THE HIGH COURT

[2014/2606 P]

BETWEEN

SLAWOMIR MAREK

PLAINTIFF

AND

AGATHA MOCIOR T/A SUMMITTO GARDEN ARCHITECTURE AND LANDSCAPE DESIGN AND KEVIN O'HIGGINS

DEFENDANTS

JUDGMENT of Mr. Justice Bernard J. Barton delivered on the 18th day of December, 2017.

Introduction

1. This is an action for damages for personal injuries and loss arsing from an accident which occurred on the morning of the 17th September, 2012, in the garden of the second Defendant's home at 32 Neville Road, Rathgar, Dublin, 6.

2. The Plaintiff is a Polish national with a limited command of English. He commenced employment with the first Defendant about six months before the accident which occurred while the Plaintiff was attempting to pull a broken branch down from a tree. He had reached the branch by using a step ladder taken from the householder's garage. One of the matters in issue germane to the potential liability of the second Defendant for the accident was whether he had given permission for use of the ladder in connection with the gardening work.

3. A co-employee of the Plaintiff, known to him as 'Pawel', was in charge of operations on site. He held the ladder while the Plaintiff climbed up to see whether the broken branch could be pulled free or would have to be cut down. The height of the branch above ground and the dimensions of the ladder were such that the Plaintiff had to stand on the second last step from the top before he could reach and grab hold of the branch.

4. For reasons which were never satisfactorily explained, Pawel let go of the ladder without telling the Plaintiff who, unaware, continued to pull on the branch which he was unable to free. In the process the ladder became unstable, it fell one way and the Plaintiff the other. He landed awkwardly on the ground as a consequence of which he sustained bilateral wrist injuries, a transient injury to his right ulnar nerve and a minor head injury.

5. Although both Defendants delivered full Defences, the first Defendant did not participate in the trial. On the 18th October, 2006, she wrote to the Plaintiff's solicitors informing them that she would not be defending the case as she had moved to live abroad and could not afford legal representation. The Court was satisfied at the outset of the trial that the first Defendant had been notified and was aware of the hearing date. She did not appear and was not represented. The claim against the second Defendant was fully contested.

Background

6. The first Defendant carried on the business of landscape design and garden maintenance styling herself 'Summito Garden Design'. In the year or so before the accident she had provided gardening services to the second Defendant and his wife. Although the Plaintiff was employed to work as a general operative in landscape gardening, he had not received any formal health and safety training appropriate to his duties. Although he had an established work record and a good work ethic, immediately before he took up employment with the first Defendant he had worked as a security guard; he had never previously worked in the horticultural sector.

7. On any view of the evidence it may safely be stated that the first Defendant failed to comply with the relevant provisions of the Safety, Health and Welfare at Work Act 2005 and the Safety, Health and Welfare at Work (General Application) Regulations, 2007, about which more later. In so far as it may be said that he had received any training at all in landscape gardening, when the Plaintiff started working for the first Defendant she informed him that he would learn on the job and assigned him to work with Pawel, whom he understood was a trained and experienced landscape gardener.

Accident locus

8. The second Defendant's home consists of a substantial and long-established semi-detached house occupying a corner site within a large mature garden. At approximately 9 am on the morning of the accident, Pawel and the Plaintiff arrived at the premises to carry out gardening maintenance work. A man, the identity of whom was never established but whom they took to be the owner of the property, let them into the garden via a side entrance. They started to unload gardening equipment, from a van which included a ladder and a hedge/ branch trimmer.

Permission to use the Householder's Ladder

9. The second Defendant's evidence was that he had left home at 8.30 am to go on a school run before either the first Defendant or her employees arrived on site and was unaware that the household step ladder was wanted for use in connection with the gardening work due to be undertaken that day.

10. Shortly after the Plaintiff and Pawel arrived on site, the first Defendant joined them and gave instructions concerning their work duties. The Plaintiff witnessed but was unable to hear a conversation between the first Defendant and a person, whom the he took to be the householder, as a result of which the first Defendant gave instructions to put the company ladder back into the van and to use the householder's ladder, which was kept in a garage adjoining the house. His understanding of why the householder's ladder was to be used was because the firm's ladder was required for another job elsewhere.

