

THE HIGH COURT

2008 4253 P

Between:

Phyllis Donovan

Plaintiff

And

Susan Farrell, The Motor Insurers Bureau of Ireland, and Ark Gaffney

Defendants

Judgment of Mr Justice Michael Peart delivered on the 4th day of December 2009:

The plaintiff is a fifty nine year old lady who received injuries on 1st July 2005 when a car being driven at the time by the third named defendant collided head-on with her car as she was on a roundabout. It appears that the third named defendant was driving at considerable speed on the roundabout at the time, and in the wrong direction.

Liability is not disputed in the case, and the issues are confined to the nature of the injuries attributable to this accident and the amount of damages which ought to be awarded.

When she first saw the car coming towards her on the roundabout she believed that she was going to be killed. According to her own evidence she was in shock in the immediate aftermath of the accident but managed to stumble out of the car. She was aching from head to toe and was taken to Tallaght Hospital where she was found to have a fractured sternum.

She also had pain in her neck and in her lower back for which she was given painkillers. These symptoms continued for some months, and she attended her G.P. Dr Quigley.

Her back in particular continued to be painful, and worsened as time went on. She was referred for physiotherapy and received heat treatment. She had about twelve such treatments which provided some short term relief only after each session.

She found that she was not the same person after this accident. She states that she cannot do any gardening or house cleaning and other such tasks. She cannot lift anything heavy and has great difficulty bending. She said that all of these difficulties caused her to become very depressed. In addition, she was having nightmares, and she felt that she had become a burden on her family. She attended a psychiatrist, Dr Murphy and he prescribed Cipramil.

But she also began to abuse alcohol, and this became a problem for her, leading to her being admitted to Tallaght Hospital in relation to it, following a particular episode at a shopping centre. She is still on medication for her depression. She is still feeling depressed, and does not drive a car any more, and this affects her. She does not believe that she will drive a car again because she is too nervous. I will come to the evidence of Dr Murphy who examined her two years post-accident and diagnosed a post traumatic stress disorder and depression resulting from this accident.

While her neck symptoms have to a large extent resolved, it can still be a bit stiff.

She had some pain in her arm also for a few weeks, but that has resolved.

As far as her sternum is concerned, it took some months to resolve, though she still has some pain there when she coughs.

It is her low back which continues to cause her the most pain and difficulty, even to this day. She considers that her back is now very weak, and that it becomes very stiff if sitting in a chair, and when she is in bed. She appears to have learned how to manage this pain, but it still causes her great discomfort and restricts her daily activities. She applies heat treatment to her back herself by using a hot-water bottle. She does not take painkillers. Mr Stephen Young, Neurosurgeon, has suggested an epidural injection might assist her but she is reluctant to undergo this treatment as she feels that there is no guarantee that it will work. He also mentioned the possibility of a discectomy but she is unsure about that also.

Bernard McDonagh SC for the defendants cross-examined the plaintiff. During the course of that cross-examination, he referred to the fact that a report from Mr Stephen Young, Consultant Orthopaedic Surgeon, who examined the plaintiff for the defendants in 2008, contains no reference in the plaintiff's past history to the fact that she had experienced difficulties with her back during her previous pregnancies many years ago. The plaintiff stated that she told him about this, even though it is not mentioned in his report.

Mr McDonagh also questioned her in relation to when her back symptoms developed. He referred to the clinical notes made upon her first attendance at the A & E Department at Tallaght Hospital on the day of this accident on the 1st July 2005 which notes complaints in relation to her neck, her scalp, her sternum, her right wrist and right arm, but not to her back. He referred also to clinical notes made ten days later when she again attended on the 11th July 2005. These notes indicate that the plaintiff was brought to hospital on a spinal board on the 1st July 2005, and refer also, *inter alia*, to "continuous aches in lower back". They note that the plaintiff was complaining in relation to her back but notes "able to fully flex when sitting on couch and knees straight – SLR [straight leg raise] normal". These notes also indicate that an x-ray was done on her lumbar spine which showed "significant degen L4 L5".

