

THE HIGH COURT

[2011/2522P]

BETWEEN

ANTHONY DOYLE

PLAINTIFF

AND

BRIDGET LYONS, MOTOR INSURERS BUREAU OF IRELAND

DEFENDANTS

JUDGMENT of Mr. Justice Fullam delivered on the 3rd day of March, 2016.

Background

1. This is a claim for damages for personal injuries sustained in a road traffic accident in the earlier hours of the 10th October, 2008 on the Tullow to Carlow Road. The plaintiff who was 21 years of age at the time was a back seat passenger in a Nissan car driven by the first defendant, who was uninsured. There were three other passengers in the car at the time, Mr. Michael Carey in the front; in the back the plaintiff sat between Mr. John Stynes on his left and his girlfriend and daughter of the first defendant, Ms. Linda Lyons on his right.

2. The plaintiff issued a personal injury summons on the 16th March, 2011. The second defendant was joined as a party to the proceedings as the first defendant was not covered by a valid policy of insurance. On the 14th November, 2011 the plaintiff obtained judgment in default of defence against the first defendant. The second defendant filed its defence on the 4th April, 2012.

3. The defence of the second defendant puts the plaintiff on full proof of all matters, denies negligence and alleges contributory negligence on the part of the plaintiff. In particular, at para.3 e, it claims that it is not liable for the injuries suffered by the plaintiff on the following ground:-

"Strictly without prejudice to the foregoing, the second defendant relies upon clause 5.2 of the agreement dated the 31st March, 2004 between the second named defendant and the Minister for Transport and pleads that it bears no liability to the plaintiff in circumstances where, at the time of the accident, he knew or ought to have known that there was in force an approved policy of insurance in respect of the use of the vehicle in which he was travelling then being driven by the first defendant."

4. It is accepted by the second defendant that following the decision of the Court of Justice in *Commission of the European Communities v. Ireland (Case 211/07)* [2008] E.C.R. 33. that the inclusion of the words "or ought reasonably to have known" at paragraph 5.2 of the Motor Insurers' Bureau Of Ireland (MIBI) Agreement 2004 was in breach of Council Directive 84/5/EEC of 30th December, 1983 and therefore, for the purposes of this case, the second defendant must prove actual knowledge on the part of the plaintiff on the 10th October, 2008 that the first defendant was uninsured, in order to avoid liability under Article 5.2 of the MIBI Agreement.

5. At the date of the accident the plaintiff was unemployed and had been so since leaving school, apart from a FAS Course. He was a car enthusiast and at the time owned an old 3 Series BMW 1.8i. The plaintiff was at home at 60 Newoak Estate, Carlow, when he received a phone call from his friend Mr. Carey asking him to go for a spin with the first defendant in her new car. He drove to Mr. Carey's house, stayed there for an hour or two, and then both men went on to the first defendant's house on the Hackettstown Road, Carlow, where she lived with her partner Mr. Stynes and her daughter Linda. Mr. Carey had a couple of cans of Budweiser with him. After about an hour or an hour and a half at the first defendant's house, all five got into the first defendant's car and went for a 'rambling drive' towards Tullow. They stopped for a while in Tullow and talked. Mr. Carey received a phone call on his mobile from his partner asking him to come home as it was late. He asked the first defendant to bring him home. However, the first defendant wanted to stay talking and there was some form of argument. Ultimately they started back for Carlow. In the course of the drive the first defendant took Mr. Carey's beer can and drank from it. She drove faster. The plaintiff states that he asked her to stop and let him out. The first defendant lost control of the car midway between Tullow and Carlow while driving through a series of severe bends marked by rumble strips, a continuous white line and reflective arrow signs in the hedge. The car swerved from side to side struck a grass bank on the left hand side of the road at an entrance to a house. It was a side-on impact which caused the car to overturn a number of times ending up on the road facing back towards Tullow. The plaintiff's engineer concluded from the description of the accident given in evidence that the car had gone out of control due to excessive speed through the bends. An over-correction on the part of the driver caused the car to swerve sideways to the left into the bank at the side of the road.

