[2001 No. 10826 P.]

BETWEEN

THOMAS HILL

AND

PLAINTIFF

HEALTH SERVICE EXECUTIVE

DEFENDANT

JUDGMENT of Mr. Justice Cross delivered on the 14th day of December, 2016

- 1. The plaintiff was born on 21st December, 1958 and is a married man with children residing in the midlands. Up to the incident complained of, the plaintiff worked all his life after leaving school at 18 and provided for his family. This was important to the plaintiff. Generally, his health was good, he had a previous kidney stone which passed naturally in 1989.
- 2. In September 1998, the plaintiff began to experience pain in his lower left back, stomach and indeed groin. In point of fact, the plaintiff had been suffering from pain in his testicle area for some weeks prior to this event but had not raised this pain with his doctor due to embarrassment.
- 3. The plaintiff's GP referred him on 29th September, 1998, to the Emergency Department of the defendant's hospital in Portlaoise.
- 4. The appropriate tests were undertaken and revealed a "high grade obstruction to his left ureter secondary to a stone at the left PUJ". The plaintiff was initially managed conservatively in the hopes that the stone would pass but on 5th October, 1998, x-rays revealed that the stone had progressed towards the left vesico-ureteric junction but was trapped there and he came under the care of Mr. C, a consultant surgeon with a special interest in urology. The x-rays revealed a stone some 5 x 4.5mm and as this stone had not progressed, Mr. C. performed an operation to extract the stone which he calculated as being 7 x 8mm, which was removed intact with what is known as a "dormia basket". The procedure was carried out under direct vision by Mr. C. via an ureteroscope. After this operation, though the notes do not state this, Mr. C. said, and I accept, that he re-entered the plaintiff's ureter with his ureteroscope in order to check that there was not a second stone, that the stone had not fragmented and that no damage had been caused in the original procedure.
- 5. The next day, the plaintiff was discharged home on oral analgesia but on the night of 7th October/early morning of 8th October, he was readmitted as an emergency with left abdominal pain associated with a fever. His creatinine was elevated at 128 and his white cell count was elevated at 11,700, consistent with infection.
- 6. Over the next few days, renal ultrasound was performed and following this a intravenous pyelogram was performed with a contrast which revealed a perforation of his distal left ureter post stone extraction.
- 7. The plaintiff was then transferred to the specialist urology unit at the Adelaide and Meath Hospital (Tallaght) under the care of Mr. T, Consultant Urologist.
- 8. A stent was inserted by Mr. T on 22nd October, 1998 and a nepehrostomy tube was clamped on 23rd October and removed on 25th October. This tube was then reinserted on 26th October, due to probable pain and it was found that the left ureter was completely obstructed but a stent was replaced and he was discharged home.
- 9. On 25th November, 1998, the plaintiff was readmitted to the Midland Regional Hospital in Portlaoise with left loin pain and when good discharged was discharged home. The procedure for the removal of the stent had been cancelled on a number of occasions but the plaintiff was symptomatic and he was sent urgently in the end of January 1999 to Tallaght for its removal.
- 10. On 27th January, 1999, the plaintiff was readmitted to Tallaght in pain and as the stent procedure had not worked, his obstructed ureter was re-implanted into a bladder flap (known as a Boari flap) which procedure was performed on 2nd February, 1999. The plaintiff was discharged on 25th February, 1999.
- 11. This Boari flap procedure, in effect, bypasses the ureter which was non-functioning and is permanent.
- 12. The plaintiff has been complaining of regular significant pain colic, testicular pain and a significant psychological upset since the operation.

Issues

- 13. The plaintiff claims that the defendants in their care of the plaintiff in Portlaoise were negligent in:-
 - (a) Not affording the plaintiff proper or adequate or any consent to the procedure undertaken.
 - (b) Rupturing or piercing his ureter in the course of the removal of the stone on 5th October, 1998 without being aware that this rupture had occurred.
 - (c) When immediately after the removal, Mr. C. re-entered the ureter to check that there was no other stone and that the stone had not been damaged in its removal and that no damage had occurred to the plaintiff's ureter that he failed to notice the fact that the ureter had been pierced in the operation.
 - (d) On the plaintiff's representation to the defendant's hospital on 8th October, 1998, for failing to anticipate that the plaintiff's symptoms were consistent with a ruptured ureter and failing to take the appropriate studies and films to establish that point.
- 14. The plaintiff contends that had the tear been discovered either on the original procedure or in the checking on the day of the operation or even had it been discovered when the plaintiff re-presented on 8th October in pain, or in the next few days after 8th

October, that the problem could have been dealt with by a simple application of a stent which would have allowed the ureter to heal naturally and the plaintiff would not have had to have the procedure in Tallaght of the Boari flap inserted and that this operation which involves operating close to a nerve caused damage to this nerve and as a result, the plaintiff was in fairly constant pain in his side and testicles and as a result of this the plaintiff has not been able to work, has been in a psychologically low mood and that his life has been significantly ruptured.