Some of Mr McDonagh's questions in relation to her back were predicated on an understandable mis-reading of these notes. The handwriting in these notes is in places difficult to read, and it was thought that one part of the notes indicate significant

degeneration at C4, C5. It has been subsequently confirmed and accepted by all that the reference to degeneration relates to L4, L5, and not to her cervical spine. The plaintiff is adamant that immediately following this accident she had back pain.

Mr McDonagh referred also to the fact that Dr Quigley's report makes no reference to back pain, but again she was definite that she had back pain following the accident.

Her evidence has been that her back problems persist to the present day, as already set forth. Mr McDonagh asked her about that by reference to an examination performed for the defendants by Mr Brian Hurson, Consultant Orthopaedic Surgeon, on the 18th June 2009, some four days before she was observed by a private investigator cutting grass at her home, and which shows her brushing up garden debris, cutting grass with a mower, and carrying that mower into her house. A video of these activities was shown to the court. I will come to that evidence shortly.

Mr McDonagh referred to the fact that Mr Hurson reports that in relation to her back as follows:

"Near normal flexion, extension and lateral bending. Straight leg raising is resisted at approximately 30 degrees bilaterally. However she is able to sit up almost at right angles. Neurological assessment of her lower limbs was normal. She has mild tenderness in her lumbar sacral region."

Mr Hurson's opinion in relation to her back as expressed in this report is that the plaintiff has aggravated the degenerative arthritis in her lower lumbar spine, and that for the future she is likely to have persistent symptoms, but that these symptoms are "due to the fact that she has had degenerative changes rather than being caused by the accident". He goes on to state that "the accident would have contributed to her symptoms although would not cause further deterioration of her degenerative arthritis."

I am satisfied that the back pain which the plaintiff experienced during her pregnancies and for which she received treatment at the time, many years ago, is not relevant to the progress of the injury which she sustained to her back in this accident.

As I have said already, her neck has substantially recovered, as has her sternum, and arm pain.

Her back pain, her depression and the onset of alcohol abuse are matters which need to be considered in the light of the evidence given in this case.

There is no doubt that when being examined by Mr Phillips on the 25th June 2009 the plaintiff told him that she was unable to do any gardening. She has stated in her evidence that this was incorrect. That was conceded in the light of evidence that four days after her examination by Mr Phillips she had been observed by a private investigator mowing the grass at the front of her house and she was filmed doing so. I have viewed that video evidence and it is certainly apparent from it that she performed that task with relative ease. Indeed she is also to be seen carrying the mower back into the house having completed the task, and she is to be seen also sweeping up the grass and other garden debris. All of this involved bending and lifting. However, it should also be noted, as is accepted, that the mower in question was an electric mower and not a heavy one. My observation of the video indicates also to me that while she was able to bend down to collect garden debris and sweep it up, she was not totally unrestricted in her movements. She was taking some care in relation to how she bent.

I will return to this video footage in due course and to the comments made by Mr Bough and others in relation to it.

There is evidence on the Clinical notes dated 11th July 2005 that an X-ray was taken of her lumbar spine and that she had at that time significant degeneration at L4/L5. There is also a statement on these notes that at that date, ten days post accident, she complained of back pain, and that an examination on that date disclosed minimal flexion, although the doctor at A&E notes also that when sitting on a couch with knees straight her Straight Leg Raise test was "normal". This normal test is submitted by Mr McDonagh to contradict her subjective complaint of back pain on that occasion, and that she had no significant injury to her back in this accident. He referred also to the fact that her own GP, Dr Quigley who treated her for complaints following this accident makes no reference to back complaints. However the plaintiff has stated that she had back pain during that time and that she was dealing with it herself by applying heat by means of a hot-water bottle.

The plaintiff was in due course in June 2007 referred by her GP to Mr Bruce Bough, a Consultant Orthopaedic Surgeon at Clane General Hospital and The Charlemont Clinic in Dublin. He has provided three reports dated respectively 14th June 2007, 10th June 2008 and 25th June 2009, and has given evidence to the Court.