6. The plaintiff stated in evidence that both he and Linda Lyons were wearing seatbelts and had he not been, he would not have survived the accident. He felt pain in his left hand and when he got out of the car he saw that it was bleeding heavily. The plaintiff stated that he saw a nearby house, walked up the driveway and knocked on the door but there was no answer. Next, he heard the first defendant's car starting up and when he went back out to find that she had driven off together with Mr Stynes and Mr Carey, leaving himself and Linda Lyons behind. The replies to particulars state that the accident happened at approximately 1.10 am.

7. Eventually a passing motorist stopped, a Polish national, and gave them a lift to a 24 hour medical facility, CareDoc, in Carlow. The Plaintiff stated he wasn't let in to the CareDoc facility so he proceeded to Carlow Garda Station. At this stage, the plaintiff said he was in pain and was fainting from loss of blood. The Gardai called an ambulance which took him to St. Luke's Hospital in Kilkenny. He was examined there and transferred by ambulance to St. James' Hospital in Dublin, arriving in daylight. There is no real issue on the

extent of the plaintiff's injuries. The plaintiff was detained in St. James's for five days, during which he had a number of surgical procedures on the fingers of his dominant left hand.

Cross examination of the plaintiff

8. The plaintiff was questioned in detail about the events of the evening, commencing with the phone call from Michael Carey and ending with his admission to St. James's Hospital. He stated that he did not know the time Michael Carey rang him, he confirmed it was dark. As to the time when he left Mr. Carey's house, again he said he wasn't looking at the time. The Plaintiff also does not know the time he left the first defendant's house but it was dark. He said he didn't know where the approximate time of the accident of 1.10 am in the Replies to Particulars came from. When it was put to him that it couldn't have been anyone else but himself who had given the information to the solicitor, he said he didn't know.

9. The Plaintiff stated that the first defendant did not specifically say she was going to Tullow, she just suggested going for a spin. He does not recall where they stopped in Tullow as it was dark; when pressed, he stated that all he remembered was that they pulled in to have a talk. The Plaintiff confirmed that Mr. Carey had been drinking. Although he wasn't paying attention to the amount of drink, the Plaintiff said that Mr. Carey was drinking on the way to Tullow and had two or three cans while they were stopped. He said Mr. Carey got a phone call from his then partner asking him to come home as it was getting late. He said the first Defendant refused to do so until Mr. Carey hit the dashboard and demanded the first defendant bring him home immediately. He stated that on the way back the first defendant picked up a can that Mr. Carey had been drinking. She started to drive faster. He said that Mr. Carey wasn't violent but all the passengers were roaring on the way back telling the first defendant to slow down. He was asked what caused the first defendant to suddenly drive in such a mad way. His response was- "Ask Bridget Lyons". The Plaintiff was questioned about the handbrake. He stated that he was informed at his solicitors that the first Defendant was blaming Mr. Carey for pulling the handbrake. The plaintiff said that he would not be friends with Mr. Carey if he had done this.

10. The plaintiff identified the point in the engineer's photograph number 4 where the first defendant began to speed up as the middle of the first bend beyond three rumble strips and white paint warnings of 'slow' 'slower' and 'very slow'. He said he knew this road like the back of his hand. The first defendant lost control at a point in photograph 5 between the two bends. He said the car turned over. He said it didn't hit the hedge, he didn't know where it went on the second turnover and he said that after the third, the car was facing back towards Tullow. He stated that he did not know how he injured his left hand. He said he couldn't move for a while and got out and went up to the house with the gates and knocked for about two minutes without success. He said he didn't have a mobile phone with him that night, he must have left it at home and didn't know if Linda Lyons had a phone with her. He was asked whether he asked the first defendant or Mr. Carey or Mr. Stynes if they had a phone. He said he didn't get a chance as he went to the house first.

