

THE HIGH COURT

[2011 No. 7570 P]

BRANDON DARGEN BURGESS (SUING BY HIS MOTHER AND NEXT FRIEND, LINDA BURGESS)

PLAINTIFF

AND

JAMES MULHOLLAND

FIRST NAMED DEFENDANT

AND

SOUTH DUBLIN COUNTY COUNCIL

SECOND NAMED DEFENDANT

JUDGMENT of Ms. Justice Irvine delivered on the 21st day of December, 2012

1. The plaintiff in these proceedings is a young man who was born on 3rd August, 1985 and resides with his parents and siblings at Ard More Court, Brookville, Tallaght.
2. The within proceedings arise out of a road traffic accident which occurred at approximately midday on Saturday, 8th November, 2008, on the Tallaght Bypass at its junction with Killinarden Way, a junction controlled by traffic lights.
3. The plaintiff, who had just turned 13 years of age at the time and was well familiar with this very major junction, had been staying with his grandmother in Killinarden the previous evening. He was making his way home to his own house on the far side of the N81 and was crossing at the aforementioned junction when he was struck by a vehicle driven by Mr. Mulholland, the first named defendant, which at the time of the impact, was travelling in what is commonly described as the overtaking lane of the highway travelling in the direction of Blessington. It is not disputed that before he was struck by Mr. Mulholland's vehicle the plaintiff had made his way across two of the three traffic lanes which are present at that junction.
4. It is not really in dispute that what probably happened on this occasion was that the road traffic lights were red for traffic coming out of Dublin and going in the Blessington direction. While the lights were red, the plaintiff left the footpath and when he was approximately half way across the roadway the lights changed to green and he, recognising this fact, picked up speed and was struck by the front passenger wing of Mr. Mulholland's car as he emerged from behind the front of the vehicle which had been in the centre lane of traffic.
5. In the days leading up to 8th November, 2008, the second named defendant ("the local authority") had been carrying out substantial road works at the junction and these appear to have been for the purposes of renewing and upgrading the pedestrian crossing. From the photographs produced in evidence, it is clear that significant works were taking place on what was the original footpath and roadway at the corner of the junction from whence the plaintiff commenced his journey prior to his accident.
6. The plaintiff maintains that he was injured due to the negligence of the local authority in the manner in which it failed to make proper and safe provision for him to cross this national route during the construction works. He emphasised the fact that the junction is located in a densely populated residential area where it is used by all sectors of the community, both young and old. Further, having moved the pedestrian crossing area forward in the Blessington direction by approximately 8ft, it allegedly failed to adequately position the temporary traffic light and its pedestrian signal box so as to enable him, as he had always done before, make his way across this wide and dangerous roadway.
7. The plaintiff also maintains that the local authority failed to provide adequate road signage to warn vehicles approaching this junction of the altered layout so as to ensure that all drivers would adjust their speed to take into account any additional risks that might arise by virtue of such road works.
8. Further allegations of negligence were maintained by the plaintiff against the local authority relating to the manner in which one of its employees, a Mr. Sutcliffe, now deceased, and for whose actions it is vicariously liable, drove and/or managed one of its trucks on the day in question. It is maintained that Mr. Sutcliffe brought a local authority truck to a standstill approximately 25ft beyond the demarcated stop line for the junction as a result of which he not only interfered with the Plaintiff's ability to cross at the designated temporary crossing with a full view of the traffic to his right but also obscured his view of the pedestrian red/green man signal which he ought, in normal circumstances, have been able to see on the traffic signal on the central traffic island.
9. The final assertion of negligence against the local authority relates to the condition of the horn on the local authority vehicle being driven by Mr. Sutcliffe. It is maintained that the horn on that vehicle was defective. Accordingly, when Mr. Sutcliffe became aware of the change in the lights from red to green and of the plaintiff's presence on the crossing and Mr. Mulholland's approach in the overtaking lane he was unable to sound his horn to warn the plaintiff of his approach.
10. As against Mr. Mulholland, it is maintained that while he was driving within the speed limit, he was, nonetheless, travelling too fast on his approach to the junction, having regard to the nature of the area through which he was travelling. It is alleged that he was not keeping a proper lookout and that he ought to have noticed the plaintiff approaching the junction from Killinarden Way and proceeding across the first lane of the highway before he became obscured behind Mr. Sutcliffe's vehicle. Finally, it is alleged that Mr. Mulholland negligently failed to notice the lights change from red to green in his favour as he approached the junction and in particular failed to notice that the other vehicle or vehicles in the centre lane had not moved in response to the signal change, thus alerting him to the possibility that there might be a pedestrian on the junction who had not completed their crossing.
11. The local authority maintains that it was not negligent in relation to the management of the roadworks and claims that the plaintiff's injuries do not arise as a result of any negligence or breach of duty on its part. It maintains that the plaintiff had access to the signal box controlling this junction and that he ought, regardless of which way it was facing, to have deployed it. The local authority contended that the plaintiff ought to have known, regardless of his ability to see the pedestrian crossing signal on the central island, that he could not have had the benefit of a green man traffic signal if he had not deployed the controls on the signal box as it was what is described as an "on demand" sequence. It contended that the plaintiff should have sought to deploy the signal and then have waited until he actually had sight of a green pedestrian signal before commencing to cross the junction. It was also alleged

