

THE HIGH COURT**2004 3923 P****BETWEEN****MAGGIE YANG YUN****PLAINTIFF****AND****THE MOTOR INSURERS BUREAU OF IRELAND****AND****TOMMY XIANG BAI TAO****DEFENDANTS****Judgment of Mr. Justice John Quirke delivered on the 17th day of July 2009**

The plaintiff, Ms. Yang Yun, was born on the 1st May, 1981, and is now twenty-eight years old. On the 9th May, 2002, just eight days after her twenty-first birthday, she suffered serious personal injuries when a motorcar, driven by the second named defendant, Tommy Xiang Bai Tao, struck the rear of another vehicle on the public highway near Drogheda in County Louth. It then collided with a third vehicle.

The plaintiff was a rear seat passenger sitting directly behind the driver of the vehicle when the collisions occurred. She was wearing a seatbelt. She suffered very serious injuries as a result of the collisions including: (i) a compression fracture of her first lumbar vertebra, and, (ii) a further compressive collapse of the superior anterior end-plate of her first lumbar vertebra with kyphosis in an anterior posterior direction at the level of the fracture.

In these proceedings she claims damages from the defendants to compensate her for her injuries and for the consequent loss and damage which she has sustained.

She claims that the collisions, (and her consequent injuries), were caused by the negligence and breach of duty of the second named defendant, Tommy Xiang Bai Tao.

Her claim against the first named defendant, the Motor Insurers Bureau of Ireland, is made pursuant to the terms of an agreement in writing dated the 21st December, 1988, between the (then) Minister for the Environment and the Motor Insurers Bureau of Ireland.

Both defendants admit that the road traffic collisions on the 9th May, 2002, which caused the plaintiff's injuries were caused by the negligence of Tommy Xiang Bai Tao and that the plaintiff is entitled to recover damages from both defendants, jointly and severally, to compensate her for her injuries and for the loss and damage which she has sustained and will sustain in the future.

No contributory negligence has been alleged on the part of the plaintiff and, accordingly, the task for this Court is to assess the damages to which the plaintiff is entitled by reason of the admitted negligence and breach of duty of the second named defendant.

FACTUAL EVIDENCE**The following facts have been established in evidence:**

1. The plaintiff was born on the 19th May, 1981, in the city of Dalian in Northern China. She is the only child of devoted parents. Her mother is the manager of a hotel and her father is a transport manager working in the same hotel. She was enrolled by her parents in a good local regional school (called the Dongbei University of Finance and Economics) at the age of 6 years and received an excellent first and second level education in China.

A Notarial Certificate issued by her school recorded that, during her final three years at school, (between the 1st September, 1997, and the 15th July, 2000,) she attended the school's College of Technology and achieved an impressive student's score list in a variety of subjects including: Chinese; English; Computer Science; Economics Law; Securities Law; Physical Education and a number of other subjects.

She chose not to proceed to third level education in China. Instead she decided to travel with her boyfriend, Tony Cao Zhi (hereafter "Tony"), to Europe after graduation so that she could learn English and study accountancy.

She wished to graduate with an internationally recognised degree in accountancy. An advertisement in a local newspaper recommended Irish educational institutions and in consequence she chose to travel to Dublin to achieve her objective.

She arrived with Tony in Dublin and commenced an intermediate English language course in the American College in Dublin for six months.

In April, 2002, she enrolled in the English Language Institute on St. Stephen's Green for a one-year course in English at a cost to her of €2,000.

Thereafter, it was her intention to commence a three-year accountancy degree course in either University College Dublin or Grace's College preparatory to graduation as a Certified Accountant.

She obtained a student visa which permitted her to work in Ireland for up to twenty hours per week whilst she was resident within this jurisdiction.

2. On 9th May, 2002 the collision occurred which caused her injuries. The car in which she was a passenger was travelling from Dublin towards Drogheda. She heard a bang and felt that her body had been thrown forward and backwards as a result of a very big impact.

She immediately suffered pain in the middle of her back which was so severe that she could not speak and was unable to move. When the car came to a halt she loosened her seatbelt with her left hand and opened the door with her right hand. When she tried to step out and to stand up, she felt unbearable pain in her back and slid down onto the ground close to the damaged car.

After a short time an ambulance came and she was provided with oxygen. Supports were placed on the stretcher which had been provided for her. A paramedic cut off her clothes and touched the area which was swollen. When he did so, she suffered a pain so severe that it was difficult to describe. She was brought to Our Lady of Lourdes Hospital in Drogheda where X-rays and CAT (CT) scans were undertaken.

On admission to hospital, she was asked to stand up but the pain was so severe that she became deaf and was assisted back to bed, she was sweating and her hair was sticky and her clothes were wet.

She remained in the hospital in Drogheda for between eight and ten days suffering constant severe pain in her back. Whilst in the hospital she could not walk or visit the bathroom by reason of her condition. Doctors administered painkillers intravenously through her stomach. A swollen area developed in the centre of her back which she could not touch.

3. She was treated in hospital by way of medication only. A soft brace was applied to her back. After she had been discharged home she suffered constant debilitating pain and very severe disability in every aspect of her life. This pain and those disabilities have remained with her constantly since. She has required continuous care and assistance from her boy friend, Tony, for every type of domestic activity and for the performance of intimate bodily functions. This has caused her constant humiliation and embarrassment.

She needs assistance walking, (even short distances), because the pain when she walks is severe. She sleeps in pain and with difficulty for short periods. She cannot sit for any lengthy period. She cannot stand for more than ten minutes at a time without pain. She wears a soft brace permanently for twenty-four hours of every day.

She has spasms of neuralgic pain which she describes as "unbearable". She requires incontinence pads during these spasms. When she suffers a spasm, she is "untouchable" and cannot be helped. She must lie on her bed during the most severe spasms which last for an entire day.

She requires the application of painkilling cream and infrared treatment every morning and every night to help relieve the pain. She takes medication every four hours. This adversely affects her appetite and often causes her to vomit. She eats from a feeding bowl by lying backwards and balancing the bowl upon her chest. If she tries to eat in any other manner, she loses her appetite entirely.

If she wishes to use the bathroom at night, she needs assistance to make that journey. She has constant dreams about the collision. In these dreams she is flung backwards and forwards. These dreams terrify her and make her relive her immediate post-accident pain. She has been unable to return to school to continue her studies.

Before the accident, she telephoned her parents regularly. She lives upon the remittances which they send to her from China. She has not informed her parents about the collision and her injuries because she does not want them to discover her present status. Her injuries are a source of shame for her. Disability carries with it a stigma in her home region in China. If her parents knew of her condition they would be worried and concerned about the life she is now living far away from them. Her father has a fragile heart condition. She is concerned for his health if he learns of her injuries and their consequences for her.

As a consequence of the accident she now has an unsightly swelling or hump in the lower centre of her back which is known as a "gibbous". Her medical advisers have discussed with her the possibility of her undergoing reconstructive surgery to correct this deformity and to reduce her pain. They have explained to her that the angulation of her back has been adversely affected by her injury. It should be nought degrees. Immediately after the accident it had increased to between thirty degrees and forty degrees. It is presently sixty degrees and is likely to deteriorate further.

The objective of the surgery will be: (a) to correct the unsightly angulation within her spine and to remove the "gibbous" and (b) in particular, to relieve or reduce the level of continuous pain which she now suffers as a consequence of her injury.

She has been told in lay person's terms that the surgery, if undertaken, will require that she be stretched across a bent table while her back is surgically opened so that metal or titanium rods can be inserted within her spine. Thereafter, the table will be straightened and the spine will straighten with the table.

Having advised her of the risks associated with it, (including a risk of paraplegia which has been calculated at between 1% and 5%), her surgical advisers have recommended that she should undergo the surgery.

