Neutral Citation: [2016] IEHC 295

THE HIGH COURT

[2015/172 SP]

IN THE MATTER OF AN GARDA SIOCHANA (COMPENSATION) ACTS, 1941 AND 1945 AND

BETWEEN

DARYL MULLEN

APPLICANT

AND

THE MINISTER FOR PUBLIC EXPENDITURE AND REFORM

RESPONDENT

JUDGMENT of Mr. Justice Bernard J. Barton delivered on the 5th day of May, 2016

1. The Applicant was born on the 28th of May 1978. He is married and resides at Slieve Bracken, Gortlee, Letterkenny, Co. Donegal. On the 9th August, 2009 at or near James Street car park, Westport, Co. Mayo, the Applicant was the victim of a vicious assault and battery. That the resulting injuries and loss were inflicted maliciously is not in question and on the 17th June 2015, the Respondent authorised the bringing of these proceedings.

Background

2. The Applicant comes from Tuam, Co. Galway. He realised his ambition of becoming a police officer when he passed out of Templemore in 2002. He was a very physically fit young man; being a regular attendee at his local gym and a committed participant in Gaelic football and soccer. A marriage in 2004 did not last and was subsequently annulled. He met his present wife, also a member of the force, in 2008. They married in 2013 and have started a family.

3. On the date of the assault the Applicant was on plain-clothes duty with a unit of the drugs squad in Westport where a street festival was taking place. There were a large number of people in the town. He and his colleagues were involved in carrying out searches for illicit drugs. The Applicant saw a group of young men behaving suspiciously. He identified himself as a police officer; the group scattered and, as it did so, he ran after one individual who appeared to be holding a suspicious implement under his arm. Just as the Applicant caught up with the assailant and was attempting to grab hold of his arm, the assailant produced a knife which he drove into the left hand side of the Applicant's abdomen; repeating that action several times causing horrific internal injuries in the process.

4. The Applicant began to bleed profusely and developed hypovolemic shock. He was rushed to the operating theatre of Mayo General Hospital where he underwent an emergency laparotomy. This disclosed massive inter-peritoneal bleeding together with a laceration to the splenic pedicle and spleen, a large laceration to the splenic flexure of the colon, two lacerations in the distal part of the jejunum, a laceration of the mesentery of the colon and a retro-peritoneal haemorrhage. An emergency splenectomy, a repair of the colonic laceration and a small bowel resection with anastomosis, which was covered with a proximal loop ileostomy, was carried out.

5. Following surgery the Applicant was transferred to the intensive care unit where he remained for a week before being transferred to the surgical ward. A CT scan of the 11th August, 2009 showed a collapsed consolidation of the basal aspects of both lower lobes of his left lung with prominent pleural effusion. The knife entry wound, measured at 7cm, became infected and although he was discharged home from hospital on the 26th August, 2009, the Applicant had to be readmitted 3 days later. A further CT scan taken on the 1st of September showed an increase in the size of the splenic bed haematoma together with an interior abdominal wall sepsis secondary to the infection. This was treated with IV antibiotics. A pig-tail drain was inserted in the left upper quadrant in the bed abscesses. Chest physiotherapy was also commenced. A further pig-tail drain was inserted in the left pleural effusion on the 4th September, 2009.

6. At medical review on the 22nd September, 2009, the pig-tail drains were still discharging significant quantities of pus notwithstanding ongoing chest physiotherapy and IV antibiotics and as a result of which the Applicant was transferred to University College Hospital, Galway. On the 6th of October 2009 a left pleural decortication was performed. In evidence the Applicant described this procedure as being particularly painful. It transpired that he had developed MRSA in the operative wound whilst in hospital; one of the consequences was a loss of approximately three stone in weight.

7. The Applicant underwent an elective closure of his loop ileostomy on the 20th March, 2010. Initially the restoration of his intestinal continuity produced a positive response in bowel function. Unfortunately that was not maintained, became problematic, and requires ongoing treatment with medication. He regained weight but continued to suffer from epigastric discomfort as well as pain in his right shoulder, right hip and lower back. He also developed a lump in the upper left flank which was described as being roughly the size of a golf ball and which would protrude intermittently on certain movements. When provoked, this protruding lump would appear suddenly but just as suddenly would disappear. Difficulty was experienced in finding a comfortable position especially when sitting or sleeping. As a consequence of the splenectomy the Applicant required and was commenced on life long vaccination against infection.

8. As he mobilised and gradually recovered from the serious infection at the site of the main operation wound, the Applicant became more conscious of the pain which he was experiencing in his back, right hip and right shoulder in addition to his abdomen and chest symptoms. These problems were treated with intensive physiotherapy and physical exercises, including cycling; all as part of a rehabilitation program. However, he was unable to return to his hobby of swimming because he found that swimming strokes aggravated his right shoulder pain.

9. There is no issue between the parties as to the seriousness of the physical injuries. In that regard the Court has had the benefit of a number of medical reports which were admitted into evidence. Those for the Applicant were prepared by Mr. Khalid Asgar, Consultant Locum Surgeon, Mr. Mark Regan, Consultant General and Gastrointestinal Surgeon, Mr. Mark da Costa, Consultant Cardio-

Thoracic surgeon, Mr. David O'Gorman, Pain Management Consultant, Dr. John F. Connolly, Consultant Psychiatrist, Mr. Peter Murphy, Consultant Psychologist, Mr. Eamon Rogers, Consultant Urologist, Dr. Enda Harhan ,GP, and Dara Dunne, Chartered Physiotherapist. The reports for the Respondent were prepared by the Chief Medical Officer and Dr Patrick Devitt, Consultant Psychiatrist.

10. Towards the end of 2010 and early 2011 the Applicant had recovered to a point were he was anxious to return to work. He was still suffering from painful symptomology, including involuntary spasms in the area of his left abdomen and chest which could occur on a varying number of occasions during the day. In addition to his physical symptomology, he had also developed significant physiological problems for which he was referred to Dr. John Connolly. When first reviewed by him in February 2010 it was noted that the Applicant complained of irritability, a lack of energy and motivation, disturbed sleep, feelings of being depressed, intrusive thoughts about the assault as well as anxiety and fears for the future. These problems were treated with a combination of medications to which there was an initially positive response. Unfortunately for him the Applicant also experienced certain well-known medical side effects from the medication including erectile dysfunction, which in itself was the cause of distress especially as the Applicant and his wife were anxious to start a family.