11. There was no evidence that the first Defendant inspected or examined the house holder's ladder for the purpose of satisfying herself that it was suitable and safe for use by her employees in connection with the work they were to undertake in the garden. The first Defendant having departed, the householder's ladder was taken from the shed and both men proceeded to get on with their work.

Conclusion on permission

12. At a post accident joint engineering inspection, the second Defendant's wife was reported to have said that she had no memory of having given permission for use of the ladder; she was not called as a witness. On the Plaintiff's evidence, the instructions to put

the employer's ladder back into the van and to use the householder's ladder were given contemporaneously with the conversation between the first Defendant and the householder; in the circumstances and absent any evidence to the contrary, I am satisfied that it is likely permission was given to use the ladder in connection with the gardening work in general. The Plaintiff's initial recollection was that the conversation had taken place between the first Defendant and the man who had let them into the property; however, under cross-examination he accepted that he could not be sure about that after all. For reasons given later, it is more likely permission was given by the second Defendant's spouse.

The Ladder
13. Shortly after the accident the ladder was photographed by a representative of the second Defendant's insurer. These photographs (which were no longer available at the time of trial) were said to show that the rubber inserts in the feet of the ladder stiles were not in good condition and had partially migrated into the stiles. The ladder was subsequently examined and reported upon by engineers retained by the Plaintiff and the second Defendant, at which stage the rubber inserts were missing altogether.

14. During a joint engineering inspection the Plaintiff positioned the ladder under the tree where the accident had occurred. The accident locus with the ladder in position was then photographed. The purpose dimensions and capabilities of the ladder were not in question; it was designed to be used as a full length or as an A-frame step ladder, the format in which it was being used by the Plaintiff. The engineer's reports and photographs were admitted in evidence.

15. The distance from the ground to the top of the ladder and to the step on which the Plaintiff was standing was measured by Mr. Conor Murphy, the Plaintiff's engineer, at approximately 1.6 and 1.2 metres respectively. The ladder was designed and manufactured with the option of having stabiliser bars fitted to provide additional stability when it was being used in certain situations. There was no evidence that stabilisers had been fitted at the time when the ladder had been borrowed some time previously from a local community organisation. It had been used in the garden without mishap for some fifteen or twenty minutes before it was deployed for the purposes of taking down the broken branch.

The Accident Circumstances
16. Neither the Plaintiff nor Pawel could tell from the ground whether the dead branch was merely resting on adjoining branches or whether it was still attached to the tree. In order to ascertain this and whether it could be pulled free or would have to be cut down, Pawel instructed the Plaintiff to climb up the ladder, which he held, as the Plaintiff did as he was instructed.

17. The ladder was so positioned under the tree that on reaching the second last step the Plaintiff had to lean out and upwards in order to reach and grab hold of the dead branch. When he attempted to pull the branch free he and ladder fell. It was not until he had gathered himself after the accident and saw Pawel standing some three metres or so away from him, that he realised he had let go of the ladder.

18. There was some controversy as to whether the hedge/branch trimmer which had been brought on site could have been used to cut the branch down, however, I am satisfied that by the time it came to remove the dead branch, the hedge trimmer was no longer working; it had overheated and had run out of petrol.

19. Both engineers gave evidence at the trial. There was no dispute about the suitability of the ladder as manufactured for general domestic use in or around the home. However, there was an issue as to whether or not the ladder should have been fitted with stabiliser bars for use in the particular circumstances and whether or not the poor condition of the rubber feet and the absence of stabiliser bars had caused or contributed to the accident.

20. Mr Murphy's evidence was that these factors were contributory and that the ladder should have been taken out of use until returned to manufactures specifications. In his view, it should not have been lent to the first Defendant for use by her employees until that was done. While the second Defendant's engineer, Mr. Cathal Maguire, agreed with the general proposition that rubber feet in good condition and stabilizer bars would provide additional stability in certain situations and that the ladder was unsuitable for the use to which it had been put, he had a very different opinion as to why this was so.

21. In his view the unsuitability arose from other factors that had nothing to do with the deficiencies identified by the Plaintiff's engineer. Accepting that the situation may well have been different had the ladder been used in other circumstances, such as on a wet footpath or patio, the unsuitability in this instance arose by virtue of the purpose and use to which the ladder had been put rather than because the rubber feet were in poor condition and/or stabilisers had not been fitted.

