

THE HIGH COURT

2004 No. 3631 P

BETWEEN

FRANCIS QUINN

PLAINTIFF

AND
NOELLE CASHIN

DEFENDANT

Judgment of Mr. Justice Diarmuid B. O'Donovan delivered on the 21st day of June, 2005

1. The plaintiff herein is the father and personal representative of the estate of Samantha Quinn, late of 13 Slievebloom Heights, Rathdowney, Co. Laois, who died on the 2nd day of September, 2003, as a result of injuries sustained in a traffic accident in which she was involved on the same day while travelling as a back seat passenger in a motor vehicle driven by one Shaun Playdell, which said motor vehicle was in collision with a motor lorry on the public highway on the Kildare/Monasterevin Road in the Co. Kildare. The plaintiff maintains that the said collision was occasioned by the negligent driving of the said Shaun Playdell on the said occasion and the defendant, who has not denied liability, is sued as the administrator *ad litem* of the said Shaun Playdell.

2. The dependants of the said Samantha Quinn, deceased, within the meaning of s. 47 of the Civil Liability Act, 1961, as inserted by s. 1 of the Civil Liability (Amendment) Act, 1996, were;

- (a) Francis Quinn, father of the deceased, aged 59 years.
 - (b) Eleanor Quinn/Hurton, mother of the deceased, aged 59 years.
 - (c) Evelyn Quinn, step-mother of the deceased, aged 53 years.
 - (d) Sinead Quinn, step-sister of the deceased, aged 19 years.
 - (e) Frances Quinn, step-sister of the deceased, aged 17 years.
 - (f) Matthew Quinn, step-brother of the deceased, aged 14 years,
- and
- (g) Noel McDonagh, fiancée of the deceased, aged 29 years.

3. While it was submitted on behalf of the defence that the evidence tendered at the trial of the action did not establish that the said Noel McDonagh had been living with the deceased as husband and wife for a continuous period of not less than three years prior to her death and that, therefore, the said Noel McDonagh was not a dependant of the deceased within the meaning of s. 47 of the Civil Liability Act, 1961, as inserted by s. 1 of the Civil Liability (Amendment) Act, 1996, I took a contrary view. In that regard, Mr. McDonagh gave evidence that he met the deceased in August, 1997 and they immediately struck up a boy/girl relationship which included sexual intercourse. He said that, in September, 1997, they commenced to live together at his parents' house. In the summer of 1999, they rented an apartment in Tallaght in respect of which he paid the rent, and that they lived there for approximately six months; at which stage they decided that they wanted to purchase a home of their own and that it was wasteful to pay rent. At that time, the deceased was working as a receptionist with the Irish Brokers Association and Mr. McDonagh was a financial advisor with the Bank of Ireland. He said that his income would have been significantly greater than that of the deceased. When the deceased and Mr. McDonagh left the apartment in Tallaght, they returned to live with Mr. McDonagh's parents and Mr. McDonagh paid his mother a nominal rent of €50.00 per week. If he did, however, when he and the deceased purchased 13 Slievebloom Heights, Rathdowney, late in the year 2000, it was Mr. McDonagh's mother who paid the deposit. Apparently, she had put away the rent which he had paid to her and she insisted that it be used to pay the deposit on no. 13 Slievebloom Heights. In all of those circumstances, notwithstanding that Mr. McDonagh agreed under cross-examination that, when he started to live with the deceased, he had in mind that he wanted to find out whether or not they were suitable for one another and that they did not become engaged to be married until New Years Day, 2001, I am satisfied that Noel McDonagh and the late Samantha Quinn had been living with each other as man and wife for a continuous period of not less than three years prior to her death and that, therefore, Noel McDonagh is a dependant of the late Ms. Quinn within the meaning and for the purposes of the Civil Liability Act, 1991, as amended. I am also satisfied that the said Noel McDonagh was the only financial dependant of the deceased and that the deceased's mother, Eleanor Quinn/Hurton, who currently lives in the United States of America and who has lived there for over 20 years now, has waived any claim that she might have arising from the death of her daughter.