11. In February, 2011 the Applicant was certified fit to return to light duties. He applied for and was successful in being assigned to the position of Detective Garda. He was hopeful that his symptoms would gradually improve, especially once he had returned to work. However, his hopes were not to be realised. He continued to suffer from muscle spasms and had developed problems with his gall bladder as well as a left sided hernia. Mr. Regan was hopeful that further surgery, carried out in October 2011, to deal with these difficulties, would prove beneficial. The hernia was repaired and the gall bladder removed. Once again there was an initially positive response to these procedures until the Applicant began to mobilise post-operatively, the muscle spasms returned in a way which he described as being "worse than ever".

12. In early 2012 he re-attended Mr Regan with a view to ascertaining whether there were other surgical options to deal with the ongoing problems. He was advised that muscle tissue could be removed but that that procedure would likely be associated with other problems. His evidence was that he felt Mr. Regan's preferred treatment option was pain management.

13. The failure of the surgery carried out in late 2011 had devastating psychological consequences for the Applicant, not the least of which was that he never again obtained a fitness certificate to return to work. Ultimately he felt obliged to seek a discharge from the force on the grounds of ill health. His application in that regard was supported by the Chief Medical Officer and by Dr. Patrick Devitt.

14. Because of his fear of bodily intrusion by any implements, which developed after the assault, pain-killing injections – which the Applicant receives three to four times per year – are administered under general anaesthetic. The relief derived from these varies in effect and length, generally lasting from one to three months. However, the Applicant is never completely pain-free and, in addition to the symptoms in his back and abdomen, he continues to experience the muscle spasms. It is likely that this symptom profile will persist indefinitely.

15. The Applicant's assailant was successfully prosecuted and jailed for the assault. In 2013 he was advised that his assailant was about to be released from prison and would most likely return to live in the Westport/Castlebar area. The Applicant was very venerable and became very frightened and stressed by this news. He did not want to live in the same locality as his assailant. Consequently, he and his wife moved to be close to her family in Letterkenny, Co. Donegal.

16. Apart from pain-killing medication, including injection therapy, the Applicant also continues to receive counselling and antidepressant medication to help him deal with his ongoing psychological sequelae. In this regard his evidence was that he foresees no end to these problems or any future for himself. Although he can drive short journeys and can go down to the local shops, generally he has become socially withdrawn, remaining most of the time at home; this being the only place where he feels secure and safe. As far as he was concerned, the particular course of cognitive behavioural therapy which he had attended to help him deal with the assault and its consequences vocationally only made matters worse.

17. The Applicant's subjective reporting of his injuries and the consequences of those for him both physically and psychologically were corroborated by his physicians. Unfortunately for him their prognosis for this comparatively young man is bleak indeed.

18. In the course of the proceedings, the parties reached agreement in relation to a number of heads of damage claimed, namely:

(i) Loss of medial and travelling expenses to date;

(ii) loss of earnings to date; and,

(iii) loss of future medical expenses, medication and travelling costs.

However, apart from the assessment of general compensation, the Applicant's claim for future loss of earnings and other pecuniary benefits remained in issue, as did the appropriate multiplier to be applied to that claim.

19. The essential difference of opinion between Dr. Connolly and Mr. Murphy on the one hand, and Dr. Devitt on the other, concerns the Applicant's capacity to recover to a point where he would at least be able to engage in some form of employment. In essence, Dr. Devitt's view was that, especially once the litigation had been resolved and with a continuation of appropriate treatment, the Applicant would gradually improve to a point where he would be able to engage in worthwhile employment of a clerical/administrative nature involving the use of a computer in a non-stressful work environment, whereas Mr Murphy and Dr. Connolly thought that scenario highly unlikely.

20. The Applicant was vocationally assessed on behalf of the Respondent by Mr. Roger Leonard and on his own behalf by Ms Paula Smith. Her report is dated the 25th of May 2015. Mr. Leonard had that report as well as the medical reports prepared on behalf of the Applicant and Respondent when compiling his own report of the 27th of January, 2016. Based on the views of Dr Devitt, and on his own assessment, Mr. Leonard set out in detail several rates of pay for clerical/administrative work which would reflect the potential earnings available to the Applicant in the event of his being able to access that or similar work in the future.

21. Having carried out the assessment and having regard to the other expert reports available, he expressed the opinion that it was very difficult at that point in time to be optimistic in relation to the Applicant's final vocational outcome. In his view it would be necessary for the Applicant to increase his involvement in activities outside of the home so that he could begin to participate in a regime such as a vocational training course; that would be a first step in a return-to-work programme. Significantly, he added that he did not think that the Applicant had the ability to do that at the time of his assessment.

22. On the basis of her assessment and the expert medical reports available to her, Paula Smith expressed the opinion that the Applicant was unlikely to be capable of returning to the labour force unless his continuing physical and psychological difficulties resolved or improved to a point which would make that possible. Her view was that if those difficulties were to persist into the future then she would be very pessimistic as to the likelihood of the Applicant ever being able to secure open employment.

23. Dr. Connolly, who also gave evidence at the hearing, expressed the opinion that the prognosis for the Applicant's post-traumatic stress disorder was very poor. He described the Applicant's psychological condition as severe and as having profound effects on his mood and personality. In his view the Applicant had a very poor perception of himself and his abilities, moreover, his anxiety and depression continued to be fed by the persistence of the symptomology associated with the physical injuries.

24. Whilst the Applicant had obtained some benefit from counselling in 2011, Dr Connolly's evidence was that that had to be seen in context. He had managed to get back to work – albeit on light duties – he was hopeful of further improvement and had a medically supported expectation that the October 2011 surgery would be successful. Unfortunately it wasn't and although he accepted that a particular form of cognitive behavioural therapy might have some role to play in the future, it was his evidence that that would be marginal and he would not be recommending it to his patient.

25. Although the Applicant himself expressed the hope that he would get some closure once the litigation had come to an end, Dr Connolly stressed the significance of the broad agreement between all of the physicians in relation to the seriousness of his physical injuries and the impact that these were likely to have on his psychological sequelae. In Dr Connolly's view, this was the central matter which had to be borne in mind when the Applicant's vocational future was being considered. Proceeding thus it was highly unlikely that the Applicant would ever reach the point where he would be capable of re-entering the work force at any meaningful level, if at all.

26. Dr. Devitt, who also gave evidence and was largely in agreement with Dr. Connolly as to diagnoses, differed from him in relation to prognosis. He had hoped that the Applicant would have made more progress as a result of the cognitive behavioural therapy undertaken in 2013. He had been involved in arranging that programme and also in supporting the application to retire from the police force on grounds of ill health. In his opinion the conclusion of litigation and the severing of his relationship with his former employers would afford the Applicant a new opportunity to rebuild his life.

