THE HIGH COURT

[2014 No. 4433 P.]

BETWEEN

DESMOND REEVES

PLAINTIFF

AND

GORDON ROGERS

DEFENDANT

JUDGMENT of Ms. Justice O'Hanlon delivered on the 25th day of July, 2018

1. The court has already dealt with the liability issue between the parties at the request of the parties, and delivered judgment on this issue on 23rd day of January, 2018. This matter has now been heard before this court for the purposes of assessment of damages. The accident which gave rise to these proceedings occurred on the 21st day of March, 2008. This court took the view that the plaintiff's evidence to the court correctly represented how the accident occurred. The plaintiff was the sole occupant of his motor vehicle at the date of the accident and a truck appeared to scrape his vehicle from the rear to the front, forcing his car off the road surface. At the point of exit from two lanes, with a yield sign at the locus on to a roundabout, there was sufficient room for both vehicles. The court found that the plaintiff had not broken the rule of the roads nor was he on the yellow hatch portion. The court found that it was highly probable that this position, ready to take off to the left on to the roundabout, represented the correct version of events as to how accident occurred.

2. In opening the case, counsel for the plaintiff explained that there was now a full fight on the issue of quantum. After the accident the plaintiff was extremely upset and agitated and presented to his general practitioner with psychological symptoms. He was given Xanax and he took that medication for a two-week period. He later returned to his general practitioner with symptoms of pain and discomfort in the neck and paraesthesia of the left arm. One-month post-accident he had an MRI scan and objectively, there was pain and evidence of discomfort and evidence that he had suffered a significant injury as a result of this accident. He had no pre-accident difficulties in the neck of shoulder area. It is asserted on his behalf that his complaints are consistent with the original symptoms of paraesthesia in the left arm, small finger and finger beside it, and more symptoms on the left side. The court was told that Mr. Gilmore, Consultant, will be called. He will say that he has some degeneration of the neck and that this was aggravated by the accident. Dr. Conroy injected his neck and shoulder and will say that while the results were good, that they are wearing off now and that the plaintiff wants to be treated conservatively, although denervation was discussed with him and he will, therefore, face repeat injections every eighteen months.

3. The court was told that Mr. Meehan, Orthopaedic Surgeon, also treated the plaintiff and that he is now deceased. Dr. Spillane examined the plaintiff on behalf of the defendant. The plaintiff's GP, Dr. Comer, will also give evidence. The court was told that in 2014, the plaintiff had to undergo a triple bypass operation for heart problems and that he suffered significant absence from work as a result. The plaintiff is described as being a little highly strung and that initially he missed three weeks of work with the impact to his neck but that he was adamant that he would continue to work and that the monitors and screens at work were causing him difficulty. The total items of special damage sought are €29,037.38.

The Plaintiff's Evidence

4. The plaintiff confirmed his date of birth as 30th January, 1963, and that he was married with three adult children between the ages of 24 and 28 years. He further confirmed that he is a production technician with Visticom. This witness described how on 21st March, 2008, immediately following this accident, he was totally confused and very upset and did not sleep at all for that bank holiday weekend and was very emotional. He went to his general practitioner in an emotional state and was given Xanax for four to five days and that calmed him. He returned to his doctor with symptoms of pain in his neck and back and stiffness on the left side. He described himself as very nervous on the public road for the number of months. He went back to work because he had a child doing the Leaving Certificate and had to provide for his children, as they come first.

5. This witness described how it took him six months post-accident to calm down properly and that his neck was very sore and that his arm was numb down to the two smallest fingers on the left. That sensation never went away. He said that he cannot sleep on his left side. He sleeps on the right side but has some bother from that.

6. In the first twelve months, he attended a chiropractor concerning who diagnosed a curve in his neck. He got some relief and had nine to ten sessions with the chiropractor. He got physiotherapy later on.

7. Although this witness was in pain, he said that he had to provide for his family and that he found since the accident that he cannot look up too well. He could not go under machines at work, for example, for a couple of months but his colleagues assisted him.

8. This witness described how he had physiotherapy recently and a heat wrap and that he uses a high chair and that before the accident he never had problems on his left or right arm. He described his wife as doing anything that required heavy lifting and that he could not steer. He had a son who played rugby. He dropped him to the rugby but he could not take the same part in it. He had played golf twice a week pre-accident but he tried to play golf again nine months post-accident and found he was in too much pain. He tried at all costs to avoid aggravating his neck.