In his first report following his first clinical examination on the 12th June 2007 he states that "clinical examination implicates the Lumbar facet joints" and he noted that the plaintiff "sits in a position designed to protect the Lumbar Facet joints and experiences pain on typical movements which stress these". In his second report he has opined that the accident on 1st July 2005 exacerbated previous back problems and produced new symptoms localised at L5/S1 with central and left sided low back pain with left leg sciatic pain radiating down to the left knee.

Mr Bough arranged an MRI scan which, he reports, noted mild to moderate degenerative changes in the lower lumbar sacral spine with some disc bulging at L3/L4 and facet joint degeneration. This scan showed also a posterior and left sided disc protrusion at L5/S1 which was encroaching on the left exit foramina and left lateral recess and to a lesser extent on the right exit foramina together with a degree of compression on the anterior aspect of the thecal sac at this level.

His opinion by June 2008 was that the L5/S1 prolapse superimposed on the pre-existing degenerative changes is "entirely consistent with the clinical history and findings".

In his report in June 2009, Mr Bough notes ongoing sciatic pain with difficulties arising from any activities which involve bending which compress this region of the spine. He is of the view that a discectomy will have to be considered but that the plaintiff may not be the best candidate for such a procedure. He believes that the plaintiff's difficulties clearly relate to nerve root irritation and is chronic.

In his evidence Mr Bough saw nothing contradictory or inconsistent arising from the fact that on one day the SLR test was normal while on another the plaintiff was able to sit up at right angles, or even that on the same day her Straight leg raising was resisted at approximately 30 degrees bilaterally, yet she could sit on the couch at almost right angles, as noted by Mr Hurson. He is of the view that symptoms of this kind can vary day to day depending on recent activity.

He was asked also about her having been observed cutting grass and lifting her mower, as outlined above. His view was that while it may be foolish for her to do this, she may have felt on that day that she could, and she might "pay for it a week after".

Mr McDonagh cross-examined Mr Bough and suggested that there was no evidence that the plaintiff's disc prolapse was a result of this accident. Mr Bough stated that it is likely that this disc prolapse occurred as a result of the accident because it did not show up on the x-ray of the lumbar spine taken after the accident. His view is that this x-ray showed degenerative changes at L4/L5 pre-accident, and since the prolapse was disclosed only on a later MRI scan it must flow from the injury sustained there being no other reported incident. He did not agree that if she suffered a prolapse as a result of this accident it would have resulted in the plaintiff not being able to perform a normal Straight Leg Test on the 11th July 2005. He explained this in more detail in his evidence, and stated that it can be weeks and months before cartilage material might emerge through an annular tear. He stated that it was possible that the dramatic forward flexion caused to the lumbar spine in this impact caused a tear in the annulus, and that at some later stage the actual prolapse occurred. Mr McDonagh referred Mr Bough to Mr Hurson's examination of the plaintiff on the 18th June 2009 when he reported the plaintiff as having near normal flexion and that she could sit up to almost right angle i.e. 75 degrees. However, Mr Bough regards this as consistent with a back which is not normal. He is also of the view that simply because a junior doctor at A&E on the 11th July 2005 reported that the plaintiff had minimal flexion but was able to fully flex while seated on a couch is inconsistent with what is reported to be a normal Straight Leg Test. He is uncertain as to whether these brief notes indicate that a proper SLR was actually performed by the doctor in question.

Mr McDonagh suggested that these notes are in fact consistent with Mr Bough's own notes resulting from the SLR he himself performed in June 2007 when he reports "*Straight Leg Raise was normal bilaterally. No neurological abnormalities were detected in the legs*". Mr Bough again stated that the plaintiff's difficulties can vary from day to day and that his SLR is just a snapshot of how she was on that day. When it was suggested that this test was indicative that she had no disc prolapse, he stated that the plaintiff has a significant back problem, and that his examination on that date clearly showed that she had tenderness over the paravertebral and facet joint regions at L4/L5, being the area of the prolapse which was discovered on the MRI scan subsequently carried out. He denied that the clinical examination carried out on the 11th July 2005 meant that she could not have had a prolapse on that date, and he knew of no other traumatic incident since the accident which could account for the prolapse.

