

**THE HIGH COURT**  
**CIRCUIT COURT APPEALS**

[2016 No. 69]

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**BETWEEN****BREDA BYRNE AND SALLY BYRNE****PLAINTIFFS****AND****EDWARD McCORMACK AND AVIVA INSURANCE COMPANY LIMITED****DEFENDANTS****JUDGMENT of Ms. Justice Bronagh O'Hanlon delivered on the 17th day of May, 2018.**

1. With the agreement of the parties, this court heard two separate appeals as one concerning the plaintiffs who were both involved in the same accident on the public highway at or near Whitemill Road in the County of Wexford.
2. The first named defendant is a gentleman who resides at 20 Bishops Park in the County of Wexford and the second named defendant Aviva Insurance Co. Ltd. came off record, having acted on behalf of the first named defendant and were joined by the court as a co-defendant in these proceedings.
3. This accident occurred on the 14th day of June, 2014 when both plaintiffs were offered a lift in the first named defendant's motor vehicle. They had walked to the Lidl shopping complex and had purchased some items. While passengers in the first named defendant's motor vehicle, registration 083 D 19411, the said vehicle rear-ended a second motor vehicle, registration 05 WD 1095, owned at that time and being driven by Mr. Cullenmore. There is no dispute that the first named defendant rear-ended Mr. Cullenmore's vehicle which already had some previous damage from a bang to his vehicle which he had suffered the week prior to this accident.
4. The locus of the accident at Windmill Road, County Wexford was on a crowded street and gardaí were called to the scene of the accident. Mr. Cullenmore drove the two plaintiffs home in his motor vehicle and his vehicle was later deemed to have been a write-off.
5. The second named defendant was joined as co-defendant by order of the 20th February, 2017, in order to protect its interests, pursuant to s. 76 of the Road Traffic Act, 1961 as amended and in that it was, at all material times, the insurer at the time of the accident, of the first named defendant.
6. A Personal Injuries Assessment Board authorisation no. NL0114201570554, dated the 8th day of December, 2015 issued on behalf of the first named plaintiff and a Personal Injuries Assessment Board authorisation no. NL0114201570464, dated the 23rd day of December, 2015 issued on behalf of the second named plaintiff.

**Evidence of Ms. Sally Byrne, the second named plaintiff**

7. This lady gave evidence that she was 59 years of age in October 2018 and she gave her present address as 9 Whitemill Road, Wexford. Her evidence was that she had worked all her life as a cleaning lady and as a factory worker and was the mother of five children. She confirmed that she had never had a claim before and she had never been involved in anything criminal in her life and she confirmed that some weekends she would spend time in her mother's house, given that her mother was 79 years of age.
8. This witness confirmed the date of the accident as the 14th June, 2014 and she also told the court that she did not know the first named defendant well. She accepted the lift in his car and sat in the front seat and this offer of the lift occurred when they were coming out of the Lidl carpark. This witness told the court that the road narrows on both sides and her recollection was that the first named defendant's mobile telephone may have rung and when he went to answer it, the accident occurred. She described a scene of panic and that there was steam coming out of the car and that Teresa and John O'Rourke, two friends of hers, came on the scene. Her concern at that time was for her elderly mother who was in the back of this motor vehicle as a passenger following the impact and she confirmed again that this vehicle had rear-ended Mr. Cullenmore's vehicle and she said that the gardaí were very anxious to move the car off the road and that Mr. Cullenmore, the driver of the second car was kind enough to drive herself and her mother home to the corner of their own street.
9. This witness confirms that she earns €100 a week and that she had to go back to work after two weeks' holidays which she took as a result of the accident. She had a pre-existing condition of carpal tunnel syndrome in any event and she described the effect of that as being like shocks to her fingers and although she stayed on for six more months in her then cleaning job with other people carrying out tasks which she could not perform, she eventually had to give up that employment and now carries out work in a small cleaning job. Her present income is €152 made up of social welfare plus €100 from odd jobs and she said that her total loss of earnings since October, 2016 were €1664, her travel expenses were €350 and that her partner drove her to any treatment in Kilkenny hospital and medical costs themselves were €150 for physiotherapy and GP costs of €150 giving a total of €800 plus the loss of earnings figure at €1664.
10. The medical reports they handed in in relation to this witness's injuries the plaintiff was found to have suffered whiplash injury to the neck and a soft tissue injury to the left shoulder. On clinical examination the plaintiff was found to have limited and painful left lateral flexion with trapezius spasm and spasm of the muscles round her neck to the left side and a decreased range of movement on the left shoulder. The plaintiff was found to have moderate right arm difficulties on reaching and mild difficulty in terms of manual dexterity including lifting and carrying. The plaintiff due to her neck pain following the accident, is only able to do light work at present. Some of her duties as a domestic involves lifting heavy objects which she is not able to do and she is unable to lift her granddaughter as of the 3rd September, 2014.
11. Doctor William Lynch in his report of the 24th June, 2015 noted that the plaintiff suffered soft tissue injuries of the whiplash variety in a road traffic accident twelve months previously and that she had made excellent progress and at that stage he expected

