

BETWEEN**MICHAEL WILDERS****PLAINTIFF****AND****MOTOR INSURERS BUREAU OF IRELAND (MIBI)****DEFENDANTS****JUDGMENT of Mr. Justice Barr delivered on the 13th day of March 2018**

1. This action arises out of an accident which occurred in the grounds of St. James's Hospital on 8th July, 2015. The plaintiff, who works as a medical devices engineer at the hospital, was crossing a pedestrian crossing when he was struck by a car travelling on the wrong side of the road. When he saw the car approach, the plaintiff jumped a little into the air, but was hit on the right leg, causing injury to the right leg, right hip and right knee. The driver of the vehicle did not stop. Liability is not in issue in these proceedings.

2. The plaintiff is 34 years of age having been born on 5th October, 1983. He lives with his partner and his son, who is 12 years of age. As a result of the impact with the vehicle, the plaintiff was thrown onto the bonnet and then fell onto the ground. He was attended by two people who worked in the hospital and a pedestrian. They brought him into the Accident & Emergency Department. He complained of pain in the right hip, right leg and knee. Examination of the right hip revealed a small bruise over the right iliac crest. Examination of the right hip revealed a full range of movement with no bony tenderness. Examination of the right knee revealed tenderness around the antero-medial aspect of the joint line. There was no evidence of swelling or joint effusion. A clinical impression was made of soft tissue injuries to the affected areas. He was discharged on non-steroidal anti-inflammatory drugs.

3. After the accident, the plaintiff took two weeks annual leave. Thereafter, he did not miss any further time from work. He stated that in the weeks immediately after the accident, his right leg, right hip and right knee were particularly painful. His leg was very swollen. Things gradually improved. When reviewed by Dr. Maguire in the Emergency Department at St. James's Hospital on 9th October, 2015, he stated that the injuries to the right hip and thigh areas had gone on to make a full recovery. However, he complained of ongoing pain in the right knee. This was associated with intermittent episodes of locking and a feeling of instability in the knee. Pain was exacerbated by ascending or descending stairs. Physical examination of the knee was largely normal, as was examination of the collateral ligaments, but his medial and lateral McMurrays test was equivocal. Due to his ongoing knee symptoms, Dr. Maguire felt that the plaintiff needed an MRI scan.

4. An MRI scan was carried out on 9th June, 2016 which revealed that the menisci and intra-articular cartilages were intact. However, there was evidence of an osseous defect in the inter-condylar articulating cartilage of the femur.

5. The plaintiff stated that he continued to experience symptoms of pain in his knees and in particular in his right knee. He had tried to resume playing 5-a-side soccer in or about October/November 2017, but found that when he did so, his knee would swell and become very painful on the following day. For this reason, he had had to give that up. He stated that prior to the accident he had been a keen soccer player, who had been part of the Ladyswell United team which had won a number of Leinster titles. He had also taken part in training his son's under-13 Gaelic football team. While he could continue in that role, he was not able to participate in active drills during training, nor could he run up and down the touchline during matches.

6. The plaintiff stated that he had had extensive physiotherapy treatment since the time of the accident. Such treatment is continuing. To date, he had spent approximately €1,730 on physiotherapy treatment, which had been fully vouched in his claim for Special Damages. He stated that at present, he continues to experience low grade pain in the knee which can be particularly sore at the end of a long day at work, or after prolonged sitting or driving. As regards the future, the plaintiff stated that Mr. Gary O'Toole, consultant orthopaedic surgeon, had advised him in conversation that an arthroscopy may be necessary at some time in the future. However, the plaintiff accepted that that was not contained in his medical report which had been agreed in evidence, but was merely something that he had stated to him in conversation when he had examined the plaintiff. Likewise, there was no mention of any knee brace in the medical report furnished by the defendants' expert, Mr. Martin Walsh FRCSI, but this had been advised by him in conversation and the plaintiff had gone on to purchase a knee brace which he wears to the present time.

7. The medical evidence in this case consisted of the agreed medical reports furnished by Dr. Maguire, Mr. Gary O'Toole FRCSI and Mr. Martin Walsh FRCSI. It is not necessary to set out the content of those reports *in extenso*. Dr. Maguire's findings have already been set out earlier in the judgment. Mr. O'Toole saw the plaintiff on 15th December, 2017, some two years and two months post-accident. He noted that the plaintiff was not able to engage in domestic chores. Prolonged driving caused pain in both knees. He noted that the plaintiff had attempted to resume playing 5-a-side soccer, but had not been able to continue with that activity. He was somewhat restricted in his ability to coach his son's Gaelic football team. He rated his pain at a constant level of 2-3/10, increasing to 7/10 on occasions.