9. This witness said that he cannot get into a smaller car. For example, a taxi would cause agony for him lowering his head. He is a tall man, as the court has noted, and he said that although he used to go rugby matches on a high stand, he now watches down at the lower level in line with the pitch. He has also bought a car which is higher and that has mirrors because he cannot turn to the right.

10. This witness described how his neck would lock and that in winter, he tried to avoid this happening as much as possible by wearing a scarf. In 2016, this witness began to have injection therapy. His nephew is a physiotherapist who showed him how to do exercises to strengthen his neck. He did these for five minutes every day. His wife used a rubber ball to work on his neck. He is 6ft 3 in height. In the course of his employment he attended the general practitioner who referred him for an MRI scan. He was given medication and sent to Dr. Conroy straight away. He felt that the first set of injections were working on the neck but not on the left arm.

11. The second set of injections, four or five, were given to him in the arm and it took about a week to ten days to work. He said for the last twenty months that he felt better as a result. He said he had pain in the last month and that he was due to see Dr. Conroy again. He said that possibility of denervation had been discussed with him by Dr. Conroy but that he would prefer not to have an operation and to have injection therapy. The fact that he had a bypass heart operation disinclines him to opt for an operation.

12. This witness told the court that it took him eight years to find Dr. Conroy and that it has made a significant different to the pain levels. The numbness on his left side has shown major improvement to what it was in October last year. He explained that he can play "pitch and putt" a little and that he now does 90% - 95% of chores in the family home.

13. Under cross-examination, he was asked what analgesics and physiotherapy were prescribed by his general practitioner and he said that he was given Xanax and what he thought was a muscle relaxant.

14. It was put to him in cross examination that he saw his general practitioner in January 2010 for a medical report after the scan but that from 24th April, 2010, he had not gone back to the GP at all. His response to this was that the general practitioner had advised physiotherapy and that his sister brought him to a chiropractor where he had eight treatments. He confirmed, however, that he got no treatment after that and never went back to the general practitioner. He confirmed that he was out for three weeks after the accident and he denied that he had been scheduled to be off in any event. He denied that he told Dr. Spillane that. He said he did work the night after the accident and on Saturday 22nd of that month. It was put to him that he told Dr. Spillane that he had a few days off as scheduled. He explained that his shift was scheduled for him to work Thursday and Friday of the week of the accident and that he had gone to Mr. Paul Murray for physiotherapy and not to his nephew.

15. He said that it was Mr. Meenan, Orthopaedic Surgeon, who suggested that he get more physiotherapy. It was pointed out that from January 2011 till 2016, he had no physiotherapy and no medical treatment and he confirmed that that was the case.

16. He confirmed that the general practitioner at work saw him in 2016 and caused him to have the second MRI scan which occurred in July 2012.

17. It was put to this witness that neither his GP nor his work doctor but rather his solicitor referred him to Mr. Gilmore in 2012. The plaintiff's response to this was that he was given the same exercises by those he consulted and they all told him to do the same thing.

18. This witness was queried as to why he had left it so long to seek this treatment. He said that doctors cost €50 a visit and that he had two children in university and that the family has to come first. He confirmed, however, that the medical service and doctor at work was free and that he knew how to alleviate the pain and that that helped a lot. It worked until 2016.

19. This witness confirmed that Dr. McCurtain, his work doctor, sent him for the second MRI scan. He was asked what medication he took from 2008 until 2016, to which he replied he had taken paracetamol and has used home remedies and exercises. He said that he was still on painkillers and at the moment he was taking paracetamol.

20. It was put to this witness that his total chemist's bill was €172.21 over a ten-year period. This witness responded that he knew how to control pain and he used paracetamol to keep it at bay. He said that there was always the numbness in the left arm which pains him. He said that he may have gone to a work doctor at one stage and that he did not claim for that. That was in 2015. It was put to him that eight sessions of physiotherapy helped greatly and he confirmed that was the case. It was put to him that he got no treatment from January 2011 and he said that he was doing it himself. He was asked about whether both hands were going numb and he said it was mostly on the left side.