4. With regard to the mental distress suffered by the dependants of the late Samantha Quinn as a result of her death, I heard evidence from her father, the plaintiff, Francis Quinn, from her step-mother, Evelyn Quinn and from her fiancée, Noel McDonagh. I also read medical reports on Francis Quinn, Evelyn Quinn and their children, Sinead Quinn, Frances Quinn and Matthew Quinn, who were step-siblings of the deceased. In the light of that evidence and those reports, I have no doubt at all but that Mr. & Mrs. Quinn, their three children and Mr. McDonagh were all badly effected and traumatised by the tragic death of Samantha Quinn. She was obviously a very lovely person, who was well loved by all and her death had a devastating effect on all of those who were close to her. In this regard, I find it impossible to differentiate between the distress suffered by her three step-siblings and, therefore, I think it appropriate I deal with them equally. However, I think that their mother was more effected by the deceased's death than were her children and, of the immediate family, I think that the plaintiff, the father of the deceased, was most distressed of all by her untimely demise. However, of all those close to her, I have no doubt as all but that it was Noel McDonagh who was the worst effected by his fiancée's death. In those circumstances, allowing that there is a statutory maximum of €25,395.00 recoverable in respect of mental distress, I will apportion that sum as to €10,000.00 to Noel McDonagh, €6,000.00 to the plaintiff, Francis Quinn, €3,500.00 to the deceased's step-mother, Evelyn Quinn and €1,965.00 each to the deceased's step-siblings, Sinead Quinn, Frances Quinn and Matthew Quinn.

5. As I have indicated, the only alleged financial dependant of the late Samantha Quinn was her fiancée, Noel McDonagh. In that regard, Mr. McDonagh maintained that, as a result of her untimely demise, he lost the benefit of what he could reasonably have expected to derive from the deceased's earnings, had she survived and the benefit of the services which the late Samantha Quinn would probably have provided for him, had she lived. In that regard, at the time of her death, the late Samantha Quinn had just started work as a receptionist/administrator at Quality Kitchens, Greenhills Industrial Estate, Dublin 12 at an agreed salary of

€19,000.00 gross per annum out of which I had evidence which I accept that she would have taken home a sum of €320.00 nett per week. While, at the time of the deceased's death, Noel McDonagh was actually unemployed, having had a difference of opinion with the proprietor of a firm named J. & M Healy Construction for whom he had been working up to the month of July, 2003. However, he gave evidence which I accept that, shortly before the deceased's death, he was negotiating to return to the said employment and was confident that, had the deceased not been killed, he would have done so; as he did in the month of July, 2004. In that employment, Mr. McDonagh's wages would have been €600.00 gross per week from which he would have taken home a sum of €480.00 nett. Accordingly, had the deceased lived, the joint nett weekly income of herself and Mr. McDonagh would have amounted to the sum of €800.00. Given that the deceased died before ever receiving any wages from Quality Kitchens, there was not and could not have been any evidence as to how the joint income of herself and Mr. McDonagh was actually spent. However, Mr. McDonagh gave evidence that, in the period during which he was living with the deceased; whether she was in receipt of unemployment benefit or of wages from part-time employment in which she engaged for some of the time, he took the responsibility of discharging the mortgage repayments which amounted to €648.00 per month and she was responsible for the balance of household expenses; the amount of which was never specified. Given that, during that period, Mr. McDonagh, on his own evidence, was in receipt of a nett weekly income of €480.00, and, while I had no evidence as to what the deceased was actually earning, there is little doubt but that it was considerably less than that sum, it follows that, if I were to accept Mr. McDonagh's evidence, I would have to conclude that the division of household expenses between Mr. McDonagh and the deceased was unfairly weighted against the deceased and, to be quite frank, I do not accept that that was the case. In my view, given that Mr. McDonagh had the greater income, it is much more likely that he would have borne the brunt of household expenses. That as it may be, however, in determining whether or not Noel McDonagh has suffered a financial loss as a result of being deprived of a benefit from the deceased's earnings with Quality Kitchens, I am not so much concerned with what happened before the deceased died but rather am I concerned with what was likely to happen had the deceased survived. In that regard, Mr. McDonagh gave evidence that, during the deceased's lifetime, household overheads amounted to €878.00 per month made up of mortgage repayments amounting to €648.00, electricity expenses amounting to €90.00 per month, heating expenses amounting to €60.00 per month and telephone expenses (a mobile phone each for himself and the deceased) amounting to €80.00 per month. While the amount alleged in respect of mortgage repayments was not challenged by the defence, Mr. McDonagh was challenged to produce documentary evidence to support the amounts which he alleged were spent on the other overheads. However, although he maintained that such documentation existed, it was never, in fact, produced. Nevertheless, while conceding that it is a view which is not based on hard evidence, it does not appear to me that the amounts claimed by Mr. McDonagh in respect of overhead expenses incurred by himself and the deceased during her lifetime are unreasonable and, accordingly, I am disposed to accept them for the purpose of calculating whether or not Mr. McDonagh has suffered a financial loss as a result of being deprived of the benefit of the deceased's earnings. In this regard, while, as I have indicated, I had no evidence as to how precisely the household income was spent prior to the deceased's death, Mr. John Logan, a consultant actuary attached to the firm of Seagrave Daly & Lynch Limited, Consultant Actuaries, gave evidence that it would be reasonable to assume that, had the deceased survived, overhead household bills would have continued to amount to €203.00 per week, the cost of running two cars (that of Mr. McDonagh and that of the deceased) would amount to €200.00 per week, and the living expenses of Mr. McDonagh and the deceased would respectively amount to €199.00 and €198.00 per week. In this regard, counsel for the defence submitted that I should ignore the evidence of Mr. Logan for the reason that it was abundantly clear that the report which he furnished to the plaintiff's solicitors and the evidence in chief which he gave to the court were calculated to maximise the value of the plaintiff's claim and totally ignored matters which, if taken into account, might reduce the value of the claim. In particular, counsel for the defence pointed to the following facts, namely;