22. His explanation was that there were a number of factors involved in the accident, namely, the positioning of the ladder relative to the branch, the height of the branch above ground level relative to the height of the top of the ladder, the necessity of having to stand on and to the left of the second last step before the branch could be reached, the lateral forces generated when the Plaintiff leaned out caught hold of and pulled on the branch and the instability which arose when Pawel let go of the ladder. Significantly, in his opinion, these constituent factors were entirely consistent with the Plaintiff's description of the accident circumstances with the ladder falling one way and he the other.

Conclusion on Accident Circumstances
23. I accept the Plaintiff's evidence concerning the moments leading up to, at the time of and immediately after the accident and find that the expert evidence which best explains the cause of the accident as described by the Plaintiff is that given by Mr. Maguire. While the absence of stabilisers and the apparently poor condition of the rubber inserts in the foot of the ladder stiles may well have contributed to the cause of an accident in other circumstances, in my judgement such are non contributory to the cause of the accident which occurred. Crucially, I am satisfied on the evidence of Mr Maguire that had Pawel continued to hold the ladder it is highly likely that stability would have been maintained and the accident would have been avoided; the Court so finds.

Liability; the case against the first Defendant.
24. The Plaintiff brings these proceedings against the first Defendant in negligence, for breach of statutory duty and breach of contract, particulars of which are set out in the endorsement of claim which will not be repeated or summarised here. Suffice it to say that the thrust of the case is that the Plaintiff was required to undertake his duties without proper training, supervision, competent co-employees or equipment and was instructed to carry out a task which was dangerous with equipment which was inappropriate, inadequate and unfit for the purpose required; in so far as there was any system of work, that was unsafe.

25. The relevant provisions of Article 114 of the 2007 Regulations provide: -

> *"An employer shall ensure that -*

(a) a ladder is used for work at height only if the risk assessment has demonstrated that the use of more suitable work equipment is not justified because-

(i) the level of risk is low, and

(ii) the duration of use is short, or

(iii) existing features at the place of work cannot be altered,

(b) any surface upon which a ladder rests is stable, firm, of sufficient strength and of suitable composition to support safely the ladder, so that the ladder's rungs or steps and any loading intended to be placed on it remain horizontal,

(c) a ladder is so positioned as to ensure its stability during use,

(d)

(e) a portable ladder is prevented from slipping during use by -

(i) securing the stiles at or near their upper or lower ends,

(ii) effective anti-slip or other effective stability devices, or

(iii) any other arrangement of equivalent effectiveness,

(f) a ladder used for access is long enough to protrude sufficiently above the place of landing to which it provides access, unless other measures have been taken to ensure a firm handhold,

(g)

(h) a mobile ladder is prevented from moving before it is used,

(i)

(j) a ladder is used in such a way that –

(i) a secure handhold and secure support are always available to the employee and

(ii) the employee can maintain a safe handhold when carrying a load unless, in the case of a step ladder, the maintenance of a handhold is not practicable when a load is carried, and the risk assessment has demonstrated that the use of a stepladder is justified because -

(I) the level of risk is low, and

(II) the duration of use is short."

Conclusion on Liability; the case against the first Defendant.
26. As already stated earlier, on any view of the evidence and having regard to the findings made, I am satisfied that the Plaintiff has discharged the burden of proof of establishing on the balance of probabilities that the first Defendant was guilty of negligence, was in breach of statutory duty, and was in breach of contract. The Plaintiff received neither safety information nor training in respect of his work duties as required by the Act of 2005 and the 2007 Regulations nor was he provided with a safe system of work, adequate supervision, competent fellow employees or appropriate equipment to enable him carry out his work safely.

27. The first Defendant was a responsible for selecting and supplying the equipment for use by her employees in the course of their employment. Whether purchased, hired or borrowed, it was her responsibility to ensure that the ladder selected was suitable and appropriate to the task or tasks in connection with which it was to be used and that it was not utilised in circumstances, as pertain here, which otherwise rendered its use unsafe.

