Neutral Citation [2013] IEHC 152

THE HIGH COURT

[2003 N. 1932 P]

BETWEEN

TRACEY NELSON

PLAINTIFF

AND

ETHNA MCQUILLAN, SAEED MAHMOUD, JAMES HAYES, NIALL MAGUIRE, PAULINE MORRIS AND MAQSOOD AHMAD SAEED

DEFENDANTS

JUDGMENT of O'Neill J. delivered on the 8th day of March, 2013

1. In these proceedings, the plaintiff sues the defendants for damages for negligence arising out of the medical and obstetric treatment of the plaintiff in the latter stages of a pregnancy and the delivery of her son, Joshua, on 24th February 2000. This delivery took place in Our Lady of Lourdes Hospital in Drogheda. The first named defendant is the nominee of the HSE which controls this hospital. This second named defendant was a doctor in this hospital who treated the plaintiff. The fourth named defendant was the plaintiff's General Practitioner at the relevant time during her pregnancy. The action has been struck out as against the third and fifth named defendants. On the eighth day of the trial, the action against the fourth named defendant was withdrawn.

2. The plaintiff's case is that she suffered a symphysiotomy (a splitting or separation of the symphysis-pubis) towards the end of her labour or in the course of delivery of her son, and that this occurred because of the negligence of the doctors who treated her in the first named defendant's hospital in failing to have diagnosed on 2nd February 2000, when she was admitted overnight, or on 23rd or 24th February, that she was suffering from a condition known as symphysis-pubis dysfunction (SPD) and consequently failed to take the necessary precautions to have prevented that condition advancing or deteriorating to a symphysiotomy during labour and delivery.

3. It is the plaintiff's case that she has never recovered from this symphysiotomy, and as a consequence, she has endured severe pain since then in her pubic area and has had to undergo in 2004, surgery to stabilise her pelvis, and as a consequence of the pain and stress associated with her condition has developed a condition known as fibromyalgia and also depression. Since then, she has become addicted to alcohol which she found eased her pain and she has been unable to work since the twenty-fourth week of her pregnancy and she claims her entire life has been transformed and degraded as a result of suffering this condition.

4. The symphysiotomy was diagnosed on 26th February 2000 by a Dr. Akpan, a consultant in the first named defendant's hospital. The condition of symphysiotomy as described in the expert obstetric evidence involves a separation of the symphysis-pubis. In pregnancy, it is normal for the cartilage-type material which joins the three pelvic joints together to soften and slightly expand, thereby facilitating safe delivery. In approximately one in thirty pregnancies, a condition known as symphysis-pubis dysfunction (SPD) occurs. This condition involves an expansion of the symphysis-pubis joint beyond what would be considered normal and can cause pain and discomfort. If the expansion progresses further, the condition is described as Diasthesis and is obviously a more severe version of SPD. If the expansion of the symphysis-pubis joint goes beyond 10mms, because of the inherent non-elasticity of the connecting tissue in the joint, it means that this tissue has separated from the bone to a certain extent, either partially or totally, and it is this state of affairs that is symphysiotomy. The spontaneous occurrence of symphysiotomy in pregnancy or labour is extremely rare. When it does occur, most sufferers recover on a conservative therapeutic regime involving rest and the wearing of a brace. Recovery normally takes up to about three months. In a small number of cases, amongst whom, unfortunately, the plaintiff must be numbered, recovery in this way does not take place and surgical intervention is required to stabilise the symphysis-pubis joint, but it would appear from the expert evidence that, in general, outcomes for these unfortunate persons tend to be poor.

5. In her evidence, the plaintiff said that from approximately week twenty of her pregnancy she began to experience very significant back pain. This was a novel experience for the plaintiff who had experience of pregnancy, having one child already, Shannon, who was born in 1995. She also had an ectopic pregnancy in 1996. As a result of this pain in her back, the plaintiff was obliged to give up her job as a chef in the Flathouse Restaurant in Navan. Around week 24 of the pregnancy, it was the plaintiff's evidence that the pain in her back then shifted into her pubic area and was with her for the rest of her pregnancy. She described this pain as a severe pain coming up through her pubic area and as a shooting or sharp pain which could then subside to a dull ache-type pain. She said this pain afflicted her every day and when there, she would have considerable difficulty in walking. As the pregnancy progressed, all of this got worse and in the last three weeks of the pregnancy the plaintiff was virtually housebound, spending the day lying on a couch.

6. Evidence was given by a number of persons closely connected to the plaintiff, namely, her sister, Nuala Rogers; her brother, Tommy Nelson; her sister-in-law, Shirley Nelson and a friend, Georgina Blake, all of whom described the plaintiff at the latter stages of her pregnancy as suffering from this very severe distressing pain in her pubic area and of having considerable difficulty in walking as a result of that. Evidence was also given by Susan Kerwick, who lived in the same area as the plaintiff during the latter stages of this pregnancy. She did not know the plaintiff at the time but gave evidence of driving her children to school and seeing the plaintiff walking or shuffling very slowly along the pathway. Such was the impact that the plaintiff's plight had on Ms. Kerwick that she stopped her car and offered to take the plaintiff's daughter, Shannon, to school. In her evidence, Ms. Kerwick described having seen the plaintiff on a number of occasions walking very slowly, stopping and starting, and felt she would never get her child to school on time. It was on a rainy day that she felt compelled to stop to assist and this led to an arrangement whereby Ms. Kerwick brought Shannon to school every morning, collecting her from the plaintiff's house. She described this arrangement as starting in about September/October 1999 and continuing through to close to the following summer.

7. The plaintiff, in her evidence, described an incident which occurred on 2nd February 2000, which is of great significance insofar as this case is concerned. On the occasion in question, the plaintiff was walking to her mother's house. On the way, she became what can only be described as transfixed with this pain in her pubic area. The pain was so severe and disabling that she was unable to continue walking and remained, as it were, rooted to the spot for a considerable period of time. She was unable to call for assistance

because her mobile phone was down. Eventually, having no other choice, she continued on her way very slowly, and arrived at her mother's house in great distress. Because the pain continued, she and her family decided that she should go to hospital that evening. She was driven there. On arrival, she was unable to walk and had to avail of a wheelchair to get into the hospital. There, she complained of and described her pain and was admitted overnight. A variety of tests and checks were carried out which established that she was not in early labour. The pain subsided during the night and she was discharged the following day. She attended the wedding of a cousin of hers that day but did not stay late. For the remainder of her pregnancy, the plaintiff described herself as being, in effect, housebound, constantly afflicted with this pain and unable to undertake any activity, in particular, walking, and during the day as she lay on the sofa, was in effect, minded by her three-year-old daughter, Shannon. Eventually, on 23rd February, as she could bear the pain no longer and was in great distress, she was brought to Our Lady of Lourdes Hospital and asked for Induction of Labour. She was admitted and did in fact go into labour and delivered her son, Joshua, the following evening.

8. At the commencement of her pregnancy, when she went to the antenatal clinic in Our Lady of Lourdes Hospital for the first time at approximately six weeks gestation, she was given what is known as the "Care Card". This is a card upon which all antenatal visits to the hospital and her General Practitioner were recorded. In total, the card records 19 visits. The visit to the hospital on 2nd February 2000 is not recorded on the Care Card. In addition, it would appear that the plaintiff visited her General Practitioner on 5th August 2099, 1st November 1999 and on a date in December 1999 when seen by Dr. Pauline Morrissey in respect of a chest infection. The plaintiff was also seen by a General Practitioner on 6th January 2000. Thus, the plaintiff was seen on four occasions during her pregnancy by her General Practitioner that were recorded in her patient chart but not in her Care Card. The plaintiff had in total, therefore 24 visits to either her General Practitioner or the antenatal clinic in Our Lady of Lourdes Hospital during her pregnancy. The plaintiff, in her evidence, said she visited the GP on several occasions, not recorded on the care card.