She is not willing to do so. She has a consuming fear of paraplegia. One of the reasons for her fear is that physical disability, (and in particular paraplegia), carries with it a special stigma in her home region in China.

Additionally she has been advised that if the surgery is successful, it may not necessarily relieve her pain.

Prior to the accident the plaintiff worked regularly for approximately twenty hours each week as a cleaner in the Jervis Shopping Centre. She had been lawfully entitled to work for twenty hours each week under the terms of her student visa.

MEDICAL EVIDENCE

(A) Physical Injuries

1. Mr. Ashley Poynton, who is a consultant orthopaedic and spinal surgeon, and Mr. Christopher Pidgeon, who is a consultant neurosurgeon were in full agreement on the nature and extent of the plaintiff's physical injuries.

She has suffered "a devastating spinal injury" which includes a compression fracture of the anterior superior end-plate of the first lumbar vertebra (LV1). Her complaints are entirely consistent with her injury.

X-rays have shown a progressive compressive collapse of the vertebra into a "wedge" shape which has left her with a significant kyphosis. The vertebra has been "squashed" and the compression has been "pretty well total". In consequence the plaintiff now has a significant curvature of the spine and suffers from chronic low back pain with some thigh numbness, (resulting from nerve root compression).

She has also suffered probable fractures of the transverse processes which are wings at the side of the vertebrae to which muscles are attached. The fractures of the transverse processes have not been as serious as the compression fracture.

There has been slippage of at least one adjoining vertebra (TV12) and narrowing of the LV1/2 disc space with sclerosis (increased bone density) at that level.

Adjacent margins (DV12 and LV1) show signs of the onset of degenerative change. This change was not present in earlier MRI scans and is the direct result of the impact from the road traffic accident.

The X-rays and MRI scans, which Mr. Poynton examined, demonstrated that the fracture has resulted in an injury which has torn through the soft tissues which were the restraining structures in respect of the vertebrae. The result has been what is called a "soft tissue chance injury" which has resulted in progressive compression. This, in turn, has given rise to angulation of the spine. The apex of the angulation is the "gibbus" in her spine at this level and this has been consistent with the injury and its consequences.

At the time when she was injured the severity of the compression fracture at the LV1 level was underestimated by the medical staff responsible for treating her. Accordingly, she did not then receive and has not since received the surgery which she urgently requires.

That surgery, (described in evidence as "formidable"), if undertaken now, is likely to be lengthy and painful and she will require significant rehabilitation after its completion. It carries with it a number of risks including the risk of paraplegia. It also carries with it an increased risk of "second segment disease" immediately below the area affected.

The level of the plaintiff's injury is at the junction between her abdomen and chest, and in consequence it has caused her significant back pain when she does simple things, (like standing in front of a washbasin, bending, stooping, lifting and undertaking small household chores).

Although she has been able to walk outdoors with some support for up to two hours and should be physically capable of showering while seated, she finds such activities very difficult and is unable to perform them without ongoing constant help and assistance.

Lumbar lordosis in the plaintiff's spine is the result of compensation for the compression fracture and is the physical cause of the plaintiff's low back pain.

She complains of frequent constipation. This is consistent with her injury and has resulted from: (a) immobility; (b) pain killing and antidepressant medication; and (c) pressure upon the gastrointestinal system from the affected vertebrae and soft tissue.

If the surgery is performed, she should be able to study and to pursue a career of the type which she had contemplated before the accident.

Mr. Poynton has advised the plaintiff to undergo the surgery but has been required to warn her of the risks associated with the surgery including a risk of paraplegia which he has estimated at between 1% and 5%.

He advised her that where the surgery is performed using spinal cord monitoring, the risk is reduced to 1% or possibly less. He also warned her of other potential risks associated with the surgery including infection, part-paraplegia, and severe bleeding.

The plaintiff's injury is complicated by the fact that she is concurrently suffering from a profoundly disabling psychological injury which has been directly caused by the road traffic accident and which has remained untreated for more than six years.

When asked to estimate the prospect of the plaintiff undergoing the required surgery and returning to her studies, Mr. Poynton replied: "I would say possibility is more realistic than probability".

Although he has strongly recommended the surgery to the plaintiff, he believes that it is reasonable for the plaintiff to refuse to accept his advice.

Some of his patients have declined this surgery in similar circumstances. One such patient declined the surgery because she is the mother of three children.

If the plaintiff does not have the surgery, she will continue to have significant pain, her condition may deteriorate and her chances of successfully giving birth will be called into question.

If she does undergo the surgery, pain management will be required after the surgery and she will require considerable ongoing assistance from her boyfriend because an adverse psychological state can impact upon rehabilitation.

The cost of the surgery is estimated at €33,000 for one day. Thereafter, the plaintiff will require inpatient treatment for between one week and one month and further rehabilitation for up to six months.

The surgery, if performed, will result in significant scarring. The length of the incision will be 20 to 30 centimetres. After the surgery, bracing will be required for some three months. A lightweight brace can be used which can be removed at night but causes discomfort.

If she undergoes the surgery, she may still continue to have back pain and this may influence her ability to perform occupations with a physical component such as cleaning, lifting and carrying.

If she does not undergo the surgery, she will require ongoing pain management and approximately three to four hours care every day.

Mr. Pidgeon is in agreement with the findings and views of Mr. Poynton. He further advised the plaintiff as follows:

- (a) she should undergo the surgery because, if successful, her posture will be improved and the risk of degeneration reduced;
- (b) if the surgery is successful, she will probably be physically capable of greater independence in domestic and other areas, (although the pain is unlikely to be eliminated altogether);
- (c) in making her decision, she should take into account the pain and discomfort she is currently suffering;
- (d) if the reconstructive surgery is undertaken, and is successful, then she will probably be fit for light work which does not involve heavy lifting or prolonged stooping or bending; and
- (e) if she does not undergo the surgery, she will have no realistic employment prospect.

Although, if he were in the plaintiff's position, he would undergo the surgery, Mr. Pidgeon is of the opinion that the decision in relation to the surgery is a decision which only the plaintiff can make.

(B) Psychiatric/Psychological Injuries

Evidence of the plaintiff's psychological and psychiatric injuries was adduced by Dr. Paul McQuaid and by Dr. David Shanley who are experienced consultant psychiatrists. They were in agreement in respect of her psychiatric and psychological injuries.

The plaintiff has developed a significant post-traumatic disorder of her mind which is known as mood disorder. It is a verifiable condition. This mood disorder, which is a disabling injury, is a direct consequence of the back injury which the plaintiff sustained in the road traffic accident.

She has needed urgent medical intervention including support and treatment for her mood disorder since she first suffered the injury to her back. She has been mentally depressed, withdrawn, apathetic and nihilistic since then.

In April, 2006, Dr. McQuaid was so concerned about her condition that he urgently requested that his medical findings should be made available to the health authorities so that the plaintiff could be provided with immediate treatment and support. She did not receive that treatment.

When Dr. McQuaid examined the plaintiff on the 10th July, 2007, he found that she had deteriorated. Reporting on that examination, he concluded *inter alia* that:

"Maggie remains significantly depressed, conflicted, withdrawn, apathetic and nihilistic. Her mood disorder persists in the context of a significant back injury following the road traffic accident with which this report is concerned, now five years ago. Her overall circumstances have worsened and she represents a major challenge, both in terms of surgery and mental health needs.

The undersigned remains very concerned about her and has communicated that concern to her solicitor. It is quite unacceptable that she should be without appropriate general support and specifically, mental health intervention. Were she an Irish citizen, it would be an immediate requirement that she receive mental health intervention, probably admission to an acute psychiatric unit. She is fundamentally conflicted about her situation and helpless to do anything about it. Noteworthy are her depressive symptoms and thoughts of suicide. The prognosis is currently grave.

