

THE HIGH COURT

[2015 No. 8599 P]

BETWEEN

DYLAN MASSEY

PLAINTIFF

AND

PRIONSIAS STAGG

DEFENDANT

JUDGMENT of Mr. Justice Barr delivered on the 19th day of January, 2017**Introduction**

1. The plaintiff in this action met with his accident while playing a game of five-a-side soccer on an astroturf pitch at Longwood G.A.A. Club, near Longwood, Co. Meath. Towards the end of the game, the plaintiff took a shot at goal but the ball missed the goal and ricocheted off a player and became lodged between the top of the surrounding fence and the ball stop netting which was above the fencing. The ball stop netting had become slack, thereby causing the ball to become lodged between the top of the fencing and the ball stop netting itself.
2. With the assistance of two friends, the plaintiff was lifted up the front of the fencing and was able to dislodge the ball. However, while descending, a ring on the middle finger of his right hand became caught in part of the fencing, which was projecting above the top of the fencing itself in a vertical direction, causing the plaintiff to suffer a severe degloving injury to the middle finger on his right hand. The finger was amputated at the level of the proximal interphalangeal joint.
3. As a result of the accident, the plaintiff's middle finger on his right hand has been almost completely amputated. He has been left with a permanent injury in this regard. He has lost 80% of the function in the finger and an overall loss of function of 16% in his right dominant hand. In addition, the plaintiff has suffered significant psychiatric sequelae as a result of the injury sustained in the accident.
4. A full defence has been filed on behalf of the defendant, which includes a plea of contributory negligence, in particular, that the plaintiff failed to heed warning notices, which had been affixed to the fencing surrounding the pitch, that prohibited players wearing rings or jewellery while playing football on the astroturf pitch.

The Liability Issue

5. The only oral evidence presented to the court on the issue of liability, was that of the plaintiff. He stated that he had played football at the locus for a number of years prior to the accident. He played five-a-side soccer with his friends every Thursday evening. Each of the players would contribute €5.00 to one of the group, who would pay the G.A.A. club for the use of the pitch for one hour.
6. The plaintiff stated that on the night in question, when he had taken the shot at goal, the ball became lodged in the ball stop netting which was above the steel fencing and which had become somewhat slack. This meant that, on striking the ball stop netting, the ball did not bounce back on to the pitch, but instead became trapped between the netting itself and the top of the surrounding fence.
7. The plaintiff stated that in order to retrieve the ball, one of the other players cupped his hands together, so as to enable the plaintiff to put his foot into the cupped hands and was thereby whooshed up the face of the fencing. He then stretched upward with his right hand to release the ball. Unfortunately, while descending, the ring on his right middle finger became caught in the vertical steel bars which formed part of the fencing and which projected upwards from the top of the fencing itself. The weight of the plaintiff's body descending towards the ground caused the amputation of the finger.
8. The plaintiff stated that the locus of the accident was straight across from the entry gate to the astroturf pitch as shown in Photograph No. 2 in Mr. O'Keeffe's booklet of photographs. This was shown in further detail in Photograph No. 6, with the locus being just in front and to the right of the floodlight standard as shown in the centre of the photograph. The locus was shown in closer detail in photographs No. 7 and 8. The vertical steel bars which were projecting from the top of the fencing were shown in photographs No. 9 and 10.
9. It was put to the plaintiff in cross-examination that there were notices at either side of the entry gate to the pitch which stated inter alia:

"Users are advised that NO JEWELLERY OR RINGS should be worn while participating in activities at the facility."

The plaintiff stated that there were no such notices in situ at the time of his accident.

10. By agreement of the parties, the engineers' reports, which had been furnished on behalf of the plaintiff and the defendant, were handed into court. The plaintiff's report was from Tony O'Keeffe & Partners, Consultant Engineers. In that report Mr. O'Keeffe stated that his office had investigated over a dozen identical accidents on astroturf pitches around the country. He was of the opinion that the accident was completely foreseeable and there were a number of measures which could have been taken to prevent it which included the following: cut off the 25mm protrusions which served no function whatever at the top of the fence panels, alternatively cover the protrusions with a half pipe tied to top of the panel with cable ties, or provide a fence panel which did not contain these protrusions. The engineer noted that there were such panels available and gave as an example, panels which were marketed as "Heras Support Fencing". Finally, the engineer recommended that, in conjunction with one of the above measures, the netting should be pulled taut and it should be lapped over the inside of the fence panel and it should be tied securely to the fence panel at closely spaced intervals in the manner which had been done subsequent to the accident, but prior to the time of the engineers inspection.

11. In the conclusion section of his report, Mr. O'Keeffe stated that given the large number of identical accidents which his office had investigated over the years, it could not be suggested that the accident was not foreseeable. The common factor in all of these accidents was a row of exposed wire protrusions at the top of the fence, combined with slackness in the netting above the fence. This caused the ball to become lodged in the interface between the netting and the fence, whereby the slack net effectively forms a

shelf which traps the ball behind the top of the fence. He was of the opinion that the defendant could have taken the relatively simple measures as outlined in his report in order to prevent this type of accident.

