

THE HIGH COURT

[2009 No. 1093 S.P./1094 S.P./1095 S.P.]

IN THE MATTER OF AN GARDA SÍOCHÁNA (COMPENSATION) ACT, 1941 -1945

BETWEEN

JOSEPH O'HARA

APPLICANT

AND

THE MINISTER FOR FINANCE, PUBLIC EXPENDITURE AND REFORM

RESPONDENT

JUDGMENT of Mr. Justice Bernard J. Barton delivered on the 31st day of July, 2018

1. The Applicant was born on the 17th May, 1962, and by occupation is a Detective Sergeant in An Garda Síochána. He is divorced from his wife whom he married in 1989. There were three children of the marriage. In the course of duty he was involved in three separate incidents in respect of each of which he has been authorised to bring proceedings pursuant to the Garda Síochána (Compensation) Acts, 1941-1945. The Applicant's case is that as a result these incidents he suffered and sustained psychiatric injuries in the form of a Post-traumatic Stress Disorder (PTSD). No physical injuries were sustained in any of the incidents. In the circumstances it was agreed that the three sets of proceedings would be taken and heard together; accordingly, a single judgement is being delivered.

2. Although malice was accepted by the Respondent, the nature and extent of the injuries and consequential pecuniary losses claimed by the Applicant were hotly disputed. The controversy on the medical evidence centred on whether or not the Applicant had suffered a post-traumatic stress disorder and whether or not the stressors arising contributed to the subsequent development of a serious cardiovascular condition. The pecuniary losses claimed in aggregate amount to €48,002.83, of which the parties have agreed the sum of €10,023.47. At hearing the Applicant advanced a claim for enhanced general compensation for loss of opportunity founded on the assumption that but for his injuries he would have been promoted, firstly to the rank of Detective Inspector and, subsequently, to Detective Superintendent.

3. Actuaries were retained on behalf of both parties to advise on the capital value of the heads of pecuniary loss claims and in respect of which reports were prepared and furnished. Subject to the Respondent's contention that the ground work had not been made out for such claims, the reports were admitted in evidence on a reciprocal basis. I should also mention at the outset another matter of potential significance to the eventual outcome of the claim, namely, the Applicant's credibility which was called into question by the Respondent.

Vocational background

4. Attested in June, 1982 the Applicant was assigned to Sundrive Road Garda Station, Dublin. Two years later he was appointed to the Crime Prevention Unit and thereafter to the Divisional Task Force where he served from 1987. He subsequently sat the sergeant's exams which he passed and following interview was promoted to that rank in 1995. On promotion he was assigned to Gorey Garda Station where he served until 1997 when he returned to Sundrive Road Garda Station having been appointed to the rank of Detective Sergeant.

5. It is a matter of public record that before and particularly in the years since the Applicant's return to Dublin, gangs involved in organised criminal activities became intimately involved in the lucrative markets for illicit drugs, prostitution and people trafficking and that this ultimately led to the development of feuds which all too often culminated in serious injury or death to gang members or their families. It is accepted that the Applicant was centrally involved in the investigation of the criminal activities and feuding between these gangs which to the date of hearing had led to the murders of at least twenty people.

6. Of these the Applicant was the senior investigating officer in the cases of fourteen individuals whom he charged with murder. Not surprisingly his role in the investigation and prosecution of these cases marked him out for special attention not only amongst his colleagues but also amongst the feuding gangs who were not best pleased and led to the incidents which gave rise to these proceedings.

The Incidents

7. The first incident occurred on the 17th October, 2000, following a bail hearing in Dublin. The Applicant was escorting a prisoner to the Bridewell Garda Station. He was a member of a well-known criminal gang. He had seven previous convictions; four for assaulting Gardaí and three for possession of firearms. He had a known propensity to violence. Earlier that day he had assaulted the Applicant following a court hearing at which his brother-in-law had been refused bail and as a result of which he was arrested. At the Bridewell the prisoner threatened the Applicant that he was going to have him shot. This was not an idle threat. The prisoner had the propensity and the capacity to see that it was executed and about which the Applicant was acutely aware.

8. Engendering fear and intimidation amongst the community in which the gangs operated was a core feature of their *modus operandi*, most commonly in the form of kidnappings and beatings. Some months later, in February, 2001 the Applicant learned that a well-known assassin had been supplied with two automatic weapons and offered IR£5000 to shoot witnesses and a member of the Gardaí. This intelligence came from a reliable source; the Garda to be shot was identified as the Applicant. The seriousness with which the threat was taken was underpinned by the very real precautions which he undertook with regard to personal security which included carrying a firearm 24 hours a day; the Applicant even slept with a gun under his pillow. In addition his home was surveyed by a crime prevention officer and the alarm system was upgraded.

9. The Applicant gave evidence that externally his reaction to the threat was consistent with a culture in the Gardaí, particularly in his unit, described as 'macho'; however, inwardly his reaction was very different. He started experiencing difficulties with sleep and noticed that he was becoming agitated and obsessive about security. He described waking up with "panics" which were followed by an inability to get back to sleep. The disturbed sleeping pattern worsened and he began to feel very fatigued at work. He described himself as being anxious, irritable and jumpy. On the 11th June, 2001, at his wife's suggestion he attended his GP. Dr. O'Brien noted complaints of significant distress and on examination found that the Applicant's blood pressure was significantly elevated. The Applicant was advised to attend a clinical psychologist and make lifestyle changes to help him deal with the psychological sequelae and hypertension.