Lastly, her ability to work in the future is a subject about which it is virtually impossible to give a proper opinion, given her current state of disability and mental disturbance, although increasingly, the prognosis seems poor."

On the 23rd July, 2008, the plaintiff continued to suffer severe mood disorder. She was very vulnerable and entertained thoughts of suicide. Her background circumstances, including the fact that her parents were so far away in China together with a fear of what might happen should she return to China contributed to her depressive condition.

Although her mood was down and her demeanour troubled, tearful and uncomfortable, she had obtained a clear benefit from treatment which she was then receiving from Dr. David Shanley.

The plaintiff is one of the most severe cases of mood disorder that Dr. McQuaid has encountered in his career. Suicidal ideation is one of the main concerns for psychiatry and the plaintiff is one of the most severe cases associated with that ideation that Dr. McQuaid has encountered. She represents a real risk in this respect.

Persons suffering from psychological illness can often feel pain more intensely by reason of their psychological condition. Dr. McQuaid has never entertained any doubt that the plaintiff's pain is real.

He believes that she is conflicted by the issue raised by the recommendation of surgery. Part of her recognises that she should have the surgery. Another part of her is frightened of it. He describes her as "stuck" in this conflicted position, unable to make a decision. He believes that this is reasonable, having regard to the circumstances in which she has been placed.

He is of the opinion that very intensive psychiatric treatment over a period of between three and four months and subsequent further psychiatric treatment thereafter may bring her to the point where she will be in a position to make a rational decision in relation to the surgery. A decision to undergo the surgery would be rational.

The psychiatric treatment required would be extensive and expensive and could take a significant period of time.

Dr. Shanley is of the opinion that the plaintiff is profoundly depressed with marked psychomotor retardation. That means that her movements are slowed, her concentration is poor, she has difficulty sleeping, she has lost interest in everything and she has a poor appetite.

These are all classical symptoms of depression and they are fuelled by the fact that she feels she has not lived up to her family's expectations and is therefore unable to tell them about her injury and her consequent dilemma.

She has cut off all communication with her friends and appears to be trapped in a time warp, unable to move or to make decisions. The severity of her depression distorts her thinking, which, at times, is delusional.

After Dr. Shanley prescribed antidepressant medication and sleeping tablets, there was a slight improvement in her condition and she cried less frequently. However, she remains profoundly depressed, is fatalistic and negative towards her future and refuses to consider the surgery which has been recommended for her.

Dr. Shanley can understand the plaintiff's decision to refuse surgery. Like Dr. McQuaid, he recommends a very intensive course of inpatient treatment which he estimates will take approximately three months in an institution such as St. Patrick's Hospital or St. John of God's Hospital. He estimates that the treatment will cost approximately €550 per day. He points out that because of her difficulties with language, she would need an interpreter during this treatment, (especially during psychotherapy sessions).

He believes that there is no possibility that the plaintiff will undergo the requisite surgery unless she receives this psychiatric treatment. While there is a "prospect" that the psychiatric treatment will be successful in assisting the plaintiff to make a rational decision in relation to the surgery, Dr. Shanley does not describe it as a "good prospect".

Stating that he would undergo the surgery if he were in her place, he continued: "I am quite certain that Maggie is adamant that she will not have the operation". When asked, in cross-examination, whether he thought that the surgery was a "probability" or a "possibility", he replied "possibility".

RECOMMENDED SURGERY

In seeking to assess the damages to which the plaintiff is entitled, the central question which must be addressed is whether, on the evidence and on the balance of probabilities, the plaintiff will undergo the reconstructive surgery which has been recommended for her.

The plaintiff testified over a period in excess of four days. Although interpretation requirements added considerably to the duration of her evidence, she nonetheless described her injuries and their consequences carefully and in great detail.

Her evidence was consistent with and corroborated by the expert medical evidence which was adduced in these proceedings. It was also consistent with and corroborated by the findings of a private investigator retained by the defendants, who placed the plaintiff under surveillance and recorded her movements on camera without her knowledge on a number of occasions between the 5th February, 2008, and the 20th February, 2008.

During her testimony and at other times while she was present in court the plaintiff appeared to be in constant pain, never smiled and moved slowly and with obvious difficulty.

She became animated only on two occasions: (i) when speaking about her parents in China and (ii) when she was expressing her determination not to subject herself to the reconstructive surgery which her doctors strongly recommend for her.

In every other respect her demeanour appeared withdrawn, depressed, hopeless and joyless. She is now twenty-eight years old.

I found her to be a careful and conscientious witness. I accept that she is, at present, determined not to undergo the recommended surgery.

The question which must be addressed is whether, on the balance of probabilities, she will, in fact, undergo the surgery at some future date.

This court is not competent to answer that question. It must be guided by, and rely upon, the expert medical testimony which has been adduced in respect of that issue.

The expert medical witnesses unanimously agree that it is greatly in the plaintiff's interests for her to undergo the surgery.

Mr. Poynton and Mr. Pidgeon (quite properly) refuse to try to predict the ultimate decision but stress that, at present, the plaintiff is determined to exercise her undeniable right to decline the surgery.

Mr. Poynton says that it is reasonable for the plaintiff to refuse to accept his recommendation. He was sceptical about

the prospect of the plaintiff agreeing to undergo the surgery. He pointed to others amongst his patients who have declined this surgery for reasons not dissimilar to those identified by the plaintiff.

Dr. McQuaid believes that the plaintiff's refusal to consider surgery has been influenced by her mood disorder. He says that this disorder makes it impossible for her to make a rational decision at present.

He is of the opinion that intensive inpatient psychiatric treatment over a period of three or four months and subsequent additional outpatient psychiatric treatment may bring her to the point where she will be in a position to make a rational decision and, in consequence, to undergo the surgery.

Dr. Shanley agrees that intensive inpatient psychiatric treatment will benefit the plaintiff. However, he says that the prospect of the plaintiff undergoing the surgery after such treatment can only be described as a "possibility" and not a "probability".

On the evidence there is no prospect of the plaintiff undergoing the surgery within this jurisdiction in the foreseeable future unless she first is prepared to be admitted to St. Patrick's Psychiatric Institution or to St. John of God's Psychiatric Hospital in order to undergo a three -month programme of inpatient psychiatric treatment.

She must then be prepared to submit herself to outpatient psychiatric treatment for a further significant period before she will be capable of seriously considering the question of subjecting herself to the recommended surgery.

I am assuming, for the purposes of this issue, that she will be permitted to remain within this jurisdiction during the proposed psychiatric treatment and thereafter in order to consider, (and possibly undergo) the surgery.

For more than six years now, she has lived in confined accommodation within a country which is more than 10,000 miles from her home. During that time she has had little contact with any person other than her boyfriend, Tony, upon whose support she has been totally dependant for every kind of personal care.

She will not enjoy his support during inpatient psychiatric treatment and it is unlikely that she will receive comparable support having regard to language and other communication difficulties. She will still be the same distance from her home.

If the psychiatric treatment is successful, Dr. Shanley believes that the prospect of her undergoing the surgery can be described as a "possibility".

Dr. McQuaid takes the view that intensive psychiatric treatment, if successful, will enable the plaintiff to make a "rational" decision about the surgery. Dr. Shanley agrees but says that the resulting "rational" decision is unlikely to be positive.

The fact that the expert and other relevant witnesses believe that, faced with the same decision, they would choose to undergo the surgery does not necessarily render irrational a contrary decision by the plaintiff.

The fact that the plaintiff is presently suffering from a mood disorder which affects her capacity to make rational decisions does not mean that a decision made by her (now or later) not to undergo the surgery will necessarily be irrational.

A small number of patients who are unimpaired by any psychiatric or psychological illness or injury have declined this reconstructive surgery for reasons which, to them, were quite rational.