The cross-examination of Mr Bough was interrupted so that he could have an opportunity of viewing the video evidence of the plaintiff's gardening activities on the 18th June 2009, and so that he could be questioned in relation to same. It will be recalled that Mr Phillips had examined the plaintiff just four days prior to the date on which this video was taken, and, as it happens, Mr Bough saw the plaintiff on the day following the date of the video, namely on the 23rd June 2009. It was suggested to Mr Bough that this video footage indicates that the plaintiff showed no outward signs of disability. However, he disagreed and stated that during the eighteen minutes of video he had just seen there was virtually no movement in the lower back. He described her as spending the whole period of time "*slightly flexed forward with an absolutely rigid lower back and made all movements with her arms*". He did not consider that this footage showed a normal range of movement, and made the point also that the mower seemed light in weight. He is of the view that the footage shows a woman who has a back problem.

I have to make a judgment both from these observations, and her own evidence and her demeanour, and the other evidence given, as to whether the plaintiff was deliberately attempting to mislead Mr Phillips and the Court when she stated that she could no longer do any gardening and household chores. On balance I am of the view that while it was not correct to state that she could no longer do any gardening, she was not deliberately trying to exaggerate her symptoms and disabilities. She has stated that on most occasions it is her husband who would do the gardening, and that she has difficulty doing jobs around the house such as hovering. She has stated that it very much depends on how her back is at any particular time. I am not inclined to penalise her in relation to stating so categorically to Mr Phillips that she can do no gardening, even though she ought to have given a more comprehensive answer to his questions in that regard. I would have to be satisfied that she consciously and deliberately exaggerated her difficulties in order to mislead this Court and Mr Phillips, and I am not so satisfied on the balance of probabilities.

Mr Jack Phillips, Consultant Neurosurgeon, gave evidence on behalf of the defendant. He examined the plaintiff on the 25th June 2009, three days following the taking of the video footage of the plaintiff cutting grass and brushing in her front garden.

Having set out in his report the history as given to him, he describes the plaintiff as being on examination "*a pleasant cooperative somewhat frail lady with depressed effect*". He describes her complaints as given to him, including that "*gardening is no longer possible*".

He goes on to state that his physical examination was "*completely inconsistent*" in that during her conversation with him she moved her head and neck regularly but that on formal examination she had a 90% restriction in all directions and was almost totally unable to elevate her left arm above shoulder level. She also had minimal resistance in extension and flexion of her upper limbs on formal examination. He noted also that she was "*almost completely unable to bend her back*". He states also that the symptoms of degenerative disc disease revealed in the MRI scan "*have only occurred in the last year and do not appear to be related to the accident of 1/7/2005*". He is of the opinion in his report that the plaintiff suffered minor soft tissue injuries in this accident, and that her "*clinical presentation today to me is largely psychosomatic*" and that "*subjective symptoms although genuine are in all probability related to a pre-existing degenerative disease of her spine associated with disuse atrophy of her supporting musculature*".

In his evidence to this Court he stated that her responses were exaggerated and resulting from an anxiety or distress or neurosis, which, while understandable in the light of her nervous breakdown and nervousness generally, nevertheless makes it difficult to pinpoint any permanent structural injury. He is of the view that there is no such structural infirmity as would explain her subjective symptoms. He is of the view that the accident caused her an injury only to her neck and to her sternum, and while there may have been some soft tissue injury to her lumbar back, the history of sciatic pain appears to be more recent than can be related back to the accident.

Mr Phillips was asked to comment on the evidence of Mr Bough, which he was present for, and to the suggestion that the plaintiff suffered a disc prolapse as a result of this accident. He is of the view that none of the features of a prolapse are present with the plaintiff such as a limp, a straight leg raise of, say, 45 degrees, an absent ankle jerk and so on. He feels that the clinical finding by Mr Bough in June 2007 that the plaintiff's SLR was normal bilaterally and that no neurological abnormalities were detected in the legs, indicates no nerve damage i.e. sciatic nerve damage because she had no neurological deficit.