10. Thereafter the Applicant attended Brenda Tangney, Consultant Clinical Psychologist, on a number of occasions throughout 2001. She found symptoms which fulfilled the criteria for a diagnosis of PTSD outlined in the Diagnostic and Statistical Manual of Mental disorders (D.S.M.-IV).

11. To help the Applicant cope with the symptoms of this condition Ms. Tangney adopted a therapeutic approach which consisted of a variety of stress management techniques. The most significant symptoms which she identified on assessment were intrusive day time thoughts about the threat to kill, poor self-esteem, irritability, edginess, diminution in concentration and memory, panics, sweating, trembling/shaking, hyper vigilance at work, sleep disturbance, social withdrawal, feelings of depression and exhaustion. Ms. Tangney prepared a report dated the 4th April, 2002, in which she detailed her findings at consultations over a period of six months. With her report she enclosed the diagnostic criteria for PTSD set out in the D.S.M.-IV.

12. The close temporal recording of the Applicant's complaints at consultation with Brenda Tangney in the year immediately following the initial threats to his life are especially significant in resolving the conflict of medical evidence on the issue as to whether or not he suffered PTSD as a result of any of the incidents giving rise to these proceedings. In this regard I pause to observe that when Dr. Devitt, Consultant Psychiatrist, who was retained by the Respondent, first reported in April, 2015 he did so for the purposes of a vocational medical assessment rather than for the purposes of reporting for these proceedings. It is clear from the evidence that by that time 'a lot of water had run under the bridge'.

13. An integral part of Dr. Devitt's opinion that the Applicant did not qualify for a diagnosis of PTSD was that he had not been materially effected in the discharge of his occupational duties, moreover, the nature of his occupation and in particular his membership and participation in a unit involved in the investigation of very serious criminal activities meant that the death threats would not have been as shocking or as unusual for him as they would be to someone unaccustomed to such behaviour. In the context of the Applicant's occupation Dr. Devitt's evidence was that the threats could trauma which was a necessary criterion which had to be satisfied to found a diagnosis of PTSD.

14. The individual who had threatened the Applicant was subsequently prosecuted for that offence; He pleaded guilty in March, 2001 and received an eighteen month sentence, a term which the Applicant considered to be unduly lenient given the seriousness of the offence and the number and nature of his previous convictions. He was aggrieved by this outcome and continued to be affected by the stress involved in his work particularly because he was required to carry out duties in the same area where the gangs operated and from which the threat to his life had emanated. In this regard his GP referred him to Dr. Louis O'Carroll, Consultant Psychiatrist in November, 2002. He carried out an assessment and pursued a cognitive/supportive psychotherapeutic approach by way of treatment and encouraged the Applicant to proceed with a transfer application.

15. The second incident occurred in August, 2005. The Applicant was one of the lead investigating officers in a murder which was carried out on the 25th August, 2001, as part of the ongoing feud between two well-known criminal gangs in Dublin. The investigation ultimately led to the murder suspect being charged with that offence by the Applicant on 18th September, 2003. The accused was a notorious and very dangerous criminal. His trial would not take place until 2009. However, on the 1st August, 2005, the Applicant was informed through senior Garda intelligence that a threat to kill him had been made by the accused from prison and that the putative assassin had made anonymous contact through a confidential and reliable source to say that he had been offered €15,000 by the accused to kill the Applicant.

16. The third incident followed relatively quickly. On the 8th November, 2005, the Applicant's then spouse found a shotgun cartridge on the windscreen of the family car which was parked outside their home. This has a devastating psychological effect on the Applicant and his wife. The family had to be relocated and their home placed under 24 hour Garda surveillance. This would not be the first time that the Applicant and his family would have to leave their home. He pursued a transfer and was ultimately assigned to work in Mayo, a move which had a significant impact on his ability to manage his work and strike a good life balance.

17. By 2005 the Applicant thought his past problems were behind him, however, his reaction to the subsequent threat to kill him was one of shock and he once more began to experience episodes of panic and sleepless nights. His obsession with security for himself and his family returned. He erected CCTV cameras at his own expense around his home. The same psychological symptoms from which he had previously suffered and which had essentially resolved over a period of eighteen months to two years, returned. He re-attended his GP Dr. O'Brien, who noted that he was suffering from significant stress, was not sleeping, and that his blood pressure was once again highly elevated. He certified the Applicant unfit for work for the following four months.

18. The Applicant re-attended his clinical psychologist to help deal with his psychological sequelae which had failed to resolve. These sequelae were extenuated by a number of factors including the upcoming trial and the perceived failure of Garda management to take what the Applicant regarded as appropriate security precautions for the safety of himself and his family. Dr. O'Carroll's clinical impression of the Applicant in February, 2008 was of an individual who was continuing to show features of psycho-emotional distress and impairment in his quality of life as a result of the threats to his life. His prognosis was that the Applicant would continue to experience a considerable degree of apprehension and psycho-emotional stress for the foreseeable future; however, on the positive side he also noted that notwithstanding his complaints the Applicant had been able to return to work and was managing his duties. He considered that the thoughts of the upcoming trial and what that would involve was one of a number of factors which had once again contributed to a build-up of psychological sequelae, another was the breakdown and ultimately the loss of his marriage in 2008. It was the ability to carry out his duties despite his ongoing sequelae which Dr Devitt considered particularly significant in forming his opinion that the Applicant had not developed was not suffering from PTSD.