that when the lights changed as he proceeded across the roadway, he should have known better than to pick up speed when he could not see beyond the driver's wing of Mr. Sutcliffe's vehicle. Accordingly, it submitted any liability for the plaintiff's injuries must rest either with Mr. Mulholland or the plaintiff.

12. Mr. Mulholland maintained that he was not negligent in respect of the plaintiff's injuries and that these were caused either by his own negligence or by the negligence of the local authority by reason of its failure to ensure that there was a safe temporary crossing place for pedestrians while they were carrying out roadworks at the *locus in quo*.

13. Because the plaintiff sustained a head injury in the course of the collision he was not in a position to give much evidence as to what precisely occurred on the day in question. However, the court had significant assistance in this case due to the fact that the plaintiff's collision was witnessed by a number of motorists who were stationary and observing the junction at the time. I do not intend to recite in this judgment all of the evidence given by each of these witnesses. It is sufficient to say that the court heard evidence from a significant number of witnesses. It heard evidence from Mr. John Lowe and Mr. John Farrell, both of whom were stationary in their vehicles facing the city centre, but in the right-hand lane, intending to make a right turn up into Killinarden Way at the time of the collision. The court also had the benefit of evidence from Mr. Frank Judge, who was stationary in his vehicle on the speed ramp in Killinarden Way. He was a number of cars back from the junction and because of some delay at the junction he also witnessed the collision. Apart from these witnesses, the court heard from Sergeant Lawlor who had carried out an investigation into this accident, from Garda O'Connell who interviewed Mr. Mulholland after the accident and also from three consulting engineers retained by the respective parties. In addition, the court had the benefit of a number of statements including two made by Mr. Sutcliffe prior to his death, albeit that his evidence, as set out in these statements, could not be challenged by any of the parties.

14. Having considered all of the evidence, it appears to me that the liability decision in this case very much depends upon the conclusion I reached in relation to a number of disputed facts, the most important of which are:-

- (i) the likely stationary position of the local authority truck driven by Mr. Sutcliffe;
- (ii) the likely location and positioning of the temporary road traffic light holding the signal box governing the pedestrian crossing;
- (iii) the extent of the traffic in the centre lane behind Mr. Sutcliffe's vehicle at the time of Mr. Mulholland's approach to the junction; and
- (iv) whether there was any stationary traffic in the inner lane of the three lanes as the Plaintiff sought to commence his passage across the roadway.

15. I now propose to set out my findings of fact and the more significant aspects of the evidence which have informed each decision.

