

THE HIGH COURT
GARDA COMPENSATION

[2018 No. 62 SP]

BETWEEN**RONAN LEONARD****APPLICANT****-AND-****THE MINISTER FOR PUBLIC EXPENDITURE AND REFORM****RESPONDENT****JUDGMENT of Mr. Justice Twomey delivered on the 12th November, 2018****Summary**

1. This case concerns a claim for compensation for a soft tissue injury to a shoulder in which counsel for the applicant relied on the Book of Quantum to seek compensation of €20,000. However, this Court concludes that the appropriate amount of compensation is considerably less than the figure which counsel says the Book of Quantum indicates is appropriate, since this Court will make an award of €8,000 of compensation/general damages and €60 special damages, the special damages relating to the applicant's out of pocket medical expenses, namely the costs he incurred in GP visits.

2. The Court does so, not in reliance on the recent report of the Personal Injuries Commission chaired by the former President of the High Court which calls for the downwards 'recalibration' of awards for personal injuries, since this Report is not binding on this Court. Rather it does so in reliance upon the principles regarding the assessment of damages set down by the Court of Appeal and Supreme Court and which are binding on this Court, including the recent caselaw of the Court of Appeal, which the High Court has described as amounting to a downwards 'recalibration' of personal injury awards.

3. In light of the discrepancy between the figure suggested by his counsel, in reliance on the Book of Quantum which suggests an award of up to €32,500 for minor injuries to a shoulder, and the award made by this Court, this Court will briefly outline in this judgment the principles which this Court is required by the Court of Appeal and the Supreme Court to apply in assessing damages for personal injuries.

Background

4. The claim for compensation for personal injury is made by Garda Leonard under the Garda Compensation Acts arising from a soft tissue injury to his left shoulder which was incurred during the course of his duties. On 11th July, 2014 Garda Leonard sustained an injury to his left shoulder in a fall while chasing a suspect attempting to evade arrest. He attended an out-of-hours GP service following the incident and was subsequently referred to the Emergency Department of his local hospital. He was assessed at the Emergency Department and x-rays revealed no fractures to his left shoulder. He was discharged with pain killers and anti-inflammatories.

5. He was on sick leave for about 5 days and resumed normal duties at work thereafter.

6. On 21st July, 2014 he attended his GP due to ongoing pain. The GP diagnosed a sprain to the left A/C joint and treated him with a steroid injection which was repeated in October 2014. He was also treated with anti-inflammatory medication at that time by his GP. Medical evidence provided to this Court is that this was the end of the medical intervention in this case and that Garda Leonard has made a full recovery from this soft tissue injury.

7. No evidence was given of a previous claim by Garda Leonard and so it appears that this is Garda Leonard's first compensation claim under the Garda Compensation Acts.

8. Against this background, this Court will consider the principles applicable to the assessment of damages.

Book of Quantum

9. Counsel for Garda Leonard referred to the Book of Quantum. This provides that minor injuries to the shoulder receive awards of 'up to €32,500'. Such 'minor' injuries are described as:

'mild injuries where there is no tearing of the ligament, and often no elbow movement is lost, although there may be tenderness and slight swelling which has substantially recovered'.

In addition, the Book of Quantum provides that 'moderate injuries' to the shoulder receive awards of '€22,000 to €60,900'. Such 'moderate' injuries are described as:

'caused by a partial tear in the ligament' and 'characterised by obvious swelling, extensive bruising, pain, and reduced function of the shoulder with a full recovery expected'.

Upon this basis, counsel for Garda Leonard argued that he should be awarded compensation of in the region of €20,000.

10. As this Court is awarding Garda Leonard €8,000, it will outline the principles applicable to assessing damages in personal injury cases.

Downward recalibration of damages sought by Personal Injuries Commission

11. Before doing so, reference will be made to the recent *Report of the Personal Injuries Commission* which was chaired by Mr. Nicholas Kearns, former President of the High Court. This Report provides that certain personal injury awards in Ireland are 4.4 times higher than those in England and Wales and that there was a need for a 'rebalancing and recalibration of Irish awards' (at page 7).