her residual symptoms to resolve without complication within the following three weeks.

12. This witness's general practitioner Dr. Kamar in his report of the 10th May, 2016 found her to have moderately severe spondylitis changes in the mid and lower cervical spine with osteophytes and intervertebral disc space narrowing at all levels from C3 to C7.

13. In the opinion of Dr. Kamar the accident exacerbated these changes causing pain and muscle spasm in her neck. He anticipated that her injuries would heal gradually but that progress could be slow and that she would not be able to tolerate heavy lifting or long periods of standing for the subsequent year because this might cause pain and spasm to her and he anticipated that she would need more analgesic medications as well as physiotherapy.

14. An MRI dated the 18th February, 2016 found moderately severe spondylotic changes in the mid and lower cervical spine with osteophytes and intervertebral disc space narrowing at all levels from C3 through to C7 but that vertebral alignment was satisfactory as set out in the GP's report. The final report dated the 28th February, 2017 showed a noted improvement in the opinion of Dr. Kamar since he had last seen the patient in May 2016 and he said she did however complain still of neck pain off and on although she had become more active herself. This pain had ceased to radiate into her arms at that point and the spasms around her neck were not as frequent as before. The plaintiff was not working at that stage as lifting and standing at that time were not possible for her.

15. This witness said under cross examination that she was on the mend as she put it and that she could do her job at the moment. She confirmed that there was congestion and slow moving traffic at the time of the accident and that because she does not drive a car herself she was not knowledgeable about motor vehicles.

16. This witness said that the parents of the first named defendant lived on her street but that she had never taken a lift from him before and that she was unaware of his conviction and/or alleged drug dealing history. She said that while she had seen something in a local paper she was unaware that the first named defendant had spent a period of time in prison. This witness denied any fraud in conjunction with the first named defendant as alleged. She denied that someone did something to the motor vehicle to suggest that the damage was worse than it was and she denied that this was done as a deliberate act.

#### **The evidence of Mrs. Breda Byrne.**

17. This witness is aged 79 years of age and worked all her life and confirmed that she had no criminal convictions. She said that she was not aware of any criminal charges having been made against the first named defendant and that when he offered her a lift in his car, she accepted it and sat on the back seat of his motor vehicle. This witness said that she was very shocked when the accident happened and she knew she was injured, that her daughter did her best to get her out of the car. Mrs. O'Rourke, a neighbour, helped her get out and she had soreness across the chest and was sent for an x-ray by her GP. A gel for pain relief and Solpadine for the soreness across the chest was prescribed by her GP. This witness said that she had difficulty with housework and she could not lift a Hoover and that her right arm lifting was a problem and that she was very painful from one side to the other and unable to do her garden. This witness confirmed that she was most upset at any allegation of fraud in relation to this accident. Under cross examination this witness confirmed that she had heard a bang and smoke was coming out of the car and she said that the extent of her knowledge of the first named defendant was that while he lived on their estate and he did odd jobs for her three to four times a year she described him as a neighbour and that while her own daughter had indicated that he had done a job for her once, this witness said a little more than that three or four times and that he was handy with electrical things and that she did not have his phone number but if she saw him on the street and needed help for a job she would ask him. She describes the bang at the time of the impact as big enough and that smoke came out of the bonnet of the car.

18. It was put to this witness that her own GP described the accident as a low speed rear-ending of a car in front, this witness says that she has difficulties in that she cannot do what she used to do, she still has pains, she has difficulty with her knee though she agreed that the knee was not directly related to this accident.