- (i) I am satisfied that the plaintiff had satisfactorily traversed this junction, often several times a day, in the year or two leading up to 8th November, 2008 and that it was his normal practice to do so with the assistance of the pedestrian crossing signal. I accept his evidence and that of his mother in this regard.
- (ii) From the plaintiff's own evidence and that of Mr. Farrell, Mr. Lowe, Mr. Judge and the written statement of Mr. Sutcliffe, I am satisfied that on the day of this accident, the plaintiff did not seek to deploy the pedestrian signal which controls the pedestrian crossing to which I have earlier referred.
- (iii) I am satisfied that the position of the temporary traffic light which is seen in the photographs suspended in a concrete block was, on the day of the plaintiff's accident, in the same position as that depicted in photograph No. 6, taken by Rowen Engineering Consultants on Monday, 10th November, 2008. In reaching this conclusion, I have compared this photograph with the photographs taken on the day of the accident. These show the pedestrian entry from the footpath onto the roadway to be in precisely the same position as that which is depicted in the photograph of 10th November. I therefore think it is highly likely that the road traffic signal was in the same position on both dates. Further, the uncontested evidence was that there were no roadworks carried on over the weekend. Hence, there would have been no reason for the layout of the crossing to be changed between Saturday, the day of the accident and the following Monday.
- (iv) Given that the traffic light was in the position just mentioned on the day of the accident and in circumstances where the signal box is fixed to the upright of the traffic light, I am satisfied that the signal box was, on the day of the accident, facing towards the Dublin traffic rather than either facing the pedestrian that might be approaching the crossing or turned such that it would readily present to a pedestrian actually standing preparing to cross.
- (v) I am satisfied that the only access the plaintiff had to the crossing on the day of his collision was from the left hand side of the traffic signal shown in photograph No. 6, taken by Rowen Engineer Consultants on 10th November, 2008. The plaintiff was not able to cross at the normal crossing point which is demarcated by the white lines to the immediate right of the traffic signal shown in the photograph of the 5th November, 2008 and which is to be found at photograph No. 2, divider 1.
- (vi) I am satisfied on the balance of probabilities that Mr. Sutcliffe brought his truck to a standstill in the centre of the three lanes of traffic and that when he did so the front of his vehicle was about one foot back from the broken white line shown in photograph no 6 divider 3 dated the 10th Nov 2008. This is borne out by the evidence of Mr. Farrell and Mr. Lowe and is in some respects corroborated by the statement of Mr. Sutcliffe. I think it is much less likely that the truck was in the inner lane or stopped in the position identified by Mr. Judge in evidence. Even though he may have been closer to the locus than Mr. Farrell or Mr. Lowe, I think they were at a better angle to judge Mr Sutcliffe's position, apart from the fact that this is the lane in which Mr. Sutcliffe himself stated he stopped his truck.
- (vii) I am satisfied that there was probably a line of traffic stopped behind Mr. Sutcliffe's vehicle at the time when Mr. Mulholland was making his approach to the junction. This is the account that Mr. Mulholland gave to Garda O'Connell on 1st January, 2009. I tend to prefer this evidence to the oral evidence given by Mr. Farrell in the course of the proceedings to the effect that he believed that Mr. Sutcliffe's vehicle may have been the only vehicle in the centre lane. I believe that Mr. Mulholland's evidence is somewhat supported by the statement that Mr. Farrell made to An Garda Síochána on 21st November, 2008, when he stated that the Council truck was "first in queue at the lights" and Mr. Sutcliffe's statement that he was "the first in line in my lane" heading straight for Blessington. Further, Mr. Sutcliffe in his

statement to An Garda Síochána made it clear that he had been stopped at this light for about 30 seconds prior to it changing to green. I think it is highly likely that over that period of time on a Saturday other vehicles would have reached the junction and formed a line in the central lane. I think it would be highly unlikely, having regard to the lengthy traffic sequences which have been outlined to the court in the course of evidence to believe that only two vehicles came to a standstill at this junction while each of the other two traffic sequences were completed.

(viii) I am satisfied that prior to the collision, there was also a vehicle stopped in the first of the three lanes of traffic i.e. the lane designated for traffic intending to turn left into Killinarden. I make this conclusion from the statement of Mr. Sutcliffe.

(ix) I am satisfied that at the point of impact Mr. Mulholland was travelling well within the speed limit and at a maximum speed of 29 Km per hour.

Decision on the Liability Issue

16. Of importance to the liability issue in these proceedings is the fact that the plaintiff's accident occurred at a road traffic junction in a built up area. The junction where the plaintiff was crossing at the time he was knocked down by the first named defendant's vehicle is a crossing situated in the middle of two residential communities. This fact would be obvious to anybody driving through the area without any prior knowledge and would have been particularly known to the local authority which, at the time of the plaintiff's accident, was reconfiguring the traffic lights at the junction. As can be seen from the photographs, the new configuration of the crossing has introduced a range of barriers at the edge of the pavement and on the central island indicative of the fact that it was well understood that this crossing is used to join these residential communities to each other and as such was likely to be used by young children trying to cross two sections of roadway, each spanning three full lanes of traffic on a national route in an 80km speed limit zone.