27. Cognitively, the Applicant was intact and it had not been seriously suggested otherwise on his behalf. He thought that Ms Smith and Dr. Connolly were too pessimistic and that, though progress would be slow, ultimately felt that the Applicant would reach a point where he would be able for employment of an administrative type in a non-stressful work environment. Accordingly, he thought that every effort should be made to encourage the Applicant to try and achieve that objective. Moreover, it was his opinion that a different form of cognitive behavioural therapy concentrating on wellbeing and functioning rather than coping with duties as a police officer, did have a clinically significant role to play in rehabilitation.

28. Dr. Devitt accepted that any improvement would be slow and that much would depend on the Applicant's perception of pain. Although confined to light duties, he had supported the Applicant's decision to retire from the Gardai on grounds of ill health particularly because there was, in his view, a connection between his role in the Gardai and the profoundly negative and ongoing consequences of the assault. His evidence was that the impact of severing his connection with the Gardai would not be felt by the Applicant until after the litigation had concluded. Whilst he accepted that the Applicant was living a life which was essentially centred on his home and that, for all intents and purposes, he had become socially withdrawn, his opinion was that if the Applicant was given appropriate psychological support and assistance aimed at dealing with that aspect of his life then there was room to be more optimistic concerning the future; the Applicant was an intelligent man and, objectively, it was quite clear that he was still able to function albeit at a much reduced level.

29. In that regard, Dr Devitt accepted that the Applicant's ability to function would be affected by the level of medication being taken by him. As to that, however, it was his view was that a reduction in the level of medication might well benefit the Applicant in dealing with his psychological problems and would consequently help him achieve a better level of functioning.

Submissions

30. It was submitted on behalf of the Applicant that in relation to the assessment of general compensation, his injuries, both psychological and physical, were permanent and serious and that the degree of seriousness, together with the absence of any dispute as to the permanency of the injuries, was such as to inform the Court in making an award of general damages at the very highest level. Counsel for the Applicant relied on and referred to a number of authorities: *Bennett v Cullen* [2014] IEHC 574. *Mansfield v the Minister for Finance and others* [2014] IEHC 603, *Murtagh v the Minister for Defence* [2008] IEHC 292, *Purcell v Long* [2015] IEHC 385, Flynn v Long [2015] IEHC 401, *Doherty* (A person of Unsound mind not so found) *v Quigley* [2011] IEHC 361 and *Nolan v Wirenski* [2016] IECA 56.

31. Whilst it was accepted by counsel on behalf of the Respondent that the Applicant had suffered significant physical and psychological injuries as a result of the assault, it was submitted that these, when taken together, were nowhere near what could be considered the "*top end*" of the scale of general damages which could be awarded for personal injuries and in this regard he relied on and referred the Court to: *Kearney v McQuillan* [2012] IESC 43, *Payne v Nugent* [2015] IECA 268 and *Nolan v Wirenski,* supra. The attention of the Court was drawn by counsel for the Respondent to the fact that all of the medical witnesses considered the Applicant to have full cognitive function and to be a very intelligent man. Accepting that he had suffered and would suffer from physical and psychological sequelae it was, nevertheless, clear that he possessed the full use of his body: he was able to mobilise generally, live independently, could drive a car, had married and had started a family. It was submitted that the Applicant had travelled to and stayed in Dublin independently and that the way and manner in which he had acquitted himself in court was indicative of a man who, whilst seriously injured, was nowhere near as incapacitated as would be required of a very seriously or catastrophically injured plaintiff deserving of an award of compensation in the region of the highest level for general damages appropriate to personal injury cases of that kind.

Decision on general damages/compensation

32. The general and special compensation awarded under the Garda Siochanna (Compensation) Acts 1941 and 1945 (the Acts) is equivalent to general and special damages awarded in a personal injury action arising as a result of a wrong. The term *'compensation'* rather than *'damages'* is appropriate and employed in the Acts because the Minister, although liable to satisfy the judgment of the Court under statute, is neither a wrongdoer nor a party vicariously liable for the wrongful acts giving rise to the proceedings. Whether or not it is 'compensation' or 'damages' with which the Court is concerned, the assessment of the amount of the award in either case is governed by the same legal principles. See *Murphy v. The Minister for Public Expenditure and Reform* [2015] IEHC 868.

33. Having regard to the submissions made on behalf of the Applicant in relation to the level at which the Court should assess general

compensation consideration must be had to the so called "cap" on general damages. This was considered and pronounced upon in *Sinnott v. Quinsworth* [1984] ILRM 525 and is a matter which has been revisited in many subsequent cases up to and including *Nolan v Wirenski* [2016] IECA 56. These authorities must be viewed in the context and with regard to the particular circumstances applicable to each case.

34. From these cases some general principles applicable to the approach of the Court to the assessment of general damages in very serious or catastrophic injury cases can be ascertained. In *Yun v MIBI and Tao* [2009] IEHC 318, Quirke J. in a case where catastrophic injuries had been suffered enunciated these as follows :

> *(i) "Where the claimant has been awarded compensatory special damages to make provision for all necessary past and future care, medical treatment and loss of earnings, there will be a limit or "cap" placed upon the level of general damages to be awarded.*
>
> *(ii) When applying or viewing the 'cap' on general damages the court should take into account the factors and principles identified by the Supreme Court in Sinnott v Quinsworth [1984] ILRM 523 and in MN v. SM [2005] IESC 17 including 'contemporary standards and money values'.*
>
> *(iii) Where the award is solely or largely an award of general damages for the consequences of catastrophic injuries there will be no 'cap' placed upon the general damages awarded.*
>
> *(iv) Each such case will depend upon its own facts so that; (a) an award for general damages could, if the evidence so warranted, make provision for factors such as future loss of employment opportunity or future expenses which cannot be precisely calculated or proved at the time of trial, (b) life expectancy may be a factor to be taken into account and, (c) a modest or no award for general damages may be made where general damages will have little or no compensational consequence for the injured person.*
>
> *(v) There must be proportionality between: (a) court awards of general damages made, (i) by judges sitting alone and, (ii) in civil jury trials and, (b) by statutory bodies established by the State to assess general damages for particular categories of personal injuries."*

35. The legal objective in the assessment by the Court of general compensation or damages is to determine a figure which is fair, reasonable and proportionate to the injuries suffered. In *Sinnott*, O'Higgins C.J. expressed the view that a limit on what might be awarded should be sought and recognised having regard to the facts of each case and the social conditions obtaining in society including ordinary living standards and the level of incomes. It follows that the 'cap' to be placed in an appropriate case on an award of general compensation or damages is to be ascertained against a background of the economic circumstances, including ordinary living standards and the value of money in society at the time when the assessment is made.