#### **Medical evidence in relation to Breda Byrne.**

19. Breda Byrne was examined by Dr. Christine Brodine and described as a widow whose date of birth was the 8th December, 1941 and who was a retired woman at the time of the report of the 18th August, 2014 in relation to the examination which occurred on the 16th June that year, concerning this accident. She described the plaintiff's injuries as having pain in the right shoulder with decreased movement and rib pains to the right side of the chest on the day following the accident. She was treated by her GP over three visits with Panadol, Etoflam gel, Ixprim and Versatis patches and she had depression and she had had a previous road traffic accident when she suffered a fracture to her right wrist, some fifteen years prior to this accident. This witness confirms that the plaintiff has osteoarthritis and the pain in the right ribs in the lower aspect of the chest and pain in the right shoulder.

20. This doctor described the plaintiff's injuries as affecting her to a mild degree in terms of her mental health and her balance and coordination and manual dexterity.

21. This medical report described the difficulties as moderate in this plaintiff reaching or lifting in terms of the effects of this accident.

22. Dr. William Lynch, Enniscorthy Medical Centre, Enniscorthy, County Wexford carried out a medical report for the Personal Injuries Board which they received on the 9th November, 2015 and he noted injuries to the right shoulder and upper chest region and he noted that by that stage this plaintiff had had eight general practitioner visits and his report was completed on the 24th June 2015. He noted that this patient had seven physiotherapy visits over the previous seven weeks and analgesics and anti-inflammatory treatments were given. This doctor noted aggravation of pre-existing conditions in the plaintiff's past history including a history of osteoarthritis, heart disease, depression and hypertension and at that stage he told the doctor she had a pain in her shoulder and upper chest region which tended to bother her when she was doing her housework particularly when cleaning windows and that she takes analgesics regularly and that her sleep can be disturbed if she lies on the right shoulder at night. This report describes the plaintiff as having a good range of movement of the cervical spine albeit slightly limited to the extremes of motion, with full passive range of motion of the shoulders.

23. This examination found the plaintiff to have restriction at the extreme of internal rotation and abduction but he found the rotator cuff intact with no obvious signs of impingement. Arising out of this accident this report confirmed reaching, manual dexterity and lifting and carrying to be problems arising out of same and anticipated that physiotherapy and analgesics would be necessary going forward and he did say that the injuries are consistent with accident. This medical examination anticipated that the plaintiff would attain her pre-accident state in the next twelve to eighteen months but noted that she did have pre-existing degenerative arthritis of a more generalised nature. This witness was found to suffer strains of the neck, shoulder and upper chest and clinically she was a bit stiff but this doctor felt that it would be age consistent and he believed that over time her symptoms would diminish and she would return to her pre-accident state within the timeframe he noted.

24. Dr. William Lynch did a further report dated the 24th June, 2015 and found slight kyphosis of the cervicothoracic spine consistent with age, impaired range of spinal movements consistent with arthritis and age and he said that her hips and knees were arthritic. This doctor found a reduction to the extent of 25% in the range of movements in all directions of the right shoulder with pain and found that she was non-tender on palpation of the shoulder musculature and he said there was no evidence of mood disorder.

25. In conclusion this doctor found that this witness sustained a soft tissue injury to the right shoulder region which continues to be problematic and that she is currently having physiotherapy and that the x-ray available demonstrates osteoarthritis of her right AC joint which suggests that full resolutions of the symptoms may not be possible.

26. By report of the 4th May, 2016 Dr. Christine Brodine set out that the plaintiff Breda Byrne still suffers with intermittent pain to the right shoulder reduced abduction and external rotation and that she takes Solpadine and Solpadol and Arcoxia for pain. This doctor found that this plaintiff cannot lift shopping bags and has difficulty with housework. Her further report of the 20th January, 2017 confirmed the involvement of this witness in this accident where she suffered injuries to the right shoulder, right side of her chest anterior aspect with no fractures. This doctor confirmed that the plaintiff still has pains with decreased mobility and is still unable to carry bags or use her right arm properly due to her shoulder pain and that her shoulder pain and anxiety were aggravated by this accident.