28. Furthermore, the first Defendant is vicariously liable for the negligence of the Plaintiff's co-employee, Pawel, who, once she departed, was in charge of operations in the garden. It was he who directed the utilisation of the ladder in the manner described, who instructed the Plaintiff to climb up the ladder to ascertain whether the branch could be pulled free or would have to be cut down, who permitted the Plaintiff to stand near the top as he attempted to pull the branch free and who let go of the ladder at a time when he knew or ought to have known that by doing so it would likely result in the ladder becoming unstable thus exposing the Plaintiff to the risk of falling, a risk which had been recognised by him when he held the ladder as the Plaintiff began to climb.

Liability; the case against the second Defendant
29. The Plaintiff's case against the second Defendant is brought in negligence, nuisance, and for breach of the provisions of the Occupiers Liability Act 1995.

30. The kernel of the case pleaded is that the second Defendant supplied caused or permitted the use of a defective ladder which was unfit for gardening purposes, including the removal of the dead branch from the tree and in failing to take reasonable care for the safety of the Plaintiff, to supervise the premises adequately and by creating, causing, permitting or maintaining a hidden trap or danger.

31. The second Defendant gave his evidence in a straightforward and truthful manner; he impressed me as a witness on whose evidence the Court could rely. The ladder in question was not his property; it had been borrowed from a local community organisation

sometime previously. Although aware that the first Defendant was due to the carry out gardening on the day, I accept the second Defendant's evidence that he had already left the premises to go on a school run before the Plaintiff, Pawel and the first Defendant had arrived on site. It follows that the second Defendant was unaware of the request for permission to use the ladder on the morning of the accident.

32. While I accept that a conversation did take place, on my view of the evidence, it is more likely that this was between the second Defendant's wife and the first Defendant. Whether or not the second Defendant was vicariously liable for any negligence on the part of his wife was not advanced or argued but for the reasons which follow, even if there was such a liability she would not have been negligent nor would the second Defendant have been primarily responsible had he given permission.

33. Although it maybe inferred from the request for permission that the second Defendant's wife knew that the ladder was going to be utilised in connection with the gardening work, it does not follow from the conversation, the content of which is unknown, that the second Defendant's spouse had been made aware of, had discussed and had sanctioned the utilisation of the ladder for any particular work or task.

34. In my judgment it is improbable, indeed, highly unlikely, in circumstances where the first Defendant was retained to provide gardening services, that there was any discussion about the way in which those services were to be provided, directed or carried out, rather the first Defendant, who was in every respect an independent contractor, was likely left to get on with the work for which she had been retained.

35. It is not in issue that the Plaintiff was a visitor on the premises within the meaning of the Occupiers Liability Act 1995 (the Act). The duty of care owed by the occupier to a visitor is provided for by s. 3 of the Act as follows: -

> *"(1) An occupier of premises owes a duty of care ("the common duty of care") towards a visitor thereto except in so far as the occupier extends, restricts, modifies or excludes that duty in accordance with section 5.*
>
> *(2) In this section "the common duty of care" means a duty to take such care as is reasonable in all the circumstances (having regard to the care which a visitor may reasonably be expected to take for his or her own safety and, if the visitor is on the premises in the company of another person, the extent of the supervision and control the latter person may reasonably be expected to exercise over the visitor's activities) to ensure that a visitor to the premises does not suffer injury or damage by reason of any danger existing thereon."*

36. I pause here to observe that the statutory duties, liabilities and rights established by the Act in substitution for those at common law are confined to existing dangers and thus are concerned only with the static condition of the premises. See s 2 (1) of the Act; see also *Fitzgerald v. South Dublin County Council* [2015] IEHC 343. It follows that the duty of care under common law negligence principles in respect of the acts or omissions (often referred to as 'activities') of the occupier upon the premises remain unaffected.

37. Whether the obligations on the occupier arise under the Act or at common law, these are not absolute. Subject to other considerations which arise in circumstances of trespass or recreational use, where the entrant is lawfully on the premises, the obligation of the occupier is to behave reasonably whether that is in relation to activities on or the static condition of the premises. As Peart J. observed in *Vega v. Cullen* [2005] IEHC 362, there is no meaningful distinction between the common law duty of care and the 'common duty of care' under the Act.

