

THE HIGH COURT

[2017 No. 10021 P.]

BETWEEN

LORNA BENTLEY

PLAINTIFF

AND
LIAM NOLAN

DEFENDANT

JUDGMENT of Mr. Justice Barr delivered on the 19th day of December, 2018

1. This action arises out of an RTA on Drumcondra Road, Dublin on 2nd June, 2016. The plaintiff was stationary in a line of traffic, when she was rear-ended by the defendant's vehicle. She was wearing a seatbelt. As a result of the impact to the rear of her vehicle, her car was pushed into the car in front. Liability is not in issue in these proceedings.
2. The plaintiff is a divorced lady with two teenage children. She is 50 years of age, having been born on 9th April, 1968. She works as a manager/secretary in the family motor business.
3. The main aspect of the plaintiff's injuries, concerns scarring to her face. This was caused due to the fact that she was wearing sunglasses on the top of her head at the time of the accident. As a result of the impact, the airbag on her vehicle deployed and her glasses fell onto her face. As a result of the deployment of the airbag, the sunglasses shattered, causing the plaintiff to suffer extensive lacerations to her face, particularly to her left cheek, where there were three lacerations, together with a laceration just above the left side of her lip. The plaintiff also suffered soft tissue injuries to her neck and lower back. There was extensive bruising to the left side of her body and to her left arm. In the weeks after the accident, the plaintiff also developed pneumonia, hearing difficulties and certain psychiatric sequelae.
4. The medical evidence in this case has been agreed. To that end, the court has had the benefit of reading eight medical reports furnished by various doctors on behalf of the plaintiff.
5. At the scene of the accident, the plaintiff was aware of a large amount of blood flowing from her face onto her shirt. She was extremely shocked and upset by this. She remembers a smell of burning in the car. She wanted to get out of the car, however, three men who came to her assistance, told her to stay where she was. However, they told her not to look in the mirror. After a short period of time, an ambulance arrived and she was removed to the Mater Hospital, where she came under the care of Dr. Sinead McArdle, Consultant in Emergency Medicine.
6. Two of the lacerations to the plaintiff's face required suturing. Four sutures were inserted into the larger linear laceration on her left cheek. Two sutures were inserted into the laceration above her lip. The plaintiff was discharged from the hospital later that day. She was driven home by her sister and brother in law. She returned to hospital on 8th June, 2016, when her sutures were removed. On that occasion, the plaintiff complained of severe pain in her chest. X-rays revealed that she had developed pneumonia. The plaintiff was commenced on oral antibiotics for this. A repeat x-ray taken on 11th July, 2016, showed complete resolution of the infection. Dr. McArdle was satisfied that the extensive soft tissue injuries to her left arm, left breast and anterior chest and upper abdomen, which had been sustained in the accident, likely contributed to the plaintiff developing pneumonia in the days following the accident due to decreased lung expansion secondary to pain which would have predisposed the plaintiff to infection.
7. The plaintiff was reviewed by Dr. McArdle on 12th August, 2016. She complained of pain on the left side of her face. That area was very sensitive to touch. She experienced pain in her left cheek if she smiled or laughed, or if she was wearing sunglasses that rested on her cheek. She was not able to lie on her left side as the pressure of the pillow caused pain. She reported that members of her family had pointed out to her that her hearing seemed to be affected since the accident. In particular, she was asking them to repeat things on a constant basis. People also said that she spoke loudly when speaking on the telephone. The plaintiff said that she was very self conscious about her appearance, as the scarring to her face remained vivid. She was very anxious when driving. She did not like driving at night. She would drive very slowly and on occasion had to pull in off the road to allow other traffic to proceed past her.
8. Examination revealed that she had a full range of movement in her cervical and lumbar spine. However, the plaintiff reported a clicking sensation on left lateral rotation of her neck. Dr. McArdle noted that she continued to have three prominent scars on the left side of her face. There was no evidence of facial nerve injuries. She was of opinion that the plaintiff's soft tissue injuries had resolved completely. However, she continued to have mild impairment in relation to her vision and hearing and in relation to lifting and carrying. She had a severe impairment in relation to her mental health situation at that time. Dr. McArdle noted that the plaintiff was continuing to experience psychological symptoms, together with anxiety and poor self image as a direct consequence of the accident. She felt that counselling might be beneficial to reduce her anxiety and Post Traumatic Stress Disorder. In relation to the scarring, she recommended a referral to Mr. Kevin Cronin, Consultant Plastic Surgeon.
9. Mr. Cronin first saw the plaintiff on 25th November, 2016, some five months post-accident. He noted that at that time, the plaintiff had difficulties with facial scarring, facial pain, a click in her neck, diminished hearing and cold intolerance. She also had psychological problems with anxiety. Physical examination at that time, revealed permanent scarring on her face, including two scars of relatively poor quality. Mr. Cronin hoped that they would improve with the passage of time, but would remain obvious at conversation distance.
10. The plaintiff was reviewed by Mr. Cronin on 7th July, 2018, just over two years from the accident. She continued to experience facial pain which was associated with her scarring. She felt a stinging pain when the skin was exposed to hot or cold environments. She also complained of continuing clicking in the neck. She also experienced a change in colour of the scars when exposed to cold weather. She had continuing psychological difficulties. Mr. Cronin noted that the scars had matured a little. However, the worst of the scars on the upper left cheek, remained slightly red. The lowest of the three scars remained puckered due to pin cushioning. He was of opinion that none of the scars would be amenable to scar revision surgery. As a result, the plaintiff had been left with permanent scarring on her face of relatively good quality. He thought that it was unlikely that the scars would improve hugely with the further passage of time.
11. As noted earlier, the plaintiff did complain of some hearing loss due to the comments which were passed by other members of her family. In relation to this aspect, she was seen by Mr. Peter Walshe, Consultant ENT Surgeon, on 5th December, 2016. Having carried out a thorough examination, he was satisfied that her hearing was entirely normal. She complained of intermittent tinnitus on the left hand side. However, that was very minor and was not causing her any distress. Mr. Walshe felt that it was unrelated to the accident.