(a) That Mr. Logan conceded under cross-examination that he had made no inquiry to ascertain whether or not, following the deceased's death, the cost of heating the family home and the cost of providing electricity for it would be any less than it was when the deceased was alive,

(b) That in calculating Mr. McDonagh's alleged financial loss as a result of being deprived of the benefit of the deceased's earnings, Mr. Logan;

(i) assumed, in the absence of any evidence whatsoever, that Mr. McDonagh benefited from the use of the deceased's car (he having one of his own),

(ii) more significantly, assumed, quite wrongly, that ongoing overhead household expenses would include the cost of the deceased's telephone.

(c) When calculating the capital value of the future loss to Mr. McDonagh of €1.00 per week of benefit from the deceased's earnings, Mr. Logan totally ignored the possibility that, following the deceased's death, Mr. McDonagh might marry or take on another partner. In that regard, Mr. McDonagh gave evidence that he is currently in another relationship.

6. While I accept that all of these criticisms of Mr. Logan's evidence are well founded and that, as a result, as counsel for the defence submitted, there was a certain unreality about his evidence, I am not disposed to reject it entirely because it seems to me that there are certain aspects of his evidence which I am entitled to accept and, insofar as he took account of matters to which he was not entitled to take account and failed to enquire into matters which might have led to the reduction of the value of the plaintiff's claim, it seems to me that I have sufficient evidence to enable me to make my own calculations.

7. At this juncture, I think it appropriate to point out that, apart altogether from the evidence of Mr. Logan, there is a huge unreality about this case arising from the provisions of s. 50 of the Civil Liability Act, 1961, which provides (*inter alia*):-

"In assessing damages for this part (that is part 4 of the Act) account shall not be taken of any sum payable on the death of the deceased under any contract of insurance".

8. In that regard, the evidence before me established that Noel McDonagh and the late Samantha Quinn took out a mortgage protection insurance policy in respect of the mortgage which they had on the premises which they purchased at 13 Slievebloom Heights aforesaid. Accordingly, on the death of Samantha Quinn, that policy of insurance matured and the mortgage on the premises was discharged. It follows, of course, that Mr. McDonagh has no longer a liability to make the mortgage repayments which he was obliged to make during the deceased's lifetime. However, by virtue of the said provision in the Civil Liability Act, 1961, the court is not entitled to take that fact into account in calculating the value of the loss of dependency suffered by Mr. McDonagh as a result of the late Ms. Quinn's death. On the contrary, that calculation must be made with the assumption that Mr. McDonagh is still liable to make those mortgage repayments. Moreover, in the circumstance that Mr. McDonagh and the late Ms. Quinn were joint tenants of the said premises at 13 Slievebloom Heights, the full title to the premises vested in him by right of survivorship on her death. Nevertheless that

fact also may not be taken into account when calculating the value of Mr. McDonagh's claim for loss of dependency. In all these circumstances, the reality is that, far from suffering a financial loss as a result of the deceased's death, Mr. McDonagh has made a very substantial gain from it but I am not entitled to take that fact into account when assessing his claim for loss of dependency and must proceed to calculate that claim on the wholly artificial basis that he continues to be liable for the mortgage repayments and totally ignoring the fact that, as a result of his fiancée's death, he has succeeded to the premises of which they were the joint owners.