30. The well known phrase "*moving with the times*" could hardly be more apposite in this context and is well illustrated by the approach taken by the Court in *Yun v. MIBI and Anor* (supra) when deciding in 2008 on the real value of the 'cap' set in 1984 and how the economic circumstances prevailing and likely to prevail at the time of the assessment should be reflected in arriving at the net real value.

31. Having made an upward adjustment by increasing the equivalent value in 2008 of the 1984 'cap' of £150,000, from €400,000 to €500,000, Quirke J. then made a downward adjustment which had the effect of reducing the equivalent value of the 1984 'cap' to €450,000. This was necessary in order to take into account the anticipated reduction in wealth and living standards in the State which had commenced in early 2008 and which were expected to continue for a further period in excess of five years.

32. The social and economic circumstances prevailing were significantly less than auspicious at the time when the cases of *Yun v. MIBI and Kearney* v. McQuillan were decided. Had it not been for external assistance, I think it reasonably well-accepted by economists of all hues that for all practical purposes the State would have been bankrupt. If the official pronouncements of the Department of Finance, the Revenue, and the OECD are to be considered reliable commentators of current economic circumstances and the state of the economy in general, a significant recovery is underway: the State is enjoying the highest economic growth rate in the EU, unemployment and emigration levels have fallen dramatically, property values are recovering and there is a clamour for the restoration of pay to pre recession levels.

33. It would seem to me to follow that these factors, if maintained, must necessarily impact the present *'cap'* on general damages of €450,000, determined as it was at a time when very different economic and social factors prevailed and therefore warranting a review of that figure to take the changes in those factors which have occurred since into account. On the face of it, an adjustment upwards would seem warranted.

34. In a case where such considerations arise it is the economic and social factors prevailing and most likely to prevail at the time when the assessment is being made by the Court which will inform the relevant *'cap'* to be applied to the level of general damages or compensation rather than the *'cap'* determined 5 or 10 years earlier if at that time the economic and social circumstances considered and taken into account by the Court were markedly different. However, as that argument was not advanced on this application I will make no further comment upon it.

35. For the sake of clarity, however, I consider it appropriate to observe that absent significant claims in respect of pecuniary losses into the future, such as claims for future medical treatment, care, accommodation, aids, appliances and loss of earnings, the Court is not constrained by the so called *'cap'* applicable to cases involving such claims; though this does not mean that the figure representing the *'cap'* cannot be taken into account in a general way when an assessment of appropriate general damages or compensation is being made in a non 'cap' case. See *Gough v Neary* [2003] 3 I.R. 92 at 132.

36. In such a case an award of general damages or compensation may not only exceed but exceed substantially the 'cap' applicable to an award of general damages in a case where substantial future loss claims are made. See *B. v C.* [2011] IEHC 88 where Clarke J. awarded €700,000 in respect of injuries which, whilst very serious, were less than catastrophic and where the case did not involve a claim for substantial future medical treatment or care costs.

37. I am satisfied that that situation nor those circumstances arise in this case since the Applicant has advanced very significant pecuniary claims by way of special compensation both to date and into the future. In this regard the parties have agreed special pecuniary losses to date, to include medical expenses and loss of earnings, in the sum of €100,000. Agreement has also been reached on future special pecuniary loss in respect of medical expenses, medication and travelling expenses in the sum of €200,000. However,

a substantial claim in respect of future loss of earnings and other pecuniary benefits falls to be determined by the Court. When these claims are taken together I am quite satisfied that this is a case to which the generally accepted 'cap', currently considered to be €450,000 in respect of general compensation, applies; as to that see *Nolan v Wirenski* [2016] IECA 56.

Conclusion on general compensation.
38. As far as the Applicant's physical injuries are concerned, these were life-threatening necessitating a series of significant operations. The Applicant has been left with cosmetically disfiguring operation scars in addition to the scarring left by the knife entry wound; he had a distressing temporary colostomy; he developed a hernia and had his gall bladder and spleen removed, the consequences of the latter exposing him to a lifelong increased risk of serious infection for which he will always need to take prophylactic medication. The Applicant continues to be symptomatic with back and abdominal and left flank pain with associated intermittent involuntary spasms in that area. He derives temporary relief from intercostal injections administered three to four times a year and is likely to require ongoing interventional treatment to help control his multifactorial symptomology for the foreseeable future. Even on the most optimistic view of the future he will be left with permanent injuries.

39. The Applicant also developed significant post traumatic stress disorder symptoms; he became depressed, and was rendered emotionally and psychologically fragile. One of the consequences of the medication received was the development of erectile dysfunction which requires but does respond to medical treatment. In addition to daily antibiotics, the Applicant is on a concoction of medications to help him deal with his physical pain and psychological sequelae. He requires and benefits from psychological intervention and antidepressant medication and is likely to do so for the foreseeable future.

40. Whilst there was little or no controversy between the parties in relation to the seriousness and the consequences of what are permanent injuries, I am satisfied in relation to the issue concerning his psychological sequelae that the conclusion of the litigation and the severing of his connection with the police force are likely to have a beneficial effect on him. In this regard I prefer the evidence of Dr. Devitt who was involved in the Applicant's treatment, was sympathetic to him, and supported his application to retire. I think it pertinent to observe that I was impressed by the Applicant's presentation in court, by the way in which he acquitted himself when giving evidence and by his own hopes and aspirations including a belief that the conclusion of these proceedings would likely bring closure and enable him to get on with his life, though recognising as I do that he will continue to require long-term appropriate psychological intervention, support and medication in addition to medication and treatment for his ongoing physical injuries.

41. For all of these reasons, upon the findings made and having regard to the principles of Tort law applicable to the assessment of general compensation under the Acts, it is the view of the Court that a fair and reasonable sum to compensate the Applicant for pain and suffering to date commensurate with his injuries is €250,000 and in respect of future pain and suffering the sum of €150,000, making it an aggregate sum of €400,000.

Claim for future loss of earnings and loss of future pecuniary benefits.
42. Retired Superintendent William Keaveney gave evidence that he was the Applicant's superintendent in the period from 2001 to 2002. The Applicant made a serious impression on him as somebody who was likely to progress in his career. He discharged his duties in a very efficient manner, displayed initiative and was well disposed towards assisting other members of the force. It was partly due to these attributes that he was selected as a duty guard for students as well as being the officer designated to assist other members of the force who had experienced trauma.