Events of 2009

19. The trial of the accused for murder with which he had been charged by the Applicant ultimately came on for hearing on the 15th January, 2009. The delay had arisen for a number of reasons including legal challenges, two of which had ended up in the Supreme Court. The trial collapsed. A re-trial took place between the 9th November and the 17th December, 2009, during which witnesses and jury members were intimidated. The Applicant was the lead prosecution witness and gave evidence at both trials at the second of which he was once again threatened.

20. The evidence which he had had to go give and in particular the further threats made to his life had a significant negative impact on the Applicant's psychological functioning. On the way home from court one day during which he had given evidence he became nauseated and vomited. His anxiety and stress levels increased dramatically. Security surveillance of his home was again reactivated. The overall effect reinforced the adverse psychological sequelae from which he had suffered previously including depression for which he received psychological counselling.

The Credibility Issue

21. In late 2010 an opportunity presented itself to serve in the EULEX mission to Kosovo. The Applicant's counselling advice was that

he should seriously consider the opportunity on a number of grounds not the least of which was that it would remove him from the environment in which the threats to his life had been made.

22. Successful Applicants received a one year posting. The Applicant completed an application form on the 4th November, 2010, in which he described himself as being in excellent physical condition with no chronic health problems that would limit his physical activity. His application was successful. He served in Kosovo from the 24th February, 2011, to the 24th February, 2012, and found the experience fulfilling.

23. As part of the application process he had had to complete a questionnaire which he signed and dated the 5th January, 2011. In response to questions concerning his past medical health he denied having any heart or psychiatric problems or of having suffered from depression. These answers were incorrect. Before acceptance on the mission it was necessary for all applicants to undergo a medical examination. This was known to the Applicant. As the inaccurate declaration concerning his health status and the misleading answers to the questionnaire were central to calling the Applicant's credibility into question and on foot of which he was subjected to sustained cross examination, it is necessary to comment about this aspect in some further detail.

24. In this context I consider it to be of some considerable significance that the Applicant's medical history was known to Dr. Donal Collins, the Chief Medical Officer (CMO). He had previously written to the Applicant's GP, Dr. O'Brien, in connection with his medical health and fitness for work in May, 2006. Following medical examination for the EULEX mission, the CMO certified the Applicant as being fit for overseas duty.

25. In answer to a question from the Court the Applicant confirmed that he was fully aware of his medical status and of his medical history at the time when he completed the questionnaire and medical examination. The explanation offered to the Court for failing to give truthful and accurate information when completing the application and questionnaire was that had he completed the documentation as he ought to have his belief was that his application would have been turned down. It is clear from his evidence given on cross examination that he was aware the CMO would have had a report from Dr. O'Carroll on file and would have been aware of his full medical history.

26. In the course of cross examination the Applicant fairly admitted that had he been pulled up on the answers he had given when completing the documentation he might have had a difficulty progressing further. He also fairly acknowledged that he had completed the documentation untruthfully because he desperately wanted to go on the mission. The impression which I formed of him and of his evidence in this regard was that he honestly believed that had he completed the documentation accurately and truthfully as he ought to have done he would most likely have been excluded from consideration on the basis of a box ticking exercise before he ever got to a medical examination. Whatever chance he had of going on the mission, in which he was supported by his physicians and by his counsellor, he had to get as far as a medical assessment. In his own words to achieve that objective he had completed the form "with the mind set of not bringing attention to myself".

27. In the event the misrepresentation, which is freely acknowledged, mostly likely resulted in no more than the Applicant progressing to a medical examination by the CMO. In the event he passed and he was successful in securing a place on the mission. I am quite satisfied that the CMO was aware of the Applicant's past medical history and that had he felt there was any good medical reason by virtue of that or otherwise why the Applicant was not fit to serve overseas he would not have certified him.

28. It was submitted on behalf of the Respondent that given his role as a police officer and the standards which officers are expected to maintain the deceit involved in the completion of the application form and the medical questionnaire carried a particular significance. While it was accepted that the incidents giving rise to these proceedings had occurred and that a level of psychological injury had been caused as a result, the Applicant's deceit in that context cast what was described as a long shadow over the credibility of his narrative evidence and was a serious matter which had to be taken into consideration by the Court when it came to assessing compensation.

29. In that regard it was further submitted that as the Applicant was prepared to answer official documents in an untruthful and misleading manner in order to best suit the attainment of his objective to serve on the mission, the Court could not divorce his manipulation of the truth on that occasion from the evidence he had given in this litigation, the object of which was to secure a large award of compensation.

30. In calling his credibility into question it was not just the manner in which the application and questionnaire had been completed that the Respondent relied upon but also the fact that the whole truth about what had happened in this regard had only come to light under cross examination; moreover, there were other matters which had a bearing on this matter. The Applicant had admitted under cross examination to disagreeing with his GP designating his complaints in June/July, 2001 as "stress" instead persuading the GP to alter this entry to read "blood pressure". Other examples of inconsistencies, exaggerations and untruths about his medical circumstances included a denial in medical history that he had ever previously suffered from pneumonia whereas the medical records disclosed that he had. The explanation offered for this by the Applicant was that what had been diagnosed as pneumonia was in truth a bad flu.