9. The plaintiff said that on all of the occasions she visited her General Practitioner from the time that she began to suffer from the pubic pain, she complained of this pain to her General Practitioner, and likewise, on all of her visits to the antenatal clinic in Our Lady of Lourdes Hospital she similarly complained of this pain. Insofar as her General Practitioner was concerned, the plaintiff said that on each occasion that she complained of this, she was asked had she made the complaint on her visits to the antenatal clinic in the hospital and when she replied that she had, her evidence was that the General Practitioner would defer to the hospital insofar as treatment of this complaint was concerned. Insofar as her complaints made in the antenatal clinic in the hospital were concerned, her evidence was that she thought these complaints were not taken seriously and she was advised merely to take Panadol.

10. It is apparent from the Care Card and from the plaintiff's chart kept in the GP practice that there is no record whatever of any complaint made by the plaintiff of the pubic pain which she described in her evidence to this Court. In a request signed by Dr. Morris dated 9th November 1999 for an Ultrasound scan, Dr. Morris, under the heading of 'Clinical Information' records, *inter alia*, "*Low pelvic pain, greater on left on walking*". Apart from this, there was no other recording of pelvic or pubic pain in any of the plaintiff's medical records during her pregnancy until 2nd February 2000 when she was admitted to Our Lady of Lourdes Hospital, Drogheda overnight.

11. Before going on to deal with the plaintiff's admission to hospital on 2nd February 2000, I would like to deal with the evidence of the plaintiff of her complaints to the various General Practitioners who saw her, namely, Dr. Pauline Morris, Dr. Potts, Dr. Gilsenan and finally Dr. Maguire, and also her evidence with regard to her complaints made to the doctors who attended her in the Antenatal Clinic in Our Lady of Lourdes Hospital, Drogheda.

12. As already remarked, and there was no dispute about this, none of the plaintiff's complaints concerning pelvic or pubic pain was ever recorded apart from that recorded in the card requesting an ultrasound scan dated 9th November 1999, which was around week 25 of the pregnancy. Between 9th November 1999 and 2nd February 2000, the plaintiff had eight attendances recorded on her care card and two, namely, a date in December 1999 and 6th January 2000, recorded in her patient chart, in total ten attendances with her GP, or at the Antenatal Clinic in Drogheda. In spite of the fact, that at all of these attendances, a variety of problems or issues related to her pregnancy were recorded as having been considered and dealt with, there is no mention at all of any complaint of pain or discomfort relating to her pelvic or pubic area.

13. Apart from three attendances at the GP which were not recorded on the care card but were recorded in the GP notes, all of the attendances, both at the General Practitioner and also in the Antenatal Clinic, appear from the care card to have been scheduled appointments.

14. On 1st November 1999, in an unscheduled visit, the plaintiff was seen by Dr. Pauline Morris and complained of Haemorrhoids with bleeding and pain. The plaintiff was seen by Dr. Morris on 9th November 2011, who noted that she was well, that her Haemorrhoids were healing, but that she had a Trace Haematuria, and she ordered an Ultrasound Scan to check the placenta and on the request form recorded a complaint of low pelvic pain.

15. The attendance on 10th November 1999 records a complaint of haemorrhoids but improved and refers to a scan which, presumably, was the ultrasound scan requested the previous day. The usual array of tests on this occasion produced "*nil*" result. On 1st December 1999, it was recorded that there was "*trace of blood in urine*". On 15th December 1999, no abnormality is disclosed. In an unscheduled visit on a date in December which is obscured by photocopying of the patient chart, the plaintiff was seen by Dr. Morris for a chest infection and was given a prescription for that.

16. On 29th December 1999, again, no abnormality was disclosed. On 6th January 2000, also an unscheduled visit, the plaintiff was seen for the first time by Dr. Maguire. The patient's chart records a complaint of difficulty in voiding urine for four days, together with Dysuria and frequency. A review was arranged for two days, namely, 8th January 2000.

17. On 8th January 2000, no abnormality was detected and the plaintiff was described as "*well*". Again, on 12th January 2000, the normal tests revealed no abnormality and the plaintiff was described as "*well*". On 17th January 2000, the usual range of pregnancy tests were normal, but it was recorded "*review BEC of oedema mild ankles*". On 26th January 2000, again, the usual range of pregnancy tests were normal, but again "*mild ankle oedema*" was recorded.

18. As is plainly obvious, these records are wholly inconsistent with the plaintiff's evidence of having, on all of these occasions, and indeed on others unrecorded complained of very severe pain in her pelvic/pubic area which afflicted her every day and at times immobilised her. I do not accept the plaintiff's evidence in this regard. I find it wholly incredible that complaints of the nature and extent of which the plaintiff gave evidence would have been ignored completely by approximately six different doctors between the General Practice and the Antenatal Clinic in the hospital. I accept Dr. Maguire's evidence that no such complaints were made to him in the several attendances that he had on the plaintiff and I also accept that if complaints of this kind had been made to him, or indeed any other General Practitioner or hospital doctor, that it is highly probable that these complaints would have been recorded and dealt with.

19. There is no doubt that the plaintiff did complain of low pelvic pain on the left side while walking on 9th November 1999. It was never established what was the cause of this. I am quite satisfied, however, that a complaint of this kind was not repeated by the plaintiff until 2nd February 2000. I am also satisfied that in that intervening period, the plaintiff was not troubled by low pelvic/pubic pain as she has described in her evidence.

20. In saying all of this, I do not think that the plaintiff is in any way deliberately fabricating her evidence in this regard. In fact, having observed the plaintiff over several days in the witness box, I had the impression that she has a genuine belief in the truth and accuracy of the evidence she gave. However, I am satisfied that as a result of the devastating effect that the symphysiotomy has had on her life as a whole and the pain and suffering that she has endured since February 2000, together with the long passage of time that has elapsed in the meantime, she has convinced herself, and indeed perhaps others as well, that this pain was there since early November 1999 and that she was persistently complaining about it, and being ignored.

21. Five witnesses were called to support the evidence of the plaintiff as to the existence of this pain and the effects of it on the plaintiff over the last four months of the pregnancy. The situation which all of these witnesses describe is undoubtedly the situation that the plaintiff was in from the birth of her son, Joshua, onwards. Thereafter, there is no doubt whatsoever that the plaintiff had severe pain in her pelvic/pubic area which grossly compromised her mobility and which required her to use crutches, and indeed at times, a wheelchair. There is no doubt from the evidence of the plaintiff that she did not use crutches to get around during her pregnancy. Indeed, she complained in her evidence that she should have been advised to use crutches and also a fembrace in the latter stages of her pregnancy. Nonetheless, three of these witnesses, Laura Rogers, Georgina Blake and Anne Sherry Nelson gave evidence of the plaintiff using crutches to get around during her pregnancy. I am quite satisfied that their evidence in this regard is mistaken and that the recollections that they have of the plaintiff using a crutch probably relate to the plaintiff's situation after the birth of Joshua. I am quite satisfied that these witnesses are not deliberately misleading the court and the inaccuracy of this evidence is almost certainly due to the long period of time that has elapsed since these events occurred and the distorting effect that that can have on memory. I am quite sure also that that the plaintiff's plight in the years following the birth of Joshua must have been very distressing for all those who were close to her, no doubt enhancing a very natural inclination to agree with and support the plaintiff's recollection of events.