43. With specific regard to the Applicant's promotional prospects, Mr. Keaveney gave evidence that the Applicant had taken and passed his Sergeants exams and had successfully completed the interviews for that rank in 2006/2007. He impressed as an excellent candidate; he had no doubt but that the Applicant would by now have secured the rank of Sergeant. In support of that view, he referred to the appointment of Garda Malone as a Sergeant. He was a contemporary of the Applicant who sat and passed his exams and interviews at the same time. Insofar as any further promotion was concerned, he was confident that the Applicant would have been able to sit his Inspector's exams and thought it reasonable that he would achieve the rank of Inspector by 2020.

44. As has already been referred to earlier in this judgment, the Applicant was vocationally assessed by Mr. Roger Leonard and Ms Paula Smith. Their reports have been admitted into evidence and have been considered by the Court.

45. It is the Applicant's case that he would have retired from the Gardai at age 60 and that, as is commonly the case with members of the force on retirement he would have sought employment to supplement his pension until he was 68 years old. In her report of the 7th of December 2015, Paula Smith listed a number of different types of occupations traditionally secured by retiring Gardai producing incomes ranging from €25,000 to €35,000 gross per annum. In an earlier report dated the 29th of May 2015, Ms. Smith set out the findings of her assessment of the Applicant and expressed the opinion that it was unlikely that he would be able to return to the labour force in any capacity.

46. Mr. Leonard, referring to the views of Dr. Patrick Devitt in his report of June 2014, details rates of pay for clerical/administrative workers which would reflect the potential earnings available to the Applicant should he be able to access that or similar work. He went on to observe, however, and for reasons given that based on his assessment of progress to date it was very difficult to be optimistic that the Applicant would achieve a return to the workforce. In the first instance, it would be necessary for the Applicant to increase his involvement in activities outside the home so that he could begin to participate in a regime such as a vocational training course and which would be a first step in a return-to-work programme. However, it did not appear to Mr. Leonard that the Applicant had the ability to do that at the time of assessment.

Decision on future employability.
47. Considering all of the medical and vocational evidence available to the Court there is not, in my view, any basis to support a finding that the Applicant would ultimately be able to secure employment as a project administrator or office manager since it is unlikely that the Applicant would be able to cope with the stresses normally associated with such positions furthermore a serious question mark arises in relation to capacity even in relation to the most basic of employments referred to by the vocational consultants.

49. Whilst I prefer the evidence of Dr. Devitt concerning the prospects for some recovery by the Applicant in relation to his psychological sequelae, his opinion that the Applicant had a reasonable prospect of returning to the workforce, albeit in a limited capacity must, in my view, be read in conjunction with the vocational evidence.

48. Mr Leonard was aware of Dr. Devitt's opinion at the time when he wrote his report. Nevertheless, and having regard to the other reports available to him at the time, including that of Paula Smith, and considering his own assessment of the Applicant, his view of the Applicant's presentation was one of a person with very significant physical and mental health difficulties; he was not optimistic about the Applicant's ability to participate in a vocational training programme nor was he optimistic in relation to final vocational

outcome.

Conclusion on employability
49. It seems to me, although differently expressed, that there is no significant difference of opinion between Ms Smith and Mr. Leonard in terms of the Applicant's future vocational outcome. When all of the physical and psychological factors are taken into account – and in this regard a holistic approach is apposite – it is the view of the Court that such improvement as may likely occur in relation to the Applicant's injuries is not such as would result in his being able to secure and retain a stress-free basic employment resulting in any meaningful income.

50. In this context, it is also considered appropriate to observe that the Applicant is in receipt of a supplementary pension of €13,519 per annum which is awarded on the basis that the Applicant is unable to work. Were the Applicant to secure paid employment any income received would directly impact upon this allowance which would reduce proportionately to the income received up to the current maximum limit payable.

51. Pensions, including supplementary pensions, are deductible in valuing future loss of earnings in applications under the Garda Síochána Compensation Acts. Even if the Applicant managed to return to some sort of stress-free basic employment on my view of the evidence the Court would not be warranted in coming to the conclusion that, as a matter of probability, the type of employment he might secure and retain would be such that, having regard to the amount of his supplementary pension, it would impact on his claim for future loss of earnings.

Decision on promotion
52. I accept the evidence of retired Superintendent Kearney that the Applicant would, as a matter of probability, have been promoted to the rank of Sergeant. In this regard I consider it significant that he had already sat and passed his Sergeant's exams and had satisfied interview criteria for appointment as a Sergeant. I am fortified in that finding by the appointment to the rank of Sergeant of a contemporary of the Applicant, Garda Malone.

53. It was submitted on behalf of the Respondent that, whatever about promotion to the rank of Sergeant, the suggestion that the Applicant would have become an Inspector by 2020 or any date is simply a leap too far. I accept that submission. Although retired Superintendent Kearney was confident that the Applicant would have been able to sit and pass his Inspector's exams and that it was reasonable to infer that the Applicant would be appointed to the rank of Inspector in or about 2020, that proposition is subject to such uncertainties and imponderables as to render it highly speculative. Accordingly, the Court cannot find as a matter of probability that the Applicant would be promoted to the rank of Inspector had he not been injured and had been able to remain in the Gardai.

54. Actuarial evidence was given on behalf of the Applicant and the Respondent and the reports prepared by the actuaries were admitted into evidence. Although somewhat different approaches were taken, the actuaries were in the final result broadly in agreement concerning the relevant assumptions made.

55. Proceeding on the assumption that the Applicant would have been promoted to the rank of Sergeant by December 2015, he will suffer an ongoing net annual loss of income in the sum of €17,337; this being the difference between his Garda pension and the salary he would receive as a Sergeant to age 60 (after all deductions). The capital value of that loss without any Reddy v Bates contingencies (Reddy v Bates [1983] 1 I.R., see infra) deduction calculated on a 1% actuarial rate of interest is €360,306, and at 2.5% is €332,334.

56. In relation to the claim for loss of earnings and pension benefits between the age of 60 and 68, the evidence of the Applicant's vocational consultant was that the current levels of income achievable from the kind of occupation commonly secured by retiring members of An Garda Síochána were €35,000, €40,000 and €45,000, respectively. Assuming a retirement pension applicable to the rank of Sergeant in the sum of €22,060, the Applicant's actuary calculated the capital loss applicable to these sums on a 1% actuarial rate of interest as being €73,902, €89,925 and €105,631, respectively. Applying a 2.5% actuarial rate of interest the equivalent figures were €60,794, €73,975 and €86,887.