#### **Evidence of Mr. Billy Cullenmore called on behalf of the plaintiff.**

27. Mr. Cullenmore stressed that he had not been called as a witness in the lower court. Further stressed that while he knew the first named defendant to see, he did not know him to speak to. He further confirmed that he knew both of the plaintiffs to see and that he was on his way back from pigeon shooting and that there was only room for one car at the locus and that the first named defendant's vehicle rear-ended his vehicle and that there was a fair bang with no warning. This witness confirmed that he himself was not injured and a tow company took his car away the following day and he said that while he could not remember driving the two plaintiffs home, if they said so then that would be accurate. This witness confirmed that he had full insurance on his vehicle and this accident was covered from his point of view by his insurance and he heard no more about it. He confirmed the registration numbers and letters as 05 DW 1095 of his vehicle and he said he had some previous damage to his own vehicle but that he did not mention it as no one asked him any questions about it.

28. This witness was most concerned when he heard that there had been an allegation of fraud concerning this accident and he was only aware of this in November 2018. He stressed that he is 53 years of age and that he worked in that area from the age of eight years when sold eggs between the ages of eight and fourteen years and that he was well acquainted with people in the area and he said that at fourteen years of age he got an apprenticeship as a carpenter and had worked at that trade all his life.

29. This witness confirmed that the accident caused a fierce bang as he described it.

#### **Evidence of Teresa O'Rourke.**

30. This witness said that she lives at the locus of the accident and she recalled the date well when she heard a large bang as she was sitting in her sitting room. She went to her front door and saw Sally Byrne getting her mother out of the car and that she was trying to get the front seat to go forward so that her mother might be able to exit. In order to assist she went to the parties with sparkling water and cups and she actually did not see the accident but heard it.

31. Mr. O'Rourke her husband gave evidence that he was in his back yard when there was a loud bang and he said the back yard is 50 feet long and he confirmed that he heard but again did not see this accident.

32. Mr. Connick gave evidence that he had not given evidence in the lower court either and he described himself as a retired school teacher and he said he happened to be in O'Rourke's house with his wife when he heard a bang and he saw steam coming out of Mr. Cullenmore's car. He said he knew Mr. Cullenmore, that they had been friends all of their lives and that he did not doubt him. This witness confirmed under cross examination that he heard rather than saw the accident from some distance but he did confirm again that it was a big impact. He said steam was coming out from the car and they had heard the bang.

33. Mr. Roche confirmed that he was in a friend's house at the opposite side of the road when he heard the accident and he said he was not in communication with the gardaí at the time and did not identify himself at the locus but he did confirm himself as an acquaintance of Mrs. Byrne senior as her late husband had trained him in boxing when he was young.

34. Another witness, Mr. Murphy of 39 Kennedy Park indicated in his evidence that his parents lived in No. 35. He said when he heard the bang he went over and had a look and that he was about 40 feet from the accident at the time of same. He said that he knew Sally Byrne 20 years ago and although he did not give his name to the gardaí he thinks he got a letter in the post but he said he was surprised that nobody ever came to ask him anything about the accident and he said he could only ever remember giving evidence once before about three years ago in a case.

#### **Evidence of Mr. Edward Flahavan, engineer called on behalf of the plaintiffs**

35. This professional witness gave evidence that it was a 1940s housing estate with narrow roads where the accident occurred. He said that he was not sure about smoke or steam and where it was supposed to have come from but he said from his investigation he did note black paint which he considered to be a black paint transfer on the vehicle of Mr. Cullenmore. Photograph 7 showed damage to the bonnet and he said Aviva Insurance company report on the damage was consistent with the accident as described. This witness noted and agreed that the insurers assessor had said the headlamp was damaged but in fact the rear headlamp was not broken in terms of the glass portion on Mr. Cullenmore's vehicle. He did note that there was damage to the plastic bumper and that there was a tear in the headlamp and that the headlamp cluster is described as damaged in the assessor's report. He said we have to assume that the headlamp was broken as there is elasticity in plastic and that near the number plate there was no damage because the vehicle went under the rear of the Ford Focus and he agreed that about a third of that was over the bumper and he thought that there was bumper damage to Mr. Cullenmore's vehicle. This witness argued that the damage to the Ford Focus with its low bumper and black plastic he said this was consistent with damage to the Peugeot and he noted that from below the bumper of the Ford Focus there was damage to the bumper of the Peugeot and these matching points concurred in his view and in the opinion of this expert witness he said the point of transfer and photograph No. 2 with the black mark means that that was where the collision occurred.