22. Of these five witnesses, Ms. Susan Kerwick was not in any sense close to the plaintiff. She described how she became aware of the plaintiff because she saw her shuffling slowly out of the estate in which they lived, bringing her daughter, Shannon, to school. Eventually, on a wet day, she intervened and offered a lift. Thereafter, an arrangement was made by Ms. Kerwick to bring Shannon to school on a regular basis. The critical point in Ms. Kerwick's evidence is that all of this began in late September or early October 1999. Whilst it may very well have been that the plaintiff had significant back problems at that stage, she undoubtedly had not yet developed the pelvic/pubic pain she complained of later. The plaintiff's evidence was that the back pain she had been suffering moved around into her pelvic/pubic area in the twenty-fourth week of the pregnancy which was well into November. I am quite satisfied that the problem which the plaintiff had, which initially attracted Ms. Kerwick's attention could not have been the pelvic/pubic pain of which she later complained.

23. In short, therefore, I have come to the conclusion that the recollections of these witnesses, apart from Ms. Kerwick, relate to the plaintiff's problems after the birth of Joshua and not before.

24. This brings me to a consideration of the events that occurred on 2nd and 3rd February 2000, in week 37 of the pregnancy. The midwifery notes of the hospital disclose that the plaintiff referred herself to the hospital on the evening of 2nd February 2000. It is quite clear that this was an unscheduled attendance by the plaintiff at the hospital. The time of her arrival at the hospital is recorded as 19.30 hours and the note says the following:

> *"Self-referral with lower abdominal pain since last Thursday but a lot more severe today. On palpitation, fundus equals dates. Lie longitudinal, position LOA. Tracey complaining of dysuria ex approx 6 wks. Tracey also complaining of constipation. Commenced on CTG monitoring. B/P 135/85 P-120 CTG."*

25. This record reliably establishes that the plaintiff presented at the hospital at the time mentioned with a complaint of severe pain in her lower abdominal, a pain which had been present since the previous Thursday which was almost a week previously, the 2nd of February being a Wednesday.

26. The plaintiff's evidence was that on 2nd February 2000, she had been walking from her mother's house which would normally have taken her about twenty minutes, but in the course of that walk, she became immobilised by this very severe pain in her pubic area. She experienced the pain so badly that she could not continue to walk. The battery in her mobile phone was down so she could not call for assistance and was forced to continue walking to her mother's house very slowly. The journey which would normally have taken her twenty minutes, on this occasion took her an hour and a half. When she arrived at her mother's house, she was in great pain and distress. As the pain did not subside, she was later brought to the hospital by car by her partner. Her evidence was that to get from the car park into the Maternity Unit, she needed a wheelchair.

27. Later, on 26th February 2000, two days post-delivery, the plaintiff, having been complaining of pain in her left groin as noted in the midwifery notes, was seen at 13.50 hours by Dr. Akpan, a consultant. The midwifery note of this attendance is as follows:

> *"Dr. Akpan, consultant on call asked to R/V patient. Patient had this pain 4/52 before delivery. A symphysiotomy - mild degree . . ."*

28. This record of the plaintiff's complaint on 26th February 2000, ties in almost exactly with the complaint made and recorded on 2nd February 2000. The complaint made on 2nd February 2000 backdated the pain to Thursday 27th January 2000, almost four weeks before the delivery of Joshua on 24th February 2000.

29. The following is recorded as being the plaintiff's complaint by a physiotherapist in the hospital who attended to the plaintiff on 27th February 2000:

> *"Had pain in groin plus pubic area for 6/52 pre-delivery - had been to GP numerous times but they felt that anx. Adhesions post-salpingectomy. Worse since delivery with feet in stirrups."*

30. I accept that the plaintiff did present to the hospital on 2nd February 2000, complaining of lower abdominal pain which had become severe on the day she presented and that this pain had compromised her mobility. I am also satisfied that the plaintiff dated this pain with precision on that occasion, namely, to the previous Thursday. In her consultation with the physiotherapist, as mentioned above, she extended the time period back an additional two weeks. I would be satisfied that her description and dating of

this pain, as recorded on the 2nd February 2000, is probably a much more reliable and accurate account of this pain.

31. It is apparent from the midwifery notes as these have been interpreted by the experts who gave evidence in the case, Dr. George Murnaghan for the plaintiff and Dr. Peter McKenna for the first named defendant, that investigations were carried out, initially to see whether or not the plaintiff was in labour, and because the plaintiff complained of Dysuria, an MSU (Mid Stream Urine) test was carried out. By 21.00 hours, this returned as negative, and by that time also, it had been established that the plaintiff was not in labour. At 21.05 hours, the plaintiff's blood pressure was 110/75, but her pulse rate was elevated at 128, probably indicating continuing severe pain. The plaintiff had been admitted to the hospital and was transferred to Unit 1. At 22.30 hours, the midwifery notes record that the plaintiff was reviewed by Dr. Jamel, who apparently found her condition satisfactory and encouraged her to mobilise.

32. Although the plaintiff was seen by two doctors, namely, Dr. Saeed and Dr. Jamel, neither of these made any note.

33. The plaintiff's evidence was that her pain eased overnight when she slept and the following day she was discharged. She was seen the following day by Dr. Saeed. Having consulted this doctor for approval, the plaintiff attended the wedding of her cousin on 3rd February 2000, but did not stay late at it.

34. Dr. George Murnaghan, an expert obstetrician and gynaecologist called on behalf of the plaintiff, criticised the management of the plaintiff on this admission for the following reasons, namely, that having established that the plaintiff was not in labour and that the MSU test failed to supply any explanation for her pain, no further enquiry was made to ascertain the cause of the plaintiff's pain, and specifically, having regard to the location of her pain, no consideration was given to the possibility of the cause of the pain being related to SPD (Synthesis Pubis Dysfunction) and the simple clinical test which can elicit this problem, namely, the palpation of the synthesis pubis joint, was not done.

35. Dr. Murnaghan's evidence was that it was highly probable that as the plaintiff suffered a symphysiotomy in labour, probably during delivery, that the pain she had on 2nd February 2000 was caused by SPD and the failure of the doctors who attended her in the hospital on that occasion to have conducted any enquiry in that regard or performed the standard clinical test to ascertain or confirm SPD, was inadequate and unsatisfactory care of the plaintiff by these doctors.

36. Dr. Peter McKenna, the expert obstetrician and gynaecologist called for the first named defendant, in his evidence agreed that if the plaintiff presented with the kind of complaints she gave evidence of and with her mobility compromised and where she was not in labour, an inquiry should have been conducted to ascertain the cause of her pain, and if he had been there, he accepted he would, in these circumstances, have palpated her synthesis pubis joint.

37. The condition of SPD is relatively common in pregnant women. At the low end of the scale, namely, where it merely causes pain and discomfort during pregnancy, the evidence I have heard from the experts suggests it afflicts about one in thirty pregnant women. In its more severe manifestations, and in particular when it gets to a symphysiotomy, it is much rarer. In light of this, one would have thought that the doctors in a maternity unit, which is where the plaintiff was treated, would be familiar with this condition and alert to it and its symptoms.

38. Thus, it seems very surprising to me that in response to the plaintiff's complaint of severe lower abdominal pain that the doctors who dealt with her on 2nd February 2000 do not appear at all to have considered SPD as a potential cause of her pain, made no enquiries whatsoever in that direction and failed to carry out what is a very simple clinical test, namely, the palpating of the synthesis pubis joint which would, according to the expert evidence I have heard, have elicited the condition if it was present.

39. I accept Dr. Murnaghan's evidence to the effect that it was probable that the pain the plaintiff complained of on 2nd February 2000 was caused by SPD. I am also satisfied that the complete failure of the doctors employed by the first named defendant in this maternity unit on that occasion to consider, at all, SPD as a potential cause of the plaintiff's pain and to make the necessary enquiries in that regard and to have carried out the necessary clinical test, was wholly inadequate and unsatisfactory care, in the sense that it fell beneath a standard of professional practice and care to be expected of doctors, albeit non-consultant hospital doctors practising obstetrics in a maternity unit.

