

## THE HIGH COURT

No. 14331P/2002

BETWEEN

SANDRA KELLY

PLAINTIFF

AND  
GERRY HACKETT

DEFENDANT

**Judgment of Mr. Justice Diarmuid B. O'Donovan delivered on the 5th day of July, 2005.**

1. The plaintiff in this case, Sandra Kelly, is a 37 year old married lady with two children, respectively aged 14 years and 4 years. She resides with her husband, her children and her parents at Ayrfield Road, Coolock in the County Dublin.

2. Sandra Kelly left school at 15 years of age with no examinations to her credit. However, from the time that she left school, she was in full time employment; in a variety of jobs, until the month of February, 2001, when, while she was on maternity leave, she was made redundant by her then employers, Messrs. Motorol Limited. However, in the month of March, 2001, she applied for employment as a catering assistant at Beaumont Hospital and, following interview, was offered employment commencing on 13th April, 2001. In that regard, I had evidence from Ms. Kay Fleming, the catering officer at Beaumont Hospital, confirming the fact that Mrs. Kelly had been offered such employment and that it was to commence on 13th April, 2001 and indicating that she would have commenced employment on a salary of €17,240 gross per annum and, were she still in that employment, that her current salary would be €23,212 gross per annum. In that regard, Ms. Fleming, whose evidence I accepted without reservation, gave me to understand that she could think of no good reason why, were it not for the events which gave rise to this claim, Mrs. Kelly would not still be employed by Beaumont Hospital.

3. Sandra Kelly comes to court seeking damages for injuries which she suffered as a result of a traffic accident in which she was involved through no fault of her own on the 6th day of April, 2001; an accident which occurred at Luke Kelly bridge in the city of Dublin. On that occasion, Mrs. Kelly was a back seat passenger in a car driven by her husband. Also in the car was her four month old baby boy, Roy, who was strapped in a baby seat in the front of the car and her 10 year old daughter, Gemma, who was sitting in the back beside her. Mrs. Kelly was going into town to buy a new dress in anticipation of starting her new job in Beaumont Hospital in the following week. At the commencement of the journey, she was wearing a seatbelt. However, when the child commenced to cry, she decided to feed him and she removed the seatbelt so that she might give the child a bottle whilst sitting on her lap. As the car in which she was travelling was negotiating a junction controlled by traffic lights, it was struck on the right front by the defendant's taxi which entered the junction against a red light. Apparently, the impact between the two vehicles was a relatively severe one and, at the time, Mrs. Kelly was actually burping her baby and was able to protect it from injury. Needless to say, liability for the said occurrence was not contested by the defendant but it was alleged by the defence that Mrs. Kelly was guilty of negligence contributing to her injuries by reason of her failure to wear a seat belt. Apart from the fact that I heard no evidence whatsoever to suggest that the injuries suffered by Mrs. Kelly would have been any less severe had she been wearing a seatbelt, given that the front seat of the car in which she was travelling was pushed back against her legs, I do not think that she would have been any better off had she been wearing a seatbelt. Accordingly, I am not persuaded that she was guilty of contributory negligence.

4. Immediately after the impact between the two vehicles, Mrs. Kelly was conscious of both her husband and her two children screaming and she told me and I accept that she herself was shocked and very frightened. She said that she could not move and was conscious of pain in both of her legs which were trapped by the front seat. An ambulance was sent for and, apparently, it took in excess of an hour to cut Mrs. Kelly out of the car in which she was travelling and, in that regard, while she was very upset, Mrs. Kelly said that the ambulance men were very kind to her. Both she and her husband were taken to the Mater Hospital in separate ambulances and the two children were taken to Temple Street Children's Hospital in another ambulance. Apart from the pain in her legs and the shock which she was experiencing, Mrs. Kelly told me that she was very concerned about the welfare of her husband and of her two children and I have no doubt but that that was so. Fortunately, neither her husband nor her two children were badly injured and they were all discharged from hospital within a relatively short period of time.