11. The Plaintiff stated that he was picked up approximately an hour later by a person in a new car, there was new car plastic on the seats, and taken to the CareDoc at the back of Seven Oaks, in Carlow. He said the reason he didn't get treated at CareDoc was because he was beating down the door and they wouldn't open it. He went to the Garda Station. He said the loss of blood caught up on him. He was asked if he remembered talking to Garda Morris and said he wasn't sure; he couldn't remember a conversation with Garda Morris. He said it was a Polish fellow who was driving the car that brought him back to Carlow. It was put to him that Garda Morris would say that he told him that the driver of the car in the accident was a Polish person. He said he told the Garda that the man who gave him the lift was Polish or a foreign national. He said he was mixed up and was fainting.

12. The Plaintiff stated that he does not remember being interviewed by Mr. Tierney of the MIBI or making a statement to him at his solicitor's office on the 14th December, 2010. When shown the statement witnessed by Mr. Tierney, he said he didn't recall making it, and that he forgot a lot of things about the case.

Plaintiff's knowledge of Bridget Lyons

13. In direct examination, the plaintiff was asked how well he knew Bridget Lyons. He said he knew her to see. His friend Michael Carey had introduced them. He had been going with her daughter Linda for three to four weeks prior to the accident.

14. In cross-examination, the Plaintiff stated that he did not ask the first defendant where she got the car or check the insurance disk. The Plaintiff stated that he assumed that the car was insured, that he had never seen the first Defendant driving before and he didn't ask if she was insured. He also stated he did not ask whether the first Defendant had a driving licence. He had seen the first defendant around the town but claimed he did not know her well.

15. The Plaintiff stated that he has not seen the first Defendant in court and specifically does not remember the 17th October, 2007. This was the date the first defendant was convicted of driving without insurance, received a six month suspended sentence and was disqualified from driving for 25 years. The Plaintiff denied that he was in court and was jeering and making noises at the announcement of the verdict. It was put to him that Garda Finbarr O'Connor specifically recalls him jeering. The Plaintiff denied having any knowledge that the first defendant had 32 previous convictions for road traffic offences. It was put to him that she had three convictions for no insurance and two convictions for drink driving. He said he never knew that. It was put to him that she was disqualified from driving for 25 years in October, 2007 and it was in the local papers. He said he didn't read papers. He said that he did not know about the October 2007 disqualification.

16. The Plaintiff stated that he has 72 (corrected by Garda Morris to 43) previous convictions for offences such as 'fighting, robbing and car offences.'

17. The Plaintiff stated that he first found out that Bridget Lyons had no insurance when he went to his solicitors and was told by Mr. Kenny. He was asked if he had gone to the Garda to have the first defendant prosecuted for driving with no insurance. The Plaintiff stated that he met Garda Aylward in the street, that he was supposed to call over to take a statement but Garda Aylward never asked him to make a statement afterwards. He said he went to his solicitors. He was asked again if he really had no idea that the first defendant had no insurance. He said he assumed she had insurance. It was put to him that Garda O'Connor would give evidence that in October 2007 that when the first defendant was sentenced for driving without insurance he jeered. He said he wasn't there or if he was it was in his own case.

18. In re-examination the plaintiff said he asked Linda Lyons to take photographs of the damage to the first defendant's car but he never got them. He said he went back to the Lyons' house after he was discharged from hospital but he was not let in to the house.

Evidence on behalf of the defence

19. Garda Michael Morris was on duty in Carlow Garda Station on the 10th October, 2008. At 5 am there was a noise in the public area with somebody shouting. He confirmed it was the Plaintiff; he knew him from work. He stated that the plaintiff was agitated and was shouting for an ambulance, he was in a lot of pain and shocked with his finger hanging off. Garda Morris asked the plaintiff three

times what happened but the plaintiff did not want to tell him. The plaintiff told him he was in an accident with Bridget Lyons' daughter. He said they were picked up by a foreigner, a Polish national and he crashed the car on the Tullow Road. Garda Morris said that Carlow Garda Station was not notified of a road traffic accident. He said when the ambulance pulled up outside the Garda Station the plaintiff ran out the door.

20. Garda Morris drove out to the Tullow Road to check the scene but could not see any evidence of an accident. He then called to the house of Bridget Lyons at 23 Grange Court on the Hacketstown Road. There he met Bridget Lyons, her daughter Linda, Michael Carey, John Stynes, and another chap. Michael Carey was injured and had a cut on his scalp. He said the atmosphere was very intense and it was a dangerous situation. He said there was no statement of complaint by the plaintiff in relation to the driving of Bridget Lyons.