12. In relation to the notices which appeared on either side of the entrance gate to the astroturf pitch, the engineer noted that the plaintiff denied that such notices were in place at the time of his accident. The engineer was able to state that the notices appeared to have a fairly fresh or new appearance. They did not show any sign of aging due to weather conditions. In such circumstances they were likely to have been of fairly recent origin prior to the time of the engineering inspection. Furthermore, the engineer observed that the notices provided absolutely no warning of the hazard which existed at the top of the fence on the date of the accident, or that a person could lose a finger by not adhering to the rule on the wearing of rings.

13. The defendant's engineering report was furnished by Mr. Cathal Maguire of Maguire & Associates, from a joint engineering inspection which had been carried out on 20th April, 2015. Mr. Maguire noted that the ball stop netting was a common feature of the design of the perimeter fencing of astroturf pitches. He noted that ball stop netting tended to sag with time, resulting in footballs lodging in the netting above the fencing. Players attempting to retrieve footballs from the netting are vulnerable to the type of injuries sustained by the plaintiff, if they were wearing rings. He noted that unfortunately, a serious accident such as that suffered by Mr. Massey, was not uncommon. He was of opinion that while the perimeter fencing complied with the requirements of the British Standard, it seemed to him that the fencing was not appropriate for this particular application. The vertical wires should have been trimmed so as to ensure that they did not project above the top horizontal wires, so as to prevent the type of injury sustained by Mr. Massey occurring. He was of opinion that the design and construction of the perimeter fencing was unsatisfactory. While it complied with the requirements of the British Standard it was not suitable for the particular application of perimeter fencing for astroturf pitches, especially in view of the significant history of serious accidents occurring at the top of such fencing.

14. Mr. Maguire further noted that it would appear that the G.A.A. club did not properly maintain the ball stop netting.

15. Finally, Mr. Maguire noted that the plaintiff had been playing soccer and the wearing of jewellery and rings during the playing of soccer was generally forbidden. There were warning notices at the entrance to the astroturf pitches advising that jewellery and rings should not be worn. Had the plaintiff abided by the warning notices, as he should have done, he would have avoided his injury. On this basis, he felt that the plaintiff would have difficulty in succeeding in full in his action.

Conclusions on Liability

16. I am satisfied having regard to the substantial agreement in the engineer's reports in this case, that it was clearly foreseeable that if the ball stop netting was allowed to become slack, footballs would become lodged between the netting and the projections at the top of the fencing. Furthermore, I accept the evidence in Mr. O'Keeffe's report that accidents such as the one suffered by the plaintiff, are a relatively common occurrence and therefore are foreseeable to the occupiers of the property.

17. I find as a fact that the defendant failed in its duty of care as the occupier of the property, to maintain the ball stop netting in a safe and proper condition and in particular in his failure to ensure that the netting did not become slack over time and was looped over the front of the fencing, so it was to prevent balls being caught between the netting and the back of the fencing.

18. Furthermore, both the engineers appear to be in agreement that the fencing itself was unsuitable for use in the particular circumstances, and in particular that the fencing was unsatisfactory because there were vertical steel bars projecting above the top horizontal rim of the fencing itself. The projecting portions should have been removed. Accordingly, I am satisfied that the defendant did not comply with its obligations to the plaintiff, who was a visitor on the property, and in particular due to its failure to take the remedial steps as set out in Mr. O'Keeffe's report, they failed to extend to the plaintiff the common duty of care as required of them.

19. The only real issue on liability is whether the plaintiff should be found guilty of contributory negligence for failure to heed the warning notices, which were placed on either side of the entry gate to the astroturf pitch. The plaintiff stated in his evidence that there were no such notices in existence at the time of his accident. There is support for this contention in the report furnished by Mr. O'Keeffe, who stated that at the time of the joint inspection in April 2015, the notices appeared to him to have been of fairly recent origin, due to the fact that they appeared fresh and clean and did not show any signs of weathering. In the absence of any oral evidence on behalf of the defendant as to when the notices were placed in situ, I prefer the evidence of the plaintiff to the effect that there were no notices in place at the time of his accident. Accordingly, it is not appropriate to make any finding of contributory negligence against him.

The Plaintiff's Injuries

20. Apart from the evidence given by the plaintiff himself, there was no oral evidence produced in relation to the plaintiff's injuries. Instead, the court was given a number of medical reports from the plaintiff's treating doctors and a report from Ms. Mary Feeley, Vocational Consultant. On behalf of the defendant, the court was furnished with a report from Mr. Colin Riordan, Hand and Plastic Surgeon from an examination on 17th April, 2015 and a report from Ms. Siobhan Kelly, Vocational Consultant from an assessment carried out on 1st July, 2016.

21. At the time of the injury, the plaintiff stated that he heard a crunching sound as the bone in his finger snapped and then a ripping sound as the middle and top section of his finger was torn away from the rest of his hand. He stated that he experienced immediate excruciating pain. His brother took him to the Emergency Department of Mullingar Hospital. They bandaged the finger and also took photographs of the injured finger. He was told that he would have to attend at St. James Hospital, Dublin at 06.00 hrs on the following morning. He was given pain relieving medication, but was advised only to use it if absolutely necessary, as it might interfere with any anaesthetic that he may be given in St. James Hospital. The plaintiff stated that during that night, he was unable to sleep due to severe pain in his right hand.

22. When he attended at St. James Hospital, he was told that they would try to save as much of the finger as they could, but that it would be necessary to surgically attach the right hand and injured finger to a flap in his groin, so as to enable regeneration of the soft tissues therein. He was brought to theatre and after a five hour operation; he awoke to find his right hand surgically attached to the right side of his groin. He was detained in St. James Hospital for eight or nine days.