40. After the plaintiff was discharged from the hospital on 3rd February 2000, she attended the wedding of her cousin but her evidence was she did not stay late.

41. From then until 23rd February 2000, her expected date of delivery, her evidence was, that she was, in effect, confined to her home, still continuing to suffer this very severe pain, spent most of the days lying on a couch being looked after by her three-year old daughter.

42. I would readily accept that in the last three weeks of her pregnancy, she was very uncomfortable and did spend a considerable amount of time lying down. I am, however, satisfied that the very severe lower abdominal/pelvic pain that brought her to hospital on 2nd February 2000 had subsided, and in that acute way, did not continue to trouble her over the final three weeks of her pregnancy. She may very well have had some ongoing ache and pain from this source, but in the overall context of her discomfort at this very late stage in the pregnancy, it was not an outstanding feature. I am compelled to this conclusion by the fact that in the final three weeks of her pregnancy, the plaintiff had three scheduled attendances; one at the hospital and two with her General Practitioner, Dr. Maguire. She attended the hospital at week 38 on 9th February 2000, where all the usual tests were normal and where she was described as *"well"*. It would appear she was seen by Dr. Saeed on that occasion. Next, she attended Dr. Maguire, again a scheduled appointment, on 15th February 2000. At that appointment, Dr. Maguire found that the plaintiff had a trace of protein in her urine and because she had a history of Toxemia and was approaching the end of her pregnancy, he thought it appropriate to bring her back in two days to monitor for the evolution of Preeclampsia. Thus, an appointment was arranged for her on 17th February 2000. When Dr. Maguire saw her on 17th February 2000, her tests and her blood pressure were in order and he noted that she was due to the clinic the following week, which would have been her expected date of delivery.

43. As is apparent from the care card, there is no note of any complaint by the plaintiff at any of these attendances between 2nd February 2000, and 23rd February 2000 of any complaint of pelvic or pubic pain. I accept the evidence of Dr. Maguire that the plaintiff did not make any such complaint to him, then, or at any time, nor was he ever asked to make a house call to the plaintiff during those last three weeks.

44. On 23rd February 2000, which was the plaintiff's expected date of delivery and also a scheduled appointment at the hospital, as indicated in the care card, the plaintiff came to the hospital in considerable distress. Her complaints, as recorded on the care card, it would appear by Dr. Saeed, were: "*Can't sleep, in tears, wants IOL. Pressure and pain*".

45. The "*IOL*" it was agreed by all meant Induction of Labour. Although the plaintiff, at that time, was not in labour, her state of distress was such that Dr. Saeed considered it appropriate to admit her to Unit 2 for induction of labour at term.

46. Having been admitted, the midwifery notes records the following entry for 20.00 hours:

> *"Tracey Nelson is in admission from the clinic for induction of labour at term. Has previously had Preeclampsia in 1995 and Ectopic Pregnancy in 1996.*
>
> *On admission*
>
> *Fundus = dates.*
>
> *Lie = longitudinal.*
>
> *Presentation = V*
>
> *X position = ROA*
>
> *FHHR = 140bpm.*
>
> *CTG commenced - same satisfactory at present.*
>
> *On palpitation - quite tender around scar area when feeling for the head. Wishes to breast feed. Wishes for Epidural in labour.*
>
> *Dr. Ghada informed of admission and will come up. Urinalysis trace.*
>
> *Ketons + protein.*
>
> *BP 120/82. P72. Ankle Oedema moderate."*

47. In her evidence, the plaintiff said that she complained vociferously of the pelvic/pubic pain that she said had afflicted her continuously throughout the latter stages of her pregnancy. Indeed, her evidence was that this pain continued to be present throughout her labour until the delivery of Joshua, whereupon she experienced approximately six hours of relief from it.

48. It is apparent that the midwifery notes from her admission at 20.00 hours on 23rd February 2000, until her delivery at 20.12 hours on 24th February 2000, do not reflect the complaints of pelvic/pubic pain as described by the plaintiff in her evidence. There is no doubt that when she presented to the Antenatal Clinic on 23rd February 2000, she complained of "*pressure and pain*". Unfortunately, the note on the care card does not identify the location of that pain, although it appears to have been associated with pressure.

49. In common with the plaintiff's evidence concerning her pain in the latter stages of her pregnancy, apart from 2nd February 2000, I have come to the conclusion that her evidence with regard to the presence of this pain during her labour and delivery is unreliable.

50. It is clear that overnight on 23rd February 2000, into the morning of 24th February 2000, the plaintiff went into spontaneous labour. This was apparent from an examination of the plaintiff by the labour ward sister at 06.45 hours on 24th February 2000. The first note concerning the plaintiff that morning was:

> *"Slept for short periods only. C-O crampy pains. CTG performed, same satisfactory. Did not wish to be examined. Panadol given . . ."*

Whilst there was undoubtedly a complaint of pain, the description of it appears somewhat different to the pelvic/pubic pain of which the plaintiff complained in her evidence.

51. Throughout the morning of 24th February 2000, the plaintiff's labour progressed slowly. At 9.45am, it was noted:

> *"Having irregular tightening at present. Coping well . . ."*

At 10.00am it was noted:

> *"Comfortable at present. Contractions 1:3-4 lasting 20-25 seconds. No liquor draining."*

52. Further entries are made at 10.07am and 10.20am recording that ARM i.e. Artificial Rupture of Membranes was carried out resulting in clear liquor draining. This was performed by Dr. Umar who made a note accordingly, in a record entitled '*Delivery*'.

53. At 10.55am, it was noted in the midwifery note that the plaintiff was:

> *". . . feeling contractions very strong, C/O of supra - pubic pressure. Positioned on bed on all fours. A small blood stained mucoid discharged. Liquor clear."*

54. At 11.15am, it was noted:

> *". . . Tracey becoming distressed with contractions, and wishes to be re-examined."*

55. At 11.45am, the plaintiff was transferred to Delivery Suite Room 3 and a IV Cannula was inserted for the purposes of the Epidural. At 12.33pm, the anaesthetist inserted the Epidural. From then until 13.40 hours, there are seven entries in the notes which record some difficulty associated with the Epidural which seemed to interfere with the plaintiff's breathing but resolved uneventfully so that by 13.40 hours, she was described as:

> *"Tracey sitting up. Colour good, resps. Normal 02 4 L/min being given by face mask. FH*
>
> *Baseline 130bpm. Good variability and reaction. On palpation with Lie longitudinal presentation Cephalic VX N/eng clear*

liquor draining. Pain free. Epidural infusing at 4 mls./hr."

56. Five minutes later, the plaintiff is recorded as "*feeling dizzy*" and the head of her bed was lowered. At paragraph 14.10, it is recorded that Dr. Ghada commenced IV infusion of Oxytocin.

57. At 15.45 hours, it is recorded that:

"Tracey beginning to feel contraction but bearable at present . . ."

58. At 15.55 hours, it is recorded:

". . . feeling pressure in lower abdo region. Epidural increased 10 mls/hr e her permission."

59. At 16.10 hours, the following is recorded:

"Feeling a lot of pain and pressure with contractions. Ve to assess consent. Chaperone Tara Shields. Cx remains posterior, fully effaced 3cm dilated. Vx + 1 station, no cord or placenta felt. Drained slightly bloodstained liquor during VE . . ."

60. At 16.20 hours, it is recorded that:

"Oxytocin raised 50 dpn. Dr. Nkayna asked to come and review re pain relief - he is busy at present, will come as soon as he can, meantime to increase Epidural to 15 ml . . . same done."

61. At 16.30 hours, inter alia, the following is recorded:

". . . no complaints of dizziness now or visual disturbances, feels moderate Oedema of feet and hands and says her face feels a bit puffy - she thinks this is from crying, was upset she hadn't progressed more, reassured."