- 15. It is conceded on behalf of the plaintiff that the last number of years, the plaintiff has also developed coincidental back pain radiating down his leg which has required treatment.
- 16. The defendant denies each of the allegations of negligence.
 - (a) they contend that the appropriate consents were given;
 - (b) they contend that the surgeon, Mr. C. could not have reasonably known that a tear had occurred in his operation;
 - (c) they contend that, first of all, there was no obligation on Mr. C. to follow up his initial procedure with a check but that if he did check the ureter after removing the stone that it was not unreasonable for him to fail to notice a tear which might have been a very small one; and
 - (d) they also contend that when the plaintiff re-presented himself to the hospital in Portlaoise that it was not reasonable to expect that a tear had occurred and that other than in the light of hindsight could such a unlikely event have been anticipated.
- 17. In relation to the issue of damages:
 - (a) The defendants further contend that even if the plaintiff had been diagnosed with the tear in Portlaoise on his representation that he would have been too late to make any difference as over 24 hours had elapsed since the initial tear.
 - (b) The defendant further contends that the plaintiff had for some weeks prior to his initial presentation to hospital, pain in his testicle from a unknown origin, known as Orchalgia and that it was this Orchalgia (which is merely a name for pain in the testicles) which had "taken a back seat" during the operation reappeared and has persisted and is unrelated to the incident.
 - (c) It is also contended on behalf of the defendant when the plaintiff went to the pain management clinic in Tallaght and was given injections in respect of the nerve damage which they diagnosed as being related to the Boari flap procedure, that this was a misdiagnosis and that the plaintiff was, at all times, suffering from an unrelated back problem.

Liability

- (A) The Consent
- 18. The plaintiff stated that before the procedure an anaesthetist sat down beside the plaintiff asked him a couple of questions about his general health and smoking and he signed a form. The plaintiff stated that "he told me that I was going down for a test".
- 19. The anaesthetist who signed the form did not give evidence, and the consent form used is fairly standard identifying the plaintiff's name and address referring to the operation and it is signed by the plaintiff and a medical practitioner the name of the medical practitioner is not inserted in the area of the form which refers to the nature and purpose of the procedure having been explained to him.
- 20. I do not believe that the plaintiff has established as a matter of probability that he did not sign a form in the knowledge that an operation procedure was being carried out or that some of the usual complications of the procedure were not outlined to him.
- 21. Mr. C. said that he did not think that the actual complication which occurred would have been mentioned as it was a highly unusual complication. Neither Mr. C. in his practice or any of the experts on behalf of the plaintiff or the defendant in the course of their practice ever had experienced a tear in the ureter in the removal of a stone and accordingly I must conclude that it is a rare if known complication of the procedure.
- 22. Notwithstanding suggestions in some decisions to that effect I do not believe that there is a duty on a hospital, or doctor, to explain to a patient every possible complication rather than doing so in general. There is a need of course to reassure a patient as well as to procure informed consent. Informed consent does not necessarily require being advised of possible though highly unlikely complications.
- 23. Accordingly I conclude that the plaintiff has not established as a matter of probability that there is any breach of duty in failure to afford informed consent.
- (B) The Operation
- 24. As stated above the tearing of the ureter so as to cause bleeding is a known but highly unusual complication. It is not suggested on behalf of the plaintiff that in the procedure Mr. C. was negligent because he tore the ureter. What is contended is that he ought to have realised in the procedure that he tore the ureter and ought to have immediately applied a stent.
- 25. Mr. N. the first of the plaintiff experts states that a stone of less than 5mm is normally expected to pass naturally. This evidence is accepted by all the experts on both sides. A natural passing had occurred before in the plaintiff's case, in 1989, and when the x-ray showed a stone measure approximately 5mm by 4.5mm it was not unreasonable to leave the stone in place initially and when it was found not to have progressed it was reasonable to operate.
- 26. Mr. N. says however that in the course of the operation, given that Mr. C. subsequently measured the stone as 7 x 8mm, that he ought to have realised that it was excessively large and would cause difficulty and at that stage he had the choice of firstly, opening up the plaintiff and operating as in the old style or secondly, breaking up the stone into smaller fragments with the aid of equipment which Mr. N. agreed may not have been in Portlaoise at the time (and subsequently it was discovered that such equipment was not in

