

**BETWEEN****SHANNON RYAN****PLAINTIFF****AND****JACK GILL****DEFENDANT****JUDGMENT of Mr. Justice Meenan delivered on the 3rd day of May, 2019****Claim**

1. On 26 December 2014 the plaintiff was a back-seat passenger in a motor vehicle being driven by the defendant when it was involved in a collision. A photograph of the motor vehicle taken after the collision illustrates the severe nature of the impact given the extensive damage shown. As a result of the collision, the plaintiff sustained personal injuries, loss and damage. The plaintiff was wearing a seatbelt at the time and liability is not in issue.

2. The plaintiff was born on 7 December 1998, was sixteen years of age at the time of the accident and is now twenty.

3. Following the accident, the plaintiff was transferred by ambulance to the Accident and Emergency Department of University Hospital Limerick. The plaintiff had a Glasgow coma scale of 8/15. On the Glasgow coma scale, a reading of 3/15 would represent a person being almost entirely non-responsive so it can be seen that, at that stage, there were serious concerns for the welfare of the plaintiff. She was intubated for a number of hours. Whilst in hospital, the plaintiff developed a severe migraine and became quite agitated. She developed some numbness in her right upper and lower limbs. The plaintiff has no recollection of the accident and was discharged from hospital on 29 December 2014.

**Personal Injuries**

4. A CT scan of the plaintiff's brain showed no evidence of a brain injury. The plaintiff's injuries consisted of neck and upper back pain. She has also suffered from recurrent headaches in the right frontal and temporal area since the accident and these headaches have been accompanied by photophobia. Prior to the accident, the plaintiff did suffer from migraines during her childhood years. She had not, however, experienced any such migraine for approximately two to three years prior to the accident. The plaintiff further sustained an abrasion to her right tibia and while this has since healed it has resulted in a slight discolouration which can become more apparent following a shower or exposure to the sun.

**Medical evidence**

5. There was a considerable amount of medical evidence available to the Court, in particular evidence on behalf of the plaintiff. There were a number of agreed medical reports which I have considered but I will concentrate on the evidence given by Mr. John Rice, Consultant Orthopaedic Surgeon, Dr. Sean O'Sullivan, Consultant Neurologist, and Dr. Alex Stafford, Consultant Radiologist, on behalf of the plaintiff. The Court additionally heard from Mr. Brian O'Keeffe, Consultant Clinical Psychologist, also on behalf of the plaintiff. On behalf of the defendant, the Court heard evidence from Dr. Brian J. Spillane, Sports and Orthopaedic Physician.

6. Mr. Rice saw the plaintiff on numerous occasions between August 2016 and March 2019. He found that there was an overall normal range of movement of her cervical spine but that both the touching of the trapezius muscles at the end range of lateral flexion and rotation of her head and neck resulted in pain and tenderness. Given the length of time her symptoms have persisted, Mr. Rice reached the conclusion that the plaintiff has developed a chronic pain syndrome with an established pain pattern. Mr. Rice was satisfied that his findings were consistent with the various MRI's carried out on the plaintiff which revealed a loss of lordosis in the cervical spine region and minor left sided torticollis. These findings are consistent with ongoing muscle spasms resulting in the symptoms described by the plaintiff. Mr. Rice gave a very guarded prognosis for the plaintiff.

7. Dr. O'Sullivan is an experienced and highly qualified neurologist. He has published over 100 peer-reviewed papers and is the author of numerous chapters in books on clinical neurological topics. Dr. O'Sullivan has seen the plaintiff on many occasions and saw her as recently as 5 March 2019. Dr. O'Sullivan referred to the plaintiff's neck pain, upper back pain and, on occasion, severe pains in upper limbs in the form of shooting pains which have improved in frequency and severity. Evidence given by Dr. O'Sullivan was particularly instructive on the matter of the headaches which the plaintiff has been experiencing since the accident. These headaches occur once or twice a week and are noted to be 7/10 in severity but improve within an hour or two after taking paracetamol. When the headaches are present the plaintiff is dizzy and she continues to have associated photophobia.

8. According to the Dr. O'Sullivan, the plaintiff's symptoms are consistent with post-traumatic headaches. He considers that, at this stage, a full recovery is very unlikely as there has been no significant improvement in these headaches in excess of four years since the accident. Dr. O'Sullivan accepted that there was no significant abnormality present on the MRI's that had been taken. He is fully satisfied however as to the genuineness of the plaintiff's complaints and considered the absence of such abnormalities to be as a result of the technical limitations of MRIs.

9. Dr. Stafford, Consultant Radiologist, gave evidence of the various MRI's and confirmed the various findings in respect of which Mr. Rice and Dr. O'Sullivan gave their opinions.

10. Mr. O'Keeffe, Consultant Clinical Psychologist, gave evidence that the plaintiff suffered psychological shock in addition to the physical injuries already described. He described this as an "adjustment disorder" and stated that "post-traumatic disorder" was only a possibility. The plaintiff has residual car-phobia symptoms which are likely to resolve over time.