62. At 17.20 hours, it is recorded as follows:

"Epidural top up given by Dr. Nkanya, BP 130/79. P137 post same - aware of rapid pulse rate - said it's because of her pain."

63. At 17.38 hours, it is noted:

"Pulse 173 bpm. BP 103/60

Not much pain relief from top up. Dr. Shiddo (reg.) and Dr. Nkanya asked to come and review in view of Tachycardia by Mary, Ita, Niall."

64. At 17.45 hours, the plaintiff was reviewed by Dr. Nkanya and Dr. Shiddo who appear to take the view according to the note, that the plaintiff's Tachycardia was related to pain and possible use of Entenox.

65. At 18.00 hours it was recorded:

"Tracey coping better now, pulse 122 bpm . . ."

66. At 18.35 hours, the note records:

"Tracey turned on (L) side. C/O pressure . . ."

67. By 19.30 hours, the plaintiff's labour had progressed to the point of commencement of delivery as recorded as follows:

"Very distressed with urge to push, VE with consent, Chaperone Tara Shields. Cx fully dilated. Vx + 1. FH 100 bpm."

68. At 19.45 hours, it was recorded that the plaintiff was "pushing well".

69. At 20.12 hours, Joshua was delivered by way of a spontaneous vaginal delivery, in good condition.

70. The final timed record of that day was at 21.40 hours where it was recorded as follows:

"Transferred to Postnatal following SVD of living boy, lochia red/moderate. Fundus well contracted. Observations on admission BP 120/70. Apex 120 baby breast fed well in labour ward. Mum to remain on bed rest until 2.00am. Tracey aware of same."

71. The following day, the first entry in the notes records as follows:

"Slept intermittently overnight. Breast feeding well. C/O shiverness. X 10 mils 10.36.6 resolved spontaneously. Has passed urine. Lochia normal.

Satisfactory morning, no complaints voiced. Postnatal check NAD.

T. 36.1 Lochia red/moderate.

Tracey's C/O (L) groin painful, worse on mobility. Panadol x 2 given with effect.

Mary physio spoke to Tracey re same, will come back up in afternoon e ice pack."

72. Later that day, i.e. 25th February 2000, the following is recorded at 8.00pm:

"IV bung removed. Tracey has ice pack in situ - (L) groin S/B by Dr. O'Neill re (L) groin pain. Charted for Distalgesic QDS.

No other complaints voiced."

73. The first record for the following day, 26th February 2000, is as follows:

"Continues to C/O Lt. groin pain and discomfort: analgesia offered and Difene 100 mgs given. Slept for short periods only. Baby unsettled and breast fed, frequently unsettled with wind.

Satisfactory morning. Tracey continues to have some pain and discomfort in her left groin. S/B Dr. Mahmoud, for physio, charted for more analagesia as per card X"

74. The next entry is at 13.15 hours and is as follows:

"Dr. Akpan Consultant on call asked to r/v patient. Patient had this pain 4/52 before delivery. A sympyhsiotomy - mild degree:

For rest, analgesia and Clexane 20mgs.

Physiotherapist could not see the patient this am as dealing with emergency cases only."

75. As is apparent, these midwifery notes do not at all support or reflect the plaintiff's evidence of her complaints of pain during the course of her labour and delivery. The plaintiff did complain of pain on three occasions up to the administration of the Epidural, the first of these when she presented in the Antenatal Clinic; the second on admission to the maternity ward at 20.00 hours when she complained of crampy pains and the third at 11.45pm on 24th February 2000. Between then and the delivery at 20.12 hours on 24th September 2000, pain is mentioned three times, the first at 16.10 hours, the complaint appears to be a lot of pain and pressure with contractions. At 17.20 hours, her rapid pulse rate is attributed to pain and at 17.38 hours, it is noted that she has not got much pain relief from the top up of the Epidural.

76. These notes give the distinct impression that such pains as were complained of during the labour were attributable to the normal contractions experienced during labour.

77. A very different picture emerges in the notes after the delivery of Joshua. From early the following morning, 25th February 2000, there is noted an entirely new and different complaint, namely, left groin pain which becomes clearly the major complaint until the plaintiff is reviewed by Dr. Akpan at 13.50 hours on 26th February 2000. From then on until her discharge, this complaint is clearly the dominant feature in the notes.

78. When the plaintiff presented to the Antenatal Clinic in great distress on 23rd February 2000, and did complain of pain, it is probable that this pain was caused by SPD. The note made by Dr. Saeed on the care card is non-specific as to the source of this pain, but nonetheless, I am satisfied that the condition of SPD, which was by then established, was the source of this pain. No doubt, the presentation of the plaintiff was complicated by the fact that she presented on her due date for delivery, was obviously very uncomfortable generally, and was also complaining of pressure. In light of the fact that for the previous three weeks she had not mentioned her pubic/pelvic pain at any of her medical appointments, I am quite satisfied that the SPD condition and any pain associated with it had not then assumed the dominating affect which in retrospect she now attributes to it.

79. As the plaintiff's labour progressed, I am quite satisfied that the pain and discomfort associated with normal labour overwhelmed and probably masked or obliterated whatever pain and discomfort might have emanated from the SPD. Once she was given the Epidural, it is probable she would not have felt SPD pain thereafter until the Epidural had worn off. Without doubt, the fact that she had an Epidural probably masked the pain that would have been caused by the occurrence of the symphysiotomy late in the labour or during delivery. It is striking that the plaintiff experienced complete pain relief approximately six hours after the delivery, but then, as the notes reflect, began to experience severe pain in her groin. I am quite satisfied that it was from this point onwards that the plaintiff began to experience the kind of severe pelvic/pubic pain that unfortunately has afflicted her so much since then.

80. When seen by Dr. Akpan on 26th February 2000, she gave a history of having that type of pain about four weeks before her delivery which corresponds with her coming to the hospital on 2nd February 2000. The difference now is that this pain from then on, namely, 25th February 2000, continuously affected here, whereas I am quite satisfied that the pain she suffered on 2nd February 2000, did subside, as she herself acknowledged in her evidence and did not return to trouble her to any significant extent for the rest of her pregnancy.

81. Returning to the admission of the plaintiff on 23rd February 2000, if one were to take the complaints as noted at the time on a stand alone basis, in my view, it was unlikely that these would have alerted doctors in a maternity unit to the presence of SPD. However, her complaints on this occasion are not to be taken on a stand alone basis because of her presentation to the hospital on 2nd February 2000. Then, as I have already said, the complaints made by the plaintiff warranted an inquiry and diagnostic tests which would have revealed her SPD condition. Had that been done then and noted, it is probable that her complaints made on 23rd February 2000, when she presented, would have been seen in a different light and as reinforcing a diagnosis of SPD. In this respect, it is telling that when admitted to the maternity unit and examined by a midwife who palpated for the baby's head, she elicited tenderness near her scar area which was low down in the abdomen. One wonders if the diagnosis of SPD had, by then, been noted, would this finding have been interpreted differently.

82. I am satisfied that as the plaintiff entered into labour on the evening of 23rd February 2000, there should have been a diagnosis of SPD noted at that stage, which would have affected how her labour and delivery were to be managed thereafter.

83. There was a difference of opinion between Dr. George Murnaghan and Dr. Peter McKenna on the relationship between SPD and the ultimate development of symphysiotomy. Dr. Murnaghan described a continuum from SPD through its more serious aspect, Diastesis, and on to sympysiotomy. Dr. McKenna's evidence was that the occurrence of sympysiotomy was a spontaneous occurrence and could happen regardless of whether or not it was preceded by SPD. I would be inclined to the view that both of them are right, in the sense that whilst SPD afflicts approximately one in thirty pregnant women, sympysiotomy is an extremely rare occurrence, the figures mentioned in evidence were one in 20,000 or one in 30,000 pregnant women. Thus, whilst I would readily accept Dr. McKenna's evidence that it can be an entirely spontaneous occurrence without any preceding history of SPD, where there is a history of SPD, I would be satisfied that Dr. Murnaghan is right that it can and does, in rare cases, advance, probably in the rigours of labour and delivery to sympysiotomy, as occurred in this case.