17. In these circumstances, it was incumbent upon the local authority when planning to redevelop this junction to make a traffic plan to ensure that all motorists approaching this junction would be doing so with particular care having regard to road works and any confusion that might be generated by them. It was also mandatory for the local authority to have a plan to ensure that a pedestrian crossing of the same standard as would be expected in the absence of road works was available to all pedestrians potentially using the crossing in the course of these road works.

18. It goes without saying that regardless of the speed limit on a road such as this, there is a duty of care on every motorist driving through a built up area to keep a vigilant eye out for any pedestrians that might emerge onto the road way so as to create a hazard and to drive in a manner sensitive to the actions of other drivers in and about an area which incorporates a pedestrian crossing. It is also obvious that regardless of the presence or absence of any road works, a motorist must not bring their vehicle to a stop on a junction or a pedestrian crossing where it is likely to cause a hazard for a pedestrian. The motorist's obligation is to bring their vehicle to a stop behind the white line which designates the stop line at any such crossing so as to afford both the motorist and the pedestrian a clear view of each other's movements.

19. I am satisfied that the local authority was grossly negligent in a number of respects in relation to its management of this dangerous junction as of the date of the plaintiff's accident. Firstly, in setting up an alternative pedestrian crossing, it did so in circumstances where it made it extremely difficult for a pedestrian to access the pedestrian signal box to avail of what is commonly described as the "green man" phase provided for within the traffic light sequence. The pole upon which that signal was mounted was located amongst road traffic cones and other debris on an area of broken ground adjacent to the roadway. The location of the traffic light pole on which the pedestrian signal box was mounted was so positioned that any pedestrian trying to access it would have to try to reach their hand around in a blind type of fashion in order to try to depress the signal by exerting pressure on the glass plate to the front of the signal box.

20. I am satisfied that it was reasonably foreseeable that a pedestrian of thirteen years of age approaching this junction and seeing the location of the signal box might reasonably have concluded that it was not operational or that he might not be able to deploy it and might instead favour crossing the junction at a time when the traffic appeared to him to be stopped, albeit that he did not have the benefit of a green pedestrian signal showing in his favour. It was vital, according to Mr. Wood, Consulting Engineer, that the pedestrian signal box should stand out and present favourably to the pedestrian as they approach or arrive at the crossing.

21. The local authority's negligence in respect of the configuration of the temporary pedestrian crossing was further severely compounded by the negligence of its servant or agent, Mr. Sutcliffe, in his driving the local authority truck. He drove this vehicle which has a cab that is 83 inches high almost 25ft beyond the stop line which can be seen clearly in Photograph C11 of 10th November, 2008, and almost up to the dotted white line which is apparent in that photograph. The effect of his breach of duty in this regard was that the plaintiff's intended path of travel across the temporary crossing was impeded, but more significantly, the positioning of his vehicle made it impossible for a pedestrian of the plaintiff's height to see clearly the pedestrian red/green man signal on the traffic light on the central island to which he had intended travelling. In this regard, I think it was more than reasonably foreseeable that a young man such as the plaintiff this junction in circumstances where his line of sight to the red/green man signal is impeded and where he did not have ready access to the signal box controlling the pedestrian crossing and when traffic was stationary in his favour would decide to cross the roadway without seeking to deploy the pedestrian signal.

22. I reject the submissions made by counsel on behalf of the local authority to the effect that it was legitimate to expect that the plaintiff in such circumstances would seek to deploy the pedestrian signal and wait for the stationary traffic which was then present on the junction to clear such that he could see that signal and ultimately wait until the signal turned green in his favour. This is a submission that might have carried more weight in the absence of the stationary traffic of Mr. Sutcliffe which was occluding his view of the pedestrian signal on the traffic island. I believe that the scenario contended for by the local authority is one which involves a counsel of perfection on the part of a thirteen year old boy faced with a very unusual situation.

