Neutral Citation: [2014] IEHC 637

THE HIGH COURT

Record no. 2010 No.1114P

BETWEEN

Sheila Andaloc

Plaintiff

AND

Iarnrod Eireann/Irish Rail

Federal Security Services Limited (in receivership)

Caraher and Ward Limited

Defendants

Judgment of Mr. Justice Tony Hunt delivered on 10 December 2014.

Pleadings

1. The plaintiff's claim in this case, as set out in the Plenary Summons, is for damages for loss of consortium and servitium suffered by her by reason of the negligence, breach of duty and breach of statutory duty of the defendants, in causing serious personal injury to her husband.

2. More detail is provided in the Statement of Claim, which was delivered on 8 February 2010. This sets out details of the incident that caused serious injury to the plaintiff's husband, and paragraph 6 claims as follows:-

> "As a consequence of the aforementioned accident, Benjie Andaloc suffered serious physical injury as well as a traumatic brain injury which in turn caused him to have a significant change in personality. Due to the foregoing, the plaintiff has suffered loss of consortium and servitium."

3. The Particulars of Personal Injury specifically claim that:-

> "As a consequence of the permanent brain damage and associated change of personality suffered by her husband, the plaintiff's marriage to Benjie Andaloc came to an end and he ultimately moved out of the family home in February 2008 and thereafter he was made a Ward of Court."

4. These pleas are interpreted as amounting to an allegation that the breakdown of the plaintiff's marriage was caused by the negligence of the Defendants.

5. The Defence puts all matters in issue, but contains a number of specific pleas and denials, not all of which were pursued by the defendants at the hearing. Paragraph 4 is of particular relevance, and asserts that any loss of consortium or servitium suffered by the plaintiff is as a result of the institution and prosecution of matrimonial proceedings by her against her husband, and not otherwise. Paragraph 5 pleads that in these circumstances, the losses claimed by the plaintiff are referable to her own acts and deeds, were not reasonably foreseeable, and give rise to no liability on the part of the defendants. Paragraph 6 pleads that any economic loss to the plaintiff or actual or prospective change in economic circumstances are or will be referable to orders made or to be made in the matrimonial proceedings and not otherwise. This paragraph also refers to the compromise of Mr. Andaloc's proceedings against the defendants in July 2010 by his wardship committee.

Issues

6. On the basis of these pleadings, the central liability issue in this case is the factual and legal causation of the marital breakdown between the plaintiff and Benjie Andaloc. If the plaintiff succeeds in holding the defendants legally responsible for that breakdown and the consequences thereof, further issues arise as to the recoverability and assessment of damages.

Evidence

7. Two witnesses gave oral evidence, the plaintiff Sheila Andaloc, and her daughter Shane Andaloc. On observation of their demeanour and evaluation of the content of their evidence, both were found to be credible and truthful witnesses, and their evidence establishes the facts asserted by them beyond the balance of probabilities. In the case of the plaintiff, her credibility is supported by the fact that she readily volunteered and did not dispute intimate matters which were probably only known to her and her husband, even where those matters might reasonably be regarded as damaging to her claim in this case.

Evidence pertaining to causation and liability

8. The plaintiff and her husband are natives of the Philippines, and married there in 1985. They have four children, all born in the Philippines. Mr. Andaloc worked as a policeman, and also did part-time security work. At some point in the mid-1990s, Mr. Andaloc became involved with another woman. This liaison produced a baby boy in January 1997. Mr. Andaloc confessed the fact of the pregnancy to his wife, who apparently had a discussion with the other woman involved in 1996, who indicated that she intended to return to a neighbouring city. Unfortunately, it appears that Mr. Andaloc's child Nico has considerable congenital disabilities affecting his eyesight and mental faculties. Nico's mother has apparently married since, and had three other children, all of whom suffer from similar unfortunate difficulties. From 1997 to 2002, the plaintiff described that she and her husband did their best to keep the family intact.