5. Insofar as Mrs. Kelly, herself was concerned, when she was brought to the Mater Hospital, she was subjected to x-ray examination following which she was told that she had sustained no bony injury but that both of her legs were very badly bruised; so much so that she could not walk. However, it was not considered necessary to detain her in hospital and, while she was given crutches to help her to mobilise, she found them impossible to use and, in fact, was wheeled out of the hospital in a wheelchair. However, when she got home, she told me that, because of her inability to walk on her legs, she had, as she put it, to "bum around the house" which she did for the next four weeks. However, the bruising of her legs gradually subsided although it was some months before it abated altogether and, for some weeks after her accident, she experienced pain in her legs which necessitated pain killing medication from time to time. However, she suffered no long term discomfort or disability arising from the injury which she had suffered to her legs. On the other hand, a huge problem manifested itself about four or five weeks after her accident on the first occasion on which she travelled in a car. On that occasion, when she was going into town she experienced what appears to have been a panic attack manifested by;

- (a) terrible fear,
- (b) difficulty in breathing,
- (c) a choking sensation,
- (d) uncontrollable crying, and
- (e) vomiting.

6. The attack was so bad that she could not continue her journey and had to return home. She told me and I accept that she could not understand what was happening to her and that she had never had a similar experience in her lifetime. As a result of this experience, she attended her General Practitioner, Dr. T.M. Coghlan, who advised her to continue taking Prozac tablets which, in fact, she was taking at the time to counter a condition of post-natal depression which she had suffered following the birth of her son some months earlier. However, the Prozac did not help to counter the fear which she continued to experience every time that she tried to travel in a car. In fact, it was not even necessary that she be in a car before she experienced a fearful attack similar to that which she had experienced on the first occasion on which she had got into a car after her accident. In the presence of heavy traffic she

was fearful, even the sound of the horn of a car terrified her. Accordingly, although, prior to her accident, she enjoyed walking, she was no longer able to enjoy a walk in the presence of traffic. On account of these problems, Mrs. Kelly continued to attend Dr. Coghlan on a regular basis. However, as the Prozac which he was prescribing did not help to alleviate Mrs. Kelly's problems, Dr. Coghlan referred her to Dr. Robert Cantrell, a consultant psychiatrist, who has furnished reports on her and who gave evidence before me to which I will refer in due course. Dr. Cantrell prescribed different medication for Mrs. Kelly and advised counselling to which end he put her in touch with a man, who she called Pat, at a health centre. For many months following, Mrs. Kelly attended counselling sessions at that health centre on a weekly basis for sessions lasting approximately an hour. She told me that she thought that those counselling sessions helped her and, in particular, helped her to relax. She told me that, while she travelled to the health centre by car; a journey lasting five to ten minutes, those journeys were always a fearful experience for her and, at the end of the day, while, as I have indicated, the counselling sessions did help her to relax somewhat, she continued to experience great fear on any occasion on which she travelled in a car. She said the situation was not too bad while driving through a housing estate but that she became very panicky while driving through the city, or in heavy traffic. She told me that, on one occasion, she travelled on a bus but that she became so upset that she had to get off the bus after one stop. Indeed, she gave me to believe that the fear which she experienced on the bus was worse than that which she had experienced in a car. At the same time as she was attending counselling sessions, Mrs. Kelly was taking anti-depressant medication, medication to relax her and sleeping tablets because she was restless at night. All of that medication was prescribed by Dr. Cantrell and, indeed, she still takes that medication to the present day and, as I interpreted Dr. Cantrell's evidence, the probabilities are that she will continue to do so for the foreseeable future. In that regard, Mrs. Kelly has attended Dr. Cantrell every six weeks since November, 2001 and, again, as I interpreted Dr. Cantrell's evidence, the probabilities are that she will continue to have to attend him on a regular basis for the foreseeable future.

7. Although she told me that she had learned how to drive, Mrs. Kelly said that, in fact, she has never driven since her accident and although she keeps trying to accommodate to travel by car, she has been unable to do so. In that regard, she instanced an occasion last Christmas when she was driven to a social function in Ashbourne and became so ill that she could not move her legs and had agonising pains in her arms so that she had to come home. Indeed, she told me that, since the incident which gave rise to this claim, her social life has been totally disrupted. She agreed that she can go to local shops but that she gets so panicky if she goes into town that her mother now has to do any shopping that she wants done in town. In that regard, Mrs. Kelly told me that, only last week, she was required to attend an occupational therapist in connection with her case. She said that she went by car and that it was "a horrible experience"; that she vomited and experienced severe pain in her arms. Indeed, she told me that, when she was driven to court for her case she was ill. Essentially, therefore, she is unable to travel by car or bus with any comfort and, accordingly, is unable to go to work.