8. Examination by Mr. O'Toole showed that the plaintiff walked with a normal gait. He had a full range of motion of both knees, but had patello femoral crepitus throughout the range of motion. He had a positive Clarke's grind test in both knees, which indicated some pathology in the patello femoral joint on both sides. This was more marked on the right side. The knee was stable to examination in both the sagittal and coronal plains. There were no signs of an effusion. Mr. O'Toole noted that the plaintiff never had any knee symptoms prior to the accident. The accident has resulted in him having to alter his extracurricular activities quite significantly and to make allowances for his knee during his working day. In this regard, he found it difficult to walk long distances during working hours and he used a cushion to kneel on when carrying out specific work to machines. It was noted that the plaintiff had been very engaged with physiotherapy treatment. However, more than two years post-accident, he had not made a full recovery. Having regard to the findings on the MRI scan, Mr. O'Toole did not expect him to make a full recovery in the future. He thought that the plaintiff would be forever reliant on working adaptations in order to accommodate his ongoing knee pain.

9. The plaintiff had been seen the previous month on 7th November, 2017 by Mr. Martin Walsh FRCSI. He noted the plaintiff's history; the extensive physiotherapy treatment which he had obtained down to that time and the MRI findings. The plaintiff had made some attempt to return to 5-a-side soccer and had not given up that activity at that time. He did, however, complain of pain on the day after playing soccer, together with swelling of the knee. In addition to that, the plaintiff complained of experiencing pain when sitting

or driving for more than one hour. He also experienced discomfort after a day's work. Examination revealed a normal gait, with no evidence of deformity or swelling of the knee when standing. He had a full range of motion with crepitus, which was most noticeable at the extreme of flexion. There was some discomfort on compression of the patello femoral joint. This was in keeping with the findings noted on the MRI scan. Examination of the left knee was normal.

10. Mr. Walsh was of opinion that the plaintiff had suffered some soft tissue trauma to the outer border of the left iliac crest of the pelvis from which he had made a rapid and full recovery. His primary injury involved the right patello femoral joint area, with MRI scan revealing evidence of a defect involving the inter-condylar notch at the lower end of the femur, which probably arose as a result of compression forces to the patello femoral joint. His current symptoms were in keeping with trauma of that area. He was hopeful that they would improve with ongoing quadriceps exercises over the next 6 to 12 months.

11. Mr. Walsh went on to state that occasionally there may be a role for arthroscopic debridement of the area, but on the basis of his review, he deemed it unlikely that a treatment of that magnitude would be indicated in the foreseeable future. The plaintiff will, however, continue to encounter some difficulties in his patello femoral joint as a legacy of the accident. These difficulties were most likely to intrude following prolonged periods of flexion i.e. sitting, driving and football. Accordingly, he thought that the plaintiff would have some residual disability as a result of the trauma. These complaints should rapidly resolve following a change of activity and gentle mobilisation of the knee joint. On very rare occasions, he may need some mild analgesia for relief.

12. The plaintiff in this case gave his evidence in a clear and straightforward manner. I am satisfied that he did not try to exaggerate either the circumstances of the accident itself nor the injuries flowing therefrom nor the effect that these injuries have had on him in the ordinary aspects of his life. His evidence that he has received extensive physiotherapy treatment down to the present time, which is continuing, is supported by the documentation furnished in the booklet supporting the claim for Special Damages. It is clear that the plaintiff has been proactive in trying to achieve a resolution of his symptoms due to the fact that he has expended a considerable sum of money on physiotherapy treatment.

13. It is also to the plaintiff's credit that he has attempted to return to his sporting pursuits, but has not been able to continue playing soccer due to the fact that his leg becomes very painful and swells on the day after playing soccer. On this account, he has had to give up that sporting activity. For a relatively young man, who has played soccer at a reasonably high level and with some success in the past, this is a significant loss from his life. I appreciate that at the age of 34 years, his days of playing serious competitive soccer had probably passed, nevertheless, but for the accident, he might have looked forward to playing on a casual basis with his friends for a considerable number of years into the future. It would appear that that opportunity has now gone.

14. I accept the plaintiff's evidence that while he has been able to continue with his coaching of his son's Gaelic football team, he has had to play a more restricted role therein. It is also noteworthy that, apparently, the defendants' consultant suggested to him that he might benefit from wearing a knee brace. The plaintiff has taken that advice on board and has purchased a knee brace, which consists of strapping and vertical steel bars on either side of the knee. He has found this helpful. He wears the brace down to the present time. He also continues to take non-prescription analgesic medication on a relatively frequent basis.

15. In reaching an assessment of the appropriate level of general damages in this case, the court has been greatly assisted by the guidelines set down by the Court of Appeal in *Nolan v. Wirenski* [2016] IECA 56, and *Shannon v. O'Sullivan* [2016] IECA 93 and in particular to the criteria set down by Irvine J. at paras. 43 and 44 thereof. The court has also had regard to the dicta of the Court of Appeal in the case of *Fogarty v. Cox* [2017] IECA 309. In the light of these judgments, this Court has had to somewhat recalibrate its approach to the assessment of general damages in personal injury cases.

16. Having regard to the findings of fact made herein and to the content of the medical reports which have been agreed in evidence, I award the plaintiff the sum of €30,000 for pain and suffering to date. Having regard to the plaintiff's relatively young age, the continuing disabilities which has in both the work and sporting aspects of his life and the somewhat guarded prognosis given by both Mr. O'Toole and Mr. Walsh for his future recovery, I award the plaintiff €30,000 for General Damages into the future. To this must be added the agreed sum for Special Damages of €2,015, giving a total award of €62,015.