21. The second MRI scan took place on 18th December, 2012. Mr. Gilmore reported compression of C5/C6. It was put to this witness that it was difficult whether to relate this to the accident or not and he said he did not know the answer to that. This witness said that in the year 2000, he had no neck pain. It was put to him that Dr. Stafford would say that there is degeneration of the neck on the C3/C4 and that there is growth on the spine which predates the accident and that his problems were pre-existing. He did not agree with that.

22. He saw Dr. Gilmore on 13th April, 2015, and was asked what treatment he got between 3rd July, 2012 and 13th April, 2015. He said that he only had home remedies, that he got no treatment and that in 2014, he had the bypass.

23. It was put to this witness that he told Dr. Spillane that his neck was better most of the time and for the period 2008 to 2011, but he denies this. He confirmed that he saw Dr. Conway on 23rd August, 2016 and that he had the third MRI of the humerus in September/October 2016. He confirmed that this examined the acromo-clavicular joint and was in July/August 2016, when he had injections and that he had no difficulties since.

24. Regarding the items of special damage, this witness said he never received any money for the car damage and that his insurance paid for the car. His insurance company was Royal Sun Alliance. He paid €200 excess on the policy.

25. It was put to this witness that he was not in pain but that he suffered from anxiety after the accident and that he had told Dr. Spillane that it was mild and that he had difficulty for two to three weeks, not six months. He denied this and he said he went back to work two to three weeks after the accident still in pain. He described himself as a regular walker for exercise.

26. It was put to this witness that in December 2008 when he saw Dr. Spillane for the first time, he thought that he was given a muscle relaxant for ten days after the accident. This witness said that he had ten sessions of physiotherapy which was not working and he went to the doctor.

Evidence of Dr. Comber

27. Dr. Comber gave evidence of his qualifications. He is a retired general practitioner.

28. This witness said that the plaintiff never went to him about his chest. When he went to see this GP on 25th March, 2008, he had not seen a GP for two years prior to this and for three years prior to that again. He said he may have renewed a script with another doctor in the practice and that he was not sure whether he saw some other doctor. Dr. Comber described how his secretary would often have telephoned about the renewal of a prescription for him to sanction same.

29. Dr. Comber described this man as a very infrequent attendee at his practice and that it was not all due to finances. He was what one would describe as an easy patient. He said on 9th May, 2006, there was an insurance policy attendance and on 25th June, 2003,

he had come for low back pain. Following the accident, he described this patient as very upset. He prescribed Xanax. Three days later he came with pain in the neck and arm. He did not need hospitalisation or a referral to psychiatrist.

30. There was evidence of difficulty on the ulnar outside left hand going into the little and ring finger. This witness confirmed that he did the first report on 3rd January, 2010 for PIAB, using his attendances with the plaintiff and records in his office. He described him as having a stiff neck and pain on passive movement of the neck. He predicted he would need analgesics and physiotherapy. He confined this to physical problems and made no reference to mental state examination. He said he ticked two boxes concerning moderate difficulty in reaching and bending and severe difficulty in both lifting and carrying.

31. On 29th June, 2012, he did a follow up report in January 2010. He said the plaintiff had persistent pain of pins and needles in both hands with pain and stiffness of the neck. He had had a lot of physiotherapy and home exercises and heat wraps at night. He had attended the surgery for prescriptions.

32. Four years post the accident the plaintiff had chronic pain. His assessment was that it was unlikely that he would improve. He would be able to cope with work and day to day living. His examination at the time showed passive movement of the arm. Flexion and twisting was limited due to pain. Two years after the previous report, he found that he had pain and stiffness in the neck with a consistent clicking in the neck. He said only the patient would hear the clicking. A doctor would not necessarily hear it. He said he had to hire a car and found it hard to get in and out of car. He had to get a jeep-type vehicle. He bought an orthopaedic mattress. He confirmed that he had pins and needles down his arms in bed and had stiffness in the neck caused by the discomfort. He said six years post-accident, he felt it was unlikely to change. In June 2017, he said that the situation was unchanged. He stated that he had pins and needles, mostly confined to the left arm, and that he had pain on movement of the neck, mostly to the right. He had given up sport and just walked for exercise as per previous reports.