21. In cross-examination Garda Morris stated he did not have notes of what happened in the Garda Station. He agreed the plaintiff had a serious injury and was in a lot of pain. It was put to him that his impression was incorrect about the plaintiff saying he was in an accident in the Polish national's car. He said he wasn't mistaken about what the plaintiff had said to him. He agreed there were no negative dealings regarding the plaintiff since 2009 and that the plaintiff had 43 previous convictions. He said that there was a Nissan Sunny at the rear of the Lyons household and it was damaged. He said the plaintiff's interest in motor cars was in powerful older cars with bigger engines and that the plaintiff's BMW was an older car. Garda Morris confirmed that the plaintiff had no convictions for driving without insurance.

22. Garda Shane Aylward was stationed at Carlow Garda Station in 2008. He did not recall the plaintiff reporting the crash. Furthermore, he did not recall meeting the plaintiff or the plaintiff saying to him that he was going to make a statement.

23. Garda Finbar O'Connor told the court that Bridget Lyons had three convictions for driving without insurance and two convictions for drink driving offences. On the 17th October, 2007 Bridget Lyons received a six month suspended sentence and was disqualified for 25 years. Garda O'Connor remembered the plaintiff Anthony Doyle being in court on that date. He stated that this day stood out for him as it was the longest disqualification he had seen imposed. He gave evidence that Anthony Doyle had jeered when the judge imposed the 25 year disqualification and then left the court.

24. On cross-examination, Garda O'Connor accepted that he had no notes of the incident in court and did not know why the plaintiff was in court that day. He said he was the prosecuting Garda in Bridget O'Connor's case. He had looked up the date of the court appearance on the system. Garda O'Connor denied that his recollection was incorrect.

25. The defence was not required to prove the statement of the plaintiff of 14th December 2010 witnessed by Mr. Tierney.

Submissions on behalf of the second defendant

26. Counsel for the MIBI submitted that the plaintiff must prove negligence. If the court is satisfied that the plaintiff has proved negligence then the onus is on the second defendant to prove that the plaintiff actually knew that the first defendant had no insurance on the 10th October, 2008.

27. As regards negligence, it was submitted that the plaintiff's account is not credible as to the locus of the accident. There is no evidence of any damage to the hedge at the alleged locus. The plaintiff's evidence that the first defendant was driving the car is contradicted by his account to Garda Morris later that night that he had been involved in a road traffic accident in a car driven by a Polish national. The matter could have been put beyond doubt had the plaintiff called Mr. Carey, who was available to him, but he did not do so.

28. As regards the plaintiff's actual knowledge, the court has the evidence of Garda O'Connor who was the prosecuting garda in court on the 17th October, 2007. Garda O'Connor gave a clear account of the plaintiff being present and reacting to the verdict by jeering and then leaving the court. The court is entitled to infer on the balance of probabilities that, on the 10th October, 2008, within one year of the incident in the District Court, the plaintiff had actual knowledge that the first defendant was uninsured.

29. Counsel relies on passages from two judgments, first *Kinsella v Motor Insurers Bureau of Ireland* [1997] 3 I.R. 586 and *Devlin v Cassidy and The Motor Insurers Bureau of Ireland* [2006] IEHC 287, a decision of Peart J. delivered on the 31st July, 2006. While he acknowledges that these cases relate to the interpretation of the phrase "*or ought reasonably to have known*" struck down in *Commission v Ireland*, counsel relies on certain passages in those judgments. It was submitted that actual knowledge encompasses imputed knowledge as per *White v White* [2001] 1 WLR 481 and in which such a construction was held to be compliant with the Second Directive. In *Kinsella*, Finlay CJ. upheld a decision where the trial judge drew inference from the plaintiff's lack of credibility in other aspects of the case.