9. As I have indicated, notwithstanding the infirmities in the evidence of Mr. Logan, I am satisfied that I have sufficient information to enable me to calculate the value of the loss of dependency suffered by Noel McDonagh as a result of being deprived of the benefit of his late fiancée's earnings. In this regard, as I have also indicated, I must proceed on the basis that Mr. McDonagh is still liable for mortgage repayments amounting to €648.00 per month. Mr. Logan made his calculations on the basis that Mr. McDonagh would also continue to be liable for telephone expenses amounting to €80.00 per month although it is clear that that is not so because that figure included the cost of the late Samantha Quinn's telephone which, of course, no longer arises. Accordingly, that figure of €80.00 falls to be reduced by 50%, i.e. €40.00 per month or €10.00 per week. Mr. Logan also made his calculations on the assumption that there would be no change in the cost of heating and providing electricity for no. 13 Slievebloom Heights following the late Samantha Quinn's death. In my view, that was an unreasonable assumption because it seems to me that it is axiomatic that it is less expensive to heat and provide electricity for a house in which one, rather than two, people will be living. Admittedly, I had no evidence whatsoever to indicate by how much that expenditure would be reduced so, somewhat arbitrarily, I am going to assume for the purpose of this case that it would be not less than 10% and, accordingly, that Mr. Logan's figure of €150.00 per month would be reduced to €135.00 per month or €33.75 per week. Without any evidence whatsoever to support it, Mr. Logan made an assumption that Mr. McDonagh used the deceased's car during her lifetime and that, therefore, as a result of her death, he has lost the benefit of that use. In my view, he was not entitled to make that assumption and, accordingly, in making my calculations, I am ignoring that assumption and all its implications. It follows, of course, that the €120.00 per week which Mr. Logan allowed in respect of the cost of running cars would be reduced to €100.00 per week. In making his calculations, Mr. Logan assumed that out, of the nett weekly income, €199.00 per week would be spent on Mr. McDonagh and €198.00 per week would be spent on the deceased. This assumption was not challenged and, as it does not appear to me to be an unreasonable one, I am disposed to including it in my calculations.

10. In the light of the foregoing, it seems to me that, when calculating the amount of Mr. McDonagh's loss arising from his being deprived of the benefit of his late fiancée's earnings, I should allow that overheads amount €189.25 per week, i.e. Mr. Logan's figure of €203.00 per week less €10.00 per week in respect of the deceased's car and €3.75 per week in respect of the reduction in the cost of providing heat and electricity, €100.00 per week in respect of Mr. McDonagh's car and €199.00 per week in respect of Mr. McDonagh's personal expenses. That all totals €488.25 and allowing that Mr. McDonagh would be taking home €480.00 per week, it follows that his nett loss as a result of being deprived of the benefit of his late fiancée's earnings was €8.25 per week. In that regard, while, in the report which he furnished to the plaintiff's solicitors and, indeed, in the evidence in chief which he gave in court, Mr. Logan said that the capital value of the future loss to Mr. McDonagh of €1.00 per week of benefit from the deceased's earnings was €1547.00, he agreed under cross-examination that, in calculating that figure, he had not allowed for the possibility that Mr. McDonagh might marry or take on another partner. Moreover, he agreed that, in the light of Mr. McDonagh's evidence that he is currently in another relationship, there was a high likelihood that he would marry or take on another partner. Accordingly, allowing for that possibility and, in my view, on the evidence it must be allowed for, Mr. Logan gave evidence that the capital value of the future loss to Mr. McDonagh of €1.00 per week of benefit from the deceased's earnings would be a sum of €913.00. It follows that the capital value of the loss of €8.25 per week, which, as I have indicated, is my assessment of Mr. McDonagh's loss as a result of being deprived of the benefit of his late fiancée's earnings, is €7,532.25.