9. In assessing the probable cause of the marital breakdown, considerable significance is attributed to the fact that these events did not act to sever the plaintiff's marriage, as they might have done in other marriages. On the contrary, not only did this marriage

subsist, but when Mr. Andaloc moved to Ireland for work in 2002, not only did he decide not to plough his own furrow in this country, as he might have done if he intended to liberate himself from his wife at that time, he was reunited with his wife here in 2003, and with his four children in 2004. These events provide a useful measure for examination of probabilities arising from subsequent events.

10. It is a reasonable inference from the relocation of his wife and children to join him in Ireland that Mr. Andaloc both desired and facilitated this move. An inference is also drawn from these facts to the effect that up to 2004 there was considerable strength in the Andaloc marriage, which had by then survived two events that might each have caused a breach in a weaker arrangement. This inference is also supported by the fact that the plaintiff gave uncontradicted evidence that she and her husband had enjoyed a full and normal marital relationship up to the date of his accident in December 2005.

11. Mr. Andaloc commenced work here with a security company, and the plaintiff took up employment as a cleaner in a nursing home. The family resided in Maynooth. She continues in this employment, and all four children of the marriage have studied and worked at various times since their arrival in this country. The plaintiff described their arrival here as "a dream come true at first." She stated that Mr. Andaloc was a good father, who worked nights, cooked breakfast when he came home, brought the children to school and then slept before preparing dinner for the children when they came home from school. She worked days, and Mr Andaloc always had dinner ready when she arrived home in the evening. As the plaintiff did not have a driving licence at the time, Mr. Andaloc did all the driving, as well as being good at house repairs and gardening. She described him as a sociable man who particularly enjoyed a few drinks and parties involving Filipino families. Both the plaintiff and her daughter described Mr. Andaloc as being a committed father who had a good relationship with his children prior to his accident.

12. That is not to say that this marriage was in a pristine condition at the time of the accident in December 2005. The plaintiff conceded that she had a "one night thing" with another man at an unspecified point in time. She also recounted that Mr. Andaloc went to the Philippines on a holiday in February 2005, which also had the purpose of ordering affairs concerning his child Nico, who apparently required a birth certificate before he was able to attend school. He had discussed these matters with the plaintiff prior to his departure, but when Mr. Andaloc returned from this trip, he informed there his wife that he had consulted a lawyer in the Philippines, and that he wished to be separated from her. This incident apparently took place in March 2005, but the plaintiff stated that she never subsequently received any paperwork from a lawyer, and described that "this was my husband's way of hurting me".

13. Thereafter, they continued to live in one house, slept together in the same bed and the plaintiff described enjoying normal sexual relations with her husband, who had resumed his work and usual routines with the children. There is no evidence or suggestion that there was any further mention of, or action concerning, the separation previously mooted by him. However, the plaintiff also referred to the fact that she did have rows with her husband during that period, a fact also confirmed by her daughter, who stated that they were having the kind of difficulties that she came understand herself as she grew older. This is interpreted as meaning that the marriage was subject to ongoing stresses and strains from time to time.

14. The plaintiff also described a further incident in or about September 2005, whereby she described examining the messages on her husband's mobile phone, to discover that Nico was staying with his grandparents, and her mother-in-law had asked her husband for money. She described herself as being annoyed that she had not been told about this.

15. The plaintiff was cross-examined in detail about these events. She said that she was aware of other "connections" that her husband had, when it was put to her that her husband's sister had given evidence in his proceedings that the marriage had had difficulties. It was also put to her that the mobile phone incident demonstrated a low level of trust on her part. She agreed that sometimes things were left unspoken, possibly on the basis that her husband did not wish to hurt her by raising these matters. The plaintiff stated that the examination of the mobile phone was "an accident" and she had no particular suspicions or expectations before going to the phone. She was unable to comment further on the evidence given by her sister-in-law, as they were not on speaking terms, and she had not been present when this evidence was given.

16. After the accident in December 2005, in which her husband received very grave brain injuries, he was detained in the Mater hospital for three months, after which he had a prolonged period of rehabilitation in the National Rehabilitation Hospital in Dun Laoghaire. The plaintiff described providing daily care for him during this period, as well as when he returned home full-time. It emerged from cross-examination that the plaintiff had received an unspecified sum from her husband's proceedings in respect of past care rendered by her.