12. In a recent media interview (Irish Independent 29th September, 2018), the current Chief Justice of Ireland, Clarke C.J. stated

that this 'report has to be taken seriously' and that:

'if damages are significantly higher in Ireland than they are for like cases in many other countries, that has consequences for competitiveness and jobs'

and that

'I don't think we necessarily have to have a race to the bottom and have the same level of damages as the country with the least, but I think we need to be in the ball park.'

13. It is important to note that these comments of former President Kearns and Clarke C.J. were extra-judicial and thus while undoubtedly of huge significance because they come from the current Chief Justice and from a former President of the High Court, they cannot be directly relied upon by this Court in reaching its decision.

The principles which actually govern the calculation of damages

14. However, what is binding on this Court are the recent decisions of the Court of Appeal in personal injury cases which have in fact been described by the High Court, in the exact same language as that used by the Personal Injuries Commission, since it stated that these Court of Appeal decisions amounted to a downwards '*recalibration*' of damages in certain personal injury actions of 45-50% (as set out in more detail in *Kampff v. Minister for Public Expenditure and Reform* [2018] IEHC 371).

15. This, and the other key principles set out below apply to this Court's calculation of awards, whether in the form of compensation under the Garda Compensation Acts to a member of An Garda Síochána or in the form of general damages for pain and suffering to other members of the public.

16. These principles, which are derived from numerous Court of Appeal and Supreme Court decisions have been dealt with in detail in the *Kampff* case and so it is proposed only to summarise them here:

(I) Is the award fair to the plaintiff and defendant

As noted by Irvine J. in *Nolan v. Wireski* [2016] IECA 56 at para 31:

"Principle and authority require that awards of damages should be (i) fair to the plaintiff and the defendant."

In every case in which damages are being assessed, this principle will assume considerable importance and the Court must consider not only whether the amount of damages proposed is reasonable in light of the pain and suffering which the plaintiff/applicant has had to endure previously and into the future, but also whether the amount of damages is a reasonable amount to ask a defendant/respondent to pay for accidentally causing the pain and suffering in question. Different principles, including the possibility of aggravated, exemplary or punitive damages, may apply if the damage was caused intentionally by the defendant who is paying the damages.

(II) Does the award reflect the downward recalibration of damages?

In assessing damages in this case, this Court is bound by the recent downwards recalibration by the Court of Appeal of up to 50% in personal injury awards. It is this approach of the Court of Appeal and also the principles set down by the Supreme Court to the assessment of damages, and not the Book of Quantum, which is binding on this Court. In this case, counsel for Garda Leonard referred to the fact that in the Book of Quantum minor shoulder injuries receive '*up to €33,500*' and moderate shoulder injuries receive awards between '*€22,000 to €60,900*'. However, as noted in the *Kampff* case, not only are these Book of Quantum figures not binding on this Court, they do not take account of the effect of the downwards recalibration of personal injury awards effected by the Court of Appeal. Accordingly, this Court must approach the figures in the Book of Quantum relied upon by counsel with considerable caution.

(III) Is the award proportionate to the cap on damages so as to avoid concertina effect?

The next principle derives from a number of cases including the Supreme Court decision in *M.N. v. S.M.* [2005] IESC 17 and the Court of Appeal decision *Wireski*. It is whether the proposed award, of general damages for pain and suffering, as distinct from special damages, is proportionate to the general cap on damages for catastrophic/quadruplegic injuries. As noted by Irvine J. in *Wireski* at para 32:

"It can however generally be said that insofar as cases which involve catastrophic or life changing injury have come before the Courts in recent years, the level of general damages awarded in respect of injuries of this type has generally been somewhere in or around €450,000. That is not to say that €450,000 is a maximum. There has been the rare case in which a sum in excess of that figure has been awarded."

At para 42, she noted:

"As Denham J. advised in *M.N. v. S.M.* damages can only be fair and just if they are proportionate not only to the injuries sustained by that plaintiff but also proportionate when assessed against the level of the damages commonly awarded to other plaintiffs who have sustained injuries which are of a significantly greater or lesser magnitude."