Under Cross-Examination
33. With reference to the 3rd January, 2010, he confirmed that the report he did was for PIAB at the request of the plaintiff's solicitor. On 25th March, 2010 he said that four days post the accident, he was the first person to treat the plaintiff. He said he had no visible physical injury i.e. no bleeding or broken bones but that he was very agitated and that that was why he came to see the doctor. He referred him for an MRI scan. He was referred to an extract from his file dated 24th April, 2008 from Dr. Stafford to him. It was put to this witness that the injury to the neck was a result of a muscle spasm. This witness said that most people have some degenerative change. This witness agreed that there was nothing structural and that two years post-accident there was no reason to think it would go on as it did.

34. This witness was asked about his second report of the 29th June, 2012 and he explained that he saw the patient at the request of the patient's solicitor who wanted another report.

35. He was asked about the fact that the patient had eight physiotherapy sessions and eight chiropractor sessions. This doctor said that anything over six sessions of physiotherapy would be deemed to be a lot and that he himself does not use a chiropractor. He said some people get benefit from it, that it is like faith/like counselling. This doctor confirmed that six weeks post the accident all anxiety had subsided. He confirmed that there was one other G.P. working in his practice and that sometimes if a person came in for a renewed prescription his secretary would check with him and then give out the repeat. He was asked what the reference on his file notes to K.R./L.O. where and he said it may be a reference from Barrington's hospital. He confirmed that the patient would have to see him to get a report. He said he did not come for treatment for six years post the accident. He was not on medication that would need a prescription. There were two types of patients – those who came often and those who did not essentially. He said when people have pain they do all kinds of things. Some do not go to the General Practitioner when maybe they should and he would not find that unusual. He said himself gave up on conventional medicine in relation to this accident. This was in relation to being asked why, from January 2011 until 2016, he had not attended the General Practitioner.

Dr. Brian McNamara
36. This witness explained that he is a consultant in neurophysiology in University College Cork and in practices at the Mercy Hospital in Cork. This witness said that he undertook nerve conduction tests, looking at the outline function of the ulnar nerve on a referral from Dr. Conroy and trying to find the cause of tingling/paraesthesia of the hand. He saw the patient and did the first test on 13th June, 2018. He did four tests in all, on the medial nerve, the first on the first, second and third fingers. He then did tests on the ulnar nerve and the little and ring fingers of both hands. He said that on the ulnar side there was a problem, particularly at the elbow on each side. He said regarding the medial/radial side that there was a suggestion of carpal tunnel in the wrist. He confirmed later in his evidence that he does have carpal tunnel syndrome. He concluded firstly, that there was damage to the nerves on the elbow of both arms. This was contributed to by damage to the medial nerve at the wrist.

37. Secondly, there was impact at speed. He said the query was why there was no immediate reference to this medically. He said that often a person concentrates on their soft tissue injuries immediately post-accident. He said that within seven days of this type of problem they become conscious of it. He said it is not a black and white situation, that there were no symptoms pre-accident but post-accident there was paraesthesia.

38. This witness confirmed his finding that the plaintiff has carpal tunnel syndrome from an electro-physical point of view. He described three treatments for same:

1. Splinting.

2. Near nerve injection with a steroid or pain killer or a mixture of the two.

3. Surgical decompression with splinting, to allow the nerve to breathe.

39. Regarding the ulnar nerve there is a freeing problem which can be resolved by:

(a) Opening up the site;

(b) moving and protecting the nerve; and

(c) reducing movement at the elbow, for example, with splints and injecting near the nerve.

This witness described the medial and ulnar as supplying small vessels of the hand and that it depends on the sort of tasks in question one has to do, around the house for example, as to the impact.

40. He interpreted his own findings as a finding of carpal tunnel on the right especially and difficulty with the medial on both sides. He said he was interested in the General Practitioner saying that he found it hard to differentiate the right from the left side in this patient as giving more trouble because he found the difficulty on both sides.

41. He said that with a trauma one does get local nerve entrapment. He said he relies on two items, firstly the electro examination and secondly the unprompted story of pins and needles within a week of the accident. He said he sees patients with severe problems where they only seek comfort treatment after ten years whereas another person will come very quickly and that each patient is different and that he treats them as they come. He grades the carpal tunnel difficulty as moderate and if he were to use a pain level from 0 to 6 he puts the plaintiff at 3 on that range. He grades the ulnar problem as moderate also.

