

**BETWEEN****JESSICA BOWES****PLAINTIFF****AND****JONATHAN MCSHERRY****DEFENDANT****JUDGMENT of Ms. Justice Bronagh O'Hanlon delivered on the 1st day of March, 2019**

1. The plaintiff is the former partner of the defendant.

2. The defendant is a gentleman and was convicted of a Sec. 3 assault on the plaintiff. He served 22 months of a three and half year prison sentence with the final twelve months suspended. He entered a drug treatment centre for seven months on his release from prison. He now attends Move, an organisation to assist men with violent tendencies and is half way through a programme with that organisation. The assault, the subject matter of these proceedings, occurred on 20th December, 2015 on the public roadway in Clondalkin in the County of the City of Dublin and the defendant admits the said assault which have given rise to the plaintiff's claim against him for damages for personal injury loss and damage as a result of same. This case is listed for hearing for the assessment of damages.

3. Garda Cian Langan gave evidence to this Court confirming the said assault on the 20th December, 2015 and referring to photographic evidence in the form of thirteen original photographs which showed extensive damage to the eyes of the plaintiff and to her face and confirmed boot marks on her neck and face. In addition, the garda showed video evidence to the court which lasted for one and half minutes of a portion of the said assault. The garda witnessed the aftermath of this assault and confirmed the injuries as described by the plaintiff and referred to in the medical reports.

4. Garda Langan confirmed that the plaintiff was taken in by her neighbour and that the defendant fled the scene but was later arrested and charged and pleaded not guilty at first but then changed his plea. The garda confirmed that the photographs shown to the court were taken between one and half to two hours following this assault and he confirmed that the defendant arrived at the scene of the incident at 4:37:27am and remained there in wait at the plaintiff's residence until the taxi in which the plaintiff was a passenger arrived at the scene at 5:24:24am that morning. The garda witness gave evidence that the assault lasted for longer than the one and half minutes shown on the video clip and he confirmed the time of arrest of the defendant as 7:55am. The plaintiff in these proceedings gave evidence to object to bail and after a return for trial on a s. 3 assault, admissions were made. The garda accepted that the plaintiff in her initial statement in the hospital had indicated that the defendant had mental health and alcohol abuse difficulties.

**The plaintiff's evidence**

5. The plaintiff described how she does not go out very often but this was a Christmas gym night and when she arrived back at her home at 5:24:24am later in a taxi with a female friend and others and that the assault began when the defendant jumped on this taxi breaking the windscreen with his fists. This caused the taxi driver, who is described by the plaintiff as a friend of the defendant, to run away. The assault by the Defendant on the Plaintiff involved her being repeatedly punched and kicked, being dragged along the ground while the assaults continued including punching and kicking. She was rendered unconscious by the first punches and regained consciousness during the course of the attack only to be rendered unconscious a second time by further blows. The plaintiff described her humiliation and distress in that locals witnessed this attack. The plaintiff confirmed the evidence given by Garda Langan and the continuing difficulties from which she suffers as a result of these injuries. The multiple fractures to her skull and face required reconstructive surgery of the face. She described a situation where it is impossible for her to fully close her lips due to damage in the upper lip and she complains of the feeling that her face appears deformed. A metal plate had to be inserted through the mouth in order to align the facial bones subsequent to this assault. Psychological sequelae, as borne out by the medical evidence, offered on her behalf, shows the plaintiff to have symptoms of post-traumatic stress disorder and the report proffered by a Psychiatrist on behalf of the Defendant gives a diagnosis of her psychological difficulties described as arising from chronic anxiety disorder and indicates a mixed picture. The plaintiff continues to have significant nightmares regarding the incident and is fearful both for her own safety and that of her children.

6. An application was made on behalf of the plaintiff to the Personal Injuries Assessment Board and authorisation granted to bring these proceedings pursuant to s. 17 of the Personal Injuries Assessment Board Act, 2003 and 2007, on foot of authorisation No. PLO52720161775 dated 8th September, 2016.

7. In describing this attack, the plaintiff described being head-butted and described the defendant's actions as if he were hunting. In order to protect herself while she was trying to get a neighbour to let her into the neighbour's house, the plaintiff put her head under a car and when the neighbour opened the door she crawled into the house. The plaintiff believes that she suffered upwards of twenty kicks during this assault. The plaintiff was initially brought to Tallaght Hospital, discharged herself because of the time of the year and because of the fact that she had young children at home. The plaintiff gave credible evidence to this Court which the court accepts.

8. She was referred to St. James' Hospital where she was treated by Mr. O'Ceallaigh, Consultant Maxillofacial Surgeon who carried out corrective facial surgery. The plaintiff described how he was not able to align the right side of the plate under the nose and that her lip is not attached to the gum anymore and that she now has to endure a permanent plate which had to be inserted to treat the fractures to her cheek bones. She notes that her mouth moves at a different rate and she has permanent numbness with her face swelling on the right side in the nasal cavity causing the face to be bigger on that side than on the left hand side.