Portlaoise at the time) or thirdly, he could have inserted a stent and transferred the plaintiff to a specialised hospital such as was ultimately done in Tallaght. Mr. C. in his evidence agreed that were any difficulty in the procedure discovered that he should and would have inserted a stent without any difficulty and referred the plaintiff to Dublin, as suggested by Mr. N. in his third option.

- 27. I do not believe that to expect a doctor, on discovering a difficulty, should revert to a former but discarded practice of performing an operation to open up a patient and surgically remove the stone is reasonable. I also accept that the option of utilising machinery to break up the stone into fragments was not available to Mr. C. and accordingly is also unreasonable. The issue is whether Mr. C. should have noticed the fact of the tear during the procedure and inserted a stent and subsequently referred the plaintiff to Dublin.
- 28. Mr. N. is of the view that no competent urologist would have proceeded with the operation once the size had been established and that the difficulty in extracting the stone ought to have been apparent to Mr. C. in the procedure and he ought to have been aware that damage had occurred.
- 29. There was a dispute as to the size of the kidney stone Mr. C. recorded in the notes and it was subsequently referred to as 7×8 mm stone though Mr. C. says that he never actually measured the stone and he believes that the x-ray film which would have resulted in a actual measurement of 4.5×8 mm is correct, indeed the defendants argued that the x-ray measurements were probably an exaggeration.
- 30. There was a debate between the experts as to whether portions of the stone measured on x-ray at 5×4.5 mm could have been hidden and whether Mr. C. is correct in his suggestion that we can simply discard his 7×8 mm measurement. However, I do not believe that the actual size of the stone is relevant. As Mr. D., the expert on behalf of the defendant stated small stones can get trapped in ureters due to the build up of scar tissue and what is important is not necessarily the size of the stone but the ratio of the stone and the available space in the ureter.
- 31. Given the fact that neither Mr. C. or any of the experts have had the misfortune of having experience any tear of the ureter during their years of practice. I don't accept that the plaintiff has established on the balance of probabilities that Mr. C. ought to have been aware of the extraction of the stone that he had damaged the ureter. Just what difference in pressure there would have been is not clear and accordingly the plaintiff must fail on that point.
- (C) The Follow Up Procedure
- 32. As Mr. C. did not record in his notes that after the operation he had re-entered the ureter with his scope to check for the existence of another stone or to check that the stone had not fragmented during the course of its removal or that any damage had been done, both sets of experts in their reports proceeded on the basis that this re-examination did not take place.
- 33. Mr. N. and Mr. S. on behalf of the plaintiff said that such examination was necessary and that had it been undertaken properly, the tear could have been discovered. Mr. D., the expert on behalf of the defendant, said that he never carried out such a reexamination and it was not necessary. It was agreed that had a defect been discovered at this stage, it could have been very simply dealt with by the stent.
- 34. As I stated previously, Mr. C., the defendant's treating doctor, indicated that as a matter, of course, he did actually perform such a re-examination though he did not note it. I accept that this is what he did.
- 35. Therefore, the debate is to whether it was necessary to perform the re-examination is not relevant. The issue is given the fact that Mr. C. did perform this re-examination, whether his failure to notice the tear was negligent.
- 36. It was submitted on behalf of the defendant that the tear was, in all likelihood, a tiny pinpoint tear and that it was not unreasonable that it should go unnoticed. The argument in favour of the tear being a small pinpoint one was an entirely circular one in that it was suggested that the reason Mr. C. did not notice it was because it must have been a tiny hole obscured by other matters in the ureter.
- 37. I do not accept that that conclusion is valid. Mr. D. on behalf of the defendant agreed that the reason the tear did not heal naturally as small tears do is because of its size. The defendants disputed that the ureter was entirely ruptured in that sense of there being no connection between each end on the basis that stents were applicable and I accept that the ureter was not entirely ruptured but as Mr. D. said the hole did not repair itself because of its size.
- 38. Although there was, I thought, some confusion initially, it is not suggested that the caustic nature of the urine which was escaping from the ureter itself caused any significant enlargement of the initial hole.
- 39. Accordingly, it follows that the hole that was created in the removal of a stone was a significant one of such a significant size that it was not able to heal itself. If the tear had been noticed promptly it could have been treated by the insertion of a stent which would have in all probability resulted in the tear healing itself naturally.
- 40. I take it that the real reason Mr. C. conducted his re-examination was to ascertain that there was not another stone left inside and that the stone removed had not disintegrated and the checking as to any damage in the ureter was very much of secondary importance given the rarity of the rupture of the ureter.
- 41. However, given the fact that the ureter was significantly holed I find it to be readily visible as suggested by the plaintiff's experts, I find that the failure of Mr. C. to notice the damage was below the standard of care so as to be a breach of duty to the plaintiff and negligent within the terms of *Dunne v. National Maternity Hospital*.
- (D) The care after the plaintiff was readmitted in pain on 8th October, 1999
- 42. Given my findings that the defendants were in breach of duty and negligent in relation to the re-examination it is not necessary for me to come to any conclusion as to the level of their care after the plaintiff was readmitted to their care in pain and in fever on 8th October. A judge should only decide the minimum necessary to be decided in any case, however, for the purpose of completeness, I believe I should set out my views.
- 43. There was considerable delay between the plaintiff's admission and the ultimate diagnosis by virtue of contrast imaging that there was a significant leakage.