The prospect, however small, of paraplegia clearly terrifies the plaintiff. It appears to have been magnified by a stigma which, apparently, attaches to disability within her home region in China. Her terror of paraplegia is not necessarily irrational. It has been shared by others in this jurisdiction and elsewhere.

I have with regret concluded that, on the evidence and on the balance of probabilities, the plaintiff is unlikely to undergo the reconstructive surgery which has been recommended for her and that she will probably rely upon pain management and care to reduce the effects of her injuries.

I have based that conclusion principally upon the medical evidence adduced in the case. I have also been influenced by the plaintiff's testimony and by her personal circumstances.

MITIGATION

It is contended on behalf of the defendants that, if the plaintiff refuses to undergo the surgery, she will have failed to take reasonable steps to mitigate her injury and will be seeking to visit upon the defendants a liability for injury, loss and expense which is unreasonable and unnecessary in the circumstances.

The duty which rests upon a claimant to mitigate injury, loss and damage sustained as a result of negligence is well established. It includes a duty to obtain such medical treatment as may reasonably be necessary to reduce the claimant's pain and suffering and the extent of any loss which he or she may sustain and subsequently seek to recover.

Questions concerning whether or not claimants have acted reasonably in order to mitigate injury and loss are questions of fact for the court – (see *Sotiros Shipping Inc. v. Sameiet Solholt* [1983] 1 Lloyd's Rep 605).

Where it is claimed on behalf of a defendant that a claimant has failed to mitigate by refusing recommended surgery, the onus rests upon the defendant to show that the claimant's refusal has been unreasonable in the circumstances (see *Steele v. Robert George & Co. (1937) Ltd.* [1942] A.C. 497, *Richardson v. Redpath, Brown & Co. Ltd.* [1944] A.C. 62 and *Selvanayagam v. University of West Indies* [1983] 1 W.L.R. 585).

The medical experts who testified in these proceedings were disappointed by the plaintiff's refusal to undergo the surgery which they were recommending. However they were unanimous in their view that her refusal was reasonable in the circumstances. No evidence was adduced suggesting otherwise.

It follows that the onus of proving the failure to mitigate has not been discharged in these proceedings.

DAMAGES

The task for this court is to assess the damages to which the plaintiff is entitled to compensate her for the injuries, loss and damage which she has suffered as a result of the defendants' admitted negligence and breach of duty.

The principle *restitutio in integrum* applies and the court is required to replace the plaintiff, insofar as money can do so, in the position which she would have occupied if she had not suffered her injury.

What cannot be and is not in dispute is that during the period of more than eight years which has elapsed since the plaintiff suffered her injuries her life has been blighted beyond recognition as a direct result of those injuries.

Furthermore, her future life and prospects have been permanently and irrevocably damaged and her hopes and aspirations for the future are unlikely to be realised.

She is entitled to special damages, (pecuniary damages), to compensate her for: (a) the losses, costs and expenses which she has incurred since the 9th May, 2002, and, (b) the losses, costs and expenses which she will sustain in the future arising from her injury.

She is also entitled to general damages, (non-pecuniary damages), to compensate her for: (a) the injury which she suffered on the 9th May, 2002, and for the near destruction of her life and lifestyle within this country since then and, (b), the pain, suffering, inconvenience, distress and disruption of her life and lifestyle which will occur in the future as a consequence of her injury.

The "cap" on general damages

No sum of money can compensate for what is continuously suffered by a person who has been catastrophically injured.

Injuries which can be categorised as "catastrophic" are too numerous to list but they include quadriplegia, cerebral palsy, hideous deformity resulting from trauma or burns, various types of catastrophic brain injury, combinations of multiple amputations and sensory losses, severe paraplegia, a range of untreatable lung, intestinal and other internal organ injuries and some extreme chronic psychiatric injuries which require permanent inpatient care, medication and, sometimes, restraint.

It is not really possible or desirable to contrast the effects of a particular catastrophic injury with those of another catastrophic injury. However some cases come before the courts where it can be readily recognised that the injury, (or injuries), suffered and their consequences are so grave that the maximum general damages payable should be awarded.

In *Sinnott v. Quinnsworth Ltd., C  ras Iompar Eireann and Edward Denning* [1984] 4 I.L.R.M. 523 the Supreme Court, (O'Higgins C.J.), indicated that, when awarding general damages for catastrophic injuries, the court should bear in mind that: "...a limit must exist, and should be sought and recognised, having regard to the facts of each case and the social conditions which obtain in our society". (At p. 532).

The court cited with approval the following extract from the judgment of Griffin J. in *Reddy v. Bates* [1983] I.R. 141:

"The fact that a plaintiff has been awarded what is considered to be sufficient damages to cover all her prospective losses, to provide for all her bodily needs, and to enable her to live in comparative comfort (having due regard to her disabilities), should be reflected in the amount of general damages to be awarded... In a case of this nature where damages are to be assessed under several headings, the jury, having added the various amounts awarded and having arrived at a total figure for damages, should consider the total sum (as should this Court on any appeal) for the purpose of ascertaining whether the total sum is, in the circumstances of the case, fair compensation for the plaintiff for the injury suffered or whether it is out of all proportion to such circumstances. In my view, the income which the capital sum would generate with reasonably careful and prudent investment is a factor which the jury (and this Court on appeal) should take into consideration in arriving at a conclusion in this behalf". (At p. 148).

In *Sinnott*, the court (O'Higgins C.J.) explained that, in cases of catastrophic injury where awards have been made which are intended to provide for all loss of earnings, care and medical costs past and future:

".... what is to be provided for... in addition in the way of general damages is a sum, over and above these other sums, which is to be compensation, and only compensation. In assessing such a sum the objective must be to determine a figure which is fair and reasonable". (At p. 532).

Condemning the jury's award of IR  800,000 as lacking "all sense of reality" he continued:

"...this is a sum which if invested would yield a yearly income which in itself would defy even the most profligate expenditure. Such a sum bears no relation to ordinary living standards in the country or to the income level of even the most comfortable and best off in our community." (*Ibid*).

He concluded that:

"...unless there are particular circumstances which suggest otherwise, general damages, in a case of this nature, should not exceed a sum in the region of IR  150,000. I express that view, having regard to contemporary standards and money values and I am conscious that there may be changes and alterations in the future, as there have been in the past."

It is, therefore, well settled that, in 1984, the sum of IR  150,000 (  190,000), was the appropriate limit or "cap" on general damages. That finding has been repeatedly accepted by the courts and this court is bound by that acceptance.

Since 1984 the courts have reviewed and reassessed this "cap" from time to time by seeking to apply "contemporary standards and money values" to the accepted 1984 "cap" of IR  150,000 (  190,000). This court has been asked to undertake that exercise in these proceedings.

The court must, therefore, seek to assess general damages at a level broadly equivalent, in today's values, to the award of IR£150,000 (€190,000) made in 1984.

The High Court (O'Sullivan J.) revisited the issue in *McEneaney v. Monaghan and Coillte Teoranta County Council and Ors.* (Unreported, High Court, O'Sullivan, J., 26th July, 2001) referring to intervening awards in the High Courts in excess of IR£150,000, and, in particular, to an award of IR£250,000 made by the High Court (Morris P.) in *Kealy v. Minister for Health* [1999] 2 I.R. 456.

O'Sullivan J. concluded that:

"... a reasonable equivalent to the IR£150,000 for general damages in *Sinnott v. Quinnsworth Ltd* in today's money would be IR£300,000." (€380,000), adding that he might be erring "on the side of conservatism"

In *Gough v. Neary* [2003] 3 I.R. 92, the Supreme Court (Geoghegan J.) explained in greater detail the principle identified by Griffin J. in *Reddy v. Bates*. Pointing out that the IR£150,000 "cap" identified in *Sinnott v. Quinnsworth* was to be applied to general damages "in a case of this nature" he explained at p. 133 that:

"...the words that precede that opinion make it perfectly clear that he was talking of a case where all the future needs, etc. of the plaintiff had been covered by special damages".