23. During the time that the hand was attached to his groin, he continued to experience severe pain in his right hand. He required assistance both from the nursing staff and subsequently, upon discharge from his mother, with all aspects of daily living, such as dressing and going to the toilet. He found this very distressing. He also experienced severe pain when the dressings were changed. Initially the dressings had been changed daily and then every two to three days.

24. Approximately three to four weeks after the initial surgery, the plaintiff was readmitted to St. James Hospital to have his hand removed from the groin flap. He understood that this surgery had taken approximately three hours. He had remained in hospital for

one day.

25. He returned to hospital one week later for a third operation to undergo a skin graft procedure. The skin graft had been taken from his right thigh and applied to his injured finger. This had been carried out under general anaesthetic. He remained in hospital until 19.00 hours on the same day. The plaintiff stated that during this period he had continued to experience severe pain. Following his discharge after the skin graft operation, he had returned to St. James Hospital every week for six weeks until the skin graft had settled down.

26. The plaintiff reported that the pain had been persistent for two to three months following the accident and had then become more intermittent and unpredictable. The pain was worsened by cold weather, which caused a shooting pain in his hand above the knuckle. He estimated that the severity of this pain was at a level of eight to nine out of ten. He stated that the digit stump itself was numb, but explained that if he hit his hand especially just above the middle knuckle, he would experience severe pain, which could continue for hours.

27. When seen by Dr. Cryan in March 2015, some seven months post-accident, the plaintiff reported some improvement in his experience of pain and stated that he had experienced periods when he had been pain free. The maximum period for which he had been without pain was for one week, on one occasion. These periods were broken by the unpredictable return of pain, which sometimes woke him from sleep.

28. The plaintiff was reviewed by Mr. Matt McHugh, consultant plastic surgeon on 9th February 2016, some eighteen months post-accident. At that time, he had a lot of problems with his right hand. The tip of the stump was very tender and cold weather caused severe pain. The plaintiff had had to give up sport and was unsure what he was going to do in the future, as he was hoping to develop some sort of sports career. The amputated stump itself was sticking out and would get in the way when he made a fist. The plaintiff stated that the finger was more of a hindrance than a help in this regard and he found that the amputated stump was really in the way. The plaintiff was very upset about the appearance of his hand and tried to keep it covered as much as possible.

29. Mr. McHugh noted that the middle finger of the right hand had been amputated at the proximal joint, so that half of the finger was missing. The amputated stump was very tender at the tip and was in the way when he made a fist. This made the hand as a whole very awkward and clumsy. The whole function of the hand was affected. The grip and strength of the hand was markedly affected. Mr. McHugh noted that there was an area of scarring in the right groin, which scarring measured approximately seven inches in length. There was a broad stretched scar, which was very noticeable. The plaintiff was upset about the appearance of this scar.

30. Mr. McHugh gave the opinion that the plaintiff had suffered a severe injury to the middle finger of his right hand. The actual finger itself had been amputated at the middle joint and half of the finger was missing. The half that was left was not really of any use, because there was no movement in it and it was sticking out and was in the way. It was more of a hindrance than a help. He noted that the plaintiff had a lot of problems with his right hand; cold weather was a big problem, general work and day to day tasks were very difficult. The plaintiff did not know what he was going to do in the future and felt that his job prospects were quite limited. Mr. McHugh was inclined to agree with this opinion. At that stage, some eighteen months post-accident, Mr. McHugh did not envisage any improvement in the future. The current position was permanent and no further treatment was indicated.

31. As already noted, the plaintiff suffered significant psychiatric sequelae as a result of the accident. He came under the care of Dr. Elizabeth Cryan, consultant psychiatrist. She first saw the plaintiff on 21st March 2015, some seven months post-accident. At that time, the plaintiff stated that he was very conscious of the appearance of the finger stump and for this reason wore a glove to hide his injured finger. Alternatively, he was inclined to keep his hand in his pocket. He described being very conscious that other people were looking at the finger. He stated that prior to the accident, he had been very sociable and had a wide circle of friends and would stay out socialising until the early hours of the morning. However, since the accident, he had lost confidence and did not socialise as he had done. Indeed, for the two months prior to his assessment by the psychiatrist, he had avoided going out completely. At the time of that assessment, the plaintiff explained that he could manage his personal care, except for cutting up his food. He stated that following the accident he had experienced weakness in the right hand and had dropped items, such as mugs. He was inclined to use two hands to pick up an item, such as a mug of coffee. His ability to write with his right hand, or to type on a keyboard, had been severely affected.

32. The plaintiff stated that he had experienced severe sleep disturbance since the accident. Initially he had been unable to sleep due to pain, but over the following months, he found himself waking up and was unable to return to sleep. He also experienced recurrent nightmares relating to the circumstances of the accident and in particular, he would hear the crunching sound, which had been made when his finger had been broken away from the hand. He stated that the nightmares occurred most nights, but that on an occasional night, he would sleep through. He explained that the nightmares were associated with a recurrence of the pain and on some occasions he was woken by pain. When he awoke, he was inclined to constantly relive what had happened in the accident. He also had recurrent regretful thoughts in which he asked "Why me?". The plaintiff also stated that his mood had changed since the accident. He described bursting into tears or becoming explosively angry. He had also become particularly irritable since the accident. He had had outbursts of anger at home, during which he shouted at his parents and then burst into tears. Whenever he went out in public, he believed that people were looking at his finger stump, so he tended to wear gloves to hide his hand. He stated that he had lost all interest in sport, which had been his passion prior to the time of the accident. Prior to the accident he had played soccer, Gaelic football, hurling and badminton. Due to the injury, he was unable to grip the hurl or the badminton racket and so had not returned to these sports. Due to pain in the finger he was unable to return to Gaelic football. Due to a fear of injuring his hand, he had not returned to playing soccer at that time.