- 44. Once the leakage had been discovered, the plaintiff was properly and reasonably promptly referred to Tallaght and there is no criticism of the plaintiff's treatment in Tallaght.
- 45. The plaintiff's experts criticise the failure on the defendants to make tests which could have ascertained the leak on 8th October and I accept the plaintiffs experts evidence that had a prompt diagnosis been made that, as a matter of likelihood, the ultimate damage could have been avoided.
- 46. Given the rarity of the incidences of damage to the ureter in the removal of stones, I do not find that the plaintiff has established liability within the terms of *Dunne v. National Maternity Hospital*. I have come to the conclusion that medical practitioners of equal specialist or status and skill would, as a matter of likelihood, have assumed that the plaintiff was suffering from a UTI which had been reasonably successfully dealt with by medication.
- 47. Accordingly, the plaintiff would fail on the fourth ground claimed but the plaintiff must succeed on the third ground above.

Injuries

48. There is a very sharp divide between the injuries as claimed by the plaintiff and those allowed by the defendant. I accept that the plaintiff was a pleasant and honest witness who did not in any way exaggerate his injuries. I also find that while the plaintiff honestly believed that all of his symptoms are related to the indexed event, some of his present symptoms are related to a coincidental back problem caused by age relation degeneration and which manifested itself at a less than clear time, at least, ten years ago.

