheless, I am satisfied that the plaintiff did suffer an unpleasant and distressing episode, when he developed stroke-like symptoms in April 2012. He was detained in hospital for six days while this was being investigated. Thereafter, he was discharged, having been assured that his symptoms were not due to any organic cause. He went on to make a full recovery within a number of months.

111. I accept the plaintiff's evidence that he returned to Slovakia in 2012 so that he could obtain intensive treatment in respect of all his injuries and ailments. Fortunately, the MRI scans which had been taken in Ireland and in Slovakia, while showing the existence of degenerative changes in his back, did not reveal any serious injury to the spine.

112. The plaintiff returned from Slovakia and set up in business on his own account. In the following year, he took up work as a part time chef in a restaurant. It is not clear what he has done since ceasing his work as a chef in July 2015. The plaintiff gave somewhat vague evidence that he would not be attractive to prospective employers, due to his medical history. However, he did not provide any firm evidence of having applied for particular jobs, whether as a butcher or otherwise. In circumstances where the plaintiff has never tried to go back to his pre-accident employment as a butcher, he has not satisfied the court that he is indeed unfit for his pre-accident employment.

113. I have found that it was reasonable for the plaintiff to return to Slovakia for intensive treatment for a seven month period in the latter part of 2012. Thereafter, it appears that the plaintiff was able to get on with his life reasonably well, as he was able to set up and pursue an independent line of business and does not appear to have received any appreciable medical treatment since the end of 2012.

114. In arriving at the quantum of damages in this case, I have had regard to the guidelines laid down by the Court of Appeal in *Payne v. Nugent* [2015] IECA 268, *Nolan v. Wirenski* [2016] IECA 56 and *Shannon v. O'Sullivan* [2016] IECA 93. Taking these principles into account, and having regard to all the matters outlined above, I award the plaintiff general damages in the sum of €47,500. I will allow the sum claimed for loss of earnings for the year 2012, in the sum of €28,537.95. From this must be deducted the sum of €19,270.03 as per the statement of recoverable benefits, giving a net amount for loss of earnings of €9,267.92. To this must be added the other items of special damage claimed in the sum of €3,655.04. This gives an overall award of €60,422.96.