He was asked also to comment on the video footage which was taken just three days before he examined the plaintiff. He does not believe that a person with the sort of shoulder complaint she has would be able "*to swing the lawnmower in such a fashion*". That is a reference to the mower being of a 'hover' variety requiring the user to swing it from side to side rather than simply push it as with other models. In relation to her being observed bending down to pick up leaves etc. he felt that the movements which he observed in the video "*were exceptionally freer when she was gardening in comparison to what she presented to me*". He stated that the way she bent down and moved was certainly not consistent with "*the restricted back of an acute disc prolapse*".

Mr Phillips was asked about the relationship between the x-ray finding of degenerative changes at L4/L5 on the 11th July 2005 and the result of the MRI scan which showed the prolapse at L5/S1. He explained that the latter is a new finding some three years after accident, and went on to state that the majority of prolapses can occur in the absence of trauma. This statement was made in response to Mr Bough's contrary evidence that prolapses will occur following trauma. He disagrees with Mr Bough in this regard. In his own extensive clinical experience treating patients with sciatica, he is constantly surprised how many will have no history of trauma, and that they will typically have some degenerative disc disease and *"at some stage with or without trauma the annulus which surrounds the disc collapses, when a person gets a disc protrusion"*. He went on to state that *"the statistics are more in favour of people having spontaneous disc prolapse than those who have trauma"*.

By way of further clarification of what he meant he stated that in road traffic accidents which involve modest impact not many would suffer an acute prolapse; whereas if a man falls on a building site or has a traumatic event there is more likely to be a disc prolapse. He regarded it as rare to see an acute disc prolapse in a whiplash type of injury.

He did not regard the fact that the plaintiff had underlying degenerative changes at L4/L5 as predisposing her particularly to a disc prolapse at some stage, though the risk was greater. He concluded by stating that the most helpful thing he could say in relation to the plaintiff is that *"if that L4/L5 disc had popped out of place after that event the lady would have had sciatica going down in an S1 distribution to her left foot and she might have had signs to support those symptoms and she certainly would have merited a scan early on"*. He would have expected symptoms from a disc prolapse to have presented themselves within days or weeks of the accident. He does not believe that the L5/S1 symptoms have been caused by this accident because she had no such symptoms in the early aftermath of the accident according to her medical history.

Mr Phillips was cross-examined, *inter alia*, about his conclusion that the plaintiff's symptoms were to an extent psychosomatic. He agreed with James Gilhooly SC that this did not mean that he was of the view that she was deliberately exaggerating her symptoms.

He was also questioned about his view that the disc prolapse at L5/S1 is not related to the injury suffered in this accident. Mr Gilhooly referred to the severe nature of the impact in this accident, and her complaints at the time of pain in her back in the aftermath of the accident. He referred also to the history of existing degenerative change at L4/L5 and the fact that she had had back difficulties during her earlier pregnancies but had had no more recent difficulties in that regard. He suggested to Mr Phillips that it was probable therefore that what was asymptomatic immediately before the accident was rendered symptomatic by the impact. Mr Phillips maintained that since there was no neurological injury, broken bone or slipped disc, or other structural defect found, what she suffered were soft tissue injuries, whatever her subjective complaints were.

He was referred also to some records made by a physiotherapist who treated the plaintiff but who did not give evidence to the court. Those records noted restriction of straight leg raising at 70 degrees bilaterally at an examination on the 25th August 2005 nearly two months after this accident. Mr Phillips interpreted this as meaning simply that the plaintiff had some restriction of movement in her back but stated that it did not mean that she had sciatica. He described this finding as meaning that she had back discomfort manifesting itself on examination. He reiterated his view on cross-examination that the clinical presentation now is consistent with a later onset of sciatica related to a progressive L5/S1 disc prolapse which she did not have in the eighteen months following the accident. However he agreed that he could not say that the disc prolapse was not, to some extent, the result of the trauma suffered in this accident.