57. It was accepted that the Applicant would suffer no loss of pension from age 68 had he remained a Detective Garda. However, a loss would arise had the Applicant been promoted to the rank of Sergeant and, in this regard, the capital value of the loss of pension from age 68 for life on a 1% actuarial rate of interest was given at €19,075 and at the 2.5% rate at €13,085.

58. The Applicant received a net lump sum of €10,574.82 on his discharge from the force in June 2015. Accepting that he would have been promoted to the rank of Sergeant by December 2015, the capital value of the future gratuity loss on a 1% actuarial rate of interest was given at €72,047 and at a 2.5% rate of interest at €59,154.

59. There was an issue between the parties in relation to overtime payment. Evidence was given on behalf of the Applicant by Mr. Walsh of Browne, Murphy & Hughes, chartered and certified accountants. He prepared a report dated the 23rd November, 2015, which was admitted. The amount allowable for future annual overtime by the Respondent was €1,888.86. The actual overtime earned by the Applicant in the two years prior to the assault was €8,682 and €11,942, respectively. For the purposes of the claim, Mr. Walsh gave evidence that the appropriate average annual overtime which ought reasonably to be allowed was €9,000 per annum. On his evidence this was reasonable not just by reference to the overtime actually earned by the Applicant in the two years prior to the date of the assault, but also by reference to actual overtime earnings in 2015 for a comparable Garda in Swinford of €15,448, and a comparable Garda in Castlebar of €10,569. If anything, the suggested average rate of €9,000 per annum was not only reasonable but conservative.

60. On my view of the evidence this contention was not seriously challenged. It was relied upon by Mr. Brendan Lynch in the preparation of his report and in his evidence. Noting that no allowance was made by the actuaries for *Reddy v Bates* contingencies and subject to what follows in this judgment, I accept, in so far as it goes, the actuarial and accountancy evidence of Mr. Lynch and Mr. Walsh.

Actuarial rate of interest.
61. It was submitted on behalf of the Applicant that the actuarial rate of interest, being the real rate of return appropriate to the Applicant's claim in respect of his future loss of earnings and pecuniary benefits, should be 1%. As against that, the Respondents argued that the Court should apply a real rate of return of 3% in line with the decision in *Boyne v. Dublin Bus* [2006] IEHC 209 or, alternatively, 2.5% in line with the decision in *McEneaney v. Monaghan County Council* [2001] IEHC 114.

62. The question of the appropriate real rate of return in respect of the future costs of medical treatment, aids, appliances and future care recently fell for consideration by this Court in *Gill Russell (a Minor) v. HSE* [2014] IEHC 590 and subsequently by the Court of

Appeal in the same case, [2015] IECA 236.

63. It was submitted on behalf of the Respondents that there was some confusion concerning the actual ratio decidendi in that case. However, albeit that his view was obiter, counsel for the Respondent drew the attention of the Court to the view of Cross J. at para. 2.47 of his judgment in relation to the appropriate multiplier to be applied in respect of a claim for future loss of earnings where he stated that *"…were I to be deciding on an appropriate multiplier for a Plaintiff, such as in the Boyne case, who required investment of a sum for loss of earnings, and I am not so deciding, then it is very likely that a 3% real rate of return or the equivalent would be appropriate."*

64. Whilst observing that the view of Cross J. was obiter and, similarly, that the Court of Appeal did not decide the question in relation to a claim for future loss of earnings and pecuniary benefits, that Court itself expressed an opinion in relation to the obiter view of Cross J. on the appropriate multiplier at para. 89 in the following terms:

> *"89. For the purposes of clarity it is perhaps of importance for this court to state that we do not accept the albeit obiter view expressed by the High Court judge in the present case insofar as he indicated that a plaintiff with a claim for future pecuniary loss confined to loss of earnings might possibly be treated as less risk averse than a plaintiff who has a claim for the cost of future care. There appear to be a number of arguments against such a proposition. It would seem to admit of the adoption of a potentially higher real rate of return in the loss of earnings claim on the assumption that the plaintiff can necessarily absorb a greater risk when investing their award to secure their future income. While of course there may be the rare case where a particular plaintiff may not need their earnings to survive on a day-to-day basis and might thus be in a position to take risks in terms of the investment of their award, most plaintiffs do not fall into that category. A plaintiff who will never be in a position to work again and is dependant upon the investment of his lump sum for their own support and that of his family may be entitled be treated similarly in terms of the investment risk he should have to absorb to the plaintiff who needs to cover the cost of their future nursing care on an annual basis."*

65. It is accepted by the Applicant that in Russell the Court of Appeal did not decide, in the circumstances of a Plaintiff who would never be in a position to work again and who was dependent on the investment of the lump sum for their own support and that of their family, that in relation to the appropriate multiplier, the Plaintiff should be treated in the same way as a Plaintiff who needed to cover the cost of future nursing care. It was submitted that, though *obiter*, the view that was expressed should nevertheless guide this Court in the determination of that question which falls for consideration in this case, especially as the permanence and seriousness of the Applicant's injuries are such that he was unlikely to be ever able to return to the workforce in the future.

66. While contending that the decision of the Court of Appeal in *Russell* was not an authority for the proposition being advanced on behalf of the Applicant, the Respondent sought to cast the view of the Court in respect of the *obiter dicta* of Cross J. as being 'one which did not necessarily commend itself to that Court'. The wording of the judgment of the Court is, however, more trenchantly and definitively expressed. The Court considered it important to state for the purposes of clarity that it did not accept the view of the learned trial judge, albeit *obiter*, in relation to the approach to be taken in relation to a claim for future loss of earnings.

67. In *Wells v. Wells* [1999] 1 AC 345 the principle question which fell for consideration by the House of Lords was the correct method of calculating lump sum damages for the loss of future earnings and the cost of future care. There were two cases heard by the Court at the same time and in respect of which the same question fell for consideration. In allowing the appeals it was held by the House of Lords that the purpose of an award of damages in tort was to make good to the injured Plaintiff, so far as money can do so, the loss that he had suffered as a result of the wrong done to him; that in awarding damages in the form of a lump sum the Court had to calculate as best it could the sum that would be adequate, by drawing down both capital and income, to apply periodical sums equal to the Plaintiff's estimated loss over the period during which that loss was likely to continue; that the injured Plaintiff was not in the same position as an ordinary prudent investor and was entitled to the greater security and certainty achieved by investment in index-linked government securities, in respect of which the current net discount rate was 3%.