33. The plaintiff stated to Dr. Cryan that he felt like a "freak". He had lost all self confidence and was unable to socialise with his friends, or go out and meet girls. He stated that he had contemplated suicide following an explosive outburst and reflected that "This is not living". He stated that his family protected him from suicide and he did not believe that he would act on such suicidal thoughts. He stated that his concentration had been adversely affected since the accident. He reported a reduction in libido and also reported having a poor appetite. He also described having increased vigilance and a compulsion to check things, for example the water taps in the bathroom. The plaintiff stated that due to ongoing psychiatric sequelae, he had been commenced on Prozac by his G.P. in February 2015. He also took Solpadine to manage severe episodes of pain.

34. The plaintiff stated that sports were his life. He had been captain of the soccer team at school and had also been a member of the hurling team. He had hoped to be called up for the Meath county football team, as he had been asked to train with the team previously, but had not been able to do so due to an injured ankle.

35. Dr. Cryan took a collateral history from the plaintiff's mother, who stated that prior to the accident the plaintiff had been an outgoing, bubbly person, who was very involved in sports. Since the accident, he had become angry and irritable. He never went out,

but spent a lot of time alone in his bedroom. Mrs. Massey was very concerned about the impact which the accident had had on her son.

36. Mental state examination on that date showed that subjectively the plaintiff reported his mood as low, angry and anxious. He considered the future to be bleak and uncertain. He acknowledged the experience of suicidal ideation, but denied any suicidal intent. Objectively, the plaintiff's effect lacked reactivity and he appeared low and anxious. In his thought content, he described being preoccupied with thoughts of why the accident had happened to him, associated with feelings of self blame and regret.

37. Dr. Cryan was of the opinion that the plaintiff was suffering from post traumatic stress disorder [hereinafter; P.T.S.D.], which was of at least moderate severity. The P.T.S.D. was characterised by intrusive nightmares, and regretful thoughts about the accident, in addition to reliving the experience of the accident and of his subsequent treatment. The plaintiff had tried to avoid such thoughts, but had been unable to do so. He had also avoided a return to the Longwood G.A.A. pitch. These symptoms were associated with marked sleep disturbance, irritability with explosive outbursts, feelings of self-blame, loss of interest and reduced concentration. The plaintiff described feeling disappointed with his psychological reaction to the accident and his consequent injury and was inclined to view himself negatively. He had also become anxious and reported repeated checking behaviours.

38. In addition to the P.T.S.D., Dr. Cryan considered that the plaintiff was suffering from a depressive disorder, which was characterised by low mood, associated with suicidal ideation, but no intent, reduced motivation and a tendency to self-isolate. He had been started on anti-depressant medication by his G.P., but to date, had not experienced any improvement.

39. Dr. Cryan stated that at that time it was too early to give a definitive prognosis. She recommended that he might try psychotherapy, in particular trauma-focused psychotherapy or cognitive behavioural therapy [hereinafter; C.B.T.] which could be undertaken in addition to his anti-depressant medication. She thought that he would need at least ten sessions of C.B.T. She noted that the plaintiff had also developed some obsessional anxiety and checking behaviours, following the accident, which had not been present prior to it.

40. The plaintiff was reviewed by Dr. Cryan on 4th July, 2015, approximately one year post-accident. He reported that in May, 2015, he had tried to cut his wrists. He stated that he had gone out with two friends and had drunk heavily. On arrival home, he had tried to cut his wrist, but had been interrupted by a noise upstairs. He stated that before he had tried to cut his wrist, he had been thinking about doing so for approximately one week and considered that his drinking had given him "the edge". At the time, he considered that he had wanted to die, but when trying to cut himself, recalled that he had broken down into tears. He had not disclosed his intention to his friends and had not left any suicide note. His parents had learned about the attempted suicide on the following day. They brought him to see his G.P., who had referred him on to the mental health services in Trim. At the time of his assessment by Dr. Cryan he remained on Fluoxetine 20mgs daily.

41. Since the attempted suicide, there had been a further incident at home, where, following a row, the plaintiff had picked up a hurl and thrown it through a window. He then left the house and stayed with a friend, without telling his family. He explained that he had found it easier to be with friends and considered that he was under less pressure when away from his family. This had occurred in or about June, 2015. The plaintiff stated that since that second incident, he had decided to try to "face my demons". He had returned to playing some football and had also taken up running. He found that the exercise had been helpful to him.