He continued at p. 134:

"In my view, there is no compulsory 'cap' if there is no 'omnibus sum' or, in other words, if the special damages are low. On the other hand that does not mean that the 'cap' figure cannot be taken into account in a general way in assessing the appropriate general damages in a non-cap case."

In *M.N v. S.M.* [2005] I.E.S.C. 17, the Supreme Court, (Denham J.) reviewed an award of general damages made by a civil jury to compensate a teenage girl for sexual assault, sexual abuse and rape.

Pointing out that the court, in that case, was hearing an appeal from an award of general damages by a jury in "...what appears to be a new and developing jurisprudence", Denham J. at p. 474, expressed the view that:

"there should be a rational relationship between awards of damages in personal injuries cases. Thus the level and limitations of awards in general damages in personal injuries actions are informative".

She referred to different methods of assessment of general damages for personal injuries adopted by some statutory bodies established by the State in recent times including: (i) a system of "weighting" adopted by the Residential Institutions Redress Board, (established in 2002 by the Residential Institutions Redress Act 2002 (Assessment of Redress Regulations 2002)), and the "Book of Quantum" which the Personal Injuries Assessment Board, (established in 2003), is statutorily required to maintain by way of "guidelines" for the assessment of appropriate levels of general damages to be awarded in relation to a range of different physical injuries.

Pointing out that '*Guidelines for the Assessment of General Damages in Personal Injury Cases*' are published and updated by the Judicial Studies Boards of England and Wales and of Northern Ireland and that similar guidelines have been recommended in this jurisdiction by the Committee on Court Practice in its 29th Report, she added at p. 473:

"I am of the view that information on awards of damages given in previous cases and information published by the judiciary benefits a court assessing general damages".

Identifying the several relevant factors which must be considered by a court hearing an appeal from an award of general damages by a jury, Denham J. explained

"... An award of damages must be proportionate; it must be fair to the plaintiff and to the defendant, it should be proportionate to social conditions, bearing in mind the common good and should also be proportionate within the legal scheme of awards made for other personal injuries". (At p. 461).

On the evidence in the appeal in *M.N. v S.M.* she concluded that:

"...an award of general damages to the plaintiff should be at the higher end of the range of awards of general damages in personal injury actions generally". (At p. 475).

She reduced an award of €600,000 to €350,000.

Referring to the distinction between awards which are solely or largely general damages and awards of general damages where substantial comprehensive special damages have also been awarded, she expressed the view that "the equivalent figure" (in March 2005), to the sum of IR£150,000, (€190,000), awarded in *Sinnott v. Quinnsworth* was "in excess of €300,000". (At p. 469).

In the instant case, Ms. Lydon S.C., on behalf of the defendants, relied upon references by O'Higgins C.J. in *Sinnott v. Quinnsworth* to the need for the courts to consider how awards in such cases impacted upon "the operation of public policy" and the observation of Denham J. in *M.N. v. S.M.* that such awards should be "proportionate to social conditions, bearing in mind the common good". (At p. 461).

In *Wells v. Wells* [1999] 1 A.C. 345, the House of Lords identified what is sometimes known as the "100% principle". Lord Hope, (at para. 390A), explained that:

"...the object of the award of damages for future expenditure is to place the injured party as nearly as possible in the same financial position as he or she would have been in but for the accident. The aim is to award such a sum of money as will amount to no more and, at the same time no less than the net loss."

However, in *Heil v. Rankin* [2001] Q.B. 272 at p. 297, the Court of Appeal (Lord Woolf M.R.) pointed out that:

"A distinction exists... between the task of the court when determining the level of pecuniary loss and when determining the level of non-pecuniary loss. In the case of pecuniary loss, and issues such as that which engaged the House of Lords in *Wells v. Wells*, the court is only required to make the correct calculation. Economic consequences are then irrelevant. When the question is the level of damages for non-pecuniary loss the court is engaged in a different exercise. As we have said, it is concerned with determining what is the fair, reasonable and just equivalent in monetary terms of an injury and the resultant PSLA. The decision has to be taken against the background of the society in which the court makes the award."

Those observations and the distinction identified by Lord Woolf between pecuniary loss (compensated by special damages) and non-pecuniary loss (compensated by general damages) are quite consistent with the principles and further distinctions identified by the Supreme Court in *Sinnott v. Quinnsworth* and *M.N. v. S.M.*

Hence, the need for the courts to hear evidence of and to consider "contemporary standards and money values" when assessing and calculating the limit or "cap" to be imposed on awards for general damages from time to time.

It was confirmed in evidence that this country is presently enduring a period of unprecedented recession. There has been a significant drop in individual disposable income and it is anticipated that this will become more acute during the next several years. Wealth and living standards have declined appreciably and economic growth has been replaced with contraction.

Those factors are relevant to the measurement of "contemporary standards" and current "social conditions" within this country and it can be validly argued that, in general, awards of general damages should reflect such economic realities.

However, life expectancy may be a factor to be taken into account where catastrophic injuries have been suffered. It is an important factor in the calculation of special damages such as care because care will usually be required for the lifetime of the person who is catastrophically injured.

The pain and distress suffered by such persons will also be life long and general damages are intended to provide them with some measure of compensation throughout the entire duration of their pain and distress.

Today's recessionary economic circumstances should not be visited upon the most vulnerable in society in order to regulate the damages which are intended to compensate them for the whole of the remainder of their lives.

Accordingly, awards of general damages in these cases should take into account historical evidence of economic and social fluctuations over relevant time periods so that consequent adjustments made in the measurement of general damages will be as accurate as possible.

In some cases an award of general damages will have little or no compensatory consequence for a catastrophically injured plaintiff because of the nature of the injury suffered. For instance, a catastrophically injured plaintiff reduced to a permanent vegetative condition without insight is unlikely to benefit from any award of general damages. It will be open to the court to make no award of general damages in such cases.

Although the term "cap" has been used conveniently and repeatedly in this context, the suggested limit on general damages might more accurately be described as a "guide". Because of constantly changing social and other circumstances and because there are usually exceptions to every seemingly inflexible rule, the courts retain an inherent jurisdiction to award appropriate damages where the interests of justice so require.

The following general principles, therefore, apply to the assessment of general damages where catastrophic injuries have been suffered:

1. Where the claimant has been awarded compensatory special damages to make provision for all necessary past and future care, medical treatment and loss of earnings, there will be a limit or "cap" placed upon the level of general damages to be awarded.

When applying or reviewing the "cap" on general damages the court should take into account the factors and principles identified by the Supreme Court in *Sinnott v. Quinnsworth*, and in *M.N. v. S.M.* including "contemporary standards and money values".

2. Where the award is solely or largely an award of general damages for the consequences of catastrophic injuries there will be no "cap" placed upon the general damages awarded.

Each such case will depend upon its own facts so that: (a) an award for general damages could, if the evidence so warranted, make provision for factors such as future loss of employment opportunity or future expenses which cannot be precisely calculated or proved at the time of trial, (b) life expectancy may be a factor to be taken into account and, (c) a modest or no award for general damages may be made where general damages will have little or no compensatory consequence for the injured person.

3. There must be proportionality between: (a) court awards of general damages made, (i) by judges sitting alone and, (ii) in civil jury trials and, (b) by statutory bodies established by the State to assess general damages for particular categories of personal injuries.

"Contemporary standards and money values"

In 1984 the Supreme Court in *Sinnott v. Quinnsworth* condemned the jury's award of IR£800,000 as "lacking all sense of reality" but did not explain precisely why it should be replaced with an award of IR£150,000 suggesting that:

"... ordinary living standards in the country, to the general level of incomes, and to the things on which the plaintiff might reasonably be expected to spend money" were relevant factors to be considered when seeking to identify "contemporary standards and money values". (At p. 532).