23. Insofar as Mr. Mulholland is concerned, I have to concern myself with the extent to which he, if keeping an adequate lookout and driving at an appropriate speed, might have seen the plaintiff such that he could have taken evasive action. In this regard, it is relevant to note that a motorist travelling in the overtaking lane who is 100m from this junction should have relatively unimpeded view of the junction and should have a sight line that will allow him see a pedestrian walk across approximately 18ft of margin or footpath as they approach the crossing from Killinarden Way. The first of the traffic lanes at the stopping line is 9.6ft wide according to Mr. O'Keeffe and the centre lane which includes the cycle lane is a further 11.3ft wide. These are probably the relevant widths when coming to consider Mr. Mulholland's potential line of vision. A pedestrian of the plaintiff's age walking at a normal pace should cover a distance of 5ft per second.

24. I believe it would be an exceptionally hard finding in the present case if I was to find any liability on the part of Mr. Mulholland, having regard to the findings of fact which I have made. I am satisfied that the reality of the situation from Mr. Mulholland's perspective is that even keeping a proper lookout towards the footpath that he probably had no realistic prospect of spotting the plaintiff either on the footpath or on the roadway before this impact. Firstly, there was the parked car in the first lane, then there was possibly six or seven vehicles in the centre lane which would have interfered with his line of sight as he approached the junction. Further, he was driving a Toyota Carina which is an exceptionally small car which, depending upon the traffic around him, might further inhibit his visibility.

25. It is not in dispute that having regard to the width of the roadway where the point of impact occurred, it would have taken the plaintiff at least five seconds at a normal walking pace to make his way across the first two lanes of traffic and it is during this period that Mr. Mulholland was making his way cautiously towards the junction. I believe that his view of the plaintiff, once he had commenced crossing the roadway would have been almost completely obscured by a combination of the vehicle which Mr. Sutcliffe states was in the innermost lane and the truck and six or seven other vehicles which would have taken up the first 60 or so feet of the centre lane. Consequently, I believe that the only possibility Mr. Mulholland had of noting the plaintiff's intention to cross was when he was more than perhaps 100m from the junction and whether he would have any sight of the plaintiff on the footpath would have been entirely dependent upon whether or not there was any traffic moving to his left. I believe it would be a very harsh judgment on Mr. Mulholland, having regard to his speed of approach to this junction which was modest in the extreme to find him culpable or blameworthy in respect of the plaintiff's injuries.

26. My only real difficulty with Mr. Mulholland's evidence is that he does not recollect the traffic lights turning from red to green but this is no reason to find liability against him. It may be the case that the lights changed almost immediately the plaintiff stepped onto the roadway and that the rest of the traffic, noting the plaintiff's presence, stayed put for several seconds to allow him complete his journey. In that scenario the lights would have turned green three or four seconds prior to Mr. Mulholland's arrival at the junction.

27. I also believe it would be to impose a false duty of care upon Mr. Mulholland to suggest that having approached this junction with a green light showing in his favour and driving at approximately 29km an hour, that he ought to have brought his car to a standstill as a result of seeing traffic in the central lane in a stationary position. Whatever about this argument being sustainable had Mr. Sutcliffe's vehicle been stopped at the pedestrian crossing, his vehicle was in fact almost 25 ft. past the stop line and Mr. Mulholland felt that as he approached, the traffic was moving slowly. By stopping his vehicle, no other action on Mr. Mulholland's part would have avoided this collision and I believe it is too onerous an obligation to suggest that Mr. Mulholland ought to have stopped in the circumstances that pertained. Looking at the concept of blameworthiness, I do not believe that Mr. Mulholland is blameworthy in respect of the plaintiff's injuries.

28. I have considered the submissions made by counsel on behalf of both defendants in relation to whether or not and if so the extent to which I should find the plaintiff to be guilty of contributory negligence. Mr. Keane, S.C., on behalf of the local authority has relied upon the plaintiff's prior knowledge of the junction to the effect that the pedestrian sequence is only available on demand. He submits that he ought to have sought to deploy the signal on the traffic light standard regardless of the position in which it was located or the direction in which it was turned. He submitted that at thirteen years of age, he should have waited for Mr. Sutcliffe's vehicle to clear the junction and to have ensured that he had a green pedestrian light in his favour before he moved off. Further, the lights having changed against him he should have stopped and looked beyond Mr. Sutcliffe's vehicle before proceeding across the overtaking lane. Mr. Reidy on behalf of Mr. Mulholland made similar submissions.