68. Insofar as that decision was persuasive authority for the proposition that, in determining the likely real rate of return which an injured Plaintiff might obtain on the investment of his lump sum in respect of his future care and treatment costs, he was not to be treated as an ordinary "prudent investor" but was, instead, entitled to have his lump sum award calculated on the basis that he was entitled to a lump sum that was sufficient to enable him to participate in as risk-free an investment as was available to meet the totality of his future losses over his remaining life expectancy, *Wells* was unanimously approved and followed by the Court of Appeal . At para. 84 of the judgment the Court stated:

> *"84. Quite correctly, in the view of this Court, Cross J. determined that the assessment of the real rate of return is to be made on the assumption that the plaintiff should be entitled to invest his award in as risk free an investment strategy as is available and which will likely meet his future care needs. In particular, we agree with his conclusion that the plaintiff is not to be treated as an ordinary prudent investor for the purposes of calculating the likely return on the investment of his lump sum. In adopting this approach, the High Court judge appropriately adopted the reasoning of the House of Lords in Wells , thus rejecting the approach earlier taken by the Court of Appeal in the same cases and which approach appears to have informed, to some extent, the decision of Finnegan P. in Boyne . The Court of Appeal in Wells and Finnegan P. in Boyne had concluded that in calculating the plaintiff's lump sum award for future pecuniary loss the court was entitled to proceed on the presumption that the plaintiff would invest his award as an ordinary prudent investor.*
>
> *85. Having considered the authorities on this issue and in particular the decision of the House of Lords in Wells , this Court is satisfied that it would be fundamentally flawed reasoning for a court to assume that the same investment policy would be prudent for all investors. The catastrophically injured plaintiff who needs to replace their lost income or to provide for their future care is simply not in the same position as the ordinary investor who has an income and has surplus funds to invest. The latter is clearly in a position to absorb greater risk. They are not dependant on such monies to meet their basic day to day requirements and indeed may not need to access these surplus funds for many years. Accordingly, they might prudently be in a position to invest in equities given their ability, should the market fall, to hold onto their investment and wait until the market recovers before selling. Even if they end up losing on their investment the outcome is not catastrophic. However, most injured plaintiffs enjoy no such comfort. Almost inevitably they are dependant upon their award of damages to meet their needs as they arise on a day to day basis. Accordingly, this Court is satisfied that the High Court judge was correct when he concluded that the plaintiff was entitled to have his damages calculated on the basis that he should be entitled to pursue the most risk averse investment reasonably available to meet his needs."*

69. Where the Court is required to calculate damages for future pecuniary loss, the law requires that the Plaintiff is to be provided with compensation on a 100% basis. Having done so, if there is an apportionment on liability, that apportionment will then be applied to the sum so calculated. Having concluded that the calculation by the Court of the discount rate was to be made on the basis of the assumed entitlement of a Plaintiff to invest the award in as risk-free an investment as was available and suitable to meet the Plaintiff's future needs, the Court in Russell was satisfied that the trial judge was entitled on the evidence to conclude that the appropriate discount rate to be used for the purposes of calculating all of the Plaintiff's outstanding claims for future pecuniary loss was 1.5%, and that the rate applicable to the Plaintiff's claim for future care should be reduced by 0.5% to 1% to take account of the extent to which wage inflation was likely to exceed the CPI (consumer price index) over the course of the Plaintiff's lifetime. In this regard the Court was also satisfied that the trial judge's conclusion that the Plaintiff's lump sum should be calculated by a reference to index-linked government stock (ILGS), was well founded.

70. It was stressed by the Court that the discount rate only applied to claims for future pecuniary loss and did not herald any change in the approach of the courts to compensate the Plaintiff for pain and suffering caused by the injury resulting from the wrong. In this regard the Court stated at p.161 of the judgment that:

> *"The alteration of the rate is, we believe, necessary to enable the Plaintiff meet his future needs without him having to take unnecessary risks with the fund provided to achieve that end. To expect and indeed oblige a Plaintiff, by the manner in which the Court approaches the calculation of their lump sum, to take such risks is, in the unanimous view of this court, both unjust and unacceptable."*

71. Counsel for the Respondent submitted that this Court should follow the decisions in *Boyne* and *McEneany* particularly as the determination of the real rate of return in *Boyne* was concerned with the Plaintiff's claim for future loss of earnings. In *McEneany* O'Sullivan J. accepted that, in calculating the real rate of return, the Court should take into account that a Plaintiff was entitled to avoid what he described as "non-negligible risk". Although he concluded that that would be achieved by a reference to a mixed portfolio including a substantial percentage of equities, it is clear that he did so against the backdrop of the non-availability of pan-European ILGS as well as the Plaintiff's evidence as to how, in such circumstances, the real rate of the return might be calculated.

72. Rejecting the defendant's criticism of the High Court judge for his failure to adopt the approach of Finnegan P. in Boyne, the Court of Appeal in Russell stated that whilst it was correct that in calculating the lump sum, the Court was entitled to assume that the Plaintiff would invest it prudently *"…he was wrong to approach the selection of the multiplier on the basis that the plaintiff would likely adopt an investment strategy akin to that appropriate for an ordinary prudent investor rather than that which would be considered prudent for a plaintiff dependant upon their annuity to sustain their future welfare."*

73. Although *Boyne* was not authority for the proposition that a 3% real rate of return should be assumed in every case of future pecuniary loss, the Court of Appeal observed that the courts had adopted what was described as a "one size fits all" approach for the purposes of determining a multiplier to be used when calculating all classes of future pecuniary loss. It is clear that since the decision in Russell, the approach of the Court to the selection of the multiplier in the decisions of *Boyne* and of *McEneany* and the consequential application of a 3% or 2.5% actuarial rate of interest no longer pertains.

74. A question remains, however, as to whether a claim for future loss of earnings is subject to the same reasoning and approach by the Court as was applied to the determination of the real rate of return in relation to a claim for future medical care and treatment. That question did not fall to be determined in Russell. However, it was a significant aspect of the claim made by the Plaintiff in Wells. As to that Lord Hutton at P. 403 stated:

> *"Unlike the great majority of persons who invest their capital, it is vital for the plaintiff's status that they receive constant and costly nursing care for the remainder of their lives and that they should be able to pay for it, and any fall in income or depreciation in the capital value of their investments will affect them much more severely than persons in better health who depend on their investments for support.*
>
> *Moreover, a plaintiff who claims damages for loss of future earnings should, in my opinion, not be placed in the same position as a person who relies on capital for his future support. Such a plaintiff, but for the injuries which have taken away his earning capacity, would have been better protected against inflation by the rise in his wages in future years than the person who has to rely on a sound investment policy to protect him in the years ahead. In Livingstone v. Rawyards Coal Company, 5 App. Cas 25, 39, Lord Blackburn stated:*
>
> *'where any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.'*
>
> *I consider that an award assessed by reference to the index-linked return on ILGS will give protection against inflation closer to the protection which would have been given by the rise in the plaintiff's wages, and will give better effect to the principle stated by Lord Blackburn, than will an award assessed by reference to the return on equities."*

75. The decision in *Wells* is not binding on this Court but is persuasive authority: it persuaded and was adopted by the Court of Appeal in relation to the questions which fell for consideration and determination by it and, in my view, it is also persuasive authority on the same question insofar as that relates to the calculation of the lump sum which should be awarded to the Applicant in relation to his claim for future loss of earnings and like pecuniary benefits. Accordingly, I adopt the foregoing extract from the judgment of Lord Hutton as a correct statement of the law in this regard.

