

THE HIGH COURT

[2003 No: 4266P]

BETWEEN

KEVIN PATRICK HAYES

PLAINTIFF

AND
AUDREY ENNIS

DEFENDANT

Judgment of Mr. Justice de Valera delivered on the 15th day of April 2005.

1. This action has been brought by the plaintiff Kevin Patrick Hayes as the father and personal representative of Thomas Paul Hayes who died on the 30th January 2002.

2. The plaintiffs claim is as one of the dependants within the meaning of s. 47 of the Civil Liability Act, 1961 of Thomas Paul Hayes and it was brought by him on his own behalf and on behalf of the other dependants.

3. The persons on whose behalf the action has been brought are:

(a) Kevin Patrick Hayes - Father of the deceased.

(b) Jane Hayes - Mother of the deceased.

(c) Jennifer Hayes - Daughter of the deceased.

(d) Scott Hayes - Son of the deceased.

(e) Helen Hayes - Sister of the deceased.

4. The father, mother and sister of the deceased have waived their claims as dependants in favour of Scott and Jennifer respectively the son and daughter of the deceased.

5. Thomas Paul Hayes had been paralysed in a road traffic accident which occurred when he was a young single man. When in a wheelchair he met and married his wife who was, tragically, subsequently to die of complications from an appendix operation in hospital. Prior to her death the couple had adopted two children neither of whom were old enough to remember their mother at the time of her death.

6. Having qualified and obtained a good job the deceased brought up his two children, from all the evidence with remarkable success, until he was involved in another road traffic accident the subject matter of these proceedings as a result of which he was killed.

7. The evidence in this action was given, movingly, by the plaintiff the deceased's elderly father and Scott.

8. Jennifer did not give evidence.

9. The only other evidence was from Brendan Lynch an actuary on behalf of the plaintiff.

10. This is an unusual claim insofar as it has been argued before me that because of the particular circumstances of the deceased there would have been permanent financial losses in respect of both Scott and Jennifer for the deceased's lifetime.

11. In the circumstances of this particular action and particularly having heard, and been impressed by, the evidence of the plaintiff and of Scott I am satisfied that the relationship between the two children and their father and particularly between Scott and his father was such that the deceased would have continued to contribute financially to both his children during the course of his lifetime.

12. In particular I accept that Scott would have continued to live with his father at the family home; this would not necessarily have interfered with any matrimonial plans Scott might have made and although I have no evidence from Jennifer I am satisfied on the balance of probabilities that given the particular circumstances and the close nature of her relationship with her father that he would have continued to make contributions to her during the same period albeit not to the same extent as to Scott.

13. On the basis of Mr. Brendan Lynch's evidence and report, which I accept with the exception which I am about to specify, the total figure which I propose to award under the heading of dependency loss is €400,000.00.

14. I have deducted a figure of approximately €71,000 from Mr. Lynch's calculations to allow for what I believe would be a difference in dependency between Scott and Jennifer - the calculation of damages in such matters is not entirely an exact science and this is a figure which I believe to be appropriate rather than one capable of precise calculation.

15. To this figure must be added agreed special damages of €34,684.67 and damages for mental distress of €25,400.

€400,000.00

€34,684.67

€25,400.00

Total: €460,084.67