

## THE HIGH COURT

[2017 No. 580 SP]

## IN THE MATTER OF THE GARDA SIOCHANA

## (COMPENSATION) ACTS, 1945-1945

BETWEEN

DANIEL TREACY

PLAINTIFF

AND

MINISTER FOR PUBLIC EXPENDITURE AND REFORM

DEFENDANT

**EX TEMPORE JUDGMENT of Mr. Justice Tony O'Connor delivered on the 4th day of February, 2019**

1. Detective Garda Treacy (*"the plaintiff"*) is 39 years of age. Over seven years ago, on the 1st November, 2011, a detainee, who was being photographed and fingerprinted, became extremely violent; in the words of the plaintiff, *"he became crazy"*. There were three gardaí, including the plaintiff, in attendance. The detainee violently struck the plaintiff's left hand causing severe pain. The plaintiff went to a nearby hospital where he was given pain-relieving medication and his injured left middle finger was neighbour-strapped to his index finger.

2. Three days later he attended a hospital in Dublin complaining of severe pain in his left middle finger. X-rays revealed a fracture at the base of his middle phalanx and his hand was placed in a splint. He then had persistent pain.

3. The consultant in emergency medicine observed in March 2012 that the plaintiff had a ten-degree radial angle at the proximal inter-phalangeal joint. He observed that active flexion was possible to 90 degrees only. He was very tender around that joint. The fracture had healed by then. However, the plaintiff is left with a set of fingers that cannot be fully clenched together and the hand is misaligned when observed from the back.

4. The plaintiff was off work for a number of weeks and was then placed on potentially less confrontational duties for another few months.

5. Counsel for the defendant cross-examined the plaintiff to indicate that after a further review by a consultant in April 2012, it took a number of years before he saw Mr. Darragh Hynes, (Orthopaedic and Upper limb surgeon) again in November 2015. By that time the plaintiff had attended for multiple therapy sessions to regain strength in his finger. Play-Doh type material and stress balls were used by the plaintiff to regain some strength.

6. The plaintiff showed counsel and myself the deformed finger. He cannot clench his fingers together in a united manner and there is a noticeable misalignment when one observes the hand. The plaintiff cannot be faulted for the delay in getting Medico-Legal Reports and processing this application. The system appears to be that various officers involved in the scheme must sign off before an application gets a date for hearing.

7. The plaintiff explained how he does not have confidence in the finger strength which prompts him not to use same when carrying something like a shopping bag. He is right-hand dominant. On questioning by myself about activities, he said he does not play golf, he gave up football due to an unrelated back injury but has undertaken skiing on a few occasions. A consultant advised him to wear mittens in that type of circumstance because it allows heat from the rest of the hand to warm the affected finger. The finger is constantly cold. The finger sensation, which continues after seven years, may be likened to the throbbing of a finger which is infected with pus. It is constant and does not abate. In the circumstances of Detective Garda Treacy, he cannot expect relief because there will be no bursting or draining of the pus.

8. Detective Garda Treacy impressed me as a genuine officer of An Garda Síochána and not a moaner whatsoever. He has a two-year old daughter and did not complain that it affects his lifting or playing with her. He and his partner are expecting another birth later this year.

9. Counsel for the plaintiff and the defendant each addressed me, as is the custom in this type of application under the Garda Compensation Scheme. Little separates counsel and the Court in describing this as a moderate fracture of the left middle finger with continuing and future effects. The plaintiff is right hand dominant.

10. Counsel for the defendant cited the judgment of Twomey J. in *Kampff v. Minister for Public Expenditure and Reform* [2018] IEHC 371 (unreported, High Court, 25th June, 2018). When all is said and done, there is nothing to suggest that the awarding of damages under this scheme differs from the process for other personal injury claims. Twomey J. referred at paras. 64 and 68 to the recalibration of damages by the Court of Appeal and referenced the phrase of Barr J. in *Seligman v. Kuiaikowski* [2018] IEHC 102 (unreported, High Court, 23rd February, 2018) about *"...the very significant downwards recalibration of personal injury awards by the Court of Appeal"* (para. 67).

