

THE HIGH COURT

[2013 No. 11283 P.]

BETWEEN

ADEOLA OZORUCHI

PLAINTIFF

AND

MICHAEL CREAM, MARTIN TUFFY, KILCAWLEY BUILDING AND CIVIL ENGINEERING (SLIGO) LIMITED AND KILCAWLEY BUILDING AND CIVIL ENGINEERING LIMITED

DEFENDANTS

JUDGMENT of Mr. Justice Cross delivered on the 4th day of November, 2016

1. The plaintiff was born on 20th March, 1973, and came to Ireland from Nigeria. She is married and in 2005, received permission to remain in this country and is a naturalised Irish citizen.
2. Having achieved her permission to remain, the plaintiff commenced training and obtained a degree in Social Services from her studies between 2007 and 2011 and commenced working with a home care agency in November 2012, and was subsequently employed since 29th October, 2012, by Cheshire Homes as a carer.
3. The plaintiff's work involved heavy and strenuous, physical labour of lifting of elderly infirm and immobile patients.
4. The plaintiff has now two Irish children.
5. On 12th January, 2013, the plaintiff was travelling on the public highway near Dromre West, Co. Sligo, heading to her home in Sligo from the Cheshire Homes in Co. Mayo when a motor vehicle, property of the third and fourth named defendant being driven by the second named defendant overtook the first named defendant's vehicle and collided into the plaintiff.
6. Whereas there was an issue between the defendants due to allegations that the first named defendant's vehicle which was towing a trailer was not properly lit, the case is now one for assessment of damages only from the plaintiff's point of view.
7. The impact was a severe one, but initially the plaintiff was not aware of any particular pain though she was very frightened as she was trapped in the car and could not exit. She had to be removed from the vehicle by the services. She was taken to Sligo Hospital.
8. She suffered a significant fracture to her right hip, disruption of her symphysis pubis fracture of her pubic rama, fractures of her lumbar spine at L2/L3/L4, lacerations of her liver and an inferior vena cava injury. She had some soft tissue injuries to her neck and contusions from her seatbelts. As a result of her subsequent treatment, she has been left with a number of significant scars. She also had a depressive reaction and suffered from PTSD which has improved though not entirely.
9. The plaintiff was admitted by ambulances to Sligo General Hospital under the care of Mr. Gaine, Orthopaedic Surgeon and was then transferred to Tallaght Hospital under the care of Mr. McElwaine until 22nd February, 2013.
10. In hospital, the plaintiff had an operation including fixation of her acetabulum. The metal plate has been left in situ. The liver laceration and lumbar spine fractures were treated conservatively and she had inferior vena cava filter inserted. She was discharged for follow up care in Sligo Hospital.
11. The plaintiff was referred to cognitive behaviour therapy for her PTSD but she was unable to take up the cognitive behaviour therapy due to the length of the waiting lists.
12. She was prescribed a significant cocktail of heavy pain medication including anti-spasmodics, hypnotics, Paracetamol and Morphine based Codine painkillers in the form of Oxynorm. She also had Lyrica Morphine patches.
13. In Tallaght, she underwent two operations and when she was discharged home, she had to stay there on the strong medication which affected her ability to enjoy life and work. The pain continued and she suffered nightmares and was tearful. Her husband who had travelled with her to Dublin and taken time off work was then let go from his employment.
14. The plaintiff was left with two significant large operation scars, one at the front of her abdomen from her umbilicus down and a second very significant long scar from her buttocks to her right thigh. She also had some minor scarring in the region of her neck due to the insertion of the filter, but this has resolved.
15. The filter was removed in June 2013 and the plaintiff was seen by Dr. Theresa O'Connor, and she suffered from ongoing low back hip and thigh pain. An MRI scan taken in July 2013, indicated some disc protrusion.
16. The plaintiff attempted to return to work in January 2014, but was unable to persist due to the heavy physical nature of the work and she had to go off work after a few days. She has not been able to return to her pre-accident work.
17. The plaintiff's husband, who was unable to find work in Ireland, went to the United Kingdom and the plaintiff followed him in August 2014 and settled in Manchester. She had a cancer scare in her breast while in Manchester but she was most relieved when the lump was found to be benign caused, it is believed probably by the effect of the seatbelt in her trauma.
18. The plaintiff had marital difficulties and separated in January 2015.
19. In 2015, the plaintiff applied to study for a Masters Degree in Social Studies but was unable to do the full time work for financial reasons and also possibly because of the full time demanding nature of the work.
20. Since February 2016, the plaintiff has found work in England as a part time home care worker, working for an agency in a residential home catering for mildly mentally handicap adults. This work is light and involves supervision and she is employed on a

contracted basis of 16 hours per week though she sometimes works for longer and sleeps overnight in the centre. The plaintiff enjoys this work.