38. Everyday householders leave independent contractors whom they have retained to provide a service to get on with the work. I dare say, other than perhaps having an interest in being satisfied as to what is on offer and whether that can be delivered, a householder would be surprised, if not astonished, at the proposition that retaining an independent contractor carried with it a responsibility, shared or otherwise, to ascertain the experience or qualifications of the contractor or the contractor's employees, to direct and control the work or service or to ensure that appropriate training, supervision, equipment or materials would be provided to enable the work or service to be carried out safely; such is not the law.

39. Clearly, where the circumstances and nature of the relationship is one which attracts the application of the Safety Health and Welfare at Work Act, 2005 and the Safety Health and Welfare at Work (General Application) Regulations 2007, different considerations would apply but none such involving the second Defendant was established on the available evidence.

40. That is not, however, the end of the matter. Quite apart altogether from the common law and statutory duties owed by an independent contractor to the contractor's employees, a duty of care on the part of the householder to the independent contractor and the contractor's employees may arise at common law in accordance with the principals enunciated by Lord Atkin in *Donohue v. Stephenson* [1932] AC 562.

41. Independently but concomitant with such a duty, the householder qua occupier also owes 'the common duty of care' under the Act in respect of existing dangers on the premises save that liability for such will not attach to the occupier in the circumstances specified by s. 7 of the Act, where the danger was caused or created by the negligence of the independent contractor.

42. It follows that where a householder provides equipment to an independent contractor with the intention that it is to be used for the purposes of executing the particular work, task, or other service for which the contractor has been retained in circumstances where the householder knew or ought to have known that the equipment was defective and/or was unsuitable for such work, task or service, a duty of care at common law arises the breach of which renders the householder liable in damages for any injuries and/ or loss which results.

Conclusion on Liability of the second Defendant

43. In so far as it could be said that the absence of stabilisers and the poor condition of the rubber inserts at the foot of the styles constituted defects in a ladder, which was otherwise sound, these were not on my view of the evidence, for the reasons already stated, causative of the accident. Rather other factors were responsible, including the way and manner in which the ladder was utilised and the instability which arose when no it was longer secured factors for which the first Defendant is solely liable.

44. For completeness, I should add that had the absence of stabilizers and/ or the poor condition of the rubber feet been causative defects in the occurrence of the accident, the second Defendant cannot bear any responsibility at law for the consequences in circumstances where, as here, no duty of care arose on his part. He was never asked for permission, never gave permission and had no reason to believe that the ladder would be used in connection with the work to be undertaken by the first Defendant's employees.

45. Finally, the Court finds that there is no convincing evidence upon which to found a conclusion that the accident was caused by

an existing danger in the static condition of the premises. The gravelled area of ground on which the ladder was placed was neither unusual in a garden nor was it a hazard or danger in itself or in combination with the placement of the ladder. Accordingly, the Plaintiff has also failed to establish a breach of the common duty of care under s. 3 of the Act.

Ruling
46. For all of these reasons and upon the conclusions reached the law requires that the Plaintiff's claim against the second Defendant must be dismissed. The Court will so order.

Injuries and Loss
47. The Plaintiff suffered serious bilateral wrist injuries together with a minor head injury. He was brought to the A&E department of St Vincent's Hospital, Dublin, where he ultimately came under the care of Mr. John Rice, Consultant Orthopaedic Surgeon, who prepared a number of medical reports for the assistance of the Court. These are dated 11th March, 2013, 14th April, 2014, an addendum 28th April, 2014, a final report 24th August, 2015, and a letter dated 10th November, 2015.

48. The Plaintiff was also examined on behalf of the second Defendant by Mr Colin Riordan, Consultant Hand and Plastic Surgeon, who also prepared a number of reports. These are dated 17th November, 2014, 21st July, 2015, and 19th October, 2016. The content of all of the medical reports was admitted as the medical evidence in the case.

49. Immediately after the fall the Plaintiff was momentarily dazed and became aware of very severe pain which developed in both wrists. X-rays taken at St Vincent's Accident and Emergency Department disclosed bilateral distal radial inter-articular fractures together with a fracture of the left Triquetral bone. Both wrists were immobilised in plaster of paris back slabs following which the Plaintiff was discharged home with instructions to return the next day for surgery. However, he had to return to hospital earlier than arranged because of increasing symptoms. He was taken to the operating theatre next morning where he had surgery carried out under general anaesthesia.