Mr Brian Hurson, Consultant Orthopaedic Surgeon, gave evidence on behalf of the defendant, in line with his report dated 18th June 2009, which, as already stated, was four days prior to the videoed observation of the plaintiff in her garden. He noted as part of the plaintiff's history, as given to him by her, that over the days following this accident she developed increasingly severe pain in her low back as well as her neck. On examination he found that she had near normal flexion, extension and lateral bending. He noted also that that straight leg raising was resisted at approximately 30 degrees bilaterally, but noted also that she was able to sit up almost at right angles. He noted that neurological assessment of her lower limbs was normal and that she had mild tenderness in her lumbar sacral region. His opinion as expressed in his report is that the plaintiff has aggravated a pre-existing degenerative arthritis of her lower lumbar spine and that she is likely to have persistent symptoms into the future. He states, however, that these symptoms are due to the fact that she had degenerative changes rather than being caused by the accident, and further that the accident would have contributed to her symptoms although it would not cause further deterioration of her degenerative arthritis.

In his evidence, Mr Hurson stated that the fact that the plaintiff could sit up at right angles when he was examining her meant that she did not have sciatica, and that while he was not sure if he knew at the time that a disc prolapse showed up on the MRI scan, she had no clinical indication of a prolapse when he saw her. He also stated that up to 50% of patients over 50 years of age will have some degenerative changes or prolapse. He disagrees with Mr Bough's evidence that this prolapse which she now has is related back to this accident. He would have expected the plaintiff to have symptoms consistent with a prolapse within quite a short period after the accident if it was so related.

In cross-examination it was put to him that the sternum injury may have masked symptoms of disc prolapse when she was first seen. Mr Hurson, to which he responded by saying that there can be some masking but it was not probable. While he accepts that the impact was a severe one, he does not believe, as a matter of probability, that the plaintiff's symptoms are related to the accident, even though he agrees that her present symptoms are related to the prolapse shown on the MRI scan.

Psychiatric sequelae:

Dr Denis Murphy, a Consultant Psychiatrist, examined the plaintiff upon referral by the plaintiff's solicitor who had concerns about her in this regard. He saw her first in March 2007 which was almost two years post accident. Dr Murphy has diagnosed post traumatic stress resulting from this accident. In his report dated 27th March 2007 he describes her as having become depressed as a result of the accident, as well as becoming a very nervous passenger so that she avoids any travel by car where possible. He notes sleep disturbance, nightmares, flashbacks, loss of appetite as well as episodes of weeping.

She has had no previous history of psychiatric treatment. Later reports note an improvement following treatment with medication, though she is still symptomatic, and that some symptoms are likely to remain. His final report dated 21st January 2009 refers to her alcohol abuse for a time.

In his evidence to this Court he refers to her as having told him that this accident as had been a life-changing experience for her, leaving her with a lot of residual persistent anxiety, mainly in relation to her safety on the road. He believes that she is unlikely ever to drive a car again in the future. He also gave evidence about a psychotic episode in the summer of 2008 which was caused by excessive drinking. She was hospitalised for about two weeks, and has since that time avoided alcohol, but Dr Murphy has stated that she was close to becoming an alcoholic.

As to the relationship between this incident, her excessive drinking, and her underlying post traumatic stress disorder, Dr Murphy was not the doctor who treated her for her psychotic episode in July/August 2008. But he was asked by Mr Gilhooly what was the cause of her drinking to excess in the summer of 2008. Dr Murphy was unable to say because he had no direct information on that (T.1, Q. 275).

Prior to that answer he had made a more general comment. In that regard he stated (T1, Q. 274):

"Well it means she mustn't drink again, in theory. In a sense it was almost an intercurrent difficulty in terms of the progress of her PTSD, possibly related to, and again I have no direct information, but as I say it is possible it is related to it in that people with PTSD do sometimes drink to excess to assuage their symptoms. But I have no particular information that was the case here. But in any case, she did drink to excess and ended up with this supposed entirely different type of problem to the PTSD."

While she recovered from this episode, she remains on anti-psychotic medication, but it would appear from Dr Murphy's evidence that she has improved substantially so that she is now on the lowest possible dose before it is actually stopped altogether. Dr Murphy believes that she will continue to improve generally, but that in all probability she will not drive a car again. He believes that her fear of crossing streets will diminish as time passes, but that there will always be some residual anxieties in that context.