9. The report of Dr. Jason Carty, Consultant in emergency medicine in Tallaght Hospital in his report of 29th May, 2018 refers to the corrective surgery which involved an open fixation of her right sided facial fracture which involved placement of a secured metal plate to the broken bones to preserve alignment. This report confirms the difficulties the plaintiff described in her evidence. The said report describes the plaintiff as having eye lacerations cleaned and sutured and that she discharged herself early from that hospital on 24th December, 2015. He noted her physical difficulties but also ongoing difficulties with trust issues and sleep and memory difficulties. He described her as having moderate mental health difficulties and described her injuries as being consistent with the incident which had

occurred. Thirty-two months post-accident, he believed that she had reached the ceiling of recovery concerning her facial injuries and was going to have ongoing paraesthesia and that the swelling would not be expected to resolve further. His report describes the plaintiff as suffering grievous and life changing injury and that she was doing well to manage to rear her children but that even with the best support what happened her was going to affect her for the rest of her life.

10. Dr. Guy Molyneux, Consultant Psychiatrist, St. Vincent's Hospital, Fairview, Dublin 3 examined the plaintiff and in his report dated 11th October, 2018 notes her account of the abusive relationship which the plaintiff had with the defendant in that she described having been stalked by him and he noted her account that some months previously she had received abusive texts and described the defendant as often driving by her house. On her account, in 2015, so that her children could have some relationship with the defendant, the plaintiff had recommenced communication with him but unfortunately the defendant interpreted this act as an attempt by her to rekindle a romantic relationship with him. This evidence was not contradicted.

11. This report evidences that three years after the assault the plaintiff had suffered and continues to suffer a significant psychological effect, she is on high alert and fearful of a return by the defendant to assault her further. She is described as severely damaged and vulnerable. She has difficulties with sleep and has nightmares and is unable to develop a new relationship. Dr. Molyneux assessed the plaintiff as having thought processes which indicated a resilient person with lots of helpful cognitions such as not wanting to be seen as being vulnerable and not wanting this event to have ruined her life, but he noted that she had experienced a shattering ordeal which has affected her self-confidence and self-esteem. In his opinion and prognosis this report evidences the fact that the plaintiff sustained a horrific assault leaving her with severe physical and life changing injuries as well as psychological injuries. He noted fear, anxiety, low self-esteem and vulnerability as well as her concern for her future and a decreased sense of enjoyment. The best fit diagnosis in his view was found to be post-traumatic stress disorder DSM-5. This doctor noted that the plaintiff had not had the time or the finances to receive any meaningful psychotherapy to help her process and cope in the aftermath of the assault. This report recommends that the plaintiff speak to her GP to seek a referral for cognitive behavioural therapy and that that the person chosen to give this therapy ought to be someone experienced in treating post-traumatic stress disorder. This report also evidenced his view that such treatment would cost between €5,000 to €10,000.

12. The defendant's had Dr. Michael Mulcahy, Consultant Psychiatrist examine the plaintiff in January, 2019 and his report is dated 22nd January, 2019. This report describes the plaintiff as having residual problems with her face with some areas of anaesthesia and cosmetic concerns. He accepts that she is a person under great stress. Notwithstanding that, he found that the plaintiff projected an image of a competent person although this report noted the plaintiff's lack of confidence in the civil authorities in relation to her appeals for assistance and notes that the plaintiff presents many features of post-traumatic stress disorder although his preference would be to describe her difficulties as that of a chronic anxiety disorder and that sleep problems and hypervigilance are common in both conditions and that clinically she presents a mixed picture.

13. Points raised by the defence confirmed that the plaintiff accepted that in the immediate aftermath of this assault she scored 15 out of 15 on the Glasgow test and that there was no evidence of cognitive loss following this incident. She confirmed visits to her GP every two months presently. The plaintiff confirmed that she returned to work three months after this incident and was paid while she was out sick for that period of time. She did agree that her mood was found to be normal objectively and subjectively. The plaintiff agreed that she was referenced in various broadcasts and newspaper articles on the topic of domestic violence and she confirmed that she had good intentions in that and that she saw herself as a survivor of domestic abuse, that she did not feel ready to go for counselling at this time. The plaintiff also accepted that she had been giving a verbal warning at work because of the amount of time she had to take off in relation to legal matters and in relation to the criminal trial and that she had to take special leave without pay. The plaintiff described being on Mirtazapine in 2015/2016 and at present.

14. The defendant described his own conduct as disgraceful and apologised to the plaintiff and to his children. He agreed that he had left his post when a member of the defence forces and that he was given an option to leave the army and he had done so and had begun his own business. He agreed that he had paid maintenance for the children in the past but was not paying same at present. He accepted fully that he had broken nearly every bone in the plaintiff's face and that he had kicked her and that he had taken his closed fist to her face and he accepted that he had carried out the acts as seen on the video.