17. She also stated that she viewed the accident as a "wake up call" for the marriage. Of particular note is the fact that she testified that when he returned home from the rehabilitation hospital at weekends, they engaged in sexual relations, a point upon which she was not challenged. Apart from that, the plaintiff described an enormous deterioration in her husband's physical and mental capacities, as well as in his personality, temper and personal hygiene. These matters were also confirmed by her daughter, who testified generally as to the significant differences in her father after the accident, when compared to his general demeanour and attitude beforehand.

18. These matters are not recounted in detail, as neither witness was seriously challenged on these aspects of their direct evidence, and their evidence is generally consistent with the apparent agreement between the parties that Mr. Andaloc received such significant brain injuries in his accident that he is unable to live independently, and now avails of a form of sheltered accommodation. Indeed, it also appears from the evidence that he was one of the first candidates for a periodic payment compensation regime, when his own proceedings concluded in July 2010.

19. Mr. Andaloc returned home in the latter part of 2006 or early 2007 and remained at home until February 2008. During this time, it appears that the plaintiff had significant difficulty in coping with the various behavioural changes brought about by her husband's new physical and mental condition. He made an unsuccessful attempt to return to his security work. A further source of tension was a social welfare lump sum payment of €8000 received by Mr. Andaloc. He gave his daughter Shane a sum of €2000 as she was then attending UCD, and the plaintiff was hopeful that he would share the balance with her. Instead, he sent money to his mother and to an unidentified person that had befriended him by phone.

20. The plaintiff described that this "made her mad", that an argument ensued bringing matters to a head, and that her husband then moved to his sister's house. He remained there for a period of time before subsequently moving to sheltered accommodation. The plaintiff is of the view that his sister could not cope with him either.

21. The plaintiff then consulted a solicitor, and a family law civil bill seeking judicial separation was issued on her behalf in March 2009. Those proceedings had not concluded as of November 2014, and it appears that the Wards of Court solicitor has assumed carriage of the family litigation on behalf of Mr. Andaloc.

22. Under cross-examination on the latter aspects of the case, the plaintiff conceded that she made the decision that her husband "had to go", but she did not think that she had communicated this fact to Mr Andaloc's sister in a phone call, on the basis that they generally were not on speaking terms. She agreed that the marriage was effectively at an end as of February 2008, and that her 2009 family law proceedings sought financial provision for the future.

Submissions on liability

23. Mr. Declan Doyle SC appeared for the plaintiff, (with Ms. Sasha Gayer SC). He submitted that at the date of the accident, there was a valid and subsisting marriage, which had suffered from tortious interference and damage at the hands of the defendants. He argued that the Court should not investigate the strength of the marriage, and should award damages unless the marriage could be viewed "as a sham, or doomed to failure". He characterised the existence of the family law proceedings as irrelevant to the issue of liability.

24. Mr. Martin Gleeson SC appeared for the defendants. He argued than an assessment of the causation of marital breakdown was not possible, and should not be embarked upon by the Court. In support of the proposition that a Court should not venture in to this area, he cited a decision of the Court of Appeal of England and Wales in **Pritchard v. Cobden and Another (No. 2) [1986] EWCA Civ. J. 1126-4.**

25. In particular, he asserted that the plaintiff could not "approbate or reprobate" after the date of the institution of the family law proceedings, and that the matter became one for the family courts after that date. He expressed concern about an overlap between this claim and any claims made in the Circuit Court case. He pointed out that the sums awarded to Mr. Andaloc would be amenable to any order made by that Court.

26. In general, the thrust of the submission of the defendants was to the effect that the combination of the state of the marriage at the date of the accident and the subsequent institution of judicial separation proceedings by the plaintiff deprived her of any entitlement to damages in the current proceedings.

27. Mr. Gleeson laid heavy emphasis on the antecedent history of the marriage as a concrete basis for rejection of the claim by plaintiff in the circumstances of this case. He specifically instanced the events in the Philippines in the mid 1990s and the events of 2005 prior to the accident, all of which are summarised above.