Although it is probably unlikely that the court, in *Sinnott* sought to predict future economic outlooks and earning levels when fixing the "cap" at IR£150,000 it is, in my opinion, appropriate for this court to consider expert evidence of: (a) our economic and social history between 1984 and 2009 and, (b) future social and economic outlooks when seeking to review the "cap" today.

This court has had the benefit of: (i) expert evidence on this issue from Mr. Moore McDowell, who is a consultant economist with exceptionally wide academic, administrative and public service experience and, (ii) an agreed report on the topic from Professor Philip Ronan Lane who is professor of international macroeconomics at Trinity College Dublin.

I accept Mr. McDowell's evidence that the two most important factors to be taken into account when seeking to compare and contrast today's standards and values with those of 1984 must be: (a) inflation, which has substantially eroded the purchasing power of money between 1984 and 2009, and (b) economic growth in the economy, which has caused a substantial improvement in the overall standard of living within this country between 1984 and 2009.

(a) Inflation

I accept Mr. McDowell's evidence that both the Consumer Price Index (CPI), which is intended to reflect what we consume, and the "Gross Domestic Product Deflator" (hereinafter the GDP Deflator), which is intended to reflect what we produce, are less than perfect measures of inflation.

However, I accept, also, his qualified evidence (and the similarly qualified findings of Professor Lane) that they probably represent a useful means of measuring inflation for many of the purposes required in this case.

The relevant statistical evidence on this issue has been confined to information available (on the CPI) up to 2008 and (on the GDP deflator) up to 2007. It is reproduced hereunder;

Inflation Measures, CPI and GDP Deflator, 1984 = 100

Year CPI Multiplier GDP Deflator Multiplier

1984	100.0	100.0
1987	112.9	113.8
1987	112.9	113.8
1990	123.9	123.0
1993	133.8	133.9
1996	140.6	138.5
2000	157.7	164.7
2001	165.1	173.6
2002	172.8	182.3
2003	178.3	187.4
2004	183.0	191.5
2005	187.2	197.1
2006	195.5	204.0
2007	204.6	2.06
2008	213.4	2.13

Based upon that evidence, the equivalent value of the sum of IR£150,000 (€190,000) in 2007 was €391,400, (applying the GDP deflator) and €388,740, (applying the CPI). In 2008 it was €405,460 (applying the CPI).

(b) Economic growth.

I again accept the evidence of Mr. McDowell (and the findings in Professor Lane's report) that there has been substantial growth in the Irish economy between 1984 and 2009.

Mr. McDowell identified three standard of living indicators which, he believes, can assist the court to identify the: "... ordinary living standard in the country....the general level of incomes, and... the things upon which the plaintiff might reasonably be expected to spend money" between 1984 and 2008.

They are as follows: (i) Gross National Product, (ii) consumption and, (iii) average industrial earnings. The relevant statistical information in relation to those indicators is reproduced below.

Standard of Living Indicators (values in Euro)*

*Year GNPper head(€'000, 1984-2007) Multiple1984-2007 Consumption**per head(€'000, 1984-2007) Multiple1984-2007 AverageIndustrial Earnings(€/hour)Multiple1984-2007*

1984	5,900	4,200	5.00
1987	7,300	5,100	6.08
1990	9,100	6,200	7.71
1992	9,900	6,700	8.50
1994	11,500	7,800	8.21
1996	14,300	9,000	8.68
2000	23,500	13,600	10.30
2001	25,500	14,700	11.76
2002	27,500	15,900	12.68
2003	30,000	16,900	13.37
2004	31,600	17,700	14.02

2005 33,900 19,100 14.42
2006 37,200 20,400 15.01
2007 39,200 6.9 22,200 5.2 15.47 3.1

(i). Gross National Product

Economic growth is conventionally measured in terms of Gross National Product (GNP). The impact on average living standards is then measured by the change in GNP per head of population.

This indicator suggests that there has been a substantial increase in the overall wealth of Irish society between 1984 and 2007, with GNP per head increasing from 5,900 in 1984 to 39,200 in 2007.

Accordingly, if the increase in the overall wealth of society between 1984 and 2007 is to be used as an appropriate yardstick, then the sum of IR£150,000 (€190,000) has increased in value by a factor of 6.9 between 1984 and 2007, when it was worth €1,311,000.

(ii). Consumption

Household consumption increased from 4,200 in 1984, to 22,200 in 2007. Therefore, using a representative household's consumption as the yardstick, the sum of IR£150,000 (€190,000) has increased by a multiple of 5.2 between 1984 and 2007, when it was worth €988,000.

(iii). Average industrial earnings

Average industrial earnings have increased from 5.00 in 1984 to 15.47 in 2007. Accordingly, if the appropriate yardstick is the income level per head of population (measured by average industrial earnings), then the sum of IR£150,000 (€190,000) has increased by a multiple of 3.1 between 1984 and 2007, when it was worth €589,000.

Professor Lane, in his report, added a range of further potential bases for calculating the rate of economic growth including indicators based upon: (a) earnings in the manufacturing and private sectors, (b) gross national income per head and, (c) disposable income per head. His findings are reproduced below:

Adjustment Factors 1984 to 2008- €190,000

Basis Factor 2008 Value

CPI 2.15 409,491

Earnings (Manufacturing) 3.34 636,652

Earnings (Private Sector) 3.81 726,077

Gross National Income per head 6.07 1,156,677

Disposable Income per head 5.34 1,016,765

Using those indicators as yardsticks the sum of IR£150,000 (€190,000) would have increased by factors varying between 2.15 and 6.07 between 1984 and 2008, giving the sum 2008 values between €409,491 and €1,156,777.

Present economic circumstances

Mr. McDowell, in evidence, pointed out that the Irish economy is presently in a state of unprecedented recession. He stated that, as of January, 2009, the consensus view of the performance of the economy was that GNP per head would fall by at least 4% and by possibly as much as 8% in 2009. He said that a further contraction of between 1% and 3% is probable for 2010, and a recovery within the economy is unlikely before the end of 2011 although it could be delayed for a further year.

Allowing for that prediction, he believes that it is unlikely that GNP per head will return to 2008 levels before 2014 or 2015. He also estimates that average earnings are certain to fall in the short term and the extent of that fall will depend upon a number of complex factors.

He explained that, whilst the effect of a prolonged recession should have an impact upon the calculation of the "cap" in catastrophic cases, the adjustment to be made should not be large by comparison with an adjustment to take into account social and economic change over a 25 year period. He did not measure the adjustment to be made.

A decline, (or increase), in national economic growth and wealth may be reflected in the level of damages awarded in personal injuries cases. Each case will depend on its particular facts and should be determined on a rational commonsense basis. The overriding consideration should be fairness to all parties.

Damages awarded in catastrophic cases are usually intended to provide compensation for lengthy periods during which domestic and global economic circumstances will inevitably fluctuate. Although the "cap" is subject to periodic review by the courts, each award of general damages is final for the recipient.

I am satisfied on the evidence that, when updating the "cap" on general damages in this case, the court should also make an appropriate adjustment to reflect a present and forthcoming reduction in wealth and living standards which is likely to continue for a period of approximately five years.

Reviewing the "Cap"

I have concluded that inflation between 1984 and 2009, with the consequent erosion in the purchasing power of money, is an important factor which must be considered in seeking to apply today's standards and money values to the 1984 "cap" on general damages. However, it is not the only factor to be considered.

I also believe that the "cap" should be adjusted to reflect sharp economic growth in the economy between 1984 and 2009 and a resultant significant improvement in living standards during that period.