29. Having considered the evidence and the submissions made on the part of the defendants, I do not believe that I should find any contributory negligence on the part of the plaintiff who was thirteen years of age at the time and found himself faced with a relatively inaccessible signal, an invisible pedestrian light and a grossly impeded crossing. I do not believe that he took an unreasonable decision, when the traffic appeared to be stopped at the junction to proceed to walk across the roadway. Further, when the lights changed against him I accept the submission made by counsel on behalf of the plaintiff that he then had a Hobson's choice. He was at risk if he moved. He was at risk if he turned back or moved forward. Accordingly, having concluded that it was not unreasonable for him to move from the footpath, I do not believe that I can hold him contributorily negligent for anything he did thereafter.

30. In the foregoing circumstances, I would apportion liability 100% as against the local authority.

Injuries

31. As a result of the impact, the plaintiff sustained multiple injuries. He was taken by ambulance to Tallaght hospital where his initial Glasgow Coma Scale was twelve. His condition deteriorated and he became unconscious. Examination disclosed the following injuries:-

- (i) a fracture to the right tibia and fibula;
- (ii) a fracture to the right humerus;
- (iii) numerous soft tissue injuries to the head and scalp;
- (iv) frontal contusions to the right occipital region with a fracture extending to the petrous temporal bone; and
- (v) compound fractures to the facial bones.

32. The plaintiff was admitted to the neurosurgical intensive care unit for intracranial pressure monitoring in Beaumont Hospital. Because of a rise in pressure he subsequently underwent bilateral decompressive craniectomies. His tibia and fibula fractures were also aligned using an external fixation device and his left arm fracture was treated conservatively.

33. The plaintiff remained intubated until 22nd November, 2008. In early 2009, he was admitted to Crumlin Hospital for the fitting of a tailor special frame to the fractured right leg and was subsequently discharged and returned to Tallaght Hospital in April 2009.

34. As a result of all of the aforementioned injuries, the plaintiff was out of school for approximately a year following his accident. He has made a very good recovery in respect of the orthopaedic injuries to which I have just referred, but it is the medical opinion of Mr. Keever, consultant in Accident & Emergency medicine, that he might nonetheless be at risk of developing arthritis as a result of some of the fractures. The plaintiff also experiences pain in his right arm occasionally and he has been left with a significant scar to his head which is not apparent at the present time due to the fact that it is covered by his hair. However, should his hair recede in the future this scarring is likely to cause him substantial disfigurement. He also has scarring to his right leg at the sites where the external fixating device used to realign his tibial fracture.

35. I am satisfied from the evidence of Mr. Pidgeon, Consultant Neurosurgeon, that the behavioural problems which the plaintiff has experienced since his accident which include mood swings, difficulty with temper control, lack of concentration, disinterest as to what the future holds for him and some degree of depressive symptoms are as a result of the brain damage which he sustained in this road traffic accident. This is a case in which the CT scan carried out in Beaumont Hospital has demonstrated encephalomalacic changes i.e. loss of brain substance, in both frontal lobes and that the plaintiff's behaviour since this accident is typical of that type of injury. Mr. Pidgeon stated that he would be surprised that any child who had sustained this type of injury would not have the type of symptoms which were well described by the plaintiff's mother and seen in the plaintiff's own evidence. Mr. Pidgeon advised me that the plaintiff should not participate in any contact sports, and in this regard, I note that he was an enthusiastic participant in Tai Kwando and in soccer prior to this collision.

36. I am satisfied that the plaintiff will have a completely different type of future as a result of the head injury sustained in this accident than he would have enjoyed had he not been involved in the same. I believe it will impact upon him in terms of his social and vocational future and will substantially reduce his enjoyment of life.