Evidence of Mr. Brendan Conroy

42. This witness qualified in medicine in Trinity College, Dublin. He has a fellowship in anaesthetics and is a specialist in anaesthesia and pain medicine. He practices in Limerick, Cork and Tralee. The patient was referred to him by his locum doctor, Dr. MacCurtain, who works in Castleconnell as well. He is well acquainted with her. He first saw the patient with difficulties of the left arm, left shoulder, and a clicking sensation in the neck which he compensated by turning using his waist. He marked him as 4 out of 10 in terms of the pain intensity although he said that is not a good measure for assessing chronic pain. He said that the last MRI scan showed facet degeneration and that he looks for a lack of fluid in the joint. He said it is quite tricky to treat the neck, that there is muscle tenderness around the shoulder going up to the neck and difficulties at the facet C5/C6 and C6/C7 on rotation to the left and right. He said he found, as his best guess scenario, micro-facial pain in the muscle and a thin inflamed membrane around the muscle. He said the plaintiff was a goal orientated person and he wanted to be back to work in as short a time as possible. He said he was a fairly stoic patient. He injected him again in August and saw him on the 23rd September. He improved for two months but in terms of his biceps and triceps he was failing miserably to relieve the pain. He said he did not have a good angle on some of his arm pain. He said where there is narrowness and boniness on the first MRI scan that one has a choice to deal conservatively or surgically with the matter. He said he would not be rushing to do an operation with a bypass patient.

43. He described given injections to the cervical facet joint. He said he gave the first injection to the C5/C6 and the second injection on both sides. He gave four injections in the neck area and a small injection to the rhomboid area. He did not see the patient for one and half years. He said he does not know, if a person does not come back, whether he has failed or the person has done well, or that maybe the patient did not like him. He said it is now going pear-shaped. He is always going to have to go down the route of least attendance with doctors and he said he is surprised that he has lasted that long without further intervention.

44. He described the cost of a day case for these injections, depending on which facility fee one is paying, as between €500 and €800 for a day case and between €300 and €600 for a doctor per visit.

45. He was cross-examined with regard to the 29th August, 2017 and he said at that point in time the plaintiff was not in pain but that the pain was beginning to come back.

Evidence of Dr. Alex Stafford

46. Dr. Stafford described how he had worked in the public sector as a consultant radiologist and had now retired from that and was in private practice as a radiologist.

47. He referred to the fact that he had carried out two MRI investigations, the first in 2008 and a further MRI in 2012. He amended his report to correctly reflect the date of this accident as the 21st of March, 2008 and he said that the first MRI scan was carried out by him on 24th of April, four and half to five weeks post-accident, in other words, within a close timeframe.

48. He found a loss of lordosis of the cervical spine and gave his opinion that this indicates a muscle spasm and that it can refer to muscular, ligamentous, soft tissue difficulties which more than likely were caused by some recent issue regarding the neck.

49. This witness found minor compression/deformity of the upper C4/C5 from the 2008 MRI. It would not be possible to put a date on when that occurred.

50. He said that there was recent bone injury with reference to the 2008 scan and that he did not see a sequence in it. It was an older machine than the one he used for the second MRI scan.

51. He found degenerative change of minor to moderate in the C3/C4, C4/C5, C5/C6, C6/C7 areas with no disc bulging, save for C6/C7, a minor osteophyte degeneration on the left side. He noted again that this was four weeks post the accident. He felt that this was indicative of trauma. He said that the General Practitioner, Dr. Comber, would be in a better position than himself to say what the cause was.

52. He noted that there was no increased signal to indicate that it was of recent origin and he said there was a small C3/C4 protrusion, a small bulge, not pressing on anything and therefore not going to have neurological consequences. This witness stressed that his report was purely a radiology one.

53. A follow-up second scan was carried out which he reviewed on the 12th of October, 2012, the scan having taken place on the 18th of September, 2012, four years post-accident.