50. The fracture of his right wrist was reduced and held with K wires. The left wrist fractures were treated by open reduction and internal fixation with a volar plate. Both wrists were immobilised in protective casts and the Plaintiff was discharged home with instructions to return to the outpatient clinic for follow up.

51. He wore bilateral forearm and wrist casts for a period of seven weeks. On the 7th November 2012, the pins which had been used to fix the right wrist fracture in place were removed. Thereafter, the Plaintiff underwent a course of physiotherapy at St. Vincent's hospital over a three-month period to help him regain movement in his wrists. The Plaintiff advised Mr Riordan at medical review on the 11th July, 2015, that he had had no further treatment to either wrist since that time.

Vocational Consequences of the Injuries
52. With regard to vocational implications of the injuries it was suggested in the course of cross examination that prior to the accident the Plaintiff had been given notice of termination of his employment, a suggestion which he rejected, though his employment was terminated shortly after the accident, an event which he attributed to his inability to work as a consequence of his injuries. Apart from one short period, the Plaintiff was unemployed from the date of the accident until the beginning of February, 2017 when he secured a job in light manufacturing. He brings a claim in these proceedings for loss of earnings up until that time to which I will return later.

Physical Consequences of the Injuries.
53. Apart from the sequelae of pain swelling and discomfort in his wrists arising from the fractures, the Plaintiff, who is right hand dominant, also experienced numbness around the right little finger and reduced sensation in the right ring finger, neurological sequelae which Mr. Rice attributed to a transient injury of the right ulnar nerve.

Scarring
54. The surgery resulted in two 0.3 cm pin entry wounds over the dorsum of the right wrist and a 7.5 cm wound running along the volar aspect of the distal forearm at the site of surgery to plate the fracture of the left wrist. The Plaintiff has been left with fully healed non-tender scarring at the site of the operative wounds which is permanent and visible at conversation distance but about which, to his credit, he makes little if any complaint.

Wrist mobility
55. The fracture injuries had an acute adverse effect on wrist mobility particularly in the early stages of recovery and rehabilitation; an improvement in wrist movement was achieved following physiotherapy treatment but when the Plaintiff was examined by Mr. Riordan in July, 2014 nearly two years after the accident, clinical examination continued to demonstrate stiffness and reduced ranges of motion in both wrists. Active wrist extension was reduced to 50 degrees in the right and to 55 degrees in the left wrist compared with a normal value of about 70 degrees. Active flexion was reduced to 50 degrees in the right and 40 degrees in the left wrist compared with a normal value of about 70. There was no improvement in passive wrist movement and the Plaintiff was continuing to experience discomfort at the extremes of movement. Supination, that is the movement turning the hand side upwards, lacked 15 degrees in both wrists whereas pronation, which is the opposite movement, turning the hand palm side downwards, was normal. Side to side wrist movements, that is radial ulnar deviation, was also normal.

Sensory impairment
56. Mr. Riordan also confirmed Mr. Rice's findings of partial sensory impairment in the volar aspect of the little and ulnar half of the ring finger. He noted, however, that there was no muscle wasting or weakness present in the hand though examination of the right elbow confirmed the presence of a tender spot behind the medial epicondyle suggestive of the presence of ulnar nerve entrapment in the cubital tunnel.

There was evidence of continuing partial sensory impairment in the volar aspect of the little finger and ulnar side of the ring finger.

Functional loss and implications for employment
57. Mr. Riordan assessed the functional loss in each wrist at 5%. He also expressed an opinion on the vocational implications of the injuries for the Plaintiff. While he accepted that certain tasks involving strenuous use of the wrists and hands might result in some ongoing discomfort, his opinion at the time was that the disabilities were not severe enough to prevent the Plaintiff returning to his pre-accident occupation as a gardener, a view with which the Plaintiff took issue and in which he was supported by Mr. Rice.