Discussion and finding

28. The existence of the action *per quod consortium et servitium amisit* (in consequence of which he lost her society and services) on the part of a wife was confirmed by a narrow majority of the Supreme Court in **McKinley v. The Minister for Defence and others [1992] 2 I.R. 333.** McCarthy and O'Flaherty JJ. also confirmed that the cause of action exists whether the loss of *consortium* or *servitium* is partial or total.

29. Based on this, the plaintiff is entitled to damages in this action if the evidence establishes the following ingredients:-

- A valid, real and subsisting marriage at all times relevant to the claim.
- Negligence or breach of duty by the defendants causing injury to her spouse.
- Consequent upon that injury, that there is total or partial loss of the ordinary incidents of an ongoing marital relationship, quaintly described by Kingsmill Moore J. in ***Spaight v. Dundon*** [1961] I.R. 201 at 214 as "All the innumerable advantages, pleasures and consolations of married life…" This description is relevant in that it demonstrates that the tort protects and values all aspects of such life, including the presence of a spouse around, and contribution by them to a family unit founded on that marriage.
- The necessary causal link in fact and in law between the wrongful conduct of the defendants and the aforesaid total or partial loss.

30. The plaintiff has pleaded with sufficient clarity that the parlous state of her marriage is due to the negligence of the defendants in causing serious injury to her husband in 2005. The defendants assert that she has no entitlement to maintain the claim because her marriage is now at an end, and that the court should not engage in any analysis of the state of the marriage or the causes of the breakdown thereof. This argument is not accepted, for to follow this suggestion would be to fail to analyse or scrutinise the claim pleaded and presented by the plaintiff.

31. The fact that there are some difficulties or strains in a marriage is not sufficient, in itself, to disentitle a plaintiff from maintaining this class of action. If that were so, a large proportion of such plaintiffs would be ruled out. If there a suggestion that a plaintiff is not entitled to maintain or to succeed in such a claim on the basis that their marriage was impaired or non-existent, then an examination of the state of the marriage at and around the date of the accrual of the action is necessary. If the evidence discloses the probability of immediate or proximate separation or divorce, or of a sham marriage, then the action cannot succeed. For example, if the facts of this case were that the Andaloc marriage was in the state in December 2005 that it is now, the plaintiff's claim would fail immediately.

32. However, the evidence in this case establishes no such proposition. On the contrary, the evidence of the plaintiff and her daughter discloses that at the date of the injury caused to Mr. Andaloc by the defendants, there was a valid, subsisting and real marriage in being between him and the plaintiff. To find otherwise would require facts or inferences justifying a conclusion that this marriage was probably about to collapse, either at that time or reasonably shortly thereafter. On the contrary, on the basis of the evidence set out above, the most striking feature of this marriage was resilience in the face of difficulty. Accordingly, the first ingredient of the tort is established.

33. The case of ***Pritchard v. Cobden*** does not support the existence of a general proposition that the court should not venture into an examination of the causes of a marital breakdown. In that case, the plaintiff also claimed that injuries sustained in the accident in question had caused his marriage to break down. The defendant conceded that the injuries had caused the divorce. The plaintiff included in an amended Statement of Claim a head of damages for any extra expense that he might incur as part of the divorce.

34. Counsel for the plaintiff argued that once it is established that a divorce was proved to have been caused by the plaintiff's injuries and was a foreseeable consequence of them, then the financial provisions made for the wife and children in proceedings for

ancillary relief were loss to the plaintiff for which the tortfeasor must reimburse him.

35. Counsel for the defendant argued that the statutory provisions relevant to the divorce did not quantify any losses suffered by the plaintiff, but provided for a redistribution of finances or property in accordance with those provisions. It was agreed that damages for personal injuries recovered by a spouse were part of the "pot" which was to be shared, and the defendant argued that to hand on to the tortfeasor the liability for a lump sum which may itself have to come out of the "pot" was only to increase the size of the "pot".