Submissions on behalf of the plaintiff

30. Counsel on behalf of the plaintiff said that the plaintiff's evidence together with that of his engineer proves the case in negligence on the balance of probabilities. The plaintiff's evidence was that Bridget Lyons was speeding entering a series of bends which were clearly marked as dangerous and lost control of the car. It was not put to the plaintiff that the first defendant was not driving on the occasion. The Garda evidence of the plaintiff's account in the Garda Station that he was involved in an accident in a car driven by a Polish driver is only relevant to the plaintiff's credibility and that is a matter for the court. Counsel further submits that the second defendant has not pleaded that the first defendant was not driving or that the first defendant was under the influence of alcohol.

31. As regards actual knowledge, counsel for the plaintiff submitted that the MIBI must prove actual knowledge on the part of the plaintiff i.e. that at the time of the accident the plaintiff knew she had no insurance. The test according to Finlay CJ. in *Kinsella* is a subjective one. The second defendant has not proved the plaintiff's state of knowledge on the evening in question. The first defendant could have been called for that purpose but was not, although she had been listed in the second defendant's schedule of witnesses. Counsel submitted that the court can infer from this that Bridget Lyons did not support the proposition that she was not insured to drive a motor vehicle on the 10th October, 2008.

32. It is submitted on behalf of the plaintiff that the only evidence tendered by the MIBI was an allegation that the plaintiff was in court on 17th October, 2007 when Bridget Lyons was sentenced. However, there is nothing in the evidence relating to the intervening twelve months which supports actual knowledge on part of the plaintiff. The plaintiff contends that it is entirely speculative to suggest that even if the plaintiff was in court in October, 2007 and witnessed the sentencing of Bridget Lyons, he had it in his mind twelve months later.

33. Furthermore, it was submitted by the Plaintiff that to deny a claimant who proves negligence causing him personal injury on the basis of an inference that he had actual knowledge that the tortfeasor was uninsured amounts to a fundamental breach of his right to

just compensation. In this regard, the court is entitled to draw an inference in favour of the plaintiff given the absence of any prosecution against him for allowing himself to be carried in a vehicle he knew to be uninsured.

34. It is submitted on behalf of the plaintiff that he was a candid and honest witness.

Discussion

35. Since the decision of the European Court of Justice in *Commission v Ireland*, the defence of an insurer based on a claimant's knowledge that the vehicle in which he was travelling was uninsured must be proved by actual knowledge. The issue is discussed at paragraphs 3.09 and 3.10 in "MIBI Agreements and the Law" Second Edition, Noctor and Lyons":-

"3.09 To successfully defend a claim under the (2009) Agreement, the MIBI must prove that the plaintiff knew that there was not in force an approved policy of insurance. It is submitted, however, that there is no reason why a court could not infer knowledge, based on circumstantial evidence given a suitable case. In the UK, "knew" has been held to mean possessing information leading one to the conclusion that a driver might not be insured but deliberately refraining from asking the question. However, it does not extend to a situation where a passenger did not think about insurance, even though an ordinary prudent person in his position, and with his knowledge, would have inquired about it.

*3.10 Thus, while it may seem that the MIBI will be faced with an insurmountable task in terms of proving that a plaintiff knew that there was no insurance, there is no reason, in principle, why a court would not be precluded from inferring that a plaintiff knew that there was no insurance on the balance of probabilities. The Criminal Courts regularly return verdicts of guilty beyond reasonable doubt in trials in which the prosecution's case is based on circumstantial evidence. There is no reason why, in an appropriate case, the MIBI could not successfully argue that actual knowledge encompasses imputed knowledge as discussed in the House of Lords in *White v White* [2001] 1 WLR 4 81 and in which such a construction was held to be compliant with the Second Directive. Indeed in *Kinsella v MIBI*, although dealing with the wording of the 1964 MIBI Agreements, Finlay C.J. specifically upheld a trial judge drawing inferences from the plaintiff's lack of credibility in other aspects of the case."*

36. In *Devlin*, Peart J. cited the following passage from the judgment of Lord Nicholls in *White v. White* dealing with the question of imputed knowledge:

*"Finally on this particular topic, it is interesting to note the comments of Lord Nicholls in the House of Lords in *White v. White* [2001] 2 AER. 43 at p.48. He was considering, in the context of the same exclusion clause appearing in the MIBI Agreement in the United Kingdom, the question of what constitutes knowledge for the purpose of the exclusion clause. He states in this regard at p. 48:*

"There is one category of case which is so close to actual knowledge that the law generally treats the person as having knowledge. It is the type of case where, as applied to the present context, a passenger had information from which he drew the conclusion that the driver might well be uninsured but deliberately refrained from asking questions lest his suspicion should be confirmed. He wanted not to know ('I will not ask, because I would rather not know'). The law generally treats this state of mind as having the like consequences as would follow if the person, in my example the passenger, had acted honestly rather than disingenuously. He is treated as though he had received the information which he deliberately sought to avoid. In the context of the directive that makes good sense. Such a passenger as much colludes in the use of an uninsured vehicle as a passenger who actually knows that the vehicle is uninsured. The principle of equal treatment requires that these two persons shall be treated alike. "

*There is nothing to distinguish the present plaintiff from the category of person referred to in this passage. The reference to collusion towards the end of the passage has a resonance of what Finlay CJ states in *Kinsella*, about the blameworthiness of the passenger who is at least condoning the commission of a serious offence, and that a court should accordingly be concerned "to assess as to whether the attitude or conduct of the person concerned at the time of the accident was in this particular sense blameworthy."*

Negligence

37. I am satisfied that the plaintiff was injured in a road traffic accident on the Tullow to Carlow road on the 10th October, 2008. I am satisfied based on the plaintiff's own evidence and the evidence of Garda Morris of visiting the first defendant's house seeing Mr Doyle's head injury and seeing a damaged Nissan Sunny, that the driver of the vehicle in which the plaintiff was injured was in fact Bridget Lyons first defendant. Finally, I am satisfied from the evidence of the plaintiff that Bridget Lyons drove the said vehicle in a negligent manner, She lost control due to driving at an excessive speed on a part of the road where she was required to be particularly careful.

Actual knowledge

38. Garda O'Connor was the prosecuting Garda in the case against Bridget Lyons for driving a mechanically propelled vehicle without insurance on the 17th October, 2007 and was present in court when the case was dealt with. Bridget Lyons was disqualified from driving for a period of 25 years. I accept the evidence of Garda O'Connor that the plaintiff was in court on that date and reacted by jeering the announcement of disqualification. I am satisfied on the basis of Garda O'Connor's evidence that on that date the plaintiff knew that Bridget Lyons was prohibited from driving mechanically propelled vehicles for a period of 25 years. The test of whether the plaintiff knew Bridget Lyons was uninsured as of the 10th October, 2008 is a subjective one. The court is entitled to consider the circumstantial evidence concerning the plaintiff's actions on the night and the account given by him in evidence.

39. Firstly, the plaintiff had the opportunity in Carlow Garda Station to tell Garda Morris the name of the person who had been driving the car in which he was injured. Not alone did he not tell Garda Morris that it was the first defendant who was driving the car, but he attempted to mislead him by telling him it was a Polish national. The obvious inference from this is that the plaintiff was intent on preventing the gardai from finding out that the first defendant was driving the vehicle on the night. Furthermore, the plaintiff subsequently made no complaint to the gardai against the first defendant. Such a complaint could have left both himself and the first defendant open to prosecution.

40. In a similar vein, the plaintiff made a statement on the 14th December, 2010 to Mr. Michael Tierney on behalf of the second defendant outlining details of the accident. In that statement he said he was 'very dazed following the impact and remembered hearing the car engine restart. Bridget drove off leaving himself and Linda behind on the road'. In his evidence he added that he had gone for assistance to the house where the accident happened. The plaintiff was somewhat evasive when asked his reasons for going

up to the house. He said that he had left his mobile phone at home and didn't know whether Linda Lyons had a mobile phone with her. Going to the house for the purpose of ringing for an ambulance would not make sense given that Mr. Carey had his phone with him. I do not accept that the plaintiff went to the house; nor do I accept his explanation for Bridget Lyons leaving her daughter and the plaintiff behind on the road.