54. Again, his clinical findings indicated a loss of lordosis with the minor protrusion at C4/C5. He felt that the scan machine brought ten years was more modern technology and therefore that it gave a better result than the 2008 scan. He said that from 2010 on with the new machine it could be put on disc and be magnified and the lighting could be adjusted in it to give a better view to a doctor.

55. Again, he noted the C4/C5 minor disc protrusion, C5/C6 minor degenerative change, C6/C7 minor degenerative change and C3/C6 mid-line degeneration. In other words he noticed a minor focal protrusion. He noticed in the second scan that there was nothing pressing on the spine and that they were pre-existing deformities as seen in 2008 and were more likely caused by the accident. He was asked about prior cause. He said he did not have that information but that the accident could have aggravated an older injury. The likely cause of this could not be said with any certainty. He said that the C3/C4 issue could have arisen as a result of the accident but it could not have caused neurological pain because it is not a large protrusion. He said that his finding regarding C5 and C6 was not there in 2008. He said there was muscle spasm there both in 2008 and 2012 and that both show that it was uncomfortable. He said it is up to the clinicians and clinician evidence to link these MRI scans together as a continuous process or not. He would bow to a pain specialist rather than to a radiologist.

56. This witness was asked regarding the issue at C4/C5 whether this deformity was as a result of trauma or whether it predated the

accident. He said he could not be certain.

57. This witness was asked about the issue at C4/C5 and he described it as a difficulty at the top of the vertebrae. He said there was a slight depression at the top of C4/C5 from the top view. He said that wear and tear gave rise to an occasional situation which could lead to gradual compression resulting in a deformity. He said this was true also of a person who fell off a ladder. It is possible that this incident triggered a weakness. This witness took the example of where a person might have fallen on steps five years earlier. They could have compressed it without knowing it. This accident, for example, could have compressed it even more. He felt that it was unlikely that this patient's difficulties were wholly attributable to the recent accident. This witness said that recent trauma could have triggered it further and that the MRIs provide a road map for the clinicians. He was asked in all probability whether the degenerative issues pre-existed the accident and he said that they had. He confirmed that the osteophyte formation at C6/C7 was degeneration. He said that the second scan was more descriptive and he described the condition as moderate.

58. This witness was asked about a minor focal protrusion projecting to the right. He said if both MRIs had been carried out on the same machine he would agree with that but he said in 2010 there is a ten year technical superiority in the machine and you could see more on the image.

59. This witness said that in the 2008 scan this difficulty could have been there but that the scan did not show it up and it was explicable by virtue of a more superior image than in 2008. In all likelihood this patient had degenerative change at C6/C7 and the likelihood was that it was there in 2008. He described the neck rotating involving two lower disc spaces and he said a disc complex osteophyte complaint with minor disc bulging.

60. It was put to this witness that the accident had raised symptoms of degeneration which were there prior to the accident and he agreed with this.

61. Under re-examination, given that the report of Dr. Stafford had been raised in oral evidence, this witness was asked to specifically identify his two reports, which he did.

Evidence of Mrs. Reeves, Wife of the Plaintiff
62. This witness confirmed that her husband had had no problems with his arms at all prior to this accident. Post-accident, she told the court that he had difficulty with his neck and hands, that he was very careful of himself, that he used scarves in winter and that he was minding his neck and went out of his way not to do damage.

63. She described a mobile home which belonged to their wider family circle where they used to spend at least a fortnight and other weekends during the year. She said that now, because of the soft furnishings in it, her husband would spend no more than one day there. At home, they had purchased an orthopaedic mattress with shaped pillows to suit his neck. This witness told the court that her husband does not get a whole night's sleep and suffers from numbness and rubbing his hands when he is awake during the night.

64. This witness's own nephew is a physiotherapist and he gave her exercises to do with her husband such as rolling a ball along his neck, deep heat, and heat wraps in cold weather.

65. This witness confirmed to the court that prior to the accident her husband played golf. He now walks instead for health and enjoyment.

66. The witness says that her husband is and always was easy going but that he gets irritated with himself and that it causes him to be contrary. They have one son who has special needs. He needs his dad more than the others.

67. Under cross-examination this witness confirmed that her son does not have a physical disability, rather that he is a slow learner with a language disorder.