Dr Murphy was cross-examined and it was put to him that it appears from his reports that by February 2008 the plaintiff's symptoms, such as flashbacks, nightmares had disappeared and that what remained was a preference to use public transport. Dr Murphy agreed that by February 2008 she had greatly improved, and that by May 2008 her mood was back to normal. This improvement had come about after just one year of treatment. He confirmed also that by June 2008 he was not aware that she was using alcohol and did not have concerns at interview that it was a problem for her or a factor in her life. In fact he had not been made aware of the psychotic episode in July 2008 and the fact that she was admitted to Tallaght Hospital for a two week period. It was not until he saw the plaintiff in January 2009 that he was informed about it by the plaintiff. He did not treat her in respect of that episode.

When cross-examined, Dr Murphy agreed that the cause of the psychotic episode was her excessive drinking. Earlier he had stated that it was 'hallucinosi's' being a condition derived from excessive drinking. When it was put to him that its origins were therefore not related to her post traumatic stress disorder, Dr Murphy stated that was so, and added that "... *the only possible connection is that people sometimes with PTSD do drink more heavily*" (T.1, Q. 337). He went on to state quite specifically that he was not meaning to link the episode of psychosis directly to the accident (T.1, Q. 339), and to state that "I have no evidence at all to relate it to the accident" (T.1, Q. 341).

It should be recalled that the episode in question in July 2008 was about three years post accident.

Conclusions:

I have already concluded that the plaintiff should not be found to have attempted to exaggerate her injuries or her symptoms either by not having mentioned her previous back difficulties during her pregnancies, or by having said to Mr Phillips that she could do no gardening at all, in the light of the video evidence. I have dealt with that.

There is not much controversy about certain aspects of her injuries. It is accepted that she suffered a fracture of her **sternum**. That was no doubt a painful injury to sustain, and equally, her recovery from it will have involved a period of discomfort, including a difficulty with her breathing. But she has recovered from it and did so after a number of weeks.

She also injured her neck, and endured the normal sort of **neck** discomfort associated with a whiplash type injury. While an x-ray showed some degenerative changes in her cervical spine she was asymptomatic pre-accident. The accident aggravated this condition and she became symptomatic thereafter. She had a period of discomfort in her neck, shoulder and arms, and this will have caused her much inconvenience, and inability to perform certain household tasks. She has confirmed that her neck improved well and that she has fully recovered from that.

I am satisfied from the evidence and reports of Dr Murphy that as a result of this severe impact the plaintiff suffered post traumatic stress disorder and became generally depressed. I accept also her own evidence that for her this was a life-changing experience resulting in her becoming very nervous in a car, crossing roads and so on. Equally, I am satisfied from Dr Murphy's evidence that she had significantly improved by February 2008, including as a result of medication which had been prescribed. She had not however lost her fear of being in a car and still was of the view that she could not ever drive again. Dr Murphy has confirmed that also. He believes that she may never drive again, and this must be accepted as a matter of probability.

But I am not satisfied that the plaintiff is entitled to compensation in relation to the psychotic episode she suffered in July 2008 and which resulted in her hospitalisation in Tallaght Hospital for two weeks in July/August 2008. Dr Murphy has reported that it occurred, having been told about it by the plaintiff when he saw her in January 2009, but he was quite clear that he could not directly relate it to the accident. I have set out what he stated in that regard, and while he has stated that people who have suffered PTSD can also abuse alcohol, I do not believe that it has been established to the point of a probability that in this case this was the cause of that episode and of her drinking.