36. The Court of Appeal held that the defendant's submission was correct, and supported on grounds of policy. The court disallowed any claim for damages under this heading, on the basis that sums ordered to be paid or expended in maintenance proceedings in matrimonial cases are not to be regarded as "loss" caused to someone like the present plaintiff. O'Connor L.J. described such damages as "not only….highly speculative but in age where breakdown of marriage is all too common… open to abuse."

37. Sir Roger Ormrod noted that the effect of orders in matrimonial proceedings was, essentially, to adjust the availability of resources to needs in a post-divorce situation. Resources and obligations formerly enjoyed and/or discharged jointly would be separated, quantified and identified. Such orders neither reduced nor added to the assets available to spouses prior to a divorce (or separation). He also noted possible anomalies arising from the timing of the two sets of proceedings, and stated that such considerations suggested that the financial consequences of divorce should be regarded as too remote to be recoverable or alternatively excluded as indirect economic loss or, failing both of these, excluded as a matter of policy.

38. ***Pritchard v. Cobden*** can be readily distinguished from the present case, in that the issue specifically decided by the Court of Appeal was the admissibility of a specific claim for financial loss consequent upon marital breakdown caused by injuries sustained in an accident. The plaintiff in this case claims damages on a different basis in an action based on loss of *consortium* and *servitium*. She makes no claim for damages of the type disallowed by the Court of Appeal, which made no reference to the class of claim brought by the plaintiff in this case. The cause of the breakdown in that case was conceded to be the injuries resulting from the accident. The causal link between negligence and marital breakdown is strongly contested in this case.

39. That case readily illustrates is that there is no overlap between the assessment of the causes of a marital breakdown in the context of a personal injuries claim, and the type of assessment carried out in this jurisdiction by the Circuit Court when hearing judicial separation or divorce proceedings. Before making an order in such cases, the Circuit Court is required to be satisfied that there is or will be proper provision for the spouses and children of the marriage in accordance with the means available for that purpose.

40. The means considered by the Circuit Court in that regard may include awards of damages received by either spouse. There is no evidence that either spouse in this case has sought or received any damages referable to or calculated upon any financial provision that might subsequently be made by the Circuit Court. In that sense, the existence of the judicial separation proceedings is irrelevant to the formulation or assessment of the current claim for damages.

41. There appears to be no issue as to the second ingredient set out above. As to the third ingredient, it is also established by the evidence as a matter of probability that the defendants caused a partial and increasing loss of the relevant type to the plaintiff. The finding on the evidence in this case is that the defendants caused injury to the plaintiff and her husband in a factual sense, and the primary and proximate cause of the subsequent upset in their marriage was this serious injury, rather than any of the tensions present up to and at the date of the accident.

42. Looked at another way, it does not appear that any damage to the marriage existing prior to accident was so far advanced that it could be said to have the probable outcome of separation in 2005 or within a reasonable period thereafter, without the negligence of the defendants. This inference is supported rather than weakened by the antecedent history of the marriage. There is absolutely no reason to suppose that this marriage would not have continued after 2005, with all the attendant imperfections, were it not for the drastic deterioration in the condition of the plaintiff's husband following his accident.

43. In the context of legal causation, the accident was highly probable proximate cause of the marriage breakdown, rather than any of the pre-accident features referred to above. It was legally foreseeable that such consequences would flow from extensive injuries of the type inflicted on Mr. Andaloc by the negligence of the defendants in this case. ***Pritchard v. Cobden*** in fact supports the proposition that extensive injuries can have the foreseeable result of causing marital breakdown, but denies recovery in the ordinary negligence suit for damages or expenses consequent on that event. It decided nothing of relevance to an action of the type under consideration here. The plaintiff has established as a matter of probability on the evidence that the legal and factual cause of the marital breakdown in 2008 was due to the injuries sustained in 2005, and not otherwise, and succeeds on the issue of liability.

44. The remaining issues are as to the extent of the plaintiff's loss, how that loss is too be assessed in the light of the admitted difficulties in the marriage at the date of the accident in December 2005, whether the plaintiff has established any factual basis for the *servitium* aspect of the claim, and as to how general and particular contingencies affect any damages to be awarded to her.