The Plaintiff's Case

- 49. The plaintiff contends that he arrived at the accident and emergency department with sudden onset of left sided abdominal pain. For some weeks before that, the plaintiff had some testicular pain which he was initially embarrassed to refer to. The plaintiff's experts, Mr. H. and Mr. S., indicate that the testicular pain was, in fact, in all probability, the effect of the stone entering and exiting from the ureter in its early stages.
- 50. The plaintiff after the procedure was readmitted into Portlaoise Hospital as previously described and it was some time before it was discovered that there was significant leakage of urine from the hole in his ureter.
- 51. He was transferred to Dublin, stents were inserted but these were not effective and ultimately in February 1999, he was operated with a re-implantation of a Boari flap whereby the bladder was mobilised into which the left ureter was re-implanted. The plaintiff had a number of episodes of pain relating to urinary tract infections treated with antibiotics. He was referred to the pain clinic in Tallaght under the care of Dr. CKP where he was given nerve blocks to treat what is believed to be a gentio femoral nerve damage. This nerve damage was caused as a complication of the Boari flap procedure. The nerve block injections were not successful and he was treated with various cocktails of drugs and was referred to a pain management service which he found helpful.
- 52. The plaintiff suffers from constant chronic left sided pain under his rib cage, like a stitch, radiating to his left groin in accordance with the distribution of the genital femoral nerve and into the medial aspect of his leg, he finds it difficult to walk.
- 53. The plaintiff suffered a psychological reaction and depression. He had nightmares and flashbacks and low mood. He has become irritable and cross and anxious. His relationship with his wife on a physical and emotional basis has suffered. The plaintiff bitterly resents the fact that he is unable to work and provide for his family. His life has, in effect, been ruined and he does not socialise and stays around the house. He found he was drinking to excess which caused anger issues and as a result he has in the last number of years abstained from alcohol.
- 54. Mr. H. on examination revealed a left sided pain "located exactly in the course of the 12th subcostal nerve on pressure which was diagnostic of subcostal nerve syndrome. Mr. H. is of the view that the access achieved by the incision in his left abdominal wall in relation to the Boari flap resulted in damage and disruption of the subcostal 12th nerve and also gentio femoral nerve which damage is the cause of his chronic pain.
- 55. Mr. H. is of the view that the ongoing urinary tract infections are on the balance of probabilities related to the re-implantation surgery which resulted in a "blind ending" of the ureter and a build up from time to time therein.
- 56. The plaintiff's pain after the operation included testicular pain which was as a result of the aforementioned nerve damage.
- 57. The diagnosis of this nerve damage was supported by Dr. CKP of the pain management team in Tallaght who gave evidence of treating the plaintiff with a number of nerve blocks which were not successful. He participated in a cognitive behavioural pain management programme which designed to help which he believed was successful but his physical condition is likely to be permanent.
- 58. Dr. P. McK., Consultant Psychiatrist, who diagnosed low mood described in a number of antidepressant medication and in 2010 when he got some temporary employment, his mood improved.
- 59. The plaintiff, as a result of the injuries claimed that he has not been able to work save for one reasonably short period when an acquaintance was out on sick leave from time to time, he operated as a caretaker with limited hours and the job was made easy for him by the agreement of school management who allowed him home in between his duties. Apart from that, the plaintiff has not worked and does not believe he will be able to work and in this he is supported by rehabilitation experts.
- 60. It is agreed on behalf of the plaintiff that in addition to the injuries he complained of that he is also suffering from ongoing unrelated disc problems in the last number of years which have required attention and which result in pain radiating down his legs.

The Defendant's Case

- 61. The defendant submits that prior to the indexed events, the plaintiff was suffering from testicular pain or orchialgia. This they submit is of unknown origin and they dispute that it was related to the kidney stone problem which developed shortly thereafter. The reason that they dispute this is that this pain returned after the incident which again they dispute is related to the incident. The reason the defendants dispute that this was related to the incident is that they deny any nerve damage was caused in the Boari flap operation and suggest that all of the plaintiff's problems relate either to the return forensic the orchialgia or to his subsequent unrelated disc problems.
- 62. The defendant contends that the diagnosis of nerve damage in the pain clinic was in error and support that opinion by virtue of the fact that none of the nerve block injections produced a satisfactory result.

63. Accordingly, the defendants dispute that any of the plaintiffs ongoing difficulties are related to the indexed event.