31. When completing a form in approximately February, 2012 he had denied having been treated by a psychiatrist whereas in truth he had attended Dr. O'Carroll as far back as 2002 and had diagnosed a PTSD. Finally, he also accepted under cross examination that he had completed a course designed to assist in the promotion process from sergeant to inspector while serving in Kosovo whereas in his evidence in chief was that of a man who despaired his career had not developed in the way he thought that it would.

32. The truth in that regard was that the Applicant had applied to sit the exam for promotion and had passed on the first occasion but had not succeeded subsequently on interview. He did not apply in the competition for places in 2013 but did apply in the next round. He was allocated an interview on the 1st February, 2016 but withdrew citing ongoing issues with management and work related illness, stating also that "with all due respects to the interview board I do not believe I would receive an impartial interview." The Applicant had also accepted that there were other factors in his decision not to proceed including the period of time which he had already served in the force, the time left till retirement and whether promotion was in all the circumstances really in his best interest.

33. Retired Superintendent Thomas Mulligan gave evidence as to character and of the Applicant's experience and abilities as a detective sergeant. There is no doubt whatsoever from this evidence that Mr. Mulligan held the Applicant in the highest of regard both personally and professionally. His expectation was that of several individuals whom he knew, including four other sergeants in "G" district, (the Applicant's district) the Applicant was the most likely to progress; at the very least he was certainly the equal of those officers all four of whom subsequently went on to become superintendents.

34. The Court has no reason to doubt the professional opinion and evidence of Mr. Mulligan, however, it is not his evidence alone on foot of which the issue of credibility and whether or not the Applicant would have been promoted to inspector and then to superintendent falls to be resolved. There is other evidence and there are other matters which have to be considered not the least of which are factors not causally related to the incidents such as those identified by the Applicant himself, including his perception of the impartiality of the interview board and whether or not in any event it was in his own best interest to continue with the promotion process.

35. Even if the Applicant had not withdrawn from the interview process the Court is well aware that it was by no means certain he would have succeeded in being promoted to inspector never mind superintendent, this notwithstanding the evidence of Mr. Mulligan. Indeed although successful in the exam he had once before been unsuccessful in securing a promotion to inspector at interview.

36. While I am satisfied, for the reasons already given, that the decision to assign the Applicant a place on the EULEX mission to Kosovo had not resulted from a misrepresentation, the other matters to which the attention of the Court has been drawn by the Respondent on the question of the Applicant's credibility do cast a shadow over certain aspects of the claim and require careful consideration.

Conclusion on Credibility

37. I had the opportunity to observe the demeanour of the Applicant as he gave his evidence and I am quite satisfied that taken as a whole he gave truthful evidence on which the Court can rely. However, it is also clear from his evidence that he has long since harboured grievances with management which have influenced his decision making process, particularly in relation to promotion, which it would be unjust to lay at the door of the Respondent as a consequence of the incidents in respect of which he brings these proceedings.

38. It follows that if the Applicant suffered a PTSD as a result of the incidents, his failure to progress with the promotion process cannot be wholly attributed to the consequential psychological sequelae. Other factors were undoubtedly at play which are not causally related and must be taken into account when consideration is being given to the claim for enhanced general compensation for loss of opportunity in respect of promotion.

Ongoing medical issues

39. Dr. O'Carroll died in 2012. In his last report of 13th January, 2012, he found the Applicant to be suffering from intense psycho-emotional distress and what he described as physical stress symptoms which he attributed to the death threats. However, he also noted that the Applicant was distressed by the breakdown of his marriage and what was described as the derailment of his career. Following the death of Dr. O'Carroll the Applicant was referred to Dr. Corry, Consultant Psychiatrist, who unfortunately also died shortly afterwards, accordingly, the Applicant was then referred to Dr. Brendan McCormack, Consultant Psychiatrist, who prepared a report and gave evidence at the hearing.

40. He formed a similar opinion to that of Dr. O'Carroll and concluded that the Applicant had suffered from a PTSD as a result of the threats to his life. The events of 2009 had essentially initiated and reactivated the psychological illness which had followed the threats made in 2001 and 2005. It was also noteworthy that the Applicant had developed depression a feature of which was suicidal ideation for which he needed treatment. The psychological sequelae were undoubtedly aggravated by the breakdown in the marriage and ultimate divorce. In this regard I pause to observe that no case is made on behalf of the Applicant that the loss of his marriage and the stresses and strains resulting from that are causally related to the incidents the subject of these proceedings.

41. The Applicant has been attending Cluain Mhuire psychiatric service on a regular basis since March, 2015. He has been prescribed anti-depressant medication, Mianserin 30 mgs, at night. He has also been attending the Donnybrook Centre for Cognitive Behavioural Therapy which has had a beneficial symptomatic impact. In 2015 he also came under the care of Dr. Attila Szigeti, Consultant Psychiatrist, who assessed and treated him on a number of occasions between the 23rd March and the 15th June. Her report containing her findings and opinion was admitted in evidence.