Damages

45. Mr. Doyle referred to several Irish authorities on the question of damages, namely the decision of Supreme Court in McKinley, and the subsequent High Court decisions in ***Coppinger v. Waterford County Council [1998] 4 IR 243*** (*per* Geoghegan J.) and ***McKinley v. The Minister for Defence (No. 2) [1997] 2 I.R. 176*** (*per* Carney J.). He submitted that the Court should prefer the approach adopted by Geoghegan J. in assessing damages in this type of claim. Mr. Doyle also produced an actuarial report capitalising sums said to represent services lost to the plaintiff and her family by reason of Mr. Andaloc's injuries. Mr. Doyle submitted that this report was based on modest assumptions about the value of such lost services, and that this aspect of the claim was supported by the evidence of the plaintiff and her daughter as to the effect of the loss of Mr. Andaloc's presence from the family home.

46. That report places a value of €100 per week on loss of care provided by Benjie Andaloc to his children between 13 December 2005 (the date of the accident) and 2 March 2010 (the date upon which the youngest child of the marriage reached the age of 15). This is capitalised at €30,609.

47. It also values an amount of €50 per week in respect of loss of services provided by Benjie Andaloc around the family home. From the date of accident to the date of the report such losses are capitalised at a sum of €23,609. Such a loss into the future for the joint lives of the spouses is put at a capital value of €50,650. The total sum claimed under this heading is €104,868.

48. Mr. Gleeson submitted that the factual basis for this aspect of the claim had not been made out. He argued that there must be actual expense before an actuarial assessment can be deployed in the calculation of damages. As to *consortium*, the Court was

obliged to have regard to the actual state of the marriage at the date of the accident, and was not entitled to speculate about the future.

49. None of the cases opened in argument include an example of assessment of damages by reference to actuarial calculations in respect of loss of either *consortium* or *servitium*, probably because such claims are not litigated frequently. It is necessary to look to the case law for guidance as to the proper approach to the assessment of damages in this specific class of claim.

50. The type of personal interest protected by the tort is eloquently described by Kingsmill Moore J. in ***Spaight v. Dundon***. O'Flaherty J. in ***McKinley (No. 1)*** offered observations for the guidance of the High Court in returning that case to the court below, noting that such damages should not be too generous, and found a benchmark in the level of damages awarded for mental distress under the Civil Liability Acts in the case of the death of the spouse. He stated that, in principle, damages for loss of *consortium* should be related to those recoverable for the death of a spouse (currently fixed at €35,000).

51. The next case in sequence is ***Coppinger***. Geoghegan J. noted that the observations of O'Flaherty J. in ***McKinley (No. 1)*** were *obiter dicta*. I respectfully agree with the observations of the learned trial judge that O'Flaherty J. was not suggesting that mental distress following death was in any way a similar kind of injury to loss of *consortium*, and the use of the word "benchmark" did not suggest a specific ceiling on damages for loss of *consortium*.

52. Geoghegan J. referred to the decision of the Supreme Court in ***O'Haran v. Devine*** (1964) 100 I.L.T.R. 53 as expressing useful views as to the measure of damages for loss of *consortium*. He noted that these views were not adverted to in ***McKinley (No. 1),*** probably for the reason that the Supreme Court was not directly concerned with the issue of assessment of damages in the latter case.

53. Geoghegan J. extrapolated from the jury finding left undisturbed by the Supreme Court in O'Haran v. Devine that as of 1996, the appropriate award of damages for 42 weeks loss of *consortium* was £4,000. The plaintiff in Coppinger had to be compensated for 26 years of loss of *consortium*. The reference to her injuries being worse than the distress if her husband had died in the accident appears to be a benchmarking exercise conducted by Geoghegan J. by reference to the remarks of O'Flaherty J., rather than the recital of a specific case made by the plaintiff.