58. The inter-articular nature of the fractures brings with it likely long-term consequences in the form of post traumatic osteoarthritis the risk of which Mr. Riordan assessed at 30%, though this was unlikely to manifest itself for ten years or thereabouts. When Mr. Riordan last reviewed the Plaintiff on the 4th October, 2016, he noted a significant improvement in the return of sensation to the right

little and ring fingers, however, the Plaintiff continued to experience intermittent pain in both wrists, generally at night or after strenuous use or in cold weather. The Plaintiff also reported experiencing a sharp reflex pain when lifting something with his hands into an elevated position and of ongoing swelling in his left wrist together with a sensation of itchiness

59. Most recent clinical examination by Mr Riordan disclosed continuing residual stiffness in both wrists. Initial X-rays demonstrated significant displacement and disruption of the articular margin bilaterally, but more marked on the left side. In his updated report Mr Riordan expresses the opinion that while the fractures had healed reasonably well, a degree of stiffness and discomfort, particularly with strenuous use, was to be expected.

60. Significantly, he altered his view with regard to the Plaintiff's capacity to return to heavy manual work of any sort, including landscape gardening. Such work would likely involve repetitive strenuous use of the hands which would cause increasing discomfort. That said, certain types of lighter manual work would be possible.

61. It was apparent from his evidence and, indeed, from the medical reports, that the Plaintiff was assiduous in complying with hand strengthening and mobilising exercises advised by his physiotherapist. Nevertheless, when medically reviewed and examined by Mr. Rice in February, 2017 the Plaintiff was continuing to suffer from stiffness in his wrists, difficulty with lifting, and ongoing end of range movements in both wrists.

62. When the Plaintiff was examined by Mr. Roger Leonard, Vocational Consultant retained on behalf of the second Defendant in September 2016, the Plaintiff's grip strength in each hand was measured and he noted that this was reduced on the right side to 59% and on the left to 51% of the average score for a man of the Plaintiff's age. Mr. Leonard considered the results to be a significant reduction in the Plaintiff's grip bilaterally, which he did not think was justified on the medical opinion available to him at the time but that was before the more recent medical examinations. However, it is clear that by then the Plaintiff's grip strength in both hands was described as good with no evidence of wasting of the muscles in either hand.

63. Otherwise the end of range restriction in dorsal flexion and volar flexion in the left wrist and flexion and supination of the right wrist remained unchanged. Mr. Rice noted that the Plaintiff was still suffering from recurrent mechanical pain in both wrists. In his view the Plaintiff was likely to continue to experience the reported symptoms in the long term.

Prognosis
64. Both surgeons accept that the Plaintiff is at risk of developing degenerative arthritis in both wrists; Mr. Riordan assessed the risk at 30% while Mr. Rice describes it as "significant". The degree of pain and discomfort associated with that condition over and above the symptomology currently experienced is not medically quantified but having regard to the nature of the condition and the importance of the wrist to hand movements it seems reasonable to infer that additional symptomology will in all probability arise from the development of that condition in due course.

The Plaintiff's employment history post-accident
65. The Plaintiff gave evidence in relation to his injuries consistent with the reporting set out in the medical and vocational reports, which were also admitted. I am quite satisfied that the Plaintiff had a strong work ethic and that he attempted to seek out alternative employment once he had sufficiently recovered to do so, albeit not in any occupation involving heavy manual work. He did secure one job which involved painting metalwork but this caused a serious aggravation of his symptoms and he had to give it up. He was unable to live in Dublin because of his economic circumstances and moved with his wife to live in Castlerea, Co. Roscommon.

66. I have no doubt that he did whatever he could to rehabilitate himself and that having done so he ultimately secured employment in February 2017 which consists of light work assembling plastic components. Although this involves constant hand and wrist movements, the Plaintiff's employers are very accommodating and in this regard his evidence was that he is permitted to take a break whenever his work duties result in the onset of discomfort or pain in his wrists.

67. I was impressed by the Plaintiff's fortitude and commitment to get on with his life as best he can. He has acquired a driving licence and freely admits that with the passage to time and rehabilitation his symptomology has improved significantly from that experienced over the first year or two following the accident. Nevertheless, he still has the residual symptoms as described in the medical reports, with end of range limitation of wrist movements and an inability to lift objects into an elevated position, symptoms which have reached a plateau and are likely to remain at current levels long term. Any form of heavy duty task provokes pain, however, the Plaintiff felt he could cope with and continue in his present employment.