Determination in Relation to Injuries

- 64. I find that it is probable that the plaintiff's pre-existing testicular pain was indeed related to the kidney stone causing pain and it is not coincidental the defendants submit. I accept Mr. N's evidence that the problem with the plaintiff's kidney stone did not suddenly become acute but was preceded with intermittent pain which manifested in his testicles as the stone was forming.
- 65. I also find that the plaintiff did indeed suffer from nerve damage as is supported by his experts, Mr. M. and Mr. S. as well as his treating pain physician, Dr. CKP. The fact that the injections did not result in a cure of the facet nerve problems is not probative of the proposition that the plaintiff never suffered from nerve damage at the time of the Boari flap procedure as the results of these injections are variable. I have no doubt but that Dr. CKP, a well known and respected pain management physician was not faulty in his diagnosis.
- 66. If follows from the above, as Mr. N. found on his examination of the plaintiff, he still has those symptoms relating to that nerve damage. This nerve damage caused referred pain to his testicles and the plaintiff's pain in this regard is continuing. The plaintiff is left with a problem of chronic abdominal pain which is likely to be permanent.
- 67. I also find that as a result of the procedure and the trauma that was involved in the delay and diagnosis and multiple attempts at fixing the problem, that the plaintiff has indeed suffered and continues to suffer the psychological and psychiatric responses as found by Dr. McK.
- 68. I reject the contention on behalf of the defendants that the pain in the testicles is coincidental and not related to the indexed event and I also reject the contention that all his problems relate and related to coincidental damage to his back. The complaints of unrelated nerve damage to his back which radiate down his leg only arose a number of years post the indexed event and during the interval the plaintiff was assessed by Social Welfare and found to be permanently incapacitated and entitled to an invalidity pension.
- 69. I do find, however, that a substantial portion of the plaintiff's current complaints are related to his degenerative back. I accept that the plaintiff himself cannot be expected to distinguish between the various sources of pain and I accept that he genuinely believes that all his pain and discomfort are as a result of the index procedures. Counsel for the defendant, by an extensive trawl through the plaintiff's attendances at his general practitioners, established that much of the plaintiff's more recent attendances relate to his back problems, though I also accept that the plaintiff's abdominal pain may well be confusingly referred to as back problems by the plaintiff when seeking medical attention.
- 70. Notwithstanding the element of contribution of his back, I believe that the indexed events have had a very significant effect upon the plaintiff both physically and psychologically and are the cause of the plaintiff being unable to work since the accident and indeed into the future due to a combination of the physical and psychological reasons. However, I also find that were it not for the indexed event, the plaintiff's back might by now be contributing to absences from work.
- 71. While I accept that the plaintiff's unrelated back problems will have contributed to this inability, I believe the plaintiff would still be unable to work had there been no back problems.
- 72. I believe that into the future the plaintiff is, as a result of the indexed event, going to be significantly disabled.
- 73. In relation to the plaintiff's work capacity as stated, he did have a limited period of employment in 2004 and 2008, as a school supervisor. In this job, the plaintiff was allowed to return home having opened up the school in the mornings and only expected to return at lunch time and then at the close of the school. He was, in effect, a gate keeper who was given the employment in the absence of a friend whose wife was ill at the time. He was awarded an invalidity pension in 1999 by the Department of Social and Family Affairs which indicates a permanent incapacity to return to work. It should be noted that this pension award and determination predated any question of his unrelated back problems. The hours the plaintiff was working were the maximum allowed consistent with the Social Welfare payments the plaintiff was being paid.
- 74. The plaintiff's employers at the time of the incident ceased trading but I believe that were it not for the accident, the plaintiff would have had reasonably steady employment and I accept that the plaintiff is unlikely to return to work and I accept that this is as a result of the indexed incident. However, the plaintiff's future working life will, as a matter of probability, also have been compromised by his unrelated back problem.

Damages

- I. Special Damages
- 75. By agreement of the parties, special damages apart from loss of earnings have been agreed at €8,500.
- II. Loss of Earnings to Date
- 76. There was uncontested evidence had the plaintiff continued earning from the date of the accident, his actual net loss of earnings amounted to €425,000. I believe the work the plaintiff would have obtained since the accident would have been similar to and with a salary similar to his pre-accident work.
- 77. From that sum, would have to be deducted a sum on the basis of the principles in *Reddy v. Bates* in that the plaintiff could not have been guaranteed to have worked all the time particularly in the time of the recession and I would assess the actual net loss, to date, being in the sum of €350,000.
- 78. There is an RB certificate of €37,211.34, which will have to be paid directly by the defendants to the Social Welfare authorities and this sum will have to be deducted from €350,000 loss to date giving a net loss of €312,788.66.
- III. Loss of Future Earnings
- 79. In relation to the future, I accept that the loss is €523 per week which at 1.5% real rate of return amounts to €229,000 on the basis of retirement at the age of 67 and to allow a *Reddy v. Bates* deduction which is more than usual given the fact that the plaintiff has coincidental back problems, I would allow the sum of €130,000.
- 80. From the sums for loss of earnings may have to be deducted Recoverable Benefits, which would have to be paid to the

Department of Social Protection, and I am not informed what that sum is, or whether there is any such sum payable and will await argument.

IV. General Damages

- 81. The plaintiff has suffered a substantial injury for which he is entitled to substantial damages. He is suffering from chronic pain, psychological problems, his enjoyment of life has been severely impaired and I accept that as a result of the incident he is in a significantly worse position than he would have been had it not occurred.
- 82. Being fair to both parties, I am allowing for the fact that some of the plaintiff's present position for the last decade or so is indeed relating to his back, I will assess general damages to date in the sum of €150,000 and general damages into the future in the sum of €100,000.

Conclusion

Special Damages €8,500

Loss of Earnings to Date €312,788.66

Loss of Earnings into the Future €130,000

General Damages €250,000

Total €701,288.66