36. Garda John Coughlan of Wexford Garda Station had examined this accident at the time and he noted that the Ford Focus was driven by Mr. Billy Cullenmore and the blue Peugeot vehicle was driven by Mr. Edward McCormack. He said he had no notes of damage to the vehicles and that he just took a few instructions and he said the damage looked like a jigsaw pattern at the time, that the Peugeot had horizontal damage and the Ford Focus had linear damage and he said he was about 20 minutes at the scene of the accident and that nobody particularly identified themselves to him.

37. Under cross-examination, this witness said that no one was injured and that both vehicles were insured and that he did not think that it was a fraudulent or "dodgy" accident at that time and that there was no family connection between the plaintiffs or anything of that nature and he said he did not think the damage to both vehicles fitted the jigsaw pattern referred to at this point in time.

38. Mr. Patrick Hayes, engineer called on behalf of the defence, said he was given digital copies of the photographs and photocopies and that he examined two different Peugeot 206 vehicles and seven Ford Focus vehicles all of the same make and model as those involved in this accident and he had copies of the damage to both of the vehicles and he concluded that there were no inconsistencies and photograph 1 showed a large indentation that was also under the number plate and he felt this was inconsistent with the description of the accident.

39. He found extensive scratching to the bumper and that this was consistent with the totality of the damage to the bumper. He found significant damage to the plastic of the Focus and he said there had been considerable force and that there was a vertical crease and that the rear headlight was intact. He said there ought to have been glass broken and that it is inconsistent that the plastic under the bonnet was torn to that degree and one would have expected something more than that on the plastic.

40. Under cross examination this witness pointed out that he did not actually get to examine the two particular cars in question although he examined similar vehicles. He said that Peugeot 206 had a faulty suspension and it was lower therefore on the road than it ought to have been. He disagreed with the conclusions of the motor assessor who found nothing suspicious based on the photograph sent but he did not accept this. He said that fraud was alleged only on the day of the trial and that he was happy that there was one point of impact which could have been caused by Peugeot 206 but he said it was only before its first listing in the Circuit Court but it was suggested that there was something untoward in the accident. He said the suggestion was made to him that someone had damaged the car's post impact. This witness said that his report was dated the 6th March, 2017 and the hearing was on the 7th March, 2017 and the defence was only amended on that date. Fraud was pleaded in the defence of the second named defendant.

### **Liability**

41. In assessing liability in this case it must first be noted that in the Circuit Court Mr. Cullenmore was not called as a witness and his evidence proved crucial in this case. It is clear from his evidence that he was a totally innocent party who was rear-ended by the first named defendant on the occasion of this accident. He clarified one point of great importance which was that he was never asked by his own insurers about a bump on his vehicle in relation to a slight accident he had had himself one week prior to the accident and he did not inform his insurers that this bump was not caused by the first named defendant. His insurers failed to ask him a very relevant question and when his own vehicle was later subject to report this led to in my view quite a bit of confusion on the part of the second defendants who jumped to the conclusion that this was a fake or false accident. They did so even though it is clear from the garda evidence that he himself never believed that it was a fake accident at that point and it was stressed in the evidence that it was only on the 6th March or a day or two before the hearing in the Circuit Court that this theory was advanced.

42. Mrs. Teresa O'Rourke gave very cogent and credible evidence that while she did not witness the accident she did hear a large bang when she was sitting in her sitting room and she went to help those who had been injured bringing water out to them. Her husband although he was further away from the locus, in his back garden, also heard this loud bang but again he did not see the accident. Of particular importance in the view of this court is that Mr. Connick, a retired school teacher, was also in the O'Rourke household with his wife when he heard the bang and he says he saw the steam coming out of Mr. Cullenmore's motor vehicle and he said he knew him and they had been friends all of their lives and more importantly he did not doubt Mr. Cullenmore. He described it under cross examination as a big impact. None of the above witnesses, the O'Rourkes or Mr. Connick, were called to give evidence in the Circuit Court.

43. Three other witnesses heard but did not see this accident even though they were as far in some cases as 40 feet away from it.