Claim for Special Damages.
68. The Plaintiff's claim for special damages is confined to loss of earnings from the 20th September 2012 until the 7th February, 2017. The net amount of the claim is €28,374.20. Medical expenses are claimed in the sum of €800 in respect of an MRI scan and consultation fees with Mr. Rice.

69. The Plaintiff was paid injury benefit until the 16th March, 2013, at which stage he applied for and obtained Jobseeker's Allowance. It follows that he was declaring himself available and fit for work, albeit not in an occupation which would involve heavy manual duties. Apart altogether from the limitations imposed by his injuries, by the type of work he could undertake and by his poor command of English, it is clear from the vocational reporting that the move to Castlerea also impacted negatively on his prospects for securing suitable alternative employment.

70. At the time of the accident, the Plaintiff was paid €10 per hour. His average earnings for the seven months up to and including September 2012 was €300 per week. He was paid by the hour and the hours he worked varied from week to week. The Plaintiff accepted that gardening work was seasonal. No evidence was led as to the level of work which might likely have been available to him over the course of the winter but the Plaintiff was quite adamant that there would have been some work available to him, albeit at a reduced level. I accept his evidence in this regard.

71. It follows that but for the injuries it is likely his average weekly earnings would have been considerably less over the winter months after the accident until the following Spring than the average weekly earnings from that time until the following Autumn. As it is, the Plaintiff was paid Injury Benefit from the 20th September, 2012, until the 16th March, 2013 in the sum of €4,794.03, a sum which, in my judgment, it seems reasonable to infer would fairly approximate to the reduced level of earnings which he was likely to have been paid but for his injuries over the Winter of 2012 until the following Spring. Accordingly, and having regard to the amount of injury benefit paid the Court finds that no loss of earnings arises in respect of this period.

72. Turning to the claim from the 16th March, 2013, until 7th February, 2017, Job Seekers Allowance was paid from the 1st March, 2013, until the end of January, 2017 in the aggregate sum of €6,631.77. Having regard to the medical evidence and the the fact that

he was declaring himself fit for work as a consequence of claiming Job Seekers Benefit, I am satisfied that the Court is warranted in approaching the claim for loss of earnings for that period by way of an award of general damages for diminution in capacity to carry out heavy manual work, with the amount paid in respect of Job Seekers Allowance, being taken into account..

Conclusion
73. Mindful that the Plaintiff's limited command of English and the move to Castlerea are factors impacting on job opportunity for which the first Defendant is not liable, I consider that a fair and reasonable sum to compensate the Plaintiff under this heading is €5,000.

Conclusion on General Damages
74. I am satisfied on the basis of the medical reports which have been admitted that the Plaintiff sustained a minor head injury, without concussion, together with intra articular bilateral wrist fractures with a transient injury to the right ulnar nerve. No significant sequelae were experienced by the Plaintiff in relation to the minor head injury. A partial loss of sensation and numbness in the little and ring fingers as a consequence of the transient injury to the right ulnar nerve gradually resolved and has now fully recovered. The bilateral wrist fractures are altogether another matter and may properly be categorised as very serious injuries coming within the severe and permanent range of damages specified in the updated Book of Quantum and to which the Court must have regard.

75. Apart altogether from the post operative scarring described earlier and about which the Plaintiff makes little or no complaint but which is permanent, the Plaintiff has been left in the position where his limitation on end of range movement in both wrists with some swelling in the left wrist, bilateral wrist discomfort and intermittent pain, is likely to continue for the foreseeable future. In addition, the Plaintiff is likely to develop bilateral post traumatic osteoarthritis in his wrists in the long term a condition which of itself is likely to be associated with some level of symptomology.

76. Having regard to the findings made and mindful that the Plaintiff's wrist injuries are bilateral, the Court considers that a fair and reasonable sum to compensate the Plaintiff commensurate with the injuries is €60,000 to date for past pain and suffering and €35,000 for future pain and suffering making an aggregate sum of €95,000 to which will be added the sum of €5,800 in respect of special damages. And the Court will so order.