42. As a result of pharmacological and psychological intervention her view is that the Applicant has achieved partial remission of recurrent depression which arose following a period of long strain work related stress in connection with the threats to the Applicant's life. With regard to prognosis, her view was that while his clinical condition had improved the Applicant was still in what she described as "partial recovery".

43. In March, 2015 the Applicant attended Dr. Pamela Fitzgerald, Clinical Psychologist. She wrote a report dated the 27th August, 2015, in which she referred to the reports of Dr. O'Carroll, Dr. Szigeti and Dr. Devitt. In her opinion the Applicant will need long term psychological support during his working life. A combination of pharmacological and psychotherapy treatments are recommended. In passing it should be noted that in his report of the 7th October, 2015, and indeed in his evidence, Dr. Devitt was largely in agreement with this assessment.

PTSD; the Law

44. Section 2 of the Civil Liability Act, 1961 defines "personal injury" as including any disease and any impairment of a person's physical or mental condition and provides that "injured" shall be construed accordingly. Recovery of damages for personal injuries is governed by well settled legal principals which prescribe the requirements to be satisfied before an award and judgment can be given and which establish the boundaries or limits beyond which recovery is not permitted.

45. In that regard it is now well settled that psychiatric illness unaccompanied by physical injury caused otherwise than by fright or shock is not actionable at common law even though it is reasonably foreseeable that such might likely be the consequence of a negligent act. Put another way a recognisable psychiatric illness which is shock induced as a result of the negligent act of another is actionable at law. See *Kelly v. Hennessy* [1996] 1 ILRM 321, a decision of the Supreme Court which has been consistently followed in this jurisdiction since it was delivered. For a discussion on the history and application see *D.J. v the Minister for Health* [2017] IEHC 114.

46. As already mentioned at the outset, the essence of the controversy in this case is whether the Applicant suffered a PTSD as a result of the incidents or any of them, which is actionable, or whether he suffered what Dr. Devitt described as an anxiety disorder which is not since though undoubtedly present it was shock induced. While it was accepted by the Respondent in the course of submissions that the incidents resulted in psychological sequelae which manifested in the form of emotional stress and anxiety these were not to be conflated with a true PTSD. It follows that significant consequences in terms of the outcome flow from the decision on this issue.

47. I have carefully considered the medical evidence made available to the Court in this regard. Dr. Devitt lay very heavy emphasis on

the Applicant's experience as a detective sergeant working daily in an environment which brought him into contact with the most heinous of crimes and the most dangerous of individuals who are involved in committing them. He did not consider threats made in such circumstances could satisfy the requirements necessary for a diagnosis of PTSD as categorised by the World Health Organisation's International Classification of Diseases (ICD-10), a categorisation also referred to by Dr. McCormack.

48. The very fact that the Applicant continued to function as a detective sergeant not only after the threats in 2001 and 2005 but also after the threats in 2009 and following his return from Kosovo was evidence that he had not suffered a PTSD. Put another way such a diagnosis was dependant on evidence of serious vocational impairment, a fundamental requirement which was absent.

49. Dr. McCormack was trenchant in his disagreement with Dr Devitt on this aspect of matters. The difference was subtle but crucial. Acknowledging that vocational impairment might well be an ingredient in any given case he stressed that its presence was not an essential requirement to diagnosis; that much was clear from both the ICD-10 and the DSM-5 classifications

50. On behalf of the Applicant it was submitted that the threats made to him were exceptional and catastrophic for the following reasons:

(i.) The threats were actual threats to kill;

(ii.) The threats came from persons who were known to be serious criminals and involved in gangland crime, including murder;

(iii.) The threats were confirmed by information coming from different independent sources that money had been offered to organised crime gangs to carry out the threat to kill the applicant;

(iv.) The threats were made in the context of a gangland feud which by then had resulted in 20 murders;

(v.) The threats were treated as being serious by An Garda Síochána who provided personal security to the Applicant on a round the clock basis; on occasions his family had to be moved from their home;

(vi.) The threats were tangible as evidenced by the placing of a shotgun cartridge on the window of the family car and the interception of two known associates of the accused by a Garda patrol within 50 yards of the Applicant's home at the time of the trial in 2009.

51. In my judgement it is significant that by the time Dr. Devitt first came to assess the Applicant for the purpose of advising in these proceedings in 2015 he had already benefitted substantially from pharmacological and psychotherapeutic treatment whereas the physicians who diagnosed the Applicant with PTSD had had the benefit of assessing him in varying degrees of relative proximity to the incidents very much closer than when he was assessed by Dr. Devitt. As mentioned at the outset of this judgement the very detailed record of symptoms consistent with a diagnosis of PTSD made by Ms Tangney in such close temporal proximity to the first threats are particularly significant.

Conclusion; Conflicting Medical Evidence; Resolution

52. In resolving the conflict on the medical evidence it is necessary that the Court should recognise that those physicians who carried out assessments, offered advice and had afforded treatment were under a professional duty of care to their patient, accordingly, unless there is compelling medical evidence or other good and sufficient reason for doing otherwise such evidence should weigh heavily in the process of determination. For all these reasons I accept the medical evidence adduced on behalf of the Applicant, accordingly, the Court finds as a matter of probability that a PTSD was caused by and resulted from each of the incidents.