84. In my view, it necessarily follows, therefore, that where SPD is diagnosed late in the pregnancy, that there is a real risk of the condition advancing to sympysiotomy and it further follows that the doctors or midwives managing the labour and delivery should cater for that risk.

85. First to be considered in this regard if the appropriateness of an Epidural for the obvious reason that this would, in all probability, eliminate the protective function of pain. The evidence of both experts on this point, was that it was nonetheless appropriate to administer an Epidural but that there would have to be careful management of the legs to ensure that in any necessary manoeuvres, the legs were moved as a unit i.e. together and not allowed to separate or abduct at the hips. Dr. McKenna's evidence was that this is a standard precaution in any and all events in dealing with a pregnant woman in order to avoid injury, not just to the symphysis pubis, but also the posterior aspects of the pelvic girdle and the spine. Dr. Murnaghan's evidence on this point was that it was essential, particularly after the administration of an Epidural, to ensure that the plaintiff's legs were not allowed to flop or move about but were managed so as to exclude any abducting of the hips which is the movement which tends to stretch or pull outwards or apart the symphysis pubis joint.

86. In her evidence, the plaintiff described her legs being put into stirrups and elevated in such a way that her knees were up at or higher than the level of her head. Whilst I am satisfied that the plaintiff's description of the position she was put in, is exaggerated, nonetheless, I am satisfied that she was put in what is known as the Lithotomy position which means that both feet and ankles were put into and supported by stirrups. Both expert obstetricians were somewhat baffled by the use of this position which is apparently only used where an assisted delivery, either by way of forceps or venteuse i.e. a vacuum delivery is involved, or where the perineum is ruptured during delivery and requires suturing thereafter, none of which eventualities occurred in this case. However, the plaintiff's evidence in this regard is corroborated by a doctor's note made on 25th February 2000, on what is described as the Puerperal Chart which reads as follows:

> *"25/2/00 Day 1 post SVD C/O L groin pain. Unable to weight bear, since delivery can't walk, worse on moving hip, HXE Epidural plus leg in stirrups . . ."*

87. A further entry in the physiotherapy records reads as follows:

> *"HPC had pain in groin plus pubic area for 6/12 pre-delivery - had been to GP numerous times but they felt that a SSOC adhesions post-salpingectomy. Worse since delivery with feet in stirrups . . ."*

88. I am quite satisfied that the doctors and midwives who attended the plaintiff during her labour and delivery were oblivious to her SPD condition and took no precautions in light of that, and I am also satisfied that during the course of her labour and delivery, the plaintiff was put into the Lithotomy position, apparently for no good reason, and no care or attention was given to ensuring that her legs were controlled to avoid abducting her hips.

89. I am satisfied that as a consequence of all this, at the very end of her labour, probably in delivery, because of the uncontrolled outward movement of her hips, she ruptured her symphysis pubis joint and only began to feel the pain from this after the Epidural had worn off.

90. Therefore, I am satisfied that had proper care been taken to manage and control the movement of the plaintiff's legs to avoid abduction, it is probable that the plaintiff would not have suffered the sympysiotomy.

91. I have come to the conclusion that all of this happened because of the failure of the doctors in the first named defendant's hospital to have diagnosed SPD on the 2nd February 2000, and thereafter to have taken the appropriate steps to manage the plaintiff's pregnancy, so as to avoid the risk of SPD progressing to a sympysiotomy, as occurred. I am quite satisfied that the failures in this regard fell substantially below the standard of care to be expected of doctors practicing obstetrics in a maternity unit such as in Our Lady of Lourdes Hospital in Drogheda. Accordingly, the plaintiff is entitled to be compensated in respect of the damages which have accrued to her as a result of this negligence.

92. Following on the diagnosis of sympysiotomy on 26th February 2007, an appropriate regime of care was put in place to deal with the plaintiff's condition. This involved, first, some physiotherapy and the wearing of a Fembrace. The plaintiff was also obliged to use crutches in order to mobilise. Whilst it would appear from all of the expert evidence that in the majority of cases, this type of conservative regime is successful in curing the injury, this, unfortunately, did not happen in the plaintiff's case. By May 2000, it was apparent that the plaintiff's problem was not resolving and she was referred for orthopaedic care and came under the care of Mr. Brady, an Orthopaedic Surgeon. He continued a regime of conservative treatment. Her Fembrace was changed for a more comfortable device and physiotherapy and hydrotherapy were employed.

93. Again, unfortunately, these measures failed to remedy the problem.

94. I am quite satisfied that the plaintiff was in an extremely distressed condition throughout all of this. She was undoubtedly suffering very severe pain from this injury and because of the instability of her pelvis, her mobility was grossly affected so that she had to use crutches and at times a wheelchair. This situation continued throughout 2000, 2001, 2002 and well into 2003. I am quite satisfied that this caused her an enormous amount of pain and suffering and disruption of her life and grossly impinged upon her ability to carry out normal activities, particularly in looking after her children, and in particular, Joshua during his infancy. I am also quite satisfied that this injury had a very deleterious effect on her relationship with her partner because of her inability to engage in normal conjugal relations.

95. The evidence establishes that the plaintiff began to drink excessively during this time, and the plaintiff went on to become, by her own acknowledgement, an alcoholic. She herself, in her evidence, does not ascribe the blame for developing this condition to her injury, nor indeed does she attribute the collapse of her relationship with her partner to it. Nonetheless, I am satisfied that at the outset of the development of her problem with alcohol, the dulling effect which alcohol had on her pain was a contributory factor in the process of becoming an alcoholic. Likewise, whilst the injury to her symphesis pubis was not the cause of the break up of her relationship with her partner, it could only have made a difficult situation worse.

96. Towards the latter part of 2003, the plaintiff was referred by her then GP, Dr. Hayes, to Mr. Paul Nicholson, an Orthopaedic Surgeon, in the hope of some form of surgical treatment that would alleviate the plaintiff's very distressing situation. Mr. Nicholson initially injected the synthesis pubis with a combination of steroids and anaesthetic, principally for diagnostic purposes so as to clearly identify the symphesis pubis joint as the source of the problem. The plaintiff did obtain considerable temporary relief from this, indicating that this joint was the cause of her pain. In the meantime, the plaintiff had an MRI which ruled out any other potential pathology. All of this encouraged Mr. Nicholson to offer the plaintiff surgery to fuse the symphesis pubis joint and thereby stabilise the

pelvis and hopefully reduce or eliminate her pain.

97. This surgery was performed in January 2004. In it, Mr. Nicholson debrided the joint, implanted a bone graft taken from the plaintiff's iliac crest and plated that portion of the anterior pelvis.

98. Initially, after this surgery, the plaintiff did well. Her pain reduced and her mobility greatly improved so that she was able to get about without reliance on crutches. Unfortunately, late in the summer of 2004 when she was out, she experienced what she described as a "click", following which, in her perception, the original problem with her pelvis returned, both in terms of pain and compromise of mobility.