11. The plaintiff was examined by Dr. Spillane, Sports and Orthopaedic Physician, on behalf of the defendant. Though the plaintiff made the same complaints to Dr. Spillane as she had made to her own doctors he had a more optimistic prognosis. He expected that the plaintiff would have a gradual improvement and make a full recovery over the next twelve months. This opinion was given in March 2019.

12. Insofar as there is a dispute between the various doctors involved in assessing the plaintiff's injuries it seems to me that such

dispute centres on the prognosis for the plaintiff. Given his particular specialisation and qualifications, I would prefer the evidence of Dr. O'Sullivan and find, as a matter of probability, that the plaintiff's prognosis is as stated by him. Further, I would also prefer the evidence of Mr. Rice, Consultant Orthopaedic Surgeon, on the plaintiff's prognosis given the frequency which he has reviewed the plaintiff's condition since the date of the accident and the overall detail of his reports and evidence to the Court.

### **The plaintiff**

13. The plaintiff herself gave evidence to the Court. As much of the plaintiff's injuries could not be evidenced on the MRIs or other scanning the Court had to rely upon the truthfulness of her evidence concerning the nature and extent of her ongoing injuries. I found the plaintiff to be an honest and truthful witness who did not seek to exaggerate or embellish her various complaints.

14. At the time of the accident the plaintiff was a secondary school student and was active in sports, in particular camogie which she played to a high level. The effects of the injuries have meant that she can no longer play camogie and her overall social life has been curtailed. This is particularly so as a result of the ongoing headaches. The plaintiff's academic life has also been affected. Though the plaintiff's absences from school were limited, I am satisfied that the pain from the recurrent headaches, as was described by the plaintiff, probably contributed to an underperformance in the Leaving Certificate examinations and a failure to attain the points required to study the course of her choice, Social Care Practice. Nonetheless, the plaintiff has overcome this and is now studying for a qualification in her chosen subject. The fact that the plaintiff has had to give up camogie is a particular loss to her given her ability in the sport. This must also have the effect of depriving her of other aspects of her social life.

15. The plaintiff is under a duty to take all reasonable steps to mitigate her injuries. I am satisfied that the plaintiff has taken such reasonable steps by way of physiotherapy and medication and I accept her reluctance to take painkillers on a frequent and ongoing basis due to her young age.

16. In assessing damages, I must have regard to the prognosis for the plaintiff as stated by Mr. John Rice and Dr. Sean O'Sullivan. This prognosis is, at best, very guarded. The plaintiff is only twenty years of age and has a full life ahead of her. At this stage the plaintiff is probably able to adjust her life so as to reduce the effects of the recurring neck pain, upper back pain and headaches. However, the plaintiff's circumstances may change over the coming years and it may be that she will be unable to make the adjustments which she can now do. As such, the plaintiff is entitled to general damages representing pain and suffering to date and into the future.

### **Principles to be applied**

17. There have been a number of recent decisions of the Court of Appeal on the principles that should be applied by a court in assessing general damages. I refer to *Nolan v. Wirenski* [2016] 1 I.R. 461 and *Payne v. Nugent* [2015] IECA 268. In *Nolan v. Wirenski*, Irvine stated at para. 31: -

"Principle and authority require that awards of damages should be (i) fair to the plaintiff and the defendant; (ii) objectively reasonable in light of the common good and social conditions in the State; and (iii) proportionate within the scheme of awards for personal injuries generally. This usually means locating the seriousness of the case at an appropriate point somewhere on a scale which includes everything from the most minor to the most serious injuries."

18. The law relating to the award of general damages has been comprehensively reviewed in a judgment of Barton J. in *BD v. Minister for Health and Children* [2019] IEHC 173 wherein the aforesaid principles were restated. In assessing my award, I will follow these principles.

### **Book of quantum**

19. When assessing damages, I am obliged to have regard to the Book of Quantum. While I have done so, it should be stated that the various figures referred to in the Book of Quantum are indicative only. This is all they can be as, in assessing damages, I must have regard to a number of factors including the age of the plaintiff and the effects which their injuries have had on the plaintiff and will continue to have on her and, in particular, on her working, social and recreational life. Additionally, the Book of Quantum is of very limited assistance in assessing damages for complaints, such as the plaintiff herein, who suffers from ongoing and regular headaches which, to a significant extent, are debilitating. The effects of such a problem will naturally vary from person to person.

20. In addition to the above, I have seen the blemish on the plaintiff's leg. It is noticeable and I accept that it can become more obvious following being subjected to hot water or exposed to the sun. However, it is cosmetic and I would not consider it to be a "scar" as such.

### **Damages**

21. By reason of the foregoing, I assess general damages as being:

(i) €45,000 to date;

(ii) €45,000 into the future.

This totals €90,000 to which must be added €2,115.11 agreed special damages. I will therefore make a decree in favour of the plaintiff for €92,115.11.