21. During the time since the accident, a number of the plaintiff's injuries have cleared up but she is still in constant pain in her right hip and is still on painkilling medication. The pain to her back and to her pubis region has resolved. The plate inserted has remained in place. The scars are permanent. The plaintiff's medication has been reduced but she is still prescribed significant painkilling medication.

22. I have had the benefit of hearing the evidence and the cross examination of the plaintiff. She was, as both her own and the defendant's experts attested, a positive optimistic person. I also heard from the plaintiff's GP, Dr. Damien Teiman, Mr. Michael Leonard, Orthopaedic Surgeon, and Dr. Theresa O'Connor, Pain Specialist, in addition I was furnished by agreement of the parties with the medical reports of Mr. Michael Sweeney, Orthopaedic Surgeon, Dr. Mohammed Zaib Khan, Consultant Surgeon, Prof. William Torreggiani, Interventional Radiologist, Mr. William Gaine, Consultant Orthopaedic Surgeon from Sligo, Mr. Matt McCue, Plastic Surgeon, Charles Gillispie, Physiotherapist, Dr. Mary Maguire, Consultant Psychiatrist.

23. Evidence was also furnished on behalf of the plaintiff by Ms. Ann Doherty, Vocational Assessor and an actuary. Ms. Doherty recommended that the plaintiff be entitled to home help in future in order to assist her around the house. The plaintiff, however, stated that she would continue to rely on her family and does not need the home help and thus reduced her claim by as much as €100,000.

24. On behalf of the defendant, evidence was given by their actuary and the reports of Laura Mannion, Consultant Psychiatrist and of Susan Tolan was also furnished.

25. In relation to the plaintiff's physical injuries, there is clearly no conflict and no evidence or reports were led by the defendants and I accept the plaintiff as a truthful witness who did not exaggerate and indeed on occasions made light of her complaints.

26. In the words of Mr. Michael Leonard:-

"[the plaintiff] sustained a significant injury to her right acetabulum and pelvis...she also reports having sustained a liver laceration for which she was treated conservatively. She required two operative interventions from the point of view of her orthopaedic injury. This consisted of internal fixation of her right acetabulum and internal fixation of anterior pelvic ring.

Overall, she has recovered well considering the severity of her injuries. She does suffer with ongoing right hip pain which particularly bothers her with walking and activity..."

27. In his final report, Mr. Leonard said that the plaintiff made a satisfactory recovery post the fixation of her injuries. She has bursitis which she was injected for. She is happy to working part time.

28. Mr. Leonard stated:-

"Considering the severity of injuries [the plaintiff] would be unable to return to full time, physical demanding work which she was doing previously."

29. In relation to the scarring injuries, I was not required to view the scars but I had the benefit of the extensive photography of Mr. Matt McCue. These photographs clearly attested the nature and severity of her scars. The plaintiff's scars on her neck were not of any ongoing concern but were sited where the valve was inserted and were 1cm in diameter, they have essentially cleared up. She also had initially a scar some 2 inches length from her seatbelt which also settled.

30. On the front of her abdomen there is a scar some 6 inches in length which was broad and stretched and very obvious and visible. It is now not as long as it was but is as described by Mr. McCue in his last report in July 2016 "obvious and visible. It is a puckered type of scar and she is still very conscious of it." The scar on her right buttock is "the most significant scar, it is now some 12 inches length, broad and stretched and goes from her buttock half way down to her right thigh".

31. The plaintiff is upset about the appearance of the scars. They affect the clothes she wears, especially on holidays and she does not swim as she would have liked.

32. Mr. McCue is of the view that the latter two scars are not going to improve in the future and plastic surgery has nothing to offer.