8. Mrs. Kelly told me that, before her accident, she led a very full social life with her colleagues in Motorolo and with her family and that she was accustomed to going on annual holidays; both in Ireland and abroad. However, since her accident, she stays at home most of the time and even finds it difficult to go out with her daughter, Gemma. Indeed, since her accident, she has developed a fear for Gemma's safety when she is away from home with the result that she very often prevents Gemma from going out and there is really no good reason for doing so and, when Gemma is away from the home, she finds herself timing her absences. Moreover, while, before her accident, Mrs. Kelly used to attend parent/teacher meetings, she has only attended one such meeting since the accident. Mrs. Kelly agreed that she did go on some family outings but that, if she did, she is always anxious when she is away from home and the prospect of going out always worries her.

9. Mrs. Kelly told me that, following Gemma's birth, she suffered from post-natal depression which necessitated her attending Dr. Coghlan, who prescribed appropriate medication which she took for a number of weeks. However, that depression did not prevent her from working. Similarly, after her son, Roy, was born, she also suffered from post-natal depression for which Dr. Coghlan prescribed Prozac which she was actually taking at the time of her accident.

10. Under cross-examination, Mrs. Kelly said that the symptoms of post-natal depression which she experienced following the birth of her two children were that she was weepy and tired. However, that depression did not create any problems for her when travelling in a car, or in a bus. She reiterated, however, that, since her accident, she cannot travel in a car or a bus with any ease and is fearful of the noise of traffic. When asked about the counselling which she had at the health centre with the man named Pat, she agreed that some of that counselling took the form of group therapy at which she and others with psychological problems discussed their fears and she thought that those sessions helped her. She also agreed that she had been advised to confront the problem which she experienced when travelling in a car and she maintained that she had tried to do so without success although she agreed that she did not travel in cars very frequently. She agreed that she had come to court in a car but that, if she did, she was violently sick afterwards. Insofar as the counselling was concerned, she said that the man named Pat left the centre and was replaced by a woman and that she had not attended counselling within the last 18 months.

11. Under further cross-examination, Mrs. Kelly agreed that she had been very upset by her father's death in the year 2003 and that, following it, she had had bereavement counselling. She also agreed that her father had been very ill for about a year before he died and that she was stressed on that account. Under further cross-examination, Mrs. Kelly accepted that she was also very upset by the death of her father-in-law and required bereavement counselling following that demise. However, as she pointed out, her father-in-law died some eight years ago. Mrs. Kelly also gave evidence that she has a brother who is seriously disabled and, as a result, is now institutionalised. She agreed, however, that, when her brother resided with her and her parents, she found living with him very stressful.

12. Under further cross-examination, Mrs. Kelly conceded that, currently, she might undertake two or three journeys a week by car but that, if she did, they would be short journeys; usually to local destinations. However, if she spends more than ten minutes on a journey, she becomes very fearful and ill. When it was suggested to her that, as time passed, her fears were not as bad as they had been, she totally rejected that suggestion and, indeed, said that she thought they were getting worse; so much so that, if she can avoid travelling in a car, she does so and she said that ten minutes in a car is like ten hours to her. She agreed that, when she visits Dr. Cantrell, she goes by car but that, if she does, she tries to ensure that she is not driven on main roads. When pressed as to what she says happens to her when she travels in a car, she says that she is stressed, that she roars and screams, experiences pain in her legs and that, after a journey in a car, she is drained. She said that, as a result of her inability to travel by bus or car, she is prevented from going to work and cannot live a normal life. When it was suggested to her that her fears were irrational, she agreed that that might be so but that, unfortunately, she was unable to control them. She said that, while she did not know what was going to happen in the future, she did not believe that she would ever recover although she accepted that Dr. Cantrell was hopeful that she would. As far as she was concerned, however, she is afraid of everything on the road and does not go anywhere on her own.