11. I do not divine from the judgments of the Court of Appeal an indication that the Book of Quantum or High Court awards should be reduced by 45% to 50% in general. The proportionality principle is stressed as it was recognised by MacMenamin J. in *Kearney v. McQuillan* [2012] 2 ILRM 377; [2012] IESC 43. It is my view that a court determining awards under the Garda Compensation Scheme, which incidentally does not provide for any appeal, should not move beyond the proportionate factor reference to the cap of €450,000.

12. The suggestion that one should reference *"average earnings"* in the awarding of general damages introduces questions about the assessment of actual incomes whether through earnings or gains of the super-rich, highly paid multinational executives, well-remunerated public servants, self-employed persons, industrial-wage earners, minimum-wage earners and those who live just above and below the poverty line. Moving to accept such a factor under the Garda Compensation Scheme for the awarding of general damages requires, in my respectful view, statutory intervention in the absence of established judgments of the Court of Appeal or the Supreme Court referencing such a factor for the awarding of all general damages. Yes, O'Higgins C.J in *Sinnott v Quinnsworth* [1984]

ILRM 523 at 532 mentioned "... *general level of incomes*" but it must be stressed that the Supreme Court was reviewing an award by a jury for general damages in the sum of IR£800,000 (= €1,015,790.00) plus very considerable special damages. In addition, the mechanism to ascertain the average earnings needs to be addressed if the Courts are going to adopt that approach which ignores some of the levelling that occurs with mandatory and voluntary insurance. As far as this Court is aware, the latter aspect of insurance has not featured in the argument for applying the average earnings factor.

13. This Court recognises the duty to determine each claim separately and to apply the ratios of the Court of Appeal and the Supreme Court in the realm of awarding damages for personal injuries.

14. I do not ignore my own limited experience in personal injury litigation prior to my appointment as a High Court Judge over three years ago. Moreover, I heard counsel for the plaintiff refer to the reasonable approach taken by the President of the Circuit Court (Groarke P.), in awarding damages and of which I am aware for the type of injury that I have described. I agree with the band of damages cited by Counsel for the plaintiff while noting the practice of this Court to itemise the general damages for past and future suffering individually.

15. Counsel for the defendant acknowledged modestly that he does not have recent experience before Groarke P. while confirming his appearances in the Circuit Court. He suggested a much lower figure by reference to an award of Twomey J. It is clear that counsel and the Court recognise that the plaintiff's claim would fall within the Circuit Court jurisdiction if it could have been prosecuted there. I am not precluded from having regard to the Book of Quantum and I have looked at same. I certainly have regard to the more recent judgments of the Court of Appeal in relation to the awarding of proportionate damages for personal injuries. I consciously exclude the factor which relates to average earnings for the reasons which I have already explained and also for the fact that I do not have evidence of those earnings.

16. I should also say that the circumstances of the injury arising in Detective Garda Treacy's claim do not detract in any way from my assessment. There is no reason not to award damages to a member of An Garda Síochána under this scheme equal to the awards given in other civil courts. The Gardaí contribute significantly to the welfare and protection of society and the State. The statutory scheme under which this claim is made is just but one recognition of that contribution.

17. I award Detective Garda Treacy €32,500 in respect of general damages for pain and suffering to date. I award €7,500 for pain and suffering into the future in view of the prognosis of Mr. Hynes, Orthopaedic and Limb Surgeon, in his report of 6th March, 2017, that the residual symptoms will continue and that Detective Garda Treacy will need to keep up stretching and other programs to minimise the effects of his injuries. That, according to my calculation, subject to correction by counsel, is a total award of €40,000 plus special damages of €1,143.87 some of which needs to be repaid by Detective Garda Treacy to his health indemnifier or insurer.