33. There is nothing of significance to differentiate the reports from the plaintiff's treating psychiatrist and Dr. Mannion who examined her on behalf of the defendant. Dr. Maguire stated the plaintiff sustained severe physical injuries but was very positive about her recovery and eager to return to work. "She was honest and genuine in reporting her psychological symptoms and the duration thereof". The plaintiff developed Post Traumatic Stress Disorder as a result of the accident and her residual symptoms of catastrophic thoughts caused startle reflex and psychological distress.

34. The plaintiff's sleep pattern was disturbed and Dr. Maguire prescribed increased medication which was of assistance to her. She developed a Post Traumatic Stress Disorder and an adjustment disorder and the depressive symptoms but in her last examination in September 2016, Dr. Maguire was of the view that the plaintiff had improved significantly.

35. Dr. Maguire did not seem to be aware of what the plaintiff freely stated in her evidence and indeed advised the defendant's psychiatrist, Dr. Mannion, that she had previous episodes of depression before the accident. She had low mood when she arrived in Ireland following the traumatic events which caused her to do so and included depression in 2009/2010, for which she got treatment from her GP and accordingly, I accept as Dr. Mannion said that she was vulnerable to further psychiatric difficulties following stressful events.

36. Dr. Mannion agrees that the plaintiff did develop Post Traumatic Stress Disorder of a "mild to moderate degree" and whereas a certain resolution had occurred prior to Dr. Mannion's examination in 2014, she does accept that ongoing physical pain leads to a degree of demoralisation and intermittent low mood. Her marital separation undoubtedly perpetuated her psychological difficulties somewhat.

37. Dr. Mannion is optimistic in relation to her future recovery, having observed the positive attitude of the plaintiff, I agree that her

prognosis in relation to her psychological injuries is good.

38. In relation to the plaintiff's working capacity, Ms. Doherty, Vocational Assessor, stated that due to her physical state she would not be suitable for the heavy work such as she did in Cheshire Homes but she was capable of doing the light work in England.

39. Ms. Tolan on behalf of the defendant in her report states:-

"If the accident had not occurred she would probably have continued to work as a careworker for Cheshire Homes and might well have been offered and accepted a full time post. She is no longer fit for the physical demands of care work and part time support work is likely to be the best she will achieve unless she can secure and cope with responsibilities of a supervisory or managerial position in a healthcare setting which might well be possible given the fact that she has a Level 8 degree in applied social sciences."

40. Accordingly, the state of the evidence is all to the effect that the plaintiff had significant physical injuries in the accident the subject of the proceedings involving two operations. She had also soft tissue issues and she is left with an ongoing hip problem and the metal work is still in situ. She has two ongoing permanent and very unsightly scars. She suffered a mild to moderate psychological injury which though improving is still present. She is still in pain. She had significant medication and she is still on medication. She is a very pleasant lady who is optimistic as to the future and in no way exaggerates her complaints. She was a hard worker and enjoyed her work in Cheshire Homes and would have continued working there. After a long period of absence, they were pleased to take her back to work although unfortunately the plaintiff was unable to persevere after a short number of days. She is unfit for full time heavy work. She enjoys the type of work that she is doing at the moment.

41. The issue between the parties is not the pain and suffering of the plaintiff to date or into the future but rather the issue of the plaintiff's loss of earnings.

42. In relation to her loss of earnings to date, the plaintiff contends that she had obtained work in Cheshire Homes on a contract of 22 hours per week but was in point of fact earning €799 gross per week.

43. The defendants contend that the plaintiff's contract was only for 22 hours per week and she may not have been made permanent.

44. Given the plaintiff's enthusiasm for work and her clear ability to do the work and the fact that though she was absent for a long period of time, her employers were prepared to take her back to work, I have no doubt but that had the accident not occurred, the plaintiff would have continued working earning, at least, the sum of €799 gross. And in that regard, Ms. Tolan on behalf of the defendant, in essence, agreed.

45. The plaintiff's actuary has calculated her loss of earnings to date on that basis allowing for the earnings she is actually obtained recently in the United Kingdom and subject to certain deductions which I will deal with when coming to the quantification of damages, I believe that the methodology of the plaintiff's actuary is reasonable.

46. In relation to the plaintiff's future loss of earnings, the plaintiff's current earnings in the United Kingdom amount to approximately €220 per week net and the plaintiff's future loss assuming she would have moved to England and be working in a similar job though full time, i.e. 39 hours rather than 16 hours per week giving a net loss of €191 per week.