The following evidence adduced by Mr. Mc Dowell is relevant:

(a) Living standards improved and average earnings increased substantially between 1984 and 2008 whilst the purchasing power of money eroded significantly,

(b) In late 2007, this country entered a recession of such magnitude that it is likely that living standards will deteriorate and average earnings will fall in the period between 2008 and 2015, whilst the purchasing power of money will be greater.

(c) A steep rise in earnings and living standards, followed by a sharp fall in both, is consistent with historical economic fluctuations recorded worldwide over long periods of time.

As a first step the court should apply the appropriate inflation index to the 1984 "cap" in order to identify a figure which is largely independent of other economic circumstances between 1984 and 2009. That requires the application of either the CPI or the GDP deflator.

Based upon the application of the CPI, the equivalent value in 2008 of the 1984 "cap" of IR£150,000 (€190,000) was approximately €400,000. That figure may be slightly downwards biased for reasons identified in evidence. The application of the "GDP deflator" gives a broadly similar result

There was a threefold increase in income level per head of population between 1984 and 2007. Living standards improved by factors varying between 5.2 and 6.9 during the same period. Those factors are relevant to the identification of: "... ordinary living standards in the country, to the general level of incomes, and to the things upon which the plaintiff might reasonably be expected to spend money" (see *Sinnott v Quinnsworth* at p. 532).

The "cap" on general damages in 2008 should be calculated against the background of living standards and money values applicable within the community in 2008. On the evidence living standards in 2007 were more than five times better than they had been in 1984. Income levels had increased at a rate approximately 50% greater than inflation during the same period. A downturn commenced in late 2007 or early 2008.

No expert evidence has been adduced which would accommodate a scientifically accurate calculation of an adjustment of the "cap" which, having allowed for inflation, would reflect the significant increases in earning levels and the improvements in living standards which have occurred between 1984 and 2008. Accordingly, I am seeking to achieve that objective on a commonsense basis by making a 25% upward adjustment of the "cap".

That upward adjustment increases the equivalent value in 2008 of the 1984 "cap" of IR£150,000 (€190,000) from €400,000 to €500,000.

However, a downward adjustment must then be made to reflect the present and forthcoming reduction in wealth and living standards which commenced in early 2008 and is expected to continue for a further period in excess of five years.

The downward adjustment should not be large for the reasons outlined by Mr. McDowell and also because, on the evidence, it is likely that living standards, after a sharp decline in 2009, will gradually improve before returning to their 2008 levels by 2014 or 2015. I would measure the downwards adjustment at 10%.

That further adjustment reduces the present equivalent value of the 1984 "cap" of IR£150,000 (€190,000) to €450,000.

Proportionality

As I have indicated earlier, there should be proportionality between, (a) court awards of general damages made: (i) by judges sitting alone and, (ii) in civil jury trials and, (b) by statutory and other bodies established by the State to award general damages for particular categories of injuries.

(a) Relevant Court Awards

On the 26th July, 2001, O'Sullivan J. concluded in the case of *McEneaney v. Monaghan and Coillte Teoranta County Council and Ors.* (Unreported, High Court, O'Sullivan, J., 26th July, 2001) that:

"a reasonable equivalent to the IR£150,000 for general damages in *Sinnott v. Quinnsworth Limited* in today's money would be IR£300,000" (€380,000) adding that he might be erring "on the side of conservatism".

In March, 2005, Denham J. in *M.N. v. S.N.* reduced a jury award of €600,000 to €350,000 to compensate a teenage girl for sexual assault, sexual abuse and rape noting that €350,000 was "at the higher end of the range of awards of general damages in personal injury actions generally".

A present equivalent "cap" of €450,000 is not inconsistent with those, or indeed most recent authorities.

(b) Statutory bodies

Personal Injuries Assessment Board

When assessing damages in personal injuries cases the courts are required by s. 22 (1) of the Civil Liability and Courts Act 2004 to have regard to the 'Book of Quantum' (described as a " guideline of injuries and related values"), which was prepared and published by the Personal Injuries Assessment Board.

The 'Book of Quantum' in June, 2004, recommended awards of "up to €300,000" to compensate for 'spinal cord injuries' identified as "quadriplegia" and "paraplegia", noting that:

"The courts set the maximum compensation with the exact value being based on a number of considerations: (a) level of movement, (b) level of pain and suffering, (c) depression - level of achievable rehabilitation, and (d) age and life expectancy".

Three years earlier, in July, 2001, O'Sullivan J. in *McEneaney*, had assessed the "cap" on general damages at IR£300,000 (€380,000), adding that:

"I cannot accept . . . that a paraplegic, no matter how aware he is of his condition or how long his life expectancy . . . is in the same category as a quadriplegic"

An adjustment to take into account an increase of 16% in the CPI between 2004 and 2007 would increase the Board's 2004 guideline from €300,000 to €348,000. There were increases also, between 2004 and 2007, in GNP per head, (25%),

consumption, (25%), and average industrial earnings, (10%).

The Board's "guideline" for "spinal cord injuries" in 2004 was somewhat less than the 2004 equivalent of the 1984 "cap" (after adjustment for inflation) and less than recent court awards for catastrophic injuries. However, its Book of Quantum expressly recognises the jurisdiction of the courts to "set the maximum compensation" in such cases.

Redress Board

The Redress Board, established pursuant to the provisions of the Residential Institutions Redress Act 2002, established a system for the assessment of damages to be awarded for the sexual assault or abuse of children in State care.

It provides for awards up to €300,000 and contemplates higher awards in cases deemed to be "exceptional".

Having regard to the specialised nature of its work I would respectfully adopt the view expressed by Denham J. in *M.N. v. S.M.* that the system, whilst informative, should not be regarded as setting a precedent in respect of the assessment of general damages for personal injuries generally.

Conclusion

Having applied the criteria and principles identified in *Sinnott* and subsequent authorities, I am satisfied on the evidence that the present equivalent value of the 1984 "cap" of IR£150,000 (€190,000) is €450,000. This sum, (assuming normal life expectancy, an annual return of 3% and current tax rates), represents the capital value of an annual payment of approximately €17,000, (a factor considered relevant by the Supreme Court in *Sinnott*).

As I have indicated the limit or "cap" on general damages might more usefully be described as a "guide". It is simply the present threshold beyond which further monetary compensation for a catastrophically injured person has probably become relatively meaningless. It is not a yardstick against which other awards of general damages should, necessarily, be measured.

The plaintiff's general damages.

The plaintiff has suffered an injury of the utmost gravity. She is entitled to recover substantial damages to compensate her for the near total destruction of her life and lifestyle during the past eight years. Those should have been amongst the most valuable years of her young life.

She is also entitled to substantial damages to compensate her for the pain, suffering and disability which she will endure in the future and the loss of many of her future hopes and aspirations.

However she cannot be categorised as a person who has been so catastrophically injured that she should be awarded the maximum level of general damages payable within this jurisdiction.

She has significant mobility and is capable of walking (with assistance). She will now receive much needed medical care and assistance including pain management and psychological treatment. This will help her to achieve an acceptable level of comfort which will enable her to participate, to some extent, in everyday life events.

I am satisfied that she is entitled to recover general damages of €125,000 to compensate her for pain, suffering and loss of life and lifestyle between the date of her injury and the date of the trial.

I am awarding her further general damages of €200,000 to compensate her for the pain, suffering, disruption and loss of life and lifestyle which she will endure for the remainder of her life.

The plaintiff's loss of earnings.

It has been contended on behalf of the plaintiff, that the evidence has established that, if she had not suffered her injury, she would probably, (a) have completed her English language studies within approximately eighteen months, (b) have graduated as a certified accountant within a further six years or thereabouts, and, (c) have been capable of obtaining remunerative employment within this jurisdiction or within the European Union at the end of 2009 or in early 2010.