Evidence of Mr. Gilmore, Consultant Orthopaedic Surgeon, Galway
68. This witness confirmed that he saw the plaintiff for the first time on the 24th of July, 2012 and that he was having difficulty sleeping, had numbness in both hands and that the ring and little finger on both sides were causing him difficulty with numbness.

69. He described the plaintiff's neck as locking in cold weather with a clicking in the neck, pins and needles, and difficulties getting in and out of a motor vehicle.

70. He had a negative previous history with no further injuries subsequent to the accident.

71. The plaintiff told him that he was driving to work, that he had a head-rest on the seat of his car when a trailer pushed him to the left along an embankment and that he hit his head off the roof of the car.

72. On examination of the cervical spine, this witness made the clinical finding that the plaintiff had 50% extension with pain on pushing and he had no obvious neurological defect.

73. He said that the MRI of the 24th of April, 2008 showed significant loss of normal lordosis of the C4/C5 with an indicator of spasm around the neck. He said he had a soft tissue injury to the neck with continuous difficulties or neurological numbness.

74. The MRI was carried out on the 18th of September, 2012 and he reviewed it on the 27th of September, 2012. This witness could not confirm that there was a compression deformity as a result of trauma on the first MRI although the scan was within one month and there was degenerative changes and minor bulging. The plaintiff continued to have ongoing difficulties with very good reason for his complaints. He noted that the plaintiff had adapted his lifestyle to minimise the difficulties. He noted that Dr. McNamara had tested the ulnar nerves on both hands and of the medial nerve on both wrists but did not anticipate surgery.

75. He noted that the plaintiff had done home exercises, took paracetamol and Xanax and had neck stiffness and numbness in both arms which would keep him awake. He thought that it might have been positional at that stage. He defers to Mr. McNamara on that point however. He noted that the plaintiff was off work for eight months and had only recently gone back to work when he saw him on the 13th of April, 2015.

76. On clinical examination, he noted that he had 50% movement and tenderness on the inner right Trapezius muscles. In his opinion, the man's age now and the time which had passed since the accident confirmed his view that he did not anticipate any significant change in his condition.

77. He noted the difficulties in the cervical and lumbar spine in the shoulder area. Three further MRIs were carried out. The plaintiff was taking no medication at that time.

78. The plaintiff enjoyed great relief from injections. He used a high collar and a scarf to protect himself. He suffered from numbness and slept mostly on the right side. In terms of the range of movement he said discomfort was 50% at the end of the range with normal flexion.

79. An MRI of the cervical spine was carried out on the 16th of April, 2016. This again confirmed loss of normal lordosis C6/C7 with pressure. He noted again that Mr. McNamara felt that he had compression. He compared the C6/C7 and found more extensive difficulty on the left side. In his opinion, nine years post-accident, the discomfort was going to persist. The plaintiff had an MRI of his shoulder and of his humerus which showed no abnormality

80. Under cross-examination, this witness confirmed that the plaintiff went to his G.P. the Tuesday after a bank holiday following this accident. He got Xanax and then attended a chiropractor but received no treatment until January 2011. He was managing to get by and there were no debilitating systems.

81. In relation to the scan on the 24th of April, 2008 this witness confirmed that the disc bulge showing the degenerative change at C4/C5 predated the accident and was not necessarily a result of trauma. He said he did not comment on any degeneration but it was reasonable to say that it predated the accident.

82. In relation to the C4/C5 difficulty, he said he would defer to Dr. Stafford who says it was at C3/C4, i.e. higher up. He said he saw nothing like that on the initial scan in 2008 and that he did not pick it up when he viewed the scan.

83. It was put to this witness that he saw the plaintiff in 2012 and he said he referred to that regarding his report on the MRI scan. The next date of significance then, it was put to him, was April 2015. He was asked whether he was on any treatment at all. He said that he had an occasional paracetamol, Xanax and home exercises. The doctor said that he thought that it was positional numbness at the time and he also added that if the plaintiff had degeneration in the neck that it would advance regardless of trauma.

84. Regarding the compression deformity, it was put to this witness that this amounted to normal deformity. He agreed that this happens to all of us.

85. This witness referred to Dr. McNamara's findings showing carpal tunnel difficulty. He said clinically he found no evidence of a neurological defect and that his left side was the worse side.