42. At the time of his reassessment, he reported that he felt more hopeful about his recovery because he had started to manage his anger more appropriately. He described ongoing feelings of anxiety and irritability and remained very conscious of people asking him about his hand. He reported that he continued to have ongoing sleep disturbance and he continued to experience nightmares. He also continued to experience memories when he was awake, during which he relived the accident, but considered that this was happening less frequently and less intensely. In relation to his physical experience of pain, the plaintiff reported that this was unpredictable. He explained that he was trying to use his experience of pain to motivate himself and tried to "run it out". Because of this new strategy the plaintiff estimated that he had experienced less explosive outbursts, though he remained irritable and inclined to snap. He reported having more capacity to walk away from confrontation.

43. He continued to have persistent self-consciousness about his missing finger, except when with people who were familiar with his injury. He stated that he was no longer trying to cover up his finger continuously, but found himself covering it up automatically. He stated that his deformity caused him to feel awkward and self-conscious. He found it very hard to accept the change in his appearance.

44. Since the previous assessment, the plaintiff had returned to Longwood G.A.A. pitch. While that had been a difficult experience, he had managed to stay there and to participate in a game of football.

45. The plaintiff stated that memory of the accident could be triggered by different events; for example, if he saw blood splatter on a film on T.V. He estimated that the experience of intrusive memories was less long lasting than it had been in March, 2015.

46. The plaintiff stated that he had been shocked by his suicide attempt, as he had not considered that he would ever do such a thing. He believed that he would not repeat this behaviour and reflected that the number of good days had increased, although his mood varied. He continued to spend long periods on his own in his bedroom, although he was more inclined to go into town with his two friends. He had cut out alcohol since the incident of self-harm. He reported that his concentration remained poor. He also reported that his checking behaviours had persisted. His self-confidence remained low and he continued to lack self-confidence in relationships. He also remained hyper-vigilant in general.

47. He reported that his level of pain was unpredictable. The better weather had been helpful to his pain level, but he could set off the pain easily for example if he accidentally hit his hand off something. On occasion, he described waking with pain and also awoke following nightmares. He continued to need help when cutting food, such as a piece of steak.

48. In relation to his mental state examination, subjectively he described his mood as low, angry and anxious, although he felt that he was managing his anger outbursts better. He was apprehensive about the future. On occasion, he would experience periods when the accident totally preoccupied him, but on better days, he was inclined to feel less overwhelmed. Objectively, Dr. Cryan considered the plaintiff's mood was slightly more reactive than it had been during the initial assessment, although his mood remained low and anxious. The doctor was of opinion that the plaintiff was continuing to suffer from P.T.S.D. which remained at a level of moderate severity. Overall he was managing his anger outbursts better, although there had been two serious incidents, one of self-harm and the other of harming property and disappearing. Since the previous assessment the plaintiff had managed to force himself to return to the Longwood G.A.A. pitch and was using running as a coping strategy to deal with feelings of irritability and anger. He remained disappointed with his psychological reaction to the accident and was apprehensive about his future.

49. Dr. Cryan also considered that the plaintiff continued to suffer from a depressive disorder, although his mood had become more variable. There had been some improvement in his sleep pattern, although it had not returned to normal. She was concerned about the incident of self-harm and had made contact with the plaintiff's G.P. and understood that he had been referred to the mental health services in his area. She noted that he remained on anti-depressant medication. Dr. Cryan considered that the plaintiff's prognosis had to remain guarded and uncertain, given the episode of self-harm and the unpredictability of his physical and psychological symptoms, although there had been some improvement in the severity of some of his psychological symptoms.

50. In his evidence at the trial, the plaintiff stated that while he thought that he would have recovered by now, he was making some improvement. He hoped to return to college in the beginning of 2017 to re-sit the module in the sports and leisure course which he had failed prior to the time of the accident. He stated that with the help of family and friends, he was getting to a better place psychologically. He stated that he was more optimistic now than he had been previously. While he stated that he did not think that he would be able to be a gym instructor due to his injuries, he hoped to become a lecturer or a teacher in the area of sport. He stated that his brother was helping him to use a computer, as it was difficult for him to use a keyboard. He stated that he had taken up running as advised by his G.P. and found this helpful if he was feeling down. He had also started going on a special diet, which he also found of assistance.

51. In addition to the scarring to the stump of the finger, the plaintiff also had a scar in the area of the right groin. This measured 14cm by 4cm at the site of the elevation of the groin flap. When viewed by the court it was red in colour and was clearly visible, but was not grossly ugly.

52. At the hearing of the action, it was indicated by counsel on behalf of the plaintiff, that the plaintiff was not claiming a specific sum for loss of earnings into the future. However, he was inviting the court to make an award of damages under the heading of general damages to cater for the loss of opportunity which the plaintiff would suffer in the job market, due to the injuries and disability which he had suffered as a result of the accident. In this regard the court was invited to consider the report furnished by Ms. Mary Feely, vocational rehabilitation consultant. She noted the plaintiff's results in the Leaving Certificate and that he had done a Post Leaving Certificate (P.L.C.) course in Sport and Recreation at Columba College, Killucan, which was a FETAC level five course, prior to the time of the accident. However he had failed one subject and was due to repeat that module in autumn, 2014. She noted that his long term plan was to go on to Athlone Institute of Technology and to qualify to work in the sport/fitness/leisure sector. However, she stated that given the plaintiff's academic background, she had doubts as to whether he would have gained entry to a third level course, or coped with the academic demands of such a course. She was of the view that his likely qualification level would have been the P.L.C.