44. As between the evidence of Mr. Edward Flahavan, engineer, and Mr. Hayes, engineer for the defence, Mr. Flahavan felt that the Aviva Insurance company report on the accident was consistent with the accident as described and he put great store on the black paint transfer on the vehicle of Mr. Cullenmore. He also noted the damage on the bonnet of that vehicle. He agreed with the motor assessor's report to the effect that there was damage to the plastic bumper and a tear in the headlamp and that the headlamp cluster is described as damaged in the assessor's report. His view was that the damage to Mr. Cullenmore's vehicle was consistent with the description given of the accident and he said that damage to the Ford Focus with the low bumper and black plastic on it was consistent with damage to the Peugeot and he noted that from below the bumper of the Ford Focus there was damage to the bumper of the Peugeot and these were matching points concurred in his opinion. He took it as conclusive in his opinion that the point of transfer as shown in photograph 2 with the black marks meant that a collision had occurred. By contrast Mr. Hayes's evidence was such that he had been given digital copies of photographs and photocopies but although he examined similar type Peugeot 206s and Ford Focus vehicles of the same make and model he actually had not looked at the two vehicles who had been involved in this accident. He was unwilling to accept that the transfer quality in photograph 2 which showed the paint damage was good enough to say although there was a loss of blue paint he said there was nothing to indicate a transfer and he stressed his ten years' experience as an engineer. He noted that the Peugeot 206 had a suspension which was gone and that it was therefore lower on the road than it should have been and he described it as sitting on its axil. He did not agree with the conclusions of the motor assessor who found nothing suspicious based on the photographs. He had taken on board the suggestion made to him when the case was first listed in the Circuit Court that someone had done something untoward by damaging the vehicles post impact.

45. In the view of this court this is a suggestion made to him but it was not proven by the evidence. This court prefers the evidence of Mr. Flahavan, engineer, to that of Mr. Hayes. The court has no doubt but that this was a genuine accident in which the first named defendant rear-ended the motor vehicle then being driven by Mr. Cullenmore. The first named defendant did not take any part in these proceedings and Mr. Cullenmore was an extremely credible and honest person in giving this evidence in the view of this court.

46. It is clear therefore that the liability for this accident lies with the defendants and they are jointly and severally liable for same.

### **Damages.**

47. In relation to Mrs. Breda Byrne it is clear that it is now almost five years since the accident in question and that the medical reports accept that what she suffered aggravated pre-existing conditions, in particular difficulties in the chest and shoulder region. She suffered the loss of the amenities of life and had difficulty doing housework and with sleep disturbance. In particular, this witness cannot carry her bags or use her right arm properly due to shoulder pain and the doctor concluded that her shoulder pains and anxiety were aggravated by this accident.

### **Medical evidence regarding Mrs. Sally Byrne.**

48. This witness suffered a whiplash type injury to the neck and soft tissue injury to the left shoulder as well as spasm in the muscles

around the neck on the left side and decreased range of movement on the left shoulder. This affected the range of duties she could do as a domestic.

49. In addition, the accident exacerbated changes causing pain and muscle spasm in her neck. The plaintiff by 2017 was not working as lifting and standing at that time were not possible for her. She had improved somewhat but still complained of pain in the neck off and on but that the pain no longer radiated into the arms.

50. There is no doubt but that this plaintiff suffered a loss of the amenities of life as well as pain and suffering for a minimum three year period after this accident.

### **Conclusion**

51. In all the circumstances both plaintiffs give credible evidence even though Mrs. Sally Byrne could not remember which car had the steam coming out of it and despite the fact that she had not mentioned to the garda witness at the time of the accident that the first named defendant had taken a telephone call on his mobile telephone at the time of the impact. She stressed that she knew nothing about motor vehicles.

52. This court formed the view that these two ladies took a lift with a neighbour's son in good faith and that nothing untoward at all occurred other than a normal road traffic rear-ending. It is of considerable concern in terms of the investigation of this accident that suddenly before the Circuit Court hearing decision seems to have been taken to portray this accident as an "ready up". This court believes that this entire confusion around this aspect of the case arose because the accident was simply not investigated properly. The fact that the accident was portrayed as being a fabricated one caused grave distress to the plaintiffs and must be taken into account.

53. In all the circumstances the appropriate level of damages in respect of Mrs. Breda Byrne is €35,000 and in the case of Ms. Sally Byrne €35,000 plus specials €2,460 giving a total sum of €37,460.

### **Addendum**

54. In all the circumstances, on the balance of probabilities the vehicle in which the plaintiffs were lawfully present on the public highway as passengers, was hit from the rear by the defendant's motor vehicle. This was reasonably foreseeable in all the circumstances.