His conclusion was that there was no damage to the plaintiff's hearing when he saw her.

12. The plaintiff had also made some complaint in relation to distortion of her vision after the accident. However, from the report furnished by Mr. Malcom Graham, it would appear that there was no damage to her eye sight as a result of the accident.

13. Due to the plaintiff's ongoing complaint of clicking in her neck, she went to see Mr. James Colville on 31st January, 2018. He noted that an MRI scan carried out on 26th October, 2017, had revealed evidence of degenerative disc disease in her cervical spine. The plaintiff stated that she continued to have a problem turning her head to the left. She had had an acute spasm in the left side of her neck in December, 2017, for which she had seen her GP. She had used heat packs, which resolved the problem for her. She stated that there was a constant click in her cervical spine when turning her head, particularly to the left. She had trouble getting comfortable and hence her sleep was disturbed. Examination revealed that there was a limitation of left lateral rotation by 25%. Mr. Colville advised that the plaintiff should undergo a course of physiotherapy treatment in an attempt to regain a normal range of movement and hopefully to resolve the clicking in her neck. He was of opinion that with that treatment, she would return to her pre-accident state within two years from the date of the accident.

14. Finally, one of the most significant aspects of the plaintiff's injuries, was the fact that as a result of the permanent scarring to her face, the plaintiff had suffered psychiatric sequelae. She came under the care of Dr. Anne Leader, Consultant Psychiatrist, who diagnosed that she had suffered an adjustment disorder, with some symptoms of PTSD. In particular, she had lost confidence in herself due to her changed appearance and had lost a considerable amount of self esteem. She had been very nervous of driving, particularly at night. However, this had improved with the passage of time. Dr. Leader noted that the plaintiff was unconsciously holding her left hand over her face during conversation, in an effort to hide her scarring.