11. For the sake of completeness, I should point out that, although Mr. McDonagh gave evidence that, as a result of the trauma which he experienced following his late fiancée's death, he was unable to work for approximately ten months and was in receipt of social welfare benefit during that period, I have not taken that fact into account when making my calculations for the simple reason that Mr. Logan did not take that fact into account and I had no evidence whatsoever with regard to the financial implications (if any) of Mr. McDonagh's absence from work during that period.

12. The second leg of Mr. McDonagh's claim for loss of dependency arising from his late fiancée's death is that he has lost the benefit of the services which she would have provided for him as a housekeeper, cleaner, cook and general factotum around the house. In this regard, in his direct evidence, Mr. McDonagh gave me to believe that, when himself and the late Samantha Quinn were living together, she did virtually everything around the house, i.e. cleaning, laundry, shopping and preparing meals while he, himself, did virtually nothing. To be quite frank, I do not believe that. In this day and age, it is my experience that no woman would allow her partner to get away with such idleness while she did all the housework. I am prepared to accept that, while the deceased was unemployed, or in part-time employment, she might well have undertaken a major portion of the housework, but I do not accept that she would have done so while in fulltime employment with Quality Kitchens. Indeed, she would not have had time to do so. Under cross-examination, Mr. McDonagh seemed to concede that, when he said that when both he and the deceased were in full time employment it was his plan to do "the lions share of the work". Accordingly, I think that there was no reality to the evidence of Mary Breslin, the recruitment lady, who gave evidence on behalf of the plaintiff that, had she lived, the deceased would have devoted 16 hours a week to household chores. I accept that that was what Ms. Breslin was told when she was asked to prepare a report on the loss suffered by Mr. McDonagh as a result of being deprived of the deceased's services. However, she conceded under cross-examination that what she was told when she was being requested to prepare a report was very different from the evidence in court given by Mr. McDonagh. I accept and indeed, counsel for the defence accepted Ms. Breslin's evidence that the cost of employing someone in the town of Rathdowney to perform household chores is €10.00 per hour but apart from that, I do not think that Ms. Breslin's evidence was at all relevant. In this regard, counsel for the defence submitted that the whole tenor of Mr. McDonagh's evidence with regard to the services which the late Samantha Quinn provided for him was so grossly exaggerated that it amounted to a deliberate falsehood whereby his credibility was totally destroyed. Accordingly, it was submitted that, in reality, I had no evidence upon which I could properly adjudicate on the claim for loss of services and that, therefore, it should not be allowed at all. In support of that proposition, counsel referred to a decision of the Supreme Court delivered in a case of *Shelly-Morris v. Bus Átha Cliath* [2003] 1 I.R. at pg. 232. However, while I accept that I did not believe Mr. McDonagh when he told me that his late fiancée did all the housework to his exclusion, I am not persuaded that his credibility was so undermined that the burden of proof on him was not discharged. While I do not believe that the late Samantha Quinn did as much housework as Mr. McDonagh suggested that she did, I accept the basic premise of his evidence that she did some of the housework and I have no doubt but that, had she lived, she would have continued to do some housework notwithstanding that she was in fulltime employment. However, as I have indicated, I do not accept that she would have spent anything like the 16 hours per week suggested by Ms. Breslin. In this connection and, here, I am having regard to my own experience in life, it would be reasonable to assume that, had she lived, the late Samantha Quinn would have averaged an hour or so a day, or seven hours a week, doing housework and that Mr. McDonagh has lost the benefit of such services. Accordingly, allowing that it would now cost €10.00 an hour to employ someone to provide such services, I calculate that Mr. McDonagh's loss as a result of being deprived of the deceased's services is €70.00 per week which, allowing that the capital value of the future loss to Mr. McDonagh of €1.00 per week in respect of the deceased's services is €913.00, has a value of €63,910.00.

13. Having regard to the foregoing I assess damages in this case as follows:-

(a) Mental distress - €25,395.00

(b) Loss of benefit from deceased's earnings - €7,532.25

(c) Loss of the deceased's services - €63,910.00

(d) Special damages (agreed) - €1,219.00

Total €98,056.25

14. Of the above figure I apportion €6,000.00 to the plaintiff, Francis Quinn, €3,500.00 to Evelyn Quinn, €1,965.00 each to Sinead Quinn, Frances Quinn and Matthew Quinn and the balance to Noel McDonagh.