15. In his defence the defendant noted that he had spent seven months in the Coolmine addiction centre and had been released early from prison to take part in that course which is one for alcoholics and that he attends Alcoholics Anonymous three to four times a week and he has taken a course with Move and that he has completed eight or nine weeks of a six-month course with that organisation. The defendant complained that that because he has been in the eye of the media that no one will employ him. He confirmed that he owns 7 Fairview Cavan which is an apartment, but that he had transferred this to his mother on the 19th September, 2017 and he agreed that the within proceedings had begun on the 7th January, 2013. The defendant agreed that he also owned a property known as Belfry, Churchview Cavan, Co. Cavan.

## **The law**

16. In *Conway v. Irish National Teachers Organisation* [1991] 2. I.R. 305 Finlay C.J. analysed the relevant principles in respect of damages:

"In respect of damages in tort or for breach of a constitutional right, three headings of damages in Irish law are, in my view, potentially relevant to any particular case. They are: —

1. Ordinary compensatory damages being sums calculated to recompense a wronged plaintiff for physical injury, mental distress, anxiety, deprivation of convenience, or other harmful effects of a wrongful act and/or for monies lost or to be lost and/or expenses incurred or to be incurred by reason of the commission of the wrongful act.
2. Aggravated damages, being compensatory damages increased by reason of
  - (a) the manner in which the wrong was committed, involving such elements as oppressiveness, arrogance or outrage, or
  - (b) the conduct of the wrongdoer after the commission of the wrong, such as a refusal to apologise or to ameliorate the harm done or the making of threats to repeat the wrong, or
  - (c) conduct of the wrongdoer and/or his representatives in the defence of the claim of the wronged plaintiff, up to and including the trial of the action.

Such a list of the circumstances which may aggravate compensatory damages until they can properly be classified as aggravated

damages is not intended to be in any way finite or complete. Furthermore, the circumstances which may properly form an aggravating feature in the measurement of compensatory damages must, in many instances, be in part a recognition of the added hurt or insult to a plaintiff who has been wronged, and in part also a recognition of the cavalier or outrageous conduct of the defendant.

3. Punitive or exemplary damages arising from the nature of the wrong which has been committed and/or the manner of its commission which are intended to mark the court's particular disapproval of the defendant's conduct in all the circumstances of the case and its decision that it should publicly be seen to have punished the defendant for such conduct by awarding such damages, quite apart from its obligation, where it may exist in the same case, to compensate the plaintiff for the damage which he or she has suffered. [*Conway v. Irish National Teachers Organisation* [1991] 2 I.R. 305 at 316-317).

## Conclusions

17. This Court finds the plaintiff's account of this incident to be factually correct. This is an extremely serious case in which the court is asked to assess damages for personal injuries loss and damage suffered by the plaintiff as a result of a significant admitted assault by the defendant upon her. In so doing there is no doubt and no issue but that the assault by the defendant upon the plaintiff caused the difficulties she has experienced which are ongoing and permanent. He fully admits same and apologises for same. The court notes that the admissions and apology did not come immediately. This Court accepts the evidence of Garda Langan. This Court notes that the medical reports bear out the evidence adduced on behalf of the plaintiff. This Court finds that beyond any doubt, the defendant's assault caused the significant and permanent injuries suffered by the plaintiff.

18. In assessing damages, the court cannot take into account extraneous matters such as the fact that the defendant is not paying money to the plaintiff in respect of the maintenance of his two children who live with the plaintiff. Separate issues concerning the children are dealt with in another forum. The court notes that the defendant was tried, convicted and sentenced in a criminal court in relation to this assault. It is not the function of this civil court to punish the defendant rather to assess the appropriate measure of damages arising from this assault. Taking the foregoing into account the court has decided to deal with this matter by way of ordinary compensatory damages to cover the plaintiff's physical injuries which were extensive and have ongoing and permanent effect, her mental distress, anxiety, deprivation of convenience and of the other harmful effects of this wrongful act which have affected her self-esteem, her trust in others and have caused the plaintiff post-traumatic stress disorder symptoms as described in the medical reports coupled with overlapping symptoms of chronic anxiety.

19. The court notes the steps taken by the defendant to rehabilitate himself and this fact is noted and welcomed but it does not reduce a quantum of damages which the plaintiff is entitled to by way of ordinary compensatory damages.

20. The court also notes that the plaintiff has not had cognitive behavioural therapy as yet nor has she engaged to any degree with services which would be available through her employment working in a hospital. She cited her reasons as including lack of time because she was rearing the children on her own but also her present state of mind. The court takes the view that she must as a matter of urgency apply some of the monies which the court is now awarding to her to address these difficulties and the court would envisage her as having an obligation to herself to do so.

21. In all the circumstances given the extreme effect on her face and daily discomfort of the long term and permanent aspects of her facial injuries the appropriate amount in general damages is €150,000 this includes consideration and assessment of the effect of this assault on her and the long term psychological consequences of the injury she has received. With proper treatment in accordance with the medical evidence, it is possible for the plaintiff to achieve considerable health improvement in the medium term in respect of this aspect of her injuries. The award therefore is for in the sum of €150,000 in respect of general damages, to cover pain and suffering to date and into the future, regarding her physical and permanent injuries and to include a measure of damages to compensate her for her mental health difficulties and to enable her to access assistance for same.