13. As I have already indicated, I had the benefit of reading several reports on Mrs. Kelly furnished by Dr. Robert Cantrell, the consultant psychiatrist whom she has been attending since the month of November, 2001 and, in addition, I had sworn testimony from Dr. Cantrell. In that regard, Dr. Cantrell assured me that, so far as he was concerned, Mrs. Kelly had been entirely consistent with regard to the complaints which she had made to him over the years and, in his view, she was a completely genuine person. That,

indeed, was also my assessment of the lady as I watched her giving evidence before me. She impressed me as a totally reliable and honest historian of the events which she described in the course of her evidence and of the feelings which she has experienced following the traffic accident in which she was involved on 6th April, 2001. I was particularly impressed by the emotion which she manifested when challenged by counsel for the defence that her fears were irrational; her response being that, whether or not they were, she could not control them; much as she would love to be able to. I have no doubt but that the tears which she shed on that occasion were very genuine. Dr. Cantrell gave evidence that, when he first saw Mrs. Kelly, he diagnosed that she was suffering from incapacitating anxiety symptoms related to cars; symptoms which were precipitated by the accident in which she was involved on 6th April, 2001 and symptoms which were provoked by the presence of cars and the presence of heavy traffic. He said that, initially, he had embarked upon a regime of intensive relaxation treatment which included anti-depressant and anti-anxiety medication but that, while Mrs. Kelly's mood improved, the anxiety symptoms were resistant to the treatment notwithstanding that he had increased the amount of medication which he had prescribed for her. In this regard, Dr. Cantrell expressed disappointment at the lack of improvement in Mrs. Kelly but he said that, in his experience, it was not all that unusual that persons suffering phobic and anxiety problems are resistant to treatment and, as I have already indicated, Dr. Cantrell said that he had no reservations whatsoever about the genuineness of the fears which Mrs. Kelly expressed. Moreover, he was satisfied that she was not employable outside of the home and that while he was hopeful that, with the passage of time, she would improve, he would not expect a significant improvement for another three to five years and it could well be that her problems would prove to be chronic. One way or the other, however, Dr. Cantrell was satisfied that Mrs. Kelly would have to continue to see him and would require ongoing treatment for the foreseeable future. When asked to put a label on Mrs. Kelly's problems, Dr. Cantrell said that she was suffering from Post Traumatic Stress, from agoraphobia, from depression and from phobic panic. He said that, in his view, there was no relationship between her current problems and the depressive symptoms which she had experienced in the past and that, were it not for the accident which gave rise to this claim, she would be well able to cope with all the demands of normal living. While it may well be that her reaction to the accident in which she was involved was disproportionate, it is nevertheless a reality.

14. Under cross-examination, Dr. Cantrell indicated that the best label for Mrs. Kelly's condition was Post Traumatic Stress and while, more often than not, persons suffering from that condition make a good recovery, that does not always happen and, in some instances, the condition can prove to be chronic. He said that, since Mrs. Kelly first came to him, her mood has improved but, otherwise, she is no better. He agreed that she should continue to try to confront her fears but he accepted that this will be difficult for her and that, one way or another, any gains from so doing will not be short term. He also agreed that it is not good for Mrs. Kelly to stay at home but that, outside of the home, she was, as he said "crippled by her symptomology". He also agreed that physically and psychologically, there is no reason why Mrs. Kelly would not be able to work. However, her problem is getting to a place of work.

15. Nevertheless, he was hopeful that, with the passage of time, she would be able to overcome her problems to the extent that she would be able to return to work. At the same time, in response to a direct question in that behalf from me, he was not prepared to say that, as a matter of probability, that was going to happen.

16. Mrs. Brenda Keenan, a vocational rehabilitation consultant, gave evidence that she assessed the plaintiff's employability in the light of what Mrs. Kelly, herself, had told her about her experiences since the incident which gave rise to this claim and in the light of the medical evidence of Dr. Cantrell and that it was her, Mrs. Keenan's, opinion that she is currently unemployable outside of the home. Mrs. Keenan added that, in the event that Mrs. Kelly were to overcome her current problems to the extent that she was able to return to the workforce, the likelihood is that she would have to undergo a retraining programme before doing so. Under cross-examination, Mrs. Keenan agreed that Mrs. Kelly was suffering from no disability which would prevent her from working at home. Her problem was that she is unable to travel by public transport, or by car, so that she cannot get to or from a place of work.