99. In the meantime, in February 2004, the plaintiff was referred to Dr. Eithne Murphy, a Consultant Rheumatologist in Blanchardstown Hospital because of generalised aches and pains and fatigue. Dr. Murphy gave evidence of being satisfied that the plaintiff, as a result of the diagnostic tests carried out by her, was suffering from a condition known as Fibromyalgia, which is a condition which causes pain throughout the muscles of the body and is usually accompanied by fatigue. She was satisfied that the plaintiff was suffering from this condition because upon examination she had a very large number of trigger points for tenderness, and in Dr. Murphy's opinion the results of the examination satisfied the criteria for a diagnosis of this condition as set down by the American College of Rheumatology. Dr. Murphy's evidence was that this condition can be precipitated or caused by stress and it was her opinion that the stress caused by the plaintiff's ongoing unresolved pain could have triggered this condition in the plaintiff.

100. I am quite satisfied that the plaintiff did suffer the condition of Fibromyalgia and still continues to suffer from it and that this was caused by the stress generated by the unrelenting and unresolved pain emanating from the sympysiotomy.

101. Although the plaintiff did undoubtedly suffer a reverse towards the end of the summer of 2004 with regard to the immediate physical effects emanating from the sympysiotomy, I am satisfied that she did not revert to the deplorable condition that she was in prior to her surgery in January 2004. I am quite satisfied from the evidence of Mr. Nicholson that notwithstanding that the reverse occurred in the summer of 2004, nonetheless, the operation was successful in stabilising her pelvis and that did ameliorate the worst features of immobility that had afflicted her prior to the surgery. Indeed, when Mr. Nicholson saw the plaintiff in January 2011, his examination of her then satisfied him that she had a stable pelvis which was capable of supporting normal mobility.

102. I am quite satisfied that notwithstanding the benefit achieved by the surgery in 2004, it did not at all ameliorate the plaintiff's pain which continued unabated until January 2007. Because Mr. Nicholson was unable to offer the plaintiff any further surgical treatment, he referred her to Dr. Declan O'Keeffe, a Consultant Anaesthetist in the Pain Management Clinic in St. Vincent's Hospital in Dublin. She came under his care in 2006. Dr. O'Keeffe, in his evidence, described with great clarity the nature of the pain suffered by the plaintiff, as being neuropathic pain resulting from damage to the nerves in the affected area, and I fully accept his evidence in this regard. Initially, in the treatment regime, he tried less invasive methods of treatment, but these, whilst indicating the potential for further treatment, were not a solution in themselves. Eventually, he decided the appropriate treatment for the plaintiff was the insertion into her, of a spinal cord stimulator, which required two surgical procedures to get this device successfully fitted into the plaintiff's body. This was successfully accomplished and, thankfully, the results in terms of relief of the plaintiff's pain were outstanding as acknowledged by the plaintiff herself. This device enables the plaintiff to control the pain herself by the use of the device and it has resulted in her being relatively pain free from 2007, until shortly before the trial in this matter when she began to notice that the pain was breaking through, notwithstanding the use of the use of the device. Dr. O'Keeffe, whilst recognising the outstanding result that the plaintiff has had with the use of this device, his evidence was that these devices can ultimately fail or become ineffective and need to be replaced by other more modern technologies which are available. It was his opinion that the plaintiff may now have reached the stage where, as he put it, she was experiencing some *"leakage"* of pain which required her to resort to medication. His evidence was that the full cost of replacing this device with a more up to date one would be approximately €30,000 to €40,000. He explained this cost as being largely related to the cost of the device together with the hospital costs associated with the two separate surgical procedures; one to remove the old one and the second to install the new one. His evidence was that even with the current device, the battery would have to be replaced about every nine years at a cost of approximately €15,000 to €18,000.

103. From early on, well before the plaintiff had her surgery in 2004, she developed a significant depression requiring treatment by medication. The evidence of Dr. Abby Lane satisfies me that the unrelenting pain suffered by the plaintiff was the probable cause of this depression.

104. I am satisfied from all of the evidence that the consequences of the sympysiotomy had a transforming effect on the plaintiff's life. The evidence convincingly establishes that prior to this happening, the plaintiff was a competent and very confident young woman who had enjoyed a wide range of athletic and other social activities, including being a member of brass band. The photographs of the plaintiff taken since the birth of her first child in 1995 but before the birth of her second child, Joshua, illustrate, even allowing for the passage of time since then, the great transformation in the plaintiff. Whilst other adverse life events, such as the break up of her relationship with her husband and the development of alcoholism were part of the attrition that has brought the plaintiff to where she is today, I have no doubt that the primary cause of the destruction of her happy and positive experience of life was the sympysiotomy and the terrible consequences of it.

105. For her pain and suffering to date, I would award the plaintiff the sum of €150,000.

106. I am satisfied that the plaintiff has now a stable pelvis which is capable of supporting normal mobility. With the benefit of the pain relief from her spinal stimulator, the plaintiff, in her own evidence, acknowledged that she had resumed normal mobility. As said already, in recent times, she has begun to experience pain again which the spinal stimulator does not successfully eliminate or control.

107. I am satisfied on the basis of Dr. O'Keeffe's evidence that her neuropathic pain is re-emerging and that it is probable that she will require a replacement of the spinal cord stimulator by another more modern and effective device. It would seem probable that such a device would in turn be successful in controlling the plaintiff's pain, at least for a number of years. However, it is probable that for the foreseeable future, there will be neuropathic pain emanating from the damaged nerves in her symphesis pubis joint area, but that it is probable that this pain can be controlled by the use of an appropriate pain relieving device.

108. The plaintiff continues to suffer from Fibromyalgia and it would seem likely that that is going to continue for the foreseeable future. She also remains prone to depression. In this regard, I am bearing in mind her other adverse life experiences and also the fact that she was the victim of a very serious assault in 2010, which I am sure must have had enormous impact upon her state of wellbeing.

109. Taking all of this into account, I will award the plaintiff the sum of €100,000 in respect of general damages for the future.

110. I am satisfied from the evidence, that the plaintiff will incur very substantial costs in replacing her spinal cord stimulator. The evidence before me deals only with one such replacement at a cost of between €30,000 and €40,000. It may very well be that it is not possible at this stage to foresee what further replacements would be either available or necessary. However, given the intractable nature of her neuropatic pain, it would seem to me to be probable that further technological aids would have to be required in the future to deal with this problem. Thus, it would appear to me to be likely that the cost of acquiring these would probably significantly exceed the €30,000 to €40,000 range which only provides for the next immediate replacement. Accordingly, therefore, I would award the plaintiff the sum of €60,000 to cater for probable future replacements of the technological aids necessary to control her neuropathic pain. This brings me then to the question of loss of earnings.

111. The plaintiff has had from an early age an impressive work history. As soon as she was eligible to do so at the age of sixteen, she applied for work in Dunnes Stores and was taken on part-time. After she left school, she was always in employment in a variety of jobs involving a considerable range of skills from sewing to upholstery to a form of artwork with Sullivan Bluth, to managing a pub, bar work and finally as a chef in the Flat House in Navan. After she got pregnant with her first child, Shannon, the plaintiff would appear to have not engaged in fulltime paid work thereafter. During her pregnancy with Shannon, she went to live with her partner's mother in Hertfordshire and helped her run a pub, not for remuneration. Three months after the birth of Shannon, she returned to part-time bar work doing three to four hours *per* week. She was obliged to keep her working hours so low so as to keep her earnings below Stg. £19 *per* week in order not to lose benefit. She continued doing this part-time bar work until March or April 1997, with one interruption around February 1996, when she had an Ectopic pregnancy and was in hospital for surgery in respect of that. She returned to Ireland about March 1997. She did not wish her daughter, Shannon, to go into playschool in London. She got part-time canteen work with Dunnes Stores from mid-1997 to mid-1998. She continued to restrict herself to part-time work because Shannon would be in playschool in the morning and she wanted to be able to spend the rest of the day with her. When she left Dunnes Stores in mid-1998, she immediately took up part-time employment in the Flat House in Navan. Her hours of work there were from 9.00am until 2.30pm. When she was there about six months, a new arrangement arose whereby she worked approximately two hours in the morning and then a number of hours in the evening after a restaurant was opened which operated at night time. In the initial phase, her work was all to do with the lunch time trade. She was out of work from 17th March 1999 until 7th June 1999, as a result of having fractured her ankle in a fall off the edge of a pavement. She returned to work in the Flat House, although pregnant, and continued there until mid-November 1999, when, as a result of back pain, she gave up that employment. She has not worked since.