76. The Court considers that this conclusion is further supported by the unanimous view of the Court of Appeal in *Russell*, though *obiter*, that it did not accept the view of the learned trial judge that different considerations in relation to the actuarial rate of interest would apply in relation to a claim for future loss of earnings than to a claim for future care.

Conclusion.

77. For all of these reasons, I cannot accept the submissions of the Respondent in relation to the appropriate actuarial interest rate to be applied in relation to the Applicant's claim for future loss of earnings and other pecuniary benefits which have not been agreed. In all but one respect I accept the submissions made on behalf of the Applicant in this regard.

78. It was submitted on behalf of the Applicant that the appropriate real rate of return to be applied in relation to the calculation of the lump sum in respect of the Applicant's claim for future loss of earnings and pecuniary benefits should be reduced from 1.5% to 1%

because, in essence, the Applicant's claim was one in respect of future loss of earnings and that, therefore, the discounted rate must be reduced further to take account of the increases that would otherwise accrue to the Applicant through wage inflation above the general rate of inflation.

79. The answer to that submission is to be found in the adopted extract from the judgment of Lord Hutton in *Wells* and in the judgment of the Court of Appeal in Russell. Although the Court held that the trial judge was entitled to adjust the real rate of return by 0.5% to take account of wage inflation in the care sector over a specified period, it went on to state that:

> *"156. The court notes that the trial judge, having concluded that a real rate of return based upon investment in a portfolio of ILGS should be set at 1.5%, reduced that rate to 1% to take account of future wage inflation, a factor only relevant to the computation of the cost of future care. However, from his judgment and order it appears that he then proceeded to use the 1% rate for the purpose of calculating certain categories of pecuniary loss of a non care nature. No submissions were addressed to this issue. Given that a rate of 1% was considered appropriate solely by reason of the potential impact of wage inflation, the use of 1% rather than 1.5% to calculate any category of pecuniary loss other than future care would appear inappropriate."*

80. It must be recalled that the head of claim in respect of which the 0.5% discount was made in *Russell* related to the wages of the carers who would be needed to look after the Plaintiff during his lifetime and not in respect of a claim for loss of earnings by the Plaintiff. Moreover, there was evidence that wage rates in the health sector were likely to outstrip general inflation. As Lord Hutton stated in Wells, the assessment of an award in respect of a claim for future loss of earnings by reference to the index-linked return on the ILGS would give protection against inflation closer to the protection which would have been given by the rise in the Plaintiff's earnings.

81. Following these authorities, I cannot accept the Applicant's submissions in regard to this issue; accordingly, the Court finds that the appropriate real rate of return to be applied in the assessment of the award to be made to the Applicant in respect of his claim for future loss of earnings and pecuniary benefits is 1.5%. It follows that the multipliers in respect of each €1 per week loss of earnings and other pecuniary benefits on a 1.5% actuarial rate of interest will need to be ascertained and applied in respect of that claim before the final order of the Court is made. I shall discuss with counsel how best to proceed with that aspect of the claim.

Reddy v. Bates contingencies.

82. It was submitted on behalf of the Respondent that although the Applicant was undoubtedly in secure employment as a member of the police force some deduction ought nevertheless be made by the Court in respect of life's uncertainties and exigencies in order to modify the certainties employed by actuarial calculations based as they are on the assumption that events will progress to a particular date without any disruption or interruption.

83. Particularly during periods in an economic cycle where there are significant rises in unemployment, emigration and a reduction in incomes and associated pecuniary benefits otherwise enjoyed, it cannot be assumed that the ordinary uncertainties and exigencies of life will not apply to what are considered relatively secure and permanent employments such as those in the public service. The pay reductions across the public service and even redundancies during the recent recession give the lie to that proposition.

84. Indeed the serious consequences of the assault giving rise to these proceedings and resulting in the Applicant's retirement from the police force is an example of but one of the events which can occur and which has in fact occurred in this case. It serves to illustrate the uncertainty attaching to an assumption that the Applicant would have served full time until retirement at age 60.

85. However, having regard to the relative security of employment in the public service when compared to the private sector and to the ordinary uncertainties and exigencies of life that go with the living of it, the Court considers that a fair and reasonable deduction to be applied to this head of claim for Reddy v Bates contingencies to age 60 is 20%.

86. As to the Applicant's claim for future loss of earnings from age 60 to 68, I accept that, as a matter of probability, the Applicant would most likely have applied for and secured employment in one of the sectors identified by Ms. Smith and regularly obtained by retiring members of the force. While I accept the evidence that there are members of the force who retire and do not take up further employment I am also satisfied on the evidence that situation is more the exception than the rule. The Court also accepts the Applicant's evidence and finds that it was his intention once he retired from the force at the age of 60 to seek out alternative employment.

87. However, with regard to this aspect of the Applicant's claim there is, nevertheless, a significant element of speculation in relation to the type and terms of employment that he might have secured. Furthermore even if he secured such employment it seems to me that there would have to be a significantly larger deduction in respect of that claim to take account of *Reddy v Bates* contingencies given his age and the uncertainties associated with such employments in the private sector.

88. Accordingly, the Court considers that in the circumstances of this case the most reasonable approach to take in relation to this aspect of the Applicant's claim is to award the Applicant an additional sum to compensate him for the loss of opportunity to pursue such employment in the future which the Court measures in the sum of €45,000.

89. This sum will be added to the sum of €400,000 general compensation already assessed by the Court together with the sum of € 300,000 agreed in respect of special pecuniary losses. In addition to these amounts will be added the sums to be calculated in respect of future loss of earnings and other pecuniary benefits to age 60 on the multiplier appropriate to an actuarial rate of interest of 1.5%, but subject to a deduction of 20% for Reddy v Bates contingencies. I will discuss with counsel the final form of the orders to be made.