41. The plaintiff was asked a number of times why he didn't enquire on the night whether Bridget Lyons was insured to drive the car. His explanation that he assumed she was insured is simply not credible. First, he knew from October 2007 that she had been disqualified for 25 years, an event which registered with him such that he reacted in court on hearing it by an outburst of jeering. That was the reaction of a supporter, friend or associate not a bystander. Second, his evidence was that he had never seen her driving before the night of the accident. At that stage he had known Bridget Lyons from seeing her around the town, from her court appearance, from association with their mutual friend Mr Carey and from his relationship with her daughter. The only assumption he could have made was that the reason he hadn't seen her driving was that she was off the road because she was disqualified.

42. The obvious inference is that the plaintiff is in the category of claimant identified by Lord Nichols in *White v. White* as a person not wanting to ask because he knew the answer.

43. In conclusion, I am satisfied the plaintiff actually knew that Bridget Lyons was not insured to drive the motor vehicle on the 10th October, 2008; his conduct in the Garda Station in blaming the accident on the Polish national so as to cover for Bridget Lyons, and his answers in cross-examination at this trial support that conclusion. I would dismiss the case against the second defendant.

Damages

44. For completeness it is necessary to assess damages for the purpose of the plaintiff's case against the first defendant.

45. The plaintiff sustained severe soft tissue injuries to the back of the left hand and damage to the index, middle and ring fingers. He is left hand dominant. Following the accident his hand was painful and he couldn't make a fist. When he got out of the car he looked at it in the headlights and saw it was spouting blood. He said he was passing in and out of consciousness on the side of the road until he was picked up and given a lift to Carlow. He said he was fainting in the Garda Station. Garda Morris agreed that he was in a lot of pain. He was taken by ambulance to St. Luke's Hospital Kilkenny and then transferred to St. James's Hospital in Dublin. He said his hand was in bits, the middle finger was burst open and the back of the fingers were all torn. He said he couldn't move the fingers. Over a space of five days at St. James's he had four operations including a skin graft and the insertion of a temporary straightening rod through the middle finger. He was not in pain while in hospital as he was on morphine. The straightening rod was in place for six weeks. He returned as a day case to have it removed. He had physiotherapy for approximately five weeks after the removal of the rod. The straightening procedure did not work.

46. The Plaintiff stated that the mid finger is permanently bent and the nail keeps falling off. The index finger has healed up with scarring at the back extending to the wrist. The nail of this finger is completely deformed. The ring finger has healed up again with permanent scarring.

47. In evidence, Mr. McHugh, Consultant Plastic Surgeon was of the opinion that the plaintiff suffered severe soft tissue injuries to the back of the hand and damage to the index, middle and ring fingers. Mr. McHugh was of the view that the plaintiff's injury affects his grip and would limit his chances of getting a manual job. He said in his report of the 23rd July, 2012 that the index and middle finger nails were growing in a very deformed fashion and in fact most of the nail bed had been destroyed in the index and middle fingers so that there was very little nail growing. In addition Mr. McHugh said that he had severe scarring on the back of the index, middle and ring fingers which extended back almost to the wrist joint. This was a source of embarrassment in company for the plaintiff. Mr. McHugh said his main problem was that the middle joint and distal joint of the ring finger were completely disrupted so that the finger has a swan like deformity. From a functional point of view this is a problem and from a cosmetic point of view it is very unsightly. Mr. McHugh is of the position that the plaintiff's condition was permanent and plastic surgery had nothing to offer. He agreed in cross-examination that the scarring was not a big deal and the plaintiff would be able to use the hand for nearly everything including being able to write. The plaintiff does not have ongoing pain and Mr. McHugh is of the view degenerative arthritis would not occur.

48. Apart from a FAS course, the plaintiff has never worked. There is no claim for loss of earnings. Special damages are agreed in the sum of €4,910.80.

49. Having consulted the PIAB Book of Quantum I am satisfied that the appropriate figure for general damages in this case is €70,000.00, comprising general damages to date €40,000.00 and €30,000.00 into the future.

50. I will give judgment in the sum of €74,910.80 against the first defendant and dismiss the plaintiff's claim against the second defendant.