15. When Dr. Leader first saw the plaintiff on 20th April, 2017, she recommended that the plaintiff should have four/eight sessions of therapy to help her adjust to the effects of the accident. She next saw the plaintiff on 25th January, 2018. The plaintiff had not had any treatment in the interim. The plaintiff told her that she felt no better since her last visit. The permanency and reality of her disfigurement had hit her hard. She remained very self conscious of her scars when socialising. She continued to avoid night driving. She had residual Post Traumatic Stress Disorder symptoms, although these had improved since she had first seen the plaintiff.

16. She noted that the plaintiff was a divorced woman, who would like to meet a new partner. However, she was very cautious about dating, due to her appearance. Dr. Leader noted that the scarring disadvantages her in almost every area of her life. Her Post Traumatic Stress Disorder symptoms had improved, but had not resolved. The plaintiff would have permanent disfigurement. She was finding it very difficult to adjust to that. She disliked discussing the accident and its consequences. Consequently, Dr. Leader did not think that counselling would be likely to be of help to her.

17. In her evidence, the plaintiff was frank and honest in relation to her injuries. She candidly accepted that any difficulties with her hearing had resolved by the time she saw Mr. Walshe in December 2016. She accepted that when she returned to Dr. McArdle two months after the accident, physical examination of her neck and lower back had been normal. However, she stated that while she may have had a full range of movement in her neck, there was a clicking sensation present since the accident. She accepted that her eye sight difficulties were not related to the accident, but were due to the aging process. It was put to her that it was not her GP, but her solicitor who had referred her to Mr. Cronin. However, I do not think that that is completely accurate, as I note that Dr. McArdle had recommended a referral to Mr. Cronin in her medical report. The plaintiff's main concern was in relation to the permanent scarring to her face. She stated that she was self conscious of this and was aware of it all the time. This was particularly difficult for her because as a divorced woman, she was now facing the prospect of returning to build a social life on her own. She candidly accepted that she had returned to work approximately four weeks after the accident, but stated that she continued to find it difficult dealing with members of the public, for fear that they would be looking at her scarring.

18. The plaintiff stated that she had not had the physiotherapy treatment as recommended by Mr. Colville in January 2018, or the sessions of therapy as had been recommended by Dr. Leader in April 2017, due to the fact that she could not afford these treatments. Also, with work commitments it was difficult to get the time to do so.

19. The court accepts the evidence given by the plaintiff as being an honest and accurate account of the effects of the injuries upon her in the almost two and a half years since the accident. The court has had the opportunity to view the scarring to the plaintiff's face. While the two scars that required suturing, are not raised or discoloured, it is possible to make them out at conversation distance. While one could not say that the plaintiff's face is grossly disfigured by them, I accept that for this plaintiff in her particular circumstances, they represent a significant cosmetic blemish.

20. The court also accepts the plaintiff's evidence in relation to the psychological sequelae which she has suffered. The court is not entirely convinced by the reason given by the plaintiff for not having the therapy which had been recommended by Dr. Leader in April 2017. The court notes that the plaintiff was only unfit for work for a period of four weeks. Thereafter, she was able to continue with her work in the family motor business without interruption. The court was not told what salary she is paid, nor what her outgoings are. Nor does the court know whether her ex-husband is paying any alimony towards the upkeep of her two children. In these circumstances, the court is not convinced that the plaintiff was not able to afford the treatment recommended by Dr. Leader and Mr. Colville. However, the court accepts the content of Dr. Leader's reports in relation to the psychiatric sequelae suffered by her.

21. Taking all of these factors into account and noting that the scarring such as it is today in 2018 will be permanent and will not be amenable to revision surgery, the court awards the plaintiff the sum of €30,000 for pain and suffering to date, together with the sum of €45,000 for pain and suffering into the future. To this must be added, the agreed figure for special damages of €5,550. This gives a total award in favour of the plaintiff of €80,550.