The main point of controversy in this case is the injury to her low back and whether the disc prolapse shown on her MRI scan at L5/S1 can be as a matter of probability be attributed to this accident. I am satisfied firstly that she did in fact suffer pain in her back after this accident. It is noted on the clinical records for the 11th July 2005. These notes also show that an x-ray of her lumbar spine was carried out and that this showed degenerative changes at L4/L5. Her injuries were soft tissue in nature, but it is clear that she was asymptomatic in that area pre-accident, although she had a back problem during her earlier pregnancies. I am not satisfied that it is reasonable to conclude that she had a back problem in the time immediately preceding this accident. The earlier problems had cleared up following the birth of her last child. I am satisfied that the back complaint which she complained of after this accident is attributable to the accident on the 1st July 2005.

Her back continued to give her difficulty, even though Dr Quigley has not noted these complaints in his notes. I am satisfied to accept the plaintiff's evidence in this regard, namely that her main concern at that time was her neck and sternum, and that these were the focus of her attention and that of Dr Quigley in the weeks and months following the accident. While she treated herself for her back problems with heat from a hot-water bottle, and achieved short term relief in relation to it, she continued to experience pain in her low back up to the time that she saw Mr Bough. It was he who investigated that further. An MRI scan showed a disc prolapse at L5/S1 as I have set forth. However that was not discovered until the MRI scan done in June 2007, which is some two years after this accident.

There has been controversy in this case about the straight leg tests performed, the results of which have at times been contrasted with her ability to straighten her legs to near right angle when stated on the couch. I do not believe that the apparent contradiction at times between a certain amount of restriction on the SLR test and the almost right angle achieved when seated on the couch are sufficient to establish that the plaintiff's back problems lack clinical explanation. I accept that her back pain is clinically evidenced as a matter of probability. I do not regard them as established as merely psychosomatic, again as a matter of probability. I can see why Mr Hurson may have had reason to say what he said, but taking the evidence as a whole I am prepared to regard the back pain as clinically established and explained by the evidence of disc protrusion, and the degenerative changes in her lumbar spine.

But there remains the question of whether the disc prolapse at L5/S1 shown on the MRI scan in June 2007 can as a matter of probability be attributed to the injury which she sustained to her back in July 2005. I appreciate that Mr Bough is of the view, on the plaintiff's behalf, that it is so attributable, but I cannot disregard the fact that the evidence for this is some two years post accident. That is a very significant feature of the evidence in this case. Both Mr Hurson and Mr Phillips believe that the disc prolapse occurred independently of the accident, given the degenerative changes which pre-existed in a lady of the plaintiff's age. They believe that such a prolapse can occur in the absence of a particular trauma. I have set forth the relevant evidence in relation to this issue.

On balance I prefer the view that this prolapse is not attributable to this accident. There was a considerable delay in the occurrence of prolapse. I accept the evidence that if the prolapse existed in the earlier aftermath of the accident she would have had considerably greater symptoms and greater pain at that time, and that what she endured is explicable by reference to the aggravation of her pre-existing degenerative changes. I accept also that these degenerative changes, on the balance of probabilities, led to the occurrence of the disc prolapse.

Having said that, it is clear that the plaintiff suffered considerably and over a lengthy period with pain in her back. But the injury which she suffered remains a soft tissue injury in so far as it can be linked to the accident itself.

Damages to which the plaintiff is entitled must cover the whiplash type injury to her neck, her fractured sternum and recovery period, her depression, anxieties around traffic and post traumatic stress disorder from which she has substantially recovered, though not completely, her inability/unwillingness to drive a car, as well as her soft tissue injury to her back which made her pre-existing degenerative changes symptomatic earlier than they would otherwise be. But I exclude from consideration the onset of alcohol abuse and the psychotic episode described, and also the disc prolapse.

There are a number of elements to the plaintiff's claim. Taking account of these elements which I have set forth, as well as the general disruption to her life and the interference with her ability to do housework, I assess general damages for past pain and suffering in the sum of **€75,000**. She is entitled to damages for future pain and suffering to the extent that pain which she would have in any event suffered at some stage as a result of her degenerative changes in her lumbar spine has been brought forward in time. Account is also taken by me of the fact that her anxiety and fear in relation to driving a car will persist indefinitely. In respect of these aspects of future pain and suffering I assess a sum of **€20,000**.

The total of damages therefore is **€95,000**, and I will enter judgment in favour of the plaintiff for that sum.