17. Mr. John Logan, a consulting actuary, gave evidence that the amount of disability benefit which Mrs. Kelly had received to date together with the amount of disability benefit which she is expected to receive during the balance of a period of five years since the date of the incident which gave rise to this claim is €38,415. Moreover, in the light of the evidence of Ms. Kay Fleming, the catering officer from Beaumont Hospital, Mr. Logan calculated that, had she been able to take up employment in Beaumont Hospital on 13th April, 2001, as she expected to, Mrs. Kelly's average net weekly earnings to date would be €347.15 and that, therefore, as a result of her inability to take up that employment, she has lost a total of €75,961 to date. In that regard, Mr. Logan gave evidence that Mrs. Kelly's current net weekly salary would be €390. Mr. Logan also gave evidence that the capital value of the future loss of €1.00 per week for Mrs. Kelly to age 65 is €965 and that a similar loss for a period of five years from the present day would be €242 and that for a period of ten years from today would be €450.

18. No evidence was called on behalf of the defence and, in particular, no evidence was called to challenge or contradict the opinion evidence of Dr. Cantrell. In that regard, as I have no reason to doubt that evidence and, indeed, thought Dr. Cantrell to be a very impressive witness, I accept without reservation all that he had to say about Mrs. Kelly, and in particular, his prognosis for her future. That being so and allowing, as I have already indicated, that I considered Mrs. Kelly to be a very honest and trustworthy witness, it seems to me that an appropriate sum to compensate her for all that she has suffered and for the considerable disruption of her lifestyle since the 6th April, 2001, the sum of €25,000. As for the future, allowing that Dr. Cantrell does not expect a significant improvement to Mrs. Kelly's condition for another three to five years and has voiced the possibility that she may never recover although he is hopeful that that doomsday situation will not arise, I think that an appropriate sum for general damages into the future is a sum of €65,000. On top of that, I am satisfied that Mrs. Kelly is entitled to be recouped the loss of earnings to date amounting to €75,961 and loss of earnings into the future. In that regard, Dr. Cantrell suggested that it would be three to five years before he would expect Mrs. Kelly to improve and, as I have indicated, he voiced the possibility that she would never improve. In my view, I must take that possibility into account in assessing future loss of earnings. I must also take into account Mrs. Keenan's evidence that, even if Dr. Cantrell's best hopes for Mrs. Kelly's future are realised, she is going to have to undergo a retraining programme before she will be able to return to the workforce. In those circumstances, I do not think it unreasonable that I should; perhaps somewhat speculatively, assume that it is unlikely that Mrs. Kelly will return to work in the next eight years and I propose to allow her loss of earnings based on that assumption. In that regard, I had evidence that, were she currently at work, Mrs. Kelly would be earning a net weekly wage of €390. While I have no evidence as to what is the capital value of the future loss of €1.00 per week for Mrs. Kelly for a period of eight years from today, Mr. Logan gave evidence that that figure for a period of five years is €242 and for a period of ten years is €450. In the light of those figures, I calculate that the capital value of the future loss of €1.00 per week for Mrs. Kelly to €360 and, therefore, allowing that, if she was currently working, she would be earning a net weekly wage of €390, the capital value of her future loss of earnings is €140,400. However, allowing for the possibility that, during that eight year period, Mrs. Kelly might be unable to work due to illness, redundancy or the unavailability of work it is always a possibility although, given Mrs. Kelly's work history to the date of her accident, I think that that possibility is a relatively small one, I must, as the Supreme Court has laid down in the well known case of Reddy v. Bates, give the defence a discount on the plaintiff's claim for future loss of earnings and, in that regard, it seems to me that an appropriate discount is 15% so that I will assess Mrs. Kelly's claim for future loss of earnings in the sum of €119,340. In addition to the foregoing, Mrs. Kelly is entitled to be recouped all out of pocket expenses which she has incurred and which are agreed in the sum of €602 but, of course, there must be deducted from her award a sum of €38,415 in respect of the disability benefit which she has received and will receive as a result of her injuries.

19. In the light of the foregoing, I will award Mrs. Kelly a sum of €247, 488 calculated as follows:-

General damages to date €25,000

General damages into the future €65,000

Loss of earnings to date €75,961

Loss of earnings into the future €119,340

Special damages €602

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Total €285,903

Less €38,415

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Balance €247,488