53. For the sake of completeness, I should add that it had been submitted on behalf of the Respondent that in his evidence the Applicant had not described the threats made to his life as "exceptional" or as "exceptionally threatening" or as "catastrophic". It was also submitted that Dr. McCormack had conflated his own views such threats would have had if made to someone such as himself rather than someone in the position of the Applicant and onto whom he had projected those views, a fundamental error on his part which thereafter tainted his professional opinion and his evidence.

54. Having very carefully considered the evidence of Dr. McCormack I cannot accept this submission. I am fortified in reaching this decision by the conclusions of the other physicians, including psychiatrists, who assessed and treated the Applicant since the time of the original threats, all of which are to the same effect. Indeed, when Professor Clare carried out an assessment on behalf of the Respondent in 2006, in his report of 6th June, he did not demur from the views of Dr. O'Carroll and Ms Tangney about which he was aware having been furnished with their reports. In this connection Professor Clare accepted that the effect of the threats made up to November, 2005 had "seriously destabilised" the Applicant.

Coronary Artery Disease

55. The Applicant suffers from significant multi-vessel coronary artery disease as a result of which he developed an atrial flutter with chest discomfort in 2013 and again in 2014. He is on beta-blockers which he will need long term. He has had coronary artery stenting carried out by Dr. Charles McCreery, Consultant Cardiologist. In his evidence he expressed the opinion that stress had unquestionably played a role in the development of the Applicant's underlying coronary disease.

56. The Respondent retained Professor Declan Sugrue, Consultant Cardiologist to advise in relation to this aspect of the claim. His opinion is expressed in a very detailed report dated the 10th March, 2016, which was admitted in evidence. Commenting on causation he stated he was unaware of compelling evidence that psychological stress "causes" the electrical abnormalities involved in the development of atrial flutter though one could speculate that acute emotional stress might potentially trigger an arrhythmic event in somebody with an underlying predisposition. The cause of the Applicant's condition was multi-factorial.

57. It is quite clear from his medical records that the Applicant has a predisposition, indeed, an established family history for the development of cardiovascular disease. In this regard Professor Sugrue expressed the opinion that the accepted causation paradigm revolves around genetic predisposition of which there were well recognised factors present in the Applicant's case. Acute psychological stress may be a factor in causing acute coronary syndromes or hypertension but he thought that in the Applicant's case that was but one of many other factors.

58. In evidence Dr. McCreery did not disagree with Professor Sugrue's conclusions, indeed, he agreed that it was not possible to state with any scientific credibility that a fixed percentage of blood pressure was due to genetic predisposition and another fixed percentage was due to environmental factors such as psychological stress. That the Applicant had suffered from hypertension for a

very long period of time independently of the threats to his life is manifest from the available medical evidence.

59. To be fair, as already observed, the Applicant does not make the case that the stress, anxiety, depression or other symptoms of PTSD were causative of his coronary condition. The case made on behalf of the Applicant is that the symptoms were stressors which contributed to the development of the condition and thus the necessity for the subsequent treatment by Dr. McCreery to date and as will be required in future.

Conclusion; Contribution to Cause of Coronary Condition

60. It was submitted on behalf of the Applicant that it was a matter for the Court to assess the degree of contribution and to determine the percentage allowance to be made in respect of the treatment costs claimed. I cannot accept that submission. To do so would be to enter into the realm of speculation, something which the law does not permit. The decision of the Court must be based on evidence or on inferences which may properly be drawn from the evidence. Taken at its height the medical evidence warrants no more than a finding that the PTSD symptoms were but a part of a constellation of relevant factors by far and away the most significant of which is a genetic pre-disposition to the development of the cardiac condition in question. Save in so far the symptoms of the PTSD were contributory to the development of the condition is not on my view of the evidence causally related to the incidents, accordingly, to such extent as it may be taken into account at all by the Court that should be by way of general compensation.

Assessment

61. The principles which govern the assessment of general damages/compensation in tort law are long settled. General damages are intended to compensate the injured plaintiff for the pain, suffering, inconvenience and loss of the amenities of life which have been caused and are likely to be caused as a result of the wrong. The fundamental principle underlying the concept of compensatory damages is summed up by the Latin *restitutio in integrum*. The purpose or object of compensatory damages is reparative, that is to restore the plaintiff, insofar as that is possible by an award of money, to the status quo ante for past and prospective pecuniary and non-pecuniary loss and damage caused by the wrong.

62. While pecuniary losses are capable of precise calculation, where non pecuniary loss is concerned the attainment of the reparative objective is undoubtedly problematic. As Lord Morris of Borth-y-Gest observed in *H. West & Son Ltd v. Shepherd* [1964] A.C. 326 at 346 "...money cannot renew a physical frame that has been battered and shattered. All the judges and courts can do is to award sums which must be regarded as giving reasonable compensation."

63. Compensatory damages are not confined to actual physical or mental pain rather, as was observed in *Bennet v. Cullen* [2014] IEHC 574, para 38, the terminology 'pain and suffering' when used in this context extends far beyond the sensory experience of pathological or neuro-pathological pain to cover loss of expectation of life, permanency of injury, mental distress, inconvenience and annoyance, sorrow, anxiety, irritation, mental strain and frustration, to mention but a few of the consequences associated with physical or mental injuries, whether categorised as separate heads or elements of damage or as constituent parts of the generic description 'pain and suffering'; all are compensable where they arise as a result of the injuries or the interference with the enjoyment of the amenities of life which go with the living of it. The rationale is simple, the uninjured plaintiff is entitled to enjoy all of the attributes physical and intellectual possessed and enjoyed at the time when the wrong was committed.