53. Ms. Feely noted that there was quite a limited range of jobs that would be precluded by the functional loss of a middle finger. It was more difficult to evaluate the effect of occasional pain, which he described. Furthermore, she noted that somebody suffering from cold intolerance was unlikely to work outdoors e.g. as a construction labourer or in forestry, or in a cold environment, such as operative in a meat processing business, or cold store. Therefore the plaintiff would continue to have reduced job opportunity as long as that condition persisted at the current level.

54. Ms. Feely noted that the functional impairment resulting from loss of a middle finger probably should not preclude somebody from resuming such a P.L.C. course and one would be slow to suggest that it would preclude somebody from working as a gym instructor, for example, or working in jobs based on a third level qualification in sport and recreation. Therefore it appeared that one of the main effects of his injury had been to delay him in continuing his plans for training, at least by one year because he missed the opportunity to return to education in September, 2014 and he remained very disrupted for a long time subsequently. In his case the delay has been more protracted due to his psychological state.

55. Ms. Feely noted that at the time of her assessment, the plaintiff presented as very lacking in confidence, with low mood and with a hopeless mindset. He was strongly advised to explore the services of the National Learning Network. She was of opinion that his functional loss was not a barrier to most of the work for which he would have been eligible, but his mental health seemed to be impeding him to a quite inordinate degree and this required psychiatric opinion and prognosis. From a purely functional perspective, the occupational restrictions from such an injury would be relatively low, but his cold intolerance would undoubtedly limit his job opportunity, as would pain. Ms. Feely stated that it was entirely reasonable that he would have been delayed in his occupational plans and generally one would hope that somebody who loses such a finger, would get back on track in terms of training and employment. However he had developed a significant adverse psychological reaction to his situation, in the form of a P.T.S.D. condition and depression, which seemed to have been undermining him to a dramatic level. He reported a very dysfunctional lifestyle with major loss of confidence, an inability to look at his hand due to the cosmetic defect and he was reluctant to be out and about and to interact with others. Ms. Feely stated that it was a matter for psychiatric opinion to comment on as to when, or whether, his response to his circumstances might allow him engage with the world of work, or training / education.

The defendant's reports

56. The court was provided with a report from Mr. Colin Reardon, consultant hand and plastic surgeon from an examination held on 17th April, 2015. He noted that at that time the plaintiff complained of severe pain in his right hand, which would shoot up his forearm. His right hand was very sensitive when exposed to cold weather. He could occasionally experience severe pain in his right hand at night. There was reduced strength in his right hand. Certain small items can slip out of his right hand and the injury had affected his writing. He was concerned regarding the appearance of his right hand and tended to wear a glove as much as possible.

57. On examination, Mr. Reardon noted that there was a grossly abnormal appearing middle finger, which had been amputated through the proximal interphalangeal joint. The remaining portion of the finger was atrophic and had been partially closed by means of imported tissue from a groin flap as well as a split skin graft over the ulnar border. All the wounds were fully healed but the skin grafted area was still somewhat pigmented in appearance. On the dorsum of the hand there was a 5cm scar extending proximally from the base of the ring finger. Overall the quality of the skin in the stump was poor and lacked sensation. He complained of discomfort when the stump was firmly palpated.

58. There was some slight loss of flexion in the remaining metacarpal phalangeal joint of the middle finger, which demonstrated active flexion to 70 degrees, compared with normal values of 90 degrees. Extension was normal. He also noted the scar to the right side of the groin. The scar was well healed and non-tender, although still somewhat pigmented in its appearance. There was some slight loss of volume in the area as a result of the flap transfer.

59. Mr. Reardon was of opinion that the remaining portion of the finger will be of little functional value due to the loss of length as well as impairment of sensation. Functional loss equated to 80% loss of function in the finger, which amounted to a loss of 16% of the function in his hand. This would adversely affect both manual dexterity and grip strength. There was also a significant cosmetic disfigurement present, which will be permanent and visible at conversational distance. The wearing of a finger prosthesis may improve

the appearance of the hand, but would not improve its function. He expected that over the next two years most of the remaining symptoms would gradually settle, although some symptoms of cold hyper sensitivity may persist into the long term. No late complications were to be expected.

60. The court was also furnished with a report from Ms. Siobhan Kelly, vocational assessor dated 19th July, 2016. She had assessed the plaintiff on 1st July, 2016. She was of opinion that the plaintiff was well positioned to continue in his career in sports and recreation, focusing on the business / administrative aspect. She noted that according to the college prospectus, the course that the plaintiff was engaged in was "designed to equip students with the theoretical and practical skills necessary for employment in the sports and leisure industry, with a particular emphasis on the business aspect of the industry". She was of opinion that when the plaintiff had repeated the outstanding module, he could secure employment in a range of entry level jobs within the sector, such as leisure centre attendant, sports retail – sales assistant and customer service in tourism / entertainment (e.g. cinema). Such jobs would pay an average of €19,000 – €22,000 per annum and would accommodate the plaintiff's current education / skills and limitations.

61. Alternatively, he could continue with his studies. He could seek to secure a place on a course such as the Higher Certificate in Business in Sport and Recreation in Athlone Institute of Technology. This is a level six course and would provide him with a background necessary for a successful career in a wide range of tourism, leisure, business and sports related activities, with a particular focus on the business element of sport. He would then have the option of continuing on to a degree level course, if he was capable of doing so.