86. This witness confirmed that the MRI of the left humerus showed no abnormality. He felt that his difficulties however were going to persist, that he will have good and bad days and that he has benefited from seeing Dr. McNamara.

87. He was asked whether he would disagree with the findings of Mr. Hobnet, radiologist, and the presence of posterior osteophytes and degenerative disc disease. He said he was not disagreeing with that.

88. In relation to re-examination, he said that trauma aggravated the injury and rendered it symptomatic. He said that this plaintiff had a degree of degenerative change pre-accident and may have progressed without trouble. He said that the findings in terms of the medial nerve difficulty were significant from a neuropsychological point of view. Clinically, he does not doubt but that the plaintiff gets numbness.

89. The plaintiff's counsel referred to C5/C6 difficulties. He said that if the plaintiff has symptoms which warrant nerve compression, he does not think he has these symptoms at the moment. He does not have symptoms significantly clinical in nature to require surgery. His neck in winter causes him difficulty but he will continue to have neck problems and arthritis/degenerative change.

90. The matter of damage to his motor vehicle goes on appeal. The plaintiff will be entitled only as a trustee. The sum will be paid on the basis that his client is liable for the sum. The plaintiff can only get the percentage entitled to if there were an apportionment of liability on appeal.

Evidence of Dr. Brian Spillane for the Defendant

91. Dr. Spillane saw the plaintiff on the 4th of December, 2008. He said that wear and tear predated the accident, that he had mild anxiety and he had soft tissue to cervical spine superimposed on degenerative change. He said that he had stiffness and that occasionally, for example twice a year, his neck locked. His neck had locked the previously November prior to him seeing the plaintiff.

92. He was asked about the fact that the plaintiff did not attend a doctor from 2011 to 2016. He said that his symptoms were manageable and not very severe and that he felt that the soft issue difficulty should have been resolved. He said that age and time and natural progression and joint disease have to be looked at. The plaintiff is now 55 years of age and one would expect more advanced changes. It is very likely that he would have had neck problems even if the accident had not occurred.

93. This witness said that where a person has a pre-existing condition they will have less movement and they will have a greater degree of soft tissue injury and delayed recovery as a result of an accident.

94. Under cross-exanimation this witness said that he had an orthopaedic fellowship and he does accident and emergency medicine two days a week in Limerick. He said that he did ask the plaintiff whether he had had any previous injuries to see whether he had a prior history of a neck injury or a history of a road traffic accidents. He said that prior accidents suggest previous injury and a predisposition to one. This witness was asked whether trauma contributes to acceleration of such a condition and he said it is not inevitable; rather, that it is a contributory factor only.

95. He was asked about the basis of his disagreement with Dr. Gilmore and he said that it is natural as people get older they get stiffer. He said that he agreed that he would defer to Dr. Gilmore.

96. It was put to him that they would say that the trauma accelerated degenerative change. His response was that was possible rather than probable.

97. It was put to this witness that the plaintiff's General Practitioner was of the view that if he had not had the accident he might not have had these problems at all. He said that he agrees that the G.P. has 35 years experience.

98. This witness confirmed that it was 2011 since he last saw the plaintiff. He was referred to the last page of his second report and it was put to him that it may have been aggravated by the accident. In relation to page 15 of his second report, he was asked about referring to what are described as differences in language between himself and the plaintiff's doctors. He accepted that his condition may have been aggravated by the accident.

Conclusion
99. This Court finds that this accident did aggravate a pre-existing degenerative condition, as a matter of probability. This Court prefers the medical evidence adduced on behalf of the plaintiff but takes a cautious approach given the lack of a pattern of treatment which one would otherwise expect. The Court notes the fact that the plaintiff takes no medication at present for this injury, although this Court accepts that the plaintiff has the symptoms complained of.

100. This Court was very impressed by the evidence of the plaintiff's general practitioner and that of Dr. McNamara and notes that the plaintiff is highly likely to adopt a conservative approach to his treatment in terms of possible medical approaches given that he has had a by-pass operation.

101. This Court awards €60,000 for pain and suffering to date and into the future. The court notes the position regarding the plaintiff's motor vehicle and allows a total figure of €20,000 in respect of the items of special damages, measuring the said damages and award in the total sum of €80,000.