64. The law requires justice to be done between the parties with regard to every aspect of the litigation in which they find themselves involved including the assessment and amount of the compensation to be awarded by the Court, a sum which must be fair, reasonable and proportionate to the injuries and loss sustained or likely to be sustained.

65. In approaching the assessment in this case I have become aware of the recent decision of the court in *Kampff v. The Minister for Public Expenditure and Reform* [2018] IEHC 371. Conscious of the desirability that there should, where possible, be comity of judgments of the Court, having read and considered the judgment it is with considerable regret that I find myself unable to follow it and apply the rules which are suggested for the assessment of compensation. I am driven to this conclusion by what appears to me on the face of it a mistaken premise on foot of which the propositions advanced are founded, namely that the maximum award for general damages which may be made for pain and suffering *in any case* [emphasis added] is presently capped or limited to a sum of in or about €450,000 and that this is the bench mark figure against which the concept or principle of proportionality of damages is to be applied and measured in approaching or carrying out the assessment of damages for pain and suffering.

66. If, as it seems to be, this is the ratio of the decision then in my judgement that is to misunderstand the particular circumstances which originally gave rise to the necessity for the introduction of a limit or ceiling on the amount of general damages. The rationale for the so called 'cap' or limit on general damages is to be found in the judgment of Griffin J. delivered in *Reddy v. Bates* [1983] I.R. 141 at 148 and in the judgments of the Supreme Court delivered in *Sinnott v. Quinsworth* [1984] ILRM 523. It is crystal clear from these judgments that the 'limit' or 'cap' on general damages is confined to particular circumstances such as those which arose in those cases. It does not apply and was not intended to apply to circumstances where even though there may be very serious, even catastrophic injuries, there are no substantial pecuniary loss claims in respect of matters such as future medical, care and accommodation costs. See *Goff v. Neary & Cronin* [2003] IESC 39 where the principle identified by Griffin J. in *Reddy v. Bates* was expounded upon in considerable detail.

67. That the 'limit' or 'cap' on general damages does not apply to the assessment of general damages in cases which fall outside the very particular circumstances which arose in those cases and that the amount of general damages may exceed, sometimes quite substantially, the amount of the 'limit' or 'cap' prevailing at the time when a case is decided see *Kealy v. Minister for Health* [1999] 2 I.R. 456; *Yang Yun v. M.I.B.I. and Anor* [2009] IEHC 318; *J.R. v. Minister for Health and Children* (unreported, High Court, Irvine J., 24th February 2011); *B v. C & D* [2011] IEHC 88 and *Mullen v. The Minister* [2016] IEHC 295.

68. I am not to be understood as saying that the notional 'cap' amount at any given time is not relevant and has no application in a case to which the 'cap' does not apply, quite the contrary, it is most certainly a factor to which the Court should also have regard; see *M.N. v. S.N.* [2005] 4 I.R. 461; *Yang Yun* and the several decisions of the Court of Appeal cited in *Kampff* but it was never intended nor is it the bench mark figure against which assessments for injuries *in all cases* are to me measured and made proportionate. [emphasis added]

69. Insofar as the amount of the 'cap' is concerned, this was never intended to be a fixed and permanent feature on the landscape in the assessment of general damages in the cases to which it applies, rather from the outset it was recognised that the amount would have to be revised from time to time to reflect the social, economic and environmental circumstances and conditions prevailing or as might likely prevail in the foreseeable future at the time of assessment. Indeed, the rationale for the revision of the amount in order to reflect these factors is succinctly set out in the judgement of Quirke J. in *Yang Yun*.

70. If the same reasoning and rationale which led his Lordship to reduce the amount of the 'cap' in *Yang Yun* was applied today as it undoubtedly ought to be in order to reflect the very different and dramatically changed social, environmental and economic circumstances which have occurred since *Yang Yun* was decided and one was to accept the public pronouncements of the ECB and the OECD that Ireland is now classified as the fastest growing economy in the EC, approaching almost full employment, with rent and house prices in some areas already exceeding levels last seen at the height of the boom which preceded the financial crash, a significant upwards recalibration of the 'cap' amount would be almost inevitable. And this notwithstanding the potential consequences for some sectors of the economy in the event of a disorderly exit from the EU by the United Kingdom.

71. As the decision in *Kampff* had not been delivered and was therefore not argued before me I shall reserve further comment to another occasion where that may arise.

Conclusion; Claim for Enhanced Compensation

72. With regard to the claim for enhanced general compensation in respect of loss of promotion to inspector and superintendent, I accept the Applicant's submissions and consider the appropriate way in which to deal with this aspect of the case is on the basis of enhanced compensation for loss of opportunity. In doing so the Court has to take into account the other factors which have already been identified in this judgment that have nothing to do with the incidents and for which the Respondent is clearly not liable but which have had an effect on the Applicant's decision-making process and which he himself fairly accepted. Although four sergeants from G district were promoted, in the Applicant's case other factors were at play which have had a material bearing on the likelihood of promotion in addition to the sequelae of the psychological injuries he undoubtedly suffered.