47. I think that this approach quite possibly underestimates the plaintiff's future loss of earnings as had the accident not occurred, it is quite likely that the plaintiff may well have continued in Ireland with her family and be earning her pre-accident wages or greater.

48. However, in ease of the defendant, I will hold that even had the accident not occurred, the plaintiff's husband would have left for England to find work and that the plaintiff would have followed him and accordingly, I accept the figure of €191 per week represents the plaintiff's loss up to her retirement at the age of 68.

49. I will use the actuary's figures as a guide and take into account an allowance for *Reddy v. Bates*.

Damages

50. The plaintiff seeks compensation for:-

- (a) Special damages to date other than loss of earnings;
- (b) loss of earnings to date;
- (c) loss of earnings into the future;
- (d) pain and suffering to date; and
- (e) pain and suffering in the future

(a) Special Damages

51. Due to the sensible agreement of the parties, the out of pocket special damages have been agreed in the sum of €68,786.

(b) Loss of Earnings to Date

52. As stated above, I accept that the plaintiff, were it not for the accident, would have worked in Cheshire Homes earning approximately €799 gross per week and that her loss of earnings allowing for the deductions of the UK Social Welfare and her UK earnings have been actuarialised in the sum of €102,249 and noting the demand for carers both in Ireland and the United Kingdom, I believe that any reduction in respect of *Reddy v. Bates* ought to be minimal and I will award the sum of €100,000 for loss of earnings to date.

(c) Loss of Earnings into the Future

53. In accordance with the judgments of the Court of Appeal in the *Gill Russell* case, the appropriate rate of return is 1.5% and I find that the appropriate date for retirement is 68 years.

54. In addition to her present earnings, I note that the plaintiff is also being paid a sum, the exact basis of which is unclear in respect of tax credits in England which is apparently akin to our Social Welfare payment schemes. It seems that these figures are allowed by the actuary when he assessed loss of earnings to date but is not included in his figures for loss of earnings into the future.

55. The parties were unclear whether the plaintiff, at law, would be obliged to give credit to the defendants for whatever these sums may be but I will give the benefit of the doubt in this regard to the defendant on the basis that the plaintiff has to prove her losses and make a reduction.

56. I believe that the figure of €191 per week to age 68 is the appropriate guideline on the basis of 1.5% and that this totals on the actuary's calculation €198,449. Given the Social Welfare payments and a relatively modest deduction for *Reddy v. Bates*, I will assess the loss of earnings into the future in the sum of €175,000.

(d)&(e) General Damages to Date and into the Future

57. My function in assessing general damages is to ascertain what sum, being fair and reasonable to both the plaintiff and the defendant were to place the plaintiff into the same position as she would have been had the accident not occurred.

58. It is trite law to reiterate that small or minor cases should required small damages, moderate cases should require moderate damages, severe or substantial cases should require severe damages.

59. Utilising the categories of injuries in the Book of Quantum, there is no doubt that the plaintiff has sustained a severe injury. Whereas there are a number of significant permanent consequences in relation to her injuries, the categorisation of severe, if required to be broken down further, would be broken by me into the moderately severe range though towards the higher end of that range.

60. Whereas I am obliged by law to have "regard" to the figures in the Book of Quantum when assessing my damages, I find that in this case with significant cocktail of injuries including psychiatric injuries and, in particular, severe scarring, I do not find the Book of Quantum of assistance to me.

61. Given the severity, however, of the injuries to date and being fair and reasonable to both of the parties, I believe that a figure for general damages to date to compensate the plaintiff for the accident, the physical pain and suffering, the emotional and psychological pain and the scarring she has undergone that the sum of €100,000 for pain and suffering to date is appropriate.

62. In relation to future pain and suffering for the permanent scarring and the ongoing though diminished pain, physical and psychological, I will award the sum of €50,000.

Summary

- (a) special damages €68,786
- (b) loss of earnings to date €100,000
- (c) loss of earnings into the future €175,000
- (d) Pain and suffering to date €100,000
- (e) Pain and suffering into the future €50,000

Total €493,786

63. Having come to the said figures, I am obliged to have regard to the entirety of the award of €493,786, to ascertain whether the same is fair compensation for the plaintiff and I do so find and make that award.