37. From a vocational prospective, I accept the evidence of Ms. Coughlin that the effect of this accident on the plaintiff is that he left school without completing his Leaving Certificate as he would otherwise have done. He is a boy who apparently has an overall profile on a neuropsychological basis that is within the high to average range of ability. Notwithstanding efforts on the part of the defendants to suggest that the plaintiff had difficulties at school prior to this incident, I am entirely satisfied from his school records that he was an able, affable and enthusiastic student, well capable of achieving a good Leaving Certificate had he not been involved in this collision. He was a good student in the years leading up to this accident, albeit that he had some difficulties in the course of his early schooling. However, these were limited and appear to have been largely overcome by repeating a year and some additional tutoring.

38. I am satisfied that but for the collision the subject matter of these proceedings that the plaintiff would certainly have successfully completed his Leaving Certificate and may have gone on to third level education. However, in the current economic climate I tend to believe that on the balance of probabilities he would not have gone on to third level education but would have taken up employment probably as a skilled worker and might have hoped to have earned something in the region of €30,000 *per annum* or thereabouts.

39. I am satisfied from the evidence of Ms. Coughlin that the plaintiff now suffers from a number of very significant problems. Firstly, he has left school without the benefit of a Leaving Certificate and is uncompetitive within the present work market, having regard to his lack of any specific qualifications or training. He is also lacking in motivation and despite his parents best efforts they have found it impossible over the years to get him to attend school. Further, regardless of their engagement with a number of Social Services and vocational agencies, the plaintiff has not been agreeable to participation in any type of course that might improve his prospects of obtaining work. Most importantly, even if the plaintiff manages to obtain some type of qualification or training and then is successful in obtaining employment, his psychological problems are such that he may find it difficult to hold down employment. Accordingly, at the moment, he is in, what Ms. Coughlin describes as a no-man's land and the longer this goes on, the more difficult the plaintiff will find it to get into the work market.

40. In coming to my conclusions in relation to the plaintiff's vocational prospects, I have taken into account Mr. Pidgeon's evidence that all of the recovery following traumatic brain injury takes place within the first eighteen months. The residual psychological problems are permanent.

41. I am going to assume that but for the accident the subject matter of these proceedings that plaintiff would have worked until he was 68 years of age. I believe that he would have been within the category of worker that could be described as skilled or semi-skilled and that he would earn on average €30,000 *per annum*. I am also going to assume that the plaintiff would have required some degree of training to obtain employment at this rate of pay and that his earnings would have started when he was nineteen years of age. Accordingly, but for this collision, I am satisfied that the plaintiff potential total earnings to age 68 may be calculated by multiplying his net weekly loss i.e. €478 by a multiplier of 1339 giving a total sum of €640,042.

42. Having regard to the injuries which he has sustained in the present collision I believe that the plaintiff will only now work on an intermittent basis for the rest of his working life. The defendants did not call any evidence to gain say, Ms. Coughlin's view that the plaintiff will have real difficulty in sustaining employment because of his psychological injuries and her views in this regard appear to be well supported by Mr. Pidgeon's medical evidence. Accordingly, I am going to assume, for the purposes of assessing the plaintiff's future loss of earnings that he will now only work for approximately 25% of the time between now and when he is 68 years of age. I am also of the view that because he is now unlikely to obtain any further training that his likely net weekly income, during the periods when he does work, will be something approaching €400 *per week*. Accordingly, in trying to assess the capitalised value of those sums that will be earned by the plaintiff between now and 68 years of age, I have taken a net weekly loss as advised by Mr. Tennant, Actuary, of €100 *per week* and multiplied that by the multiplier which is appropriate to a period commencing now and ending when the plaintiff is 68 i.e. 1440. On that basis, the plaintiff's future income generating capacity is capped at €144,000. Subtracting this €144,000 from the plaintiff's potential total losses gives a figure of €496,042. I then must take into account those exigencies which are referred to in the court's decision in *Ready v. Bates*. Taking these into account, particularly having regard to the nature of the employment which the plaintiff would have had but for this accident and which I think will be reasonably precarious for many years into the future, I feel that I should allow a total sum of €375,000 in respect of loss of earnings.

43. To the aforementioned figures must be added the agreed special damages of €176,818.86. For pain and suffering to date I will award a sum of €150,000 and I will award a further sum of €125,000 for pain and suffering into the future making a total award of €275,000 in respect of general damages. This should make the total award a sum of €826,818.86.