

THE HIGH COURT

[2017 No. 1965 P.]

BETWEEN

DAVID SCAHILL

PLAINTIFF

AND

SEAN AUGHEY

DEFENDANT

JUDGMENT of Ms. Justice O'Hanlon delivered on the 26th day of July, 2019

1. This case was heard as an assessment. The plaintiff was born on 29th day of August, 1979 and is by occupation a member of An Garda Síochána and he ordinarily resides at Strattonstown, Ballinea, Mullingar in the County of Westmeath.
2. The plaintiff is a married man and is the father of four children. The plaintiff's evidence is set out herein.
3. The defendant's motor vehicle 07MH 10780 was caused to collide with the plaintiff's motor vehicle at or near Cloghan, Mullingar in the County of Westmeath and the plaintiff was driving his vehicle at that time. The accident was described by the plaintiff as being quite traumatic owing that large pieces of wood entered up through the body of his motor vehicle on each side of where his two young children were seated in the back of the car and this caused major trauma to the plaintiff who was deeply concerned about the well-being of his young children on the occasion of this accident. His father-in-law was a passenger being carried in the front seat of the said vehicle at the time. The plaintiff believed that his facial injuries arose when an object, possibly a timber stake, hit him in the face. He had an abrasion on the bridge of the nose with a swollen deformed nose and some discomfort in the right shoulder. X-rays showed that there was no nasal bone fracture. Antibiotic treatment was administered and a review was carried out on the 3rd March, 2015. He suffered discomfort in his shoulder and right arm power was noted to be reduced and he had anterior shoulder tenderness. Anti-inflammatories and physiotherapy were prescribed.
4. The plaintiff then was scheduled for a septorhinoplasty to correct the nasal septal deviation which had been caused by the accident trauma. The plaintiff had a marked nasal blockage on the left side with cosmetic deformity of the nose which revealed a dorsal hump appearance at the bridge and a deviated septum on the left side anteriorly and posteriorly to the right hand side.
5. The plaintiff suffered and continues to suffer from a hump on the bridge of the nose and the septum is partly obstructing the right nostril. The shape of the nose was noted to have changed. The external appearance of his nose appears abnormal since the accident and continues to look crooked and the plaintiff is aware of a slight dip in the mid-portion of the nasal dorsum.
6. The plaintiff suffered and continues to suffer from numbness in the lower half of his nasal pyramid. It is the view of his treating consultant that he will require further nasal surgery which would cost if he undergoes it in the region of €2,500 with an anaesthetic fee of between €500 - €750 and a hospital maintenance charge for one or two days at a cost of €1,000 per day.
7. The plaintiff had to have some work done on his teeth as a result of this accident but is not claiming in respect of this work.
8. While the plaintiff was most emotional in giving his evidence he did not go for counselling in respect of this trauma and has been able to carry on his life largely in a normal manner. The reason why he felt so upset was his deep concern for the well-being of the young children he had in his car.
9. The plaintiff has been authorised to bring these proceedings by the Personal Injuries Assessment Board and by authorisation bearing claim no. ML0415201613419 which said authorisation was issued by the Board on 23rd January, 2017 under s. 32 of the Personal Injuries Assessment Board Acts, 2003 and 2007.
10. The plaintiff suffered and continues to suffer from the aforesaid injuries which have had an effect on the amenities of life of the plaintiff.
11. The plaintiff suffers from an ongoing problem of numbness on the tip of the nose and has difficulty getting air especially through the right side of the nose and he has some concerns about the appearance of his nose. There was also mild congestion of the lining of the nose. On the balance of probabilities, it is most likely that the plaintiff will require revision surgery to improve both the cosmetic appearance and function of the nose.
12. In all the circumstances it is quite clear that this is a very troublesome injury both in terms of feeling and function which continues to trouble the plaintiff and which will require further surgery in due course. This Court accepts the plaintiff's evidence as truthful and notes that he did not overstate his claim. He is left with various problems both cosmetic and functional and the court accepts that these difficulties are ongoing and will require further rhinoplasty surgery as borne out by Mr. Kieran O'Driscoll, Consultant Laryngologist who notes that the outcomes are not always predictable. The items of special damage are in the sum of €9,938.06 and include provision for further surgery in the sum of €3,500.00. The plaintiff wishes to defer this surgery until he finishes his active football career. The plaintiff's ENT Surgeon, Mr. Donald McShane, Consultant Otolaryngologist, head/neck surgeon, in his report of 28th June, 2016, he notes that the septorhinoplasty performed on the plaintiff in November, 2015 has not been entirely successful noting persistent nasal obstruction, blocked particularly on the right side, abnormal external appearance of the nose which looks crooked, a slight dip in the mid portion of the nasal dorsum and numbness involving the lower half of his nasal pyramid which remains numb. The defence's medical reports are largely in agreement with the plaintiff's medical reports and the contents of same are noted. The plaintiff's injury required him to have two fillings in his teeth.
13. In all the circumstances this Court assesses the appropriate amount of damages by way of general damages in the sum of €80,000 plus special damages in the sum of €9,938.06