62. Ms. Kelly was of opinion that returning to education should not pose any significant difficulty for the plaintiff. Any restriction in his speed of writing or keyboard work, could be accommodated through the use of various suitable software such as word prediction software and voice recognition software, which are both widely available. Alternatively the plaintiff could seek employment as a fitness instructor.

63. Ms. Kelly noted that at the assessment the plaintiff had stated that he had considered becoming a secondary school P.E. teacher in the future. However, she was of opinion that he would have had difficulty attaining a place and may have had difficulty completing the course given his previous level of educational attainment and levels of motivation.

64. Ms. Kelly noted that the plaintiff had completed (except for one module) a level five course in Sports and Recreation in his local vocational school. This was a sports orientated course with a focus on the business side of the sports industry, with recommended progression routes to a variety of courses including the Higher Certificate in Business in Sport and Recreation in Athlone Institute of Technology. This option was currently available to the plaintiff and would allow him gain further qualifications and secure employment in management roles, such as leisure centre manager and sports development officer. He had also expressed an interest in becoming a fitness instructor. Suitable options included swimming instructor / aerobics instructor / lifeguard, athletics training, cycling, etc. The starting rate of pay for fitness instructors was €19,000 - €30,000 gross per annum. As already noted she was of opinion that the plaintiff could currently seek employment at a range of entry level jobs including leisure centre attendant, sports retail / sales assistant, customer service in tourism / entertainment (e.g. cinema). Such jobs would accommodate the plaintiff's current education / skills and limitations.

65. There were also other entry level jobs which may require short term training, which the plaintiff could compete for including: sales work, courier driver, retail security or forklift driver.

66. Ms. Kelly stated that acknowledging the difficulties that the plaintiff had experienced and the resulting reduced functioning of his hand as stated by Mr. Reardon, there were a range of employment options currently available to the plaintiff, as were available to him prior to his accident, or he could continue to further his qualifications and seek suitable and lighter type management roles within the sports and recreation industry. Based on this, she did not agree that there was a loss of earnings or a loss of opportunity for the plaintiff.

Conclusions on Quantum

67. The plaintiff in this case is a young man of 23 years of age, who was born on 8th September, 1993. On 5th August, 2014, he suffered a catastrophic degloving injury to the middle finger on his right hand, while retrieving a ball which had become stuck in netting at the side of an astroturf football pitch. In the course of the accident, the middle finger on his right hand was amputated just below the proximal interphalangeal joint. The plaintiff is right hand dominant.

68. Treatment of the injured finger was prolonged and painful. The plaintiff underwent three operations to bring the finger to its current condition. In the first operation, the injured finger was surgically attached to a flap which had been opened in the right side of the plaintiff's groin. It remained in that position for a number of weeks. This was to allow the soft tissues and the vascular system to regenerate. Some four weeks later, the plaintiff was readmitted to hospital for a further operation under general anaesthetic to remove the hand from the groin flap and to close up the area in the groin. One week following that, the plaintiff returned to hospital to undergo a skin graft procedure. A skin graft was taken from his right thigh and was applied to the stump of the injured finger.

69. Between the operations and subsequent to them, the plaintiff was obliged to attend at the hospital on a frequent basis for change of dressings. He continued to experience severe pain in the finger and hand, particularly in cold weather and if the finger should knock against something. While there has been some improvement, these complaints are continuing down to the present time. In addition to these complaints, the plaintiff finds that the stump of the finger tends to stick out and it gets in the way when he is carrying out simple tasks, such as dressing.

70. The defendant's expert, Mr. Riordan, considered that over the next two years most of the plaintiff's remaining symptoms would gradually settle, although he accepted that some symptoms of cold hypersensitivity may persist into the long term. The plaintiff's expert, Mr. McHugh, was somewhat less optimistic. He stated that he did not envisage any improvement in the plaintiff's condition in the future. He was of opinion that the position at the present time is permanent and no further treatment was indicated. On this basis, the court is satisfied that the plaintiff's continuing complaints of cold hypersensitivity and pain if the finger should bang against anything, are sequelae that are likely to continue into the long term.

71. In addition to the plaintiff's physical symptoms, he has also suffered a severe psychiatric injury due to the effects of the injury, the cosmetic appearance of his hand and his functional disability. This aspect is dealt with in detail in the reports furnished by Dr. Cryan, which have been outlined earlier in this judgment. I accept the evidence of Dr. Cryan as set out in her reports, that the plaintiff has suffered moderately severe P.T.S.D. and a depressive disorder as a result of the injuries sustained in the accident. The plaintiff has required psychotropic medication to deal with this aspect of his injuries. The court notes that on one occasion, in or about May 2015, the plaintiff became so despondent about his physical condition, that he made an attempt to end his life. This

indicates that his psychological distress at that time, was of an acute and severe nature. It was not a spur of the moment episode, as the plaintiff told his psychiatrist that he had been thinking about ending his life for about one week prior to that incident. It may well have been precipitated by the fact that he had taken quite an amount of alcohol on the occasion in question. Thankfully, the plaintiff has made considerable improvement and has not tried to self-harm since that time. He has also taken the precaution of giving up drinking alcohol, which was a very sensible thing to do.

72. According to Dr. Cryan, the plaintiff continues to suffer from P.T.S.D. and depression. However, there has been improvement as his mood has become more variable and there has been some improvement in his sleep pattern. Nevertheless, at the time of that report in August 2015, Dr. Cryan was of the view that the plaintiff's prognosis remained guarded and uncertain, given the episode of self-harm and the unpredictability of his physical and psychological symptoms.

