

THE HIGH COURT

[2006 No. 3641 P]

BETWEEN

NIAMH KELLY (A MINOR) SUING BY HER MOTHER AND NEXT FRIEND GERALDINE KELLY**PLAINTIFF**

AND
MARK LACEY, AUGIS BITINAS
AND
MOTOR INSURERS BUREAU OF IRELAND

DEFENDANTS**Judgment of Mr. Justice Brian McGovern delivered on Tuesday 24th July, 2007**

1. This case is for assessment of damages only. The plaintiff was born on the 23rd February, 1991 and is now 16 years of age.

2. On the 1st August, 2004 the plaintiff was walking on the footpath at Carcur in Wexford when she was struck by a car driven by the first named defendant and owned by the second named defendant. It was a horrific accident in which the plaintiff and a number of her friends were knocked down and the plaintiff herself was pinned under the car for some time afterwards.

3. The plaintiff suffered severe wounds to her abdomen and her left leg. She also suffered injuries to her left forearm and fingers and to the right side of her face. Mr. Mealy the consultant surgeon who treated her in hospital described her injuries as "...massive abrasions and lacerations to her neck, back, chest and abdominal wall. Ms. Kelly also sustained lacerations to her liver and full thickness burn to her left leg." It seems that the burn on the left leg was caused by prolonged contact with the exhaust or some other hot part of the car while she was pinned underneath it. The burn extended right down to her shin bone. For this injury the plaintiff required skin grafts. The donor area was her left thigh and there are noticeable scars where the skin grafts were harvested. These are likely to remain permanent. The leg injury itself is grossly disfiguring involving a substantial portion of her shin and with a huge indentation. This has resulted in a lack of padding or subcutaneous tissue and the texture of the skin is quite different to the surrounding leg. Nothing can be done to improve the situation. The actual disfigurement of her leg and the cosmetic deformity rules out many normal forms of clothing which would be worn by the plaintiff not only in her teenage years and as a young woman but throughout her life. This is a source of great upset to her.

4. The plaintiff's other injuries can be summarised as follows:-

Near her lower lip on the right side of her face there are scars which are pale and not very obvious although they are visible at conversational distance. Above her right collar bone there is a pale triangular scarred area measuring approximately 6.5 cm x 1.5 cm. This scar is quite obvious and disfiguring and again is in a place which would be visible if the plaintiff was wearing any clothing which was "off the shoulder" or involving narrow shoulder straps. Again this is a matter of great upset to the plaintiff and significantly limits her both now and in the future as to her choice of clothing.

5. Across the front of her chest and breast there are several vertical linear scars and some of them are pigmented. The entire front of her abdomen is scarred and the scars run across the width of the abdomen with marked scarring on the left side where a drain was inserted while she was in hospital. On the left side of her abdomen is a deeper area of scarring. On her right shoulder blade there is a 4 x 4 cm triangular patch of scarring which is pink in appearance and has a dirt-ingrained edge to it. This is obvious and unsightly. In the lower thoracic region of the back there are a number of linear scars which are pale in appearance but easily noticeable. On her left knee there is a pale scar with indistinct borders around the medial and superior aspect of the left kneecap which is visible at conversational distance. On the back of her left thigh there is a triangular scar approximately 3 x 3 cm which is discoloured.

6. I have been furnished with a number of medical reports which are agreed between the parties. Mr. Michael Early and Mr. Matt McHugh consultant plastic surgeons both express the view that the scars are permanent and that the best that could be hoped for would be some slight improvement by treating some of the pigmented scars by means of laser therapy. But neither surgeon offers any assurance as to the outcome and it is clear that even such laser treatment would be of minimal benefit.

7. In short the plaintiff is left with an extremely scarred and disfigured body for the rest of her life.

8. I observed the plaintiff give evidence and she was visibly upset when describing the affect the accident has had on her. She does not want to go swimming any more with her friends or does want to go to the beach. She is severely restricted in the type of clothing she can wear and does not like to go shopping with her friends. She is deeply upset with her body image which is completely understandable. Mr. Matt McHugh the consultant plastic surgeon gave evidence and described her injuries as "dreadfully disfiguring". He also described how the indented scar on her left leg could break down in the future because of lack of padding underneath it. He said that as a matter of probability there would be complications with this leg in the future and she must be extremely careful of it. She is no longer able to take part in contact sports. If she bumps her leg at the location of the scar, the scar could break down and become ulcerated and lead to other problems. The plaintiff's mother described how the injuries have affected the plaintiff and gave a graphic description of the plaintiff's days in hospital following the accident when her extensive wounds had to be dressed and when she required skin grafts for her left leg injury. The plaintiff was on a morphine pump for a time while she received such treatment.

9. The plaintiff has been greatly upset by the injuries which she has sustained. The only positive thing that could be said is that her facial scarring is not of great significance or disfigurement so that when she dresses in a way that allows her body to be covered she is not a person who appears to be disfigured to a significant extent. I am also satisfied from the medical evidence that she does have full mobility.

10. The plaintiff was treated at Wexford General Hospital and Mr. Kenneth Mealy the consultant surgeon who treated her is of the view that she made a good physical and emotional recovery following the accident. I have read a report from Ms. Alice McLoughlin a psychologist and counsellor who says that as the plaintiff was at a vulnerable age of 13 at the time of the accident the psychological trauma of being scarred and living with marks on many parts of her body has been particularly pronounced. She says that adolescents are most focused on physical appearance and body image and accordingly the plaintiff has been greatly affected by her scarring. She does however say that the plaintiff has made considerable progress with counselling and has many good periods as she moves on with her life and generally sleeps well at night. But when she is stressed due to normal life experience such as exam pressure or difficulties with peers the trauma of the accident tends to be reawakened. Ms. McLoughlin says that the plaintiff is coping well but that times of stress trigger memories of the trauma. While giving evidence the plaintiff became visibly upset on a number of occasions although she was able to compose herself.

11. In the course of the hearing the plaintiff was brought by her solicitor Ms. Geraine O'Loughlin into my chambers with Mr. Matt McHugh who pointed out the scars on her body.

12. In assessing the general damages in this case I am balancing, on the one hand, the fact that the plaintiff has suffered grossly disfiguring injuries to her body and, on the other hand, she is not suffering any significant physical disability in terms of her general mobility, and I also taken into account that when dressed in a manner which covers the scars on her legs and her abdomen she presents as an attractive and normal looking 16 year old girl because the facial scarring is quite pale and not noticeably disfiguring.

13. Having said that I am quite satisfied that the injuries which she sustained were quite horrendous. Not only were they extremely painful in the immediate aftermath of the accident and during the course of her treatment but she had survived a most frightening accident in which her life was at risk. Her body has been grossly disfigured by the accident and while many of the injuries can be covered up this cannot diminish the grievous problems the plaintiff has and will have for the rest of her life on the issue of her body image. She cannot dress in the way that most of her peers dress and in the way she would like to dress. She will never be able to dress or buy clothes with the freedom that other women of a similar background to her can do. In short the accident has had and will have a profound affect on her life for which she can only be compensated by substantial damages.

14. For pain and suffering to date I award a sum of €150,000. For pain and suffering into the future I award €150,000. The special damages have been agreed at €18,275 and I also award that sum.