THE HIGH COURT

[2018 No. 485 C.A.]

BETWEEN

JAMIE CONNOLLY

PLAINTIFF

AND

THE MOTOR INSURERS BUREAU OF IRELAND

DEFENDANT

JUDGMENT of Mr. Justice Noonan delivered on the 4th day of June, 2019

1. This is an appeal from an order of the Circuit Court (Her Honour Judge Linnane) made on the 13th November, 2018 whereby the plaintiff's claim was dismissed, essentially on the ground that it is statute barred.

2. In his personal injury summons, the plaintiff alleges that he was travelling as a passenger in a motor vehicle on the 21st February, 2014 when it was involved in a collision with another motor vehicle, the owner and user of which is unidentified or untraced. The plaintiff suffered injuries as a result and claims damages.

3. The relevant chronology appears to be as follows:

7th March, 2014	The plaintiff's solicitors sent claim notification forms to the Personal Injuries Assessment Board ("PIAB") by registered post.
10th March, 2014	The plaintiff's solicitors followed up by sending PIAB the relevant Form A application form together with the requisite €180 fee.
12th March, 2014	PIAB wrote to the plaintiff's solicitors acknowledging receipt of the correspondence but stating that the application could not be accepted as complete until receipt of a medical report from a treating doctor on a medical assessment form (Form B).
5th August, 2014.	PIAB again wrote to the plaintiff's solicitors reiterating that the medical report was outstanding and the application could not be accepted as complete until that was furnished.
23rd November, 2011	It would appear that on this date, the plaintiff emigrated to Australia where he was arrested, charged with a criminal offence and subsequently imprisoned.
15th December, 2014.	PIAB sent a further reminder letter to the plaintiff's solicitors drawing attention to the same matters and noting that no reply had been received to the earlier correspondence. Thereafter the matter remained dormant for a period of over two years while the plaintiff remained in prison in Australia.
22nd January, 2017.	The plaintiff was released from prison and deported to Ireland.
21st August, 2017	The requisite medical report was sent to PIAB who confirmed that the application was completed on this date for the purposes of s. 50 of the Personal Injuries Assessment Board Act, 2003.
28th September, 2017	PIAB issued an authorisation to the plaintiff to institute proceedings.
7th March, 2018	The personal injuries summons was issued.

4. The motion before the court is brought by the defendant for the purposes of determining the preliminary issue as to whether the plaintiff's claim is statute barred.

5. The relevant legislation now provides that a claim for damages for personal injuries must be brought within two years of the accrual of the cause of action. Clearly in this case, it was not, but excluded from the limitation period is the time commencing with the making of an application to PIAB and ending on a date six months from the issuing of an authorisation.

6. Section 50 of the Personal Injuries Assessment Board Act, 2003 provides insofar as relevant as follows:

> "In reckoning any period of time for the purposes of any limitation period in relation to a relevant claim specified by the Statute of Limitations 1957 or the Statute of Limitations (Amendment) Act 1991, the period beginning on the making of an application under section 11 in relation to the claim and ending 6 months from the date of issue of an authorisation … shall be disregarded."

7. The critical question therefore is when was the application under s. 11 made to PIAB in this case? On the plaintiff's case, it was made on the 10th March, 2014. The plaintiff therefore says that the period commencing on that date and ending on the 27th March, 2017 (six months post authorisation) must be excluded from the calculation of the two year period and therefore the summons was issued in time.

8. The defendant on the other hand submits that the application was made on the 21st August, 2017, the date upon which PIAB deemed the application complete and by then, the statute had already expired.

9. Section 11 of the 2003 Act provides in relevant part:

> "11.—(1) A claimant shall make an application under this section to the Board for an assessment to be made under section 20 of his or her relevant claim.
>
> (2) That application shall be in the form specified by rules under section 46 and be accompanied by such documents as may be so specified.
>
> (3) Without prejudice to the generality of section 46 as regards the documents that may be specified for the foregoing purpose, the documents that may be specified for that purpose include—
>
> …
>
> (c) a report prepared by a medical practitioner who has treated the claimant in respect of the personal injuries, the subject of the relevant claim, in relation to those injuries, …"

10. I think it is of some significance in the context of this application that s. 11 (2) appears to require that the application, in the form specified, shall be accompanied by certain documents, suggesting as it does that the application, and the documents accompanying it, are two different things.