73. The Court has had the benefit of actuarial evidence contained in the actuarial reports which set out the capital of value of the loss of income had the Applicant been promoted to Inspector at a certain time up until the date of retirement at 60 as well as the loss had he been appointed in 2011 to the rank of Superintendent. Had these promotions occurred at the assumed dates they would have had a knock-on effect not only on his income levels but also on the pension and lump sum payments which the Applicant will receive from the date of retirement as a detective sergeant. The sums in respect of the putative losses are substantial.

74. It had been argued in this case that there should be no *Reddy v. Bates* deduction or if there was to be a deduction it should be very small. I do not accept that proposition. As I have said in several judgments involving Garda compensation claims, just because someone is in a job which is guaranteed until the age of retirement does not mean that *Reddy v. Bates* contingencies do not arise. However, any reduction for *Reddy v. Bates* contingencies will necessarily be less for a person who has a secure occupation such as presently exists in the public service than for a person who by way of example is self-employed with little or no security of employment. As it happens making a deduction for *Reddy v. Bates* contingencies in this case does not arise as a claim for pecuniary loss arising from loss of promotion on an actuarial basis was not pursued.

75. With regard to the claim for loss of opportunity I am satisfied that while it cannot be concluded as a matter of probability that but for his injuries alone, there being other factors at play, the Applicant would ultimately, like his colleagues, have been promoted to become a superintendent, nevertheless the ongoing sequelae of the psychological injuries were also contributory to a significant degree to his decisions not pursue or where he did pursue not to proceed with the opportunities for promotion which were presented to him. Accordingly, and to that extent, the Court considers a fair and reasonable sum commensurate with and attributable to his injuries to compensate the Applicant in respect of his claim for loss of opportunity is €85,000.

Conclusion; Pecuniary Loss Claim Coronary Condition

76. I am satisfied and find that the PTSD was a factor amongst a constellation of other factors which contributed to the development of the Applicant's coronary sequelae. The medical evidence establishes that the Applicant had a genetic predisposition to coronary problems which were exacerbated to some extent by the PTSD. In Dr McCreery's opinion this was a significant factor in causing the Applicant's coronary artery disease.

77. However, I accept the medical evidence of Professor Sugrue led on behalf of the Respondent that it is not possible to go further than concluding stress whether caused by the consequences of PTSD or otherwise is a medically recognised factor in the development of such a condition. Moreover it was not possible to apportion a percentage to the contribution made by stress to the development of the Applicant's condition, particularly in the circumstances of this case where other factors were involved the most prominent of which was the family history most likely attributable to genetic predisposition.

78. It was submitted on behalf of the Applicant that the Court should apportion such percentage as the Court considered reasonable to the substantial claim for pecuniary loss made in respect of the treatment for the coronary condition. I am satisfied on the medical evidence which I have accepted on this issue that the onus of proof in that regard, which rests with the Applicant, has not been discharged. In the absence of evidence to found a percentage contribution it is not the function nor would it be permissible for the Court to find one of its own. Accordingly, the Court cannot allow the pecuniary loss claim in relation to the Applicant's coronary condition.

Conclusion; General Compensation for Pain and Suffering.

79. In assessing general compensation or general damages the Courts apply well settled principals of tort law in an exercise which attempts, in so far as that is possible by an award of money, to restore the Applicant or a plaintiff as the case maybe to the *status quo ante* at the time when the wrong was committed in respect of pecuniary and non-pecuniary losses which have and are likely to occur in the future as a result of the wrongdoing.

80. In carrying out the assessment in this case the Court is conscious that the Applicant continues to function as a Detective Sergeant. He is not a man whose injuries are so serious that he requires hospital treatment though, as in the past, he will need ongoing psychological counselling from time to time to help him function vocationally and socially. He has been suffering to a greater or lesser extent since the first assault as long ago as October, 2000. At one stage he sought to deal with his problems by abusing alcohol which only worsened his predicament. Fortunately, he realised the futility of that course and turned instead to professional help in the form of counselling, cognitive behavioural therapy and medication to help him deal with his psychological problems.

81. I accept the assessment of the mental healthcare professionals and the Court finds that the Applicant suffered from significant psychological sequelae as a result of the incidents from which he has only partially recovered. Indeed, both of the psychiatrists found that the Applicant suffered from significant emotional distress as a result of the incidents which also contributed to the breakdown of his marriage. To his credit the Applicant made it quite clear in his evidence that he was not seeking to apportion any blame for the loss of his marriage on the Respondent preferring instead to identify other factors for which he took responsibility. This was one of a number of significant features in the Applicant's evidence which I found to be of considerable assistance in the resolution of the credibility issue.

Ruling

82. Having due regard to the findings made and conclusions reached the Court finds that a fair and reasonable sum to compensate the Applicant for pain and suffering commensurate with and proportionate to the injuries suffered is €100,000 to which must be added the figure of €85,000 in respect of enhanced general compensation for loss of opportunity making in aggregate the sum €185,000 to which must also be added the sum of €10,023.14 agreed between the parties in respect of pecuniary loss making in total €195,023.14.

83. The Court will give judgement for this amount.