112. The claim for loss of earnings in these proceedings is for loss of earnings from August 2000 to the present and for the future. Mr. Byrne, an actuary called for the plaintiff has calculated the plaintiff's loss of earnings starting from August 2000 to the present based upon her earnings in her final part-time job in the Flat House in Navan. Over the final three-month period of her employment there, her average earnings were €150 per week. Mr. Byrne has updated that sum to the present, taking account of national wage agreements in the interval. His evidence was that had she still been in that employment at the time when he prepared his report, she would have been earning €216 per week. He calculated the loss to her on the basis of those earnings over the period from August 2000 until the present in the sum of €114,551. He calculated by way of interest on that sum a further sum of €48,119 which was calculated as simple interest at the rate of 8%. Had the plaintiff been in fulltime employment over the same period, the loss of earnings calculated on the same basis would have come to €207,908 and the interest figure calculated on the same basis would have amounted to €86,881.

113. These losses are calculated from six months after the birth of Joshua. I am not satisfied that the plaintiff would have returned to part-time work so soon. The plaintiff's evidence was that in his infancy, Joshua suffered from Still's Disease, a form of rheumatoid arthritis, and was quite ill a lot of the time and in hospital on numerous occasions. In addition, Joshua suffers from ADHD (Attention Deficit Hyperactive Disorder). It is not clear from the evidence when this condition became a serious problem. In her own evidence, the plaintiff said that she would have gone back to part-time work when Joshua went into school. In my view, I think, that is a more realistic timescale for a return to work on the part of the plaintiff. I think it is probable, therefore, that the plaintiff would not have returned to work prior to September 2004, but it is probable that thereafter the plaintiff would, but for the ill effects of the sympysiotomy, have returned to work thereafter on a part-time basis. The probability is that she would have gained employment similar to that which she had prior to stopping work, namely, in the catering industry and her earnings would have been similar to her earnings prior to stopping work in 1999. I am quite satisfied that the plaintiff was a person who liked to work and enjoyed the social environment of work and would have been keen to return to work, but also to maximise her time with her children, so that during their school years, it was probable that she would confined herself to part-time work, but thereafter would return to fulltime work. What that means, in my view, is that from around 2004 until 2018, when Joshua would be eighteen, she would probably have been in part-time employment most of the time and from then on would have wanted to be in fulltime employment. At that stage, she would be 51 years of age and so would have approximately 14 to 15 years of working life left.

114. It is perfectly clear from the evidence that the plaintiff has been wholly unfit for work since February 2000 because of the effects of the sympysiotomy and that will continue for the foreseeable future. It may very well be the case, and this was to some extent portended in the evidence of Ms. Coughlin, the vocational assessor called on behalf of the plaintiff, that with her pain well controlled, the plaintiff, with appropriate retraining, could re-enter the workforce at some stage in the future. Having regard to her combination of problems, one would have to say that that remains in the realms of improbability for a very considerable time, if not for the entire foreseeable future. However, it is an element to which some weight should be attached in assessing such deductions to be made under the *Reddy & Bates* principle.

115. In respect of the past loss of earnings, I would award the plaintiff a half of the calculated sum of €114,551. Whilst it is apparent that this figure is calculated over a period of almost twelve years and that the initial period when, as I have already said, the plaintiff probably would not have been in employment at all was only four years *i.e.* one-third, nonetheless, I must have regard for the fact that over a considerable portion of the total period in question, there was a severe recession and high rates of unemployment and therefore a significant risk that the plaintiff would have had a lengthy period of unemployment. Taking all of that into account, it seems to me that a fair award to the plaintiff is half the sum claimed which is €57,275. Because the plaintiff is getting this sum in arrears, she is entitled to interest on that sum. Mr. Byrne has calculated interest at 8%. In my view, that rate of interest is too high as the prevailing rate of interest, and perhaps more particularly, the prevailing rate of inflation over the period in question would likewise have been lower. The evidence was that it would have been around 3%. Substituting 3% for 8% and starting by cutting the sum of €48,190 in half, results in a figure of €9,022 as interest. Thus, I would award her in total for her past loss of earnings including interest the sum of €66,297.

116. Calculating the plaintiff's future of loss of earnings is somewhat more complicated. As indicated earlier, I think it is probable the plaintiff would have continued in part-time employment until Joshua left school. I am somewhat reinforced in that view, by the fact that Joshua does suffer from ADHD and undoubtedly requires more care and management than would otherwise be the case. Insofar as the balance of the plaintiff's working life thereafter, namely, approximately fourteen years is concerned, as already said, I think she

would be likely to have sought fulltime employment during that period. Thus, the totality of the plaintiff's working life under consideration is approximately twenty years, divided up as to approximately six years in part-time employment and fourteen years in fulltime employment.

117. The figures which I have from Mr. Byrne calculate the future loss on the basis of either fulltime or part-time employment stretching over the entirely of that period, whereas the division of the two periods fall into approximately 58% fulltime employment and 42% part-time employment.

118. Approached in this way, and using the capital sums calculated and the multipliers used by Mr. Byrne in his reports as a guide, I would award the plaintiff the sum of €50,000 in respect of her loss of earnings over the period from now until approximately 2018 or thereabouts. In arriving at this figure, I have taken into account, as required by the decision of the Supreme Court in *Reddy & Bates*, such factors as future unemployment or other ill health.

119. For the period beyond that, I think it probable the plaintiff would have sought fulltime employment, which I think she would have been successful in getting because she had a good employment record and she presents, as she did in giving her evidence, as a competent and intelligent person.

120. Again, using Mr. Byrne's figures as a guide and subtracting an appropriate sum in respect of a loss of earnings up to approximately 2018, and again having regard to factors such as future unemployment and other ill health, it would seem to me that the appropriate sum to compensate her for her loss of earnings over that period is the sum of €150,000, thus making a total for loss of earnings in the future of €200,000.

121. The plaintiff also makes a claim in respect of the cost of a cleaner at €30 per week, laundry costs of between €20 to 30 per week and she also claims the sum of €150 *per* week for a care assistant for her son.

122. I am not satisfied on the evidence that the plaintiff requires a care assistant in respect of her son or will require such help for the future. I would disallow that claim. Similarly, I am also not satisfied that the plaintiff requires assistant with regard to laundry. It would seem to me that notwithstanding her problems, the plaintiff is still able to cope with a broad range of domestic duties. I am, however, satisfied that heavier domestic duties such as house cleaning and hoovering would impose an intolerable burden on the plaintiff, having regard, in particular, to her ongoing Fibromyalgia. It is, of course, the case that as the plaintiff gets older she might require this assistance in any event, and particularly if, as I anticipate, she would be in fulltime employment. It would seem to me that it would be unfair to impose this cost on the defendants for the remainder of her life. As is apparent from Mr. Byrne's report, a period of ten years attracts a multiplier of 448, and using that as a guide, I would award the plaintiff the sum of €15,000 under this head of damage.

Damages

123. In conclusion, therefore, the following are the damages to be awarded to the plaintiff.

General Damages: €250,000

Cost of Future Pain Relieving Aids: €60,000

Past Loss of Earnings with Interest €66,297

Future Loss of Earnings: €200,000

Future Cost of Cleaner €15,000

TOTAL: €591,297

124. There will be judgment for the plaintiff for that sum.