Compliance with this '*proportionate*' principle is important in order to avoid what the Court of Appeal described in *Payne v. Nugent* [2015] IECA 268 as the '*concertina*' effect on damages. The judgment in *Payne v. Nugent* refers to four classes of injuries, namely modest, middle-ranking, serious and catastrophic. It then goes on to discuss the necessity for awards of damages to avoid the '*concertina effect*', in order to avoid an injustice being caused to persons with *catastrophic* injuries or *serious* injuries. This injustice would arise if persons with *modest* injuries, such as a soft tissue injury to a shoulder, receive awards which are not significantly less than those received by persons with *middle ranking injuries*, which are themselves not significantly less than those received by persons with *serious* injuries such as a loss of a limb, which themselves are significantly less than those with catastrophic injuries/quadruplegia.

While it is undoubtedly easier to compare *serious injuries* such as loss of a limb with *catastrophic injuries* which are in some way comparable (than it is to compare a modest soft tissue injury with catastrophic injuries), nonetheless this principle may be of some assistance even in awards for modest injuries, particularly in view of the importance of avoiding the '*concertina*' effect as outlined by the Court of Appeal.

In this case, one could apply this principle by asking whether the suggested award of €20,000 for the pain and suffering arising from a soft tissue injury to a shoulder, which is 1/23rd of €450,000 (being in general the maximum award for the pain and suffering for a

quadriplegic/catastrophic injury), is proportionate in light of the respective pain and suffering attaching to these two types of injuries. It is this Court's view that it would not be proportionate and that an award of €8,000 would be more proportionate and consistent with the need to avoid the 'concertina' effect

(IV) Is the award reasonable in light of average earnings in the State?

The principle, that the amount of the award of general damages, as distinct from special damages, should be reasonable in light of the average earnings in the State derives from a number of cases beginning with the Supreme Court case of *Sinnott v. Quinnsworth* [1984] ILRM 523.

As noted in the *Kampff* case, average earnings for full-time workers in the State are currently in the region of €45,000. One way in which this principle can be applied is as follows. One could ask in this case whether the pain and suffering arising from the soft tissue injury to Garda Leonard's shoulder is of such magnitude that, if the defendant were an individual making the average earnings in the State, it would be reasonable to require that defendant, who accidentally caused the injury to Garda Leonard, to notionally work for over 5 months to earn €20,000 and then hand over those wages as compensation to Garda Leonard for his pain and suffering?

It is this Court's view that an award of €20,000 for the shoulder injury suffered by Garda Leonard, which has fully recovered and led to one or two GP visits and to five days out of work, would not be reasonable in light of average earnings in the State.

(V) Has appropriate scepticism and common sense been applied to claim?

The final principle, as noted by O'Donnell J. in the Supreme Court case of *Rosbeg Partners v. LK Shields* [2018] IESC 23, is that appropriate scepticism and common sense has to be applied to claims by plaintiffs for damages, not because of any dishonesty on their part, but simply because human nature is such that memories and accounts as to the extent of the damage claimed tend to become '*unwittingly adjusted*' because of the potential financial consequences for plaintiffs of their evidence.

In this case however, Garda Leonard gave his evidence in a very matter of fact manner and in addition, the primary evidence before the Court was uncontroverted medical evidence regarding the treatment and the length of his absence from work. Accordingly, in this instance applying appropriate scepticism and common sense to the evidence does not lead to any particular treatment of the evidence before the Court.

Conclusion

17. Applying the foregoing five principles, this Court does not believe that the soft tissue injury to Garda Leonard's shoulder is such that an award of €20,000 should be made. This Court concludes that €8,000 in general damages and €60 in special damages (which special damages were agreed by Garda Leonard) is the appropriate level of award for the soft tissue injury to Garda Leonard's shoulder and that such an award is fair to the applicant and the respondent.

Unnecessary cost to the taxpayer

18. Finally, this Court notes that unfortunately, this case is yet another example of a case involving very modest injuries (as illustrated by the award of €8,000) where the total legal costs are likely to be a multiple of that amount. This is because every Garda Compensation case, no matter how minor, has to be heard in the High Court (at considerable cost to the taxpayer, who pays not only the State's legal costs but also those of the injured guard). In the *Kampff* case, it was noted that savings of millions of euro in legal costs could be made for the taxpayer if Garda Compensation cases were heard in the District Court or the Circuit Court, as appropriate, or indeed with no legal costs, before the Personal Injuries Assessment Board ("PIAB"), particularly since Garda Compensation cases, as assessment only cases, are ideally suited for a body such as the PIAB, whose sole function is to do assessment of personal injury awards.