73. The plaintiff is very concerned about the cosmetic aspects of his injury. He feels that the stump of the finger is very unsightly and that people tend to stare at it when he is out in public. For this reason, he usually wears a glove on his hand when out of the house. The plaintiff is also concerned by the appearance of the scar on the right side of his groin, which is visible at conversation distance. Given that the plaintiff is a single young man, this is a significant disability to carry for the rest of his life.

74. At the time of the accident, the plaintiff had been doing a P.L.C. course in sports and recreation at a college in Killucan. He had failed one of the modules and was going to have to repeat that module in the academic year commencing in September 2014. As a result of the injury sustained in the accident, the plaintiff was not able to return to his studies. However, the court was informed that he was due to resume his studies in January 2017. It was not clear whether this was repeating the module which he had failed prior to the time of the accident, or was a new course of study. However, it was a course of study in the sport and recreation area. Counsel for the plaintiff indicated to the court that while there was no specific claim for future loss of earnings per se, they were inviting the court to make a substantial award in the context of the award of general damages to cater for loss of opportunity in the job market generally, which the plaintiff will suffer as a result of the injury to his hand.

75. I do not think that the court can make a substantial award of damages under this heading. This particular plaintiff, is a man who was very involved in sporting activities and who wished to take up a career in the sports and/or leisure industry. Both Ms. Kelly and Ms. Feely, appeared to be of the view that the plaintiff's functional loss in his right hand would not be a barrier to the type of work in the sports and leisure industry, which he would have applied for if the accident had not happened. Ms. Feely was of the view that from a purely functional perspective, the occupational restrictions from the plaintiff's injury, would be relatively low, but his cold intolerance would undoubtedly limit his job opportunity, as would pain. She was of opinion that it was entirely reasonable that the plaintiff would have been delayed in his occupational plans, but generally one would hope that somebody who loses such a finger, would get back on track in terms of training and employment. It seems to me that the assessment given by Ms. Feely is a fair and reasonable assessment of the plaintiff's job prospects at the current time.

76. Given the plaintiff's educational qualifications to date and the studies which he is likely to pursue in the future, it would appear that he is likely to seek employment as a fitness instructor or leisure centre manager or worker. In such jobs, he would be required to have a knowledge of human anatomy and a good knowledge of the operation of various types of exercise equipment which is commonly found in a gym. He would then give instruction to clients in the safe use of such equipment. This could be done by giving a comprehensive explanation of the equipment and of the amount of exercise that should be undertaken by a client without causing injury to their bodies. I am in agreement with the opinions of Ms. Feely and Ms. Kelly, that the injury to the middle finger on the right hand, would not significantly impair the carrying out of his duties in such a role. In such circumstances, one would not be inclined to award substantial damages in respect of a loss of opportunity in the job market. However, while the plaintiff would like to work in the sports and leisure industry, it may be that for one reason or another he is not able to obtain or retain work in that sector which might occur if the leisure centre were put out of business. In such circumstances, given his educational qualifications, he might be put onto the general job market with the lack of manual dexterity, that he has due to the injuries sustained in the accident. This would significantly impair his chances of obtaining employment in a range of jobs which required a reasonable level of manual dexterity. The plaintiff is entitled to damages to compensate him for the disadvantage that he would experience in the general job market in such circumstances.

77. Finally, in assessing damages in this case, one has to have regard to the fact that the plaintiff was a very keen and accomplished sportsman prior to the time of the accident. He had played soccer, Gaelic football, hurling and badminton prior to the accident. He has stated that since then, he is unable to grip either the hurl or the racket and, therefore, has not been able to return to hurling or badminton. Furthermore, due to the pain in the finger when it is struck against anything, he has not been able to return to playing Gaelic football. This was particularly distressing for him, as he had hoped to be selected for the County Meath football team. This was not just an idle or speculative hope, as I note that he told the psychiatrist that he had previously been selected on the Meath panel, but had not been able to take up his place, due to an injury to his ankle at that time. Thus, it would appear that he had a realistic chance of making the Meath team. It appears that the plaintiff has got back to playing some soccer, albeit at a purely recreational level. He has also taken up running, which has helped in the recovery of his psychiatric injuries. The award of damages, must take account of the fact that as a result of the accident, this plaintiff has been deprived of the ability to participate in sports to the level that he had been prior to the accident, which for him is a considerable loss.

78. The court was invited by Mr. Walsh, S.C., on behalf of the defendant, to have regard to the various heads of compensation as set out in page 37 of the Book of Quantum. While providing some assistance, the values given therein do not take account of the groin flap operation, or the cosmetic consequences of that operation. Nor do those values reflect the fact that playing sports was the plaintiff's passion; which said activity has been dramatically curtailed as a result of the accident. Nor do they include any amount for loss of opportunity in the job market. In addition, as was conceded by counsel, the valuations given therein, do not take account of any psychiatric sequelae as a result of the injuries.

79. Taking all relevant matters into account, I award the plaintiff general damages for pain and suffering and loss of amenity to date in the sum of €65,000, together with future general damages in the sum of €60,000 and €20,000 for loss of opportunity in the job market and agreed special damages of €700, giving a total award of €145,700.