It is also contended that her boyfriend, Tony Cao Zhi, would probably also have graduated and obtained remunerative employment and that the two would probably have married and started a family, either in this country or elsewhere within the European Union.

The defendants argue that no adequate evidence has been adduced from which the court can find that the plaintiff would have graduated as a qualified certified accountant within the suggested time or, indeed, within any reasonable time limit.

Ms. Lydon S.C contends that, if the plaintiff had not suffered her injuries she would probably have been unable to secure permission to remain within this jurisdiction and would have been obliged to return to China within a relatively short time after May, 2002. She points out that the plaintiff's grasp of the English language remains very limited notwithstanding her attendance at an American College in Dublin.

In April, 2002, one month before the collision which caused her injury, the plaintiff commenced a course in the English Language Institute on St. Stephen's Green, Dublin. Her investment of the sum of €2,000 for that purpose was a measure of her determination to bring her understanding and use of the English language to a level which would enable her to commence the full study of accountancy in English.

I am satisfied on the evidence that, if she had not suffered her injury, it is probable that she would have successfully completed her course and commenced a three-year accountancy degree in either University College Dublin or Grace's College Dublin some time in the year 2003.

I am not satisfied that she has established, on the evidence and on the balance of probabilities, that if she had not suffered her injuries she would have graduated as a certified accountant.

I believe that she has established, on the evidence that if she had not suffered her injuries, she would probably have completed a three-year accountancy degree course in either University College Dublin or Grace's College, and at a minimum, have acquired a sufficient level of proficiency and qualification in accountancy to enable her to secure full-time employment in accountancy in this jurisdiction by 2007 or 2008.

I am satisfied, on the evidence, that when she arrived within this jurisdiction, she did so as a determined and committed young woman who had a very clear objective and who had invested her time and her resources in the pursuit of a career in accountancy. The evidence has established that if she had not been so gravely injured she would probably have gone a considerable way towards achieving her objective.

I am satisfied that after graduation she would probably have continued to pursue her objective of improving her level of competence as an accountant and would probably have had some success in doing so, but without achieving her objective of qualifying as a certified accountant.

I accept her evidence that she would have continued in part-time employment between May, 2002, and the date of her graduation from either University College Dublin or Grace's College Dublin. Her student visa permitted her to work on a full-time basis also (during school holidays) and she had hoped to do so.

At the time when she suffered her injury, she was working, as a cleaner, for twenty hours every week at a rate of €8 per hour.

She would probably have continued to earn that level of remuneration as a part-time worker between the date of her injury in May, 2002, and the date of these proceedings. She has suffered a loss which I would estimate at €50,000 in respect of those earnings. She is entitled to recover that sum as damages from the defendants.

Evidence adduced on behalf of the plaintiff by Mr. Roger Leonard, who is an occupational therapist and vocational evaluator, indicated that a 2008 salary survey for the Dublin area disclosed salary levels for accountants in practice which ranged from €40,000 per annum for a new member in practice to €300,000 per annum for a partner.

The survey disclosed that the level of earnings for a trainee accountant was between €22,000 and €28,000 per annum. Newly qualified accountants, internal auditors, cost accountants and management accountants earned remuneration in the range of €45,000 to €60,000 per annum.

Ms. Paula Smith, who is a vocational rehabilitation consultant, testified on behalf of the defendant. She estimated that a trainee accountant in 2007 earned between €28,000 and €32,000 per annum, whilst assistant cost accountants earned from €38,000 to €40,000 per annum. Credit control managers earned an average of €40,000 to €60,000 per annum. Management accountants earned more than that.

The average range between the lowest earnings of a trainee accountant (€22,000 per annum) and the highest earnings of a newly qualified accountant in 2008 (€52,000 per annum) is €37,000 gross per annum or approximately €596 per week.

On the evidence of Mr. Mc Dowell those earning levels have significantly reduced during the recent past and are likely to reduce further. Unemployment has greatly increased and employment opportunity is limited.

I am satisfied that if the plaintiff had not been injured, she would probably have obtained employment in 2008 at a remuneration level in the region of €450 per week. The capital value of that loss to the plaintiff, if she remained in continuous employment as an accountant until she reached the age of sixty-five years, is €522,950.

That capital sum must be discounted to take account of the factors identified by the Supreme Court in *Reddy v. Bates* (and subsequent authorities). The discount must be substantial because of the present and predicted domestic and global economic recession and because of the plaintiff's personal circumstances and aspirations prior to her injury. The discount must also take into account the plaintiff's professed hope to marry and raise a family, which, if realised would probably have slightly reduced, the extent and duration of her earning capacity.

Allowing for those discounts I will award the plaintiff the sum of €350,000 to compensate her for earnings which she would have achieved in the future if she had not suffered her injury

The plaintiff's care costs.

Ms. Mary Breslin, who is an expert in the recruitment of nursing and caring staff, stated in evidence that the rates of remuneration for carers in 2008 was €21 per hour (for three hours or more each day).

It was Ms. Breslin's view that the plaintiff presently requires the assistance of a carer for three hours in the morning and a further three hours in the evening because she needs assistance in dressing, bathing, cooking and shopping. She also stated that the plaintiff requires a cleaner for three hours twice weekly (at a cost of between €13 and €15 per hour) to maintain her accommodation.

Since it is unlikely that the plaintiff's condition will improve, I am satisfied that she will require professional care for a minimum of four hours every day, seven days every week, at a current cost of €21 per hour (€558 per week).

The capital value of that care for the remainder of the plaintiff's life will be just in excess of €800,000. The plaintiff will also be required to pay for cleaning for approximately six hours per week and must pay for her carer's replacement for three weeks holidays each year.

Actuarial calculations in respect of the capital cost of care, cleaning and housekeeping etc., are intended to assist the court to understand the scale of daily, hourly or weekly costs. They are not intended to represent the precise calculation of the costs which will actually be incurred.

On the evidence in this case, I am satisfied that the plaintiff is entitled to recover the sum of €900,000 to compensate her for the costs which she will incur in the provision of daily care, annual carer holiday replacements, and weekly housekeeping for the remainder of her life because of her injury.

She has required continuous and comprehensive care from the time when she suffered her injury in May, 2002, up to the present time. That care has been provided in an exemplary manner by her boyfriend, Tony Cao Zhi, continuously, for more than seven years.

The plaintiff is entitled to recover damages to enable her to repay Mr. Cao Zhi for the invaluable, continuous care which she has received from him.

The cost of professional care for four hours every day from the 9th May, 2002, to the 12th December, 2008, has been calculated at €174,916. Mr. Cao Zhi provided far more than four hours care each day to the plaintiff during the past seven years.

When awarding damages for past care provided by parents and family members it has been the practice of the courts to apply remuneration rates significantly less than those which apply to the provision of professional care. It has never been entirely clear to me why that should be the case. Usually the care provided by parents and family members is commensurate with professional care standards. Often it exceeds those standards.

However, adopting that practice, I am awarding the plaintiff the sum of €85,000, which is somewhat less than 50% of the cost of the very least amount of professional care which the plaintiff has required during the past eight years.

As I have indicated, I am satisfied, on the evidence, that in addition to care, the plaintiff will require significant psychological treatment in the short-term and indefinite pain management. I am awarding her the sum of €100,000 to compensate her for the future cost of that medical treatment.

Damages will, therefore, be awarded in total as follows:

1. Agreed Special Damages to date: € 14,380.12
 2. Fee paid to English Language Institute € 2,000.00
 3. Loss of earnings to date: € 50,000.00
 4. Loss of earnings in the future: €350,000.00
 5. Care to date: € 85,000.00
 6. Care, housekeeping, etc. in the future: €900,000.00
 7. Psychological treatment and pain management
in the future: €100,000.00
 8. General Damages to date: €125,000.00
 9. General Damages in the future: €200,000.00
- Total: €1,826,380.12