54. Geoghegan J. bore in mind the figure allowed in ***O'Haran v. Devine***, and applied "modern values tempered, however, with some conservatism in accordance with the traditional approach to assessing damages in case of this kind." The result was an award of £60,000 for loss of *consortium*. A rough calculation based on the Consumer Price Index between 1996 and 2014 suggests that this sum would now be equivalent to an amount slightly in excess of €100,000.

55. On being returned to the High Court, damages in the claim of Mrs. McKinley were assessed by Carney J., reported as ***McKinley (No. 2).*** Carney J. accepted the guidance of O'Flaherty J. and awarded £20,000 for loss of *consortium*. He distinguished ***Coppinger*** on the facts, as being a case where the injuries to the plaintiff by reason of loss of *consortium* were infinitely worse than the mental distress which she would have suffered if her husband died in the accident, which was not a case made in McKinley.

56. It should be noted that the particulars of the claim by Mrs. McKinley are set out at page 340 of the judgment of Finlay C.J. in ***McKinley (No. 1),*** and they include a claim for total loss of consortium and for the loss of domestic and other services. No actuarial calculation was put forward in respect of the loss of services claim in that case, and the learned trial judge did not make separate awards in respect of *consortium* and *servitium*.

57. The approach adopted by Geoghegan J. in ***Coppinger*** offers the most specific assistance for the assessment of damages in a case such as this. However, all of these cases appear to support a view that damages in respect of *consortium* and *servitium* are best approached on a general basis for loss thereof, rather than on the actuarial basis suggested by Mr. Doyle. None of the cases suggest that damages for loss of *consortium* or *servitium* should be approached by capitalising a monetary value attributed to services given freely in the marital context.

58. There is some force in the arguments of Mr. Gleeson in this respect, because the components of marriage alluded to by Kingsmill Moore J. and protected by this tort are generally not provided or replaced on a monetary basis, as the facts of this case clearly demonstrate.

59. The plaintiff in this case is aged 56. It would be reasonable to think that her marriage would have lasted for another 20 to 25 years if all went well. On the basis of simple multiplication of the type of figure mentioned by Geoghegan J. in ***Coppinger***, that would produce an award in this case of well in excess of €120,000. Coincidentally or otherwise, that general amount appears to be similar to the result that would follow from the basis of calculation suggested by Mr. Doyle.

60. That calculation makes no allowance for the fact that the distress in ***Coppinger*** might well be regarded as at a higher point on the scale than the distress endured by the plaintiff in this case, which is not intended to denigrate the disruption, upset, inconvenience and distress undoubtedly suffered by the plaintiff as a result of the injuries to her husband. There is also the specific issue in this case that there were undoubted difficulties in this marriage, as alluded to above, although not such as to justify a conclusion that it was probably going to collapse in 2005 or at any reasonably proximate time thereafter.

61. In calculating the appropriate starting point for an award of damages of this type, regard is had to the age of the plaintiff, and to her probable prospects as of December 2005 but for the intervention of the defendants. Her entitlement to damages did not cease on the issue of judicial separation proceedings, because the plaintiff has met the burden of proving that this event was attributable to the actions of the defendants. She is entitled to an assessment of fair and reasonable damages based on the particular circumstances applicable to her marriage at the date of the injury to her spouse, adopting the conservative approach suggested by Geoghegan J., together with the application of a discount to represent both general and specific risks and contingencies.

62. Premature termination of marriage can occur for a wide variety of reasons, by death or illness, or in other cases where small fractures appear, which have the potential to increase with the passage of time, perhaps as any children of the marriage grow older and go their own way. On the other hand, very few marriages can lay claim a state of absolute perfection, and many are able to survive significant trauma and stress. Regard can also be had to the relatively novel factor that the existence of divorce raises the possibility that all of the comforts of marriage might be replaced somewhat more easily than in times past.

Result

63. The appropriate starting point for damages having regard to the facts of this case is a sum of €80,000. The vicissitudes or

contingencies applicable to those facts justify a substantial deduction from that starting point. The appropriate discount in this case is 25%.

64. The plaintiff is therefore entitled to a decree for €60,000.