11. The rules enacted pursuant to the 2003 Act are to be found in the Personal Assessment Board Rules, 2004 (S.I. 219/2004). Rule 3 (1) uses language in its terms similar to s. 11 and provides:

> "(1) An application under section 11 of the Act shall—
>
> (a) be made in writing or by electronic mail,
>
> (b) contain such information as may from time to time be specified by the Board, and
>
> (c) be accompanied by the following documents …"

12. The accompanying documents include a medical report as described in s. 11. But here again, the language of Rule 3 suggests that the application for the purposes of s. 11 must be in writing and contain certain information but in addition, the application must be accompanied by certain documents, again distinguishing between the application itself and the documents to accompany that application. That is also consistent with the wording of Rule 3 (3) which provides:

> "(3) In relation to a relevant claim, the date of—
>
> (a) the receipt by the Board of an application under section 11 of the Act for the purposes of section 13 of that Act, and
>
> (b) the making of an application under section 11 of the Act, for the purposes of section 50 of that Act, shall be the date on which the application in a form specified in sub rule (1)(a), containing the information specified in sub rule (1)(b) is acknowledged in writing as having been received by the Board."

13. It is noteworthy that Rule 3 (3) expressly refers to the application being in the form specified in sub rule (1) (a) containing the information in sub rule (1) (b) for the purposes of calculating the limitation period but does not refer to sub rule (1) (c) which deals with accompanying documents.

14. It seems to me therefore that all of these provisions are quite consistent in referring to the application as constituting a specified form in writing containing certain information. I think that it must inevitably follow that the acknowledgment in writing by PIAB of the receipt of the specified form containing the specified information constitutes the making of an application under s. 11. In the present case, in my view the acknowledgement in writing by PIAB issued on the 12th March, 2014 ought to be regarded as sufficient for the purpose of the rule.

15. However even if that were not the case, the requirement for the acknowledgement in writing by PIAB specified by the rules as a prerequisite to stopping the clock is not a requirement to be found in s. 50 which specifically provides that time ceases to run on the making of an application. It must therefore be the case that even in the absence of an acknowledgement in writing, if the date of making an application can otherwise be established, that must be sufficient, as the authorities demonstrate that in the event of a conflict between the rules and the statute, the statute must prevail - see *Dignam v. HSE* [2015] IEHC 295 and *Kiernan v. J. Brunkard Electrical Ltd* [2011] IEHC 448.

16. However, this is not particularly material here as on the facts of this case, in either event the plaintiff is within time. This construction is consistent with the views of Birmingham J. (as he then was) in *O'Callaghan v. Hannon* (High Court unreported 15th June, 2010). In that case, precisely the same point arose, namely that the relevant form was submitted in time but, as here, was not accompanied by a medical report. In commenting on Rule 3 (3), Birmingham J. noted, as I have, at p. 6:

> "It is to be noted that the date stated to me (*sic*) by reference to the acknowledgement of a form containing specified

> information, and there was no reference at this stage to any requirement for an acknowledgement of submitted accompanying documentation."

17. The court summarised the issue arising at p. 7:

> "The net issue therefore is whether the submission of an application in the prescribed form containing the prescribed information, but unaccompanied by the documentation specify (*sic*) amounts to the making of an application so as to stop the clock. I have formed the view that it does."

18. As was pointed out in argument before me, it has to be conceded that a different view was arrived at by this court (Dunne J.) in *Forde v. J. Manning & Son (Dublin) Ltd* (High Court unreported 14th December, 2009). Insofar as there is a conflict between the two decisions, I would respectfully prefer the reasoning of Birmingham J. in *O'Callaghan v. Hannon* which appears to me to more closely accord with the true construction of the statute.

19. For these reasons therefore, I am satisfied that the plaintiff's claim is not statute barred and I propose to allow the appeal and dismiss the defendant's application.