

THE HIGH COURT

[2005 No. 270 SP]

BETWEEN

MARTINA BRANT

APPLICANT

AND

THE MINISTER FOR PUBLIC EXPENDITURE AND REFORM

RESPONDENT

JUDGMENT of Mr. Justice Bernard J. Barton delivered on the 20th day of June, 2016

1. The Applicant was born on the 5th February, 1979 and was authorised to bring these proceedings on the 17th August, 2005 in respect of personal injuries and loss suffered and sustained by her as a result of an assault which occurred on the 2nd July, 2011 at Dame Street, Dublin.

2. The Applicant was assisting in the restraint of a prisoner who was resisting arrest. He was lying face down on the ground and was holding his hands under his stomach for the purpose of preventing himself from being handcuffed. While the Applicant was trying to free one of the prisoner's arms so that she could handcuff him, the prisoner caught her right arm, rolled over and pinned it between his body and the ground causing serious and permanent injuries to the Applicant's right wrist.

3. In her evidence, she described the severe strain which the action of the assailant placed on her arm and in particular her right thumb and wrist. She attended the Accident and Emergency Department of St. James's Hospital, Dublin where examination disclosed tenderness over the anatomical snuff box. X-ray examinations were advised on clinical suspicion of a scaphoid fracture. Further x-rays were taken on the 11th July, 2011. Both sets of x-rays were reported as normal. However, the Applicant continued to experience severe and persistent pain in her right wrist together with a noticeable limitation in the range of wrist movement. She also continued to experience difficulty with certain tasks including dressing, typing, writing and driving.

4. She attended her GP for medical review and was advised to undergo a course in physiotherapy. After approximately ten sessions, very little progress towards recovery had been achieved and this caused the Applicant to become concerned.

She described a continuing and constant dull pain running proximally from the distal radio ulnar joint for a distance of approximately six centimetres. She also continued to experience pain extending from the mid dorsal area of her wrist in a line from the proximal end of the carpus to the distal third of the forearm which was exacerbated by flexing the wrist.

5. Subsequent to the assault, the Applicant had also developed a severe pain at the base of her right thumb. The severity of the pain had abated to some extent by the time she was first seen by Mr. Darragh Hynes, Consultant Orthopaedic Surgeon in November, 2011. He noted tenderness at the scapho-lunate area and, on review of an MRI scan undertaken on the 3rd July, 2011, also noted that this showed some changes between the scaphoid and the lunate with fluid between these bones and also between the proximal scaphoid and capitate.

6. On the 5th December, 2011 the Applicant attended Cappagh Hospital for assessment and screening. She was treated by injection with a combination of local anaesthetic and steroids. At medical review on the 4th May, 2012 she reported that the injection had given good relief for her symptoms but that the effect had gradually worn off after about three weeks. Because of her continuing wrist problems, the Applicant had not been certified fit to return to full policing duties by the time she took leave of absence to go on a career break which is due to expire on the 17th March, 2017.

7. Mr. Hynes decided to readmit the Applicant to Cappagh Hospital on the 18th June, 2012 for further injection therapy under x-ray control. Unfortunately, the Applicant derived no real benefit from this treatment and when reviewed on the 28th November, 2012 she was still suffering from ongoing pain along the dorsal radial aspect of her wrist. Accordingly, Mr. Hynes decided to refer her for an MRI arthrogram since by then he considered that she had most likely sustained a tear of the scapho-lunate ligament in her wrist.

8. An arthroscopy was performed on the 4th February, 2013 which confirmed a significant tear of the scapho-lunate ligament. Accordingly, Mr. Hynes decided to refer the Applicant to Mr. Ciaran O'Shea, Consultant Orthopaedic Surgeon, who specialises in shoulder, elbow, wrist and hand surgery. She was admitted to Cappagh Hospital under his care on the 8th March, 2013 for a scapho-lunate ligament reconstruction, after which she was in a plaster of Paris cast for some six weeks. When she was again medically reviewed after removal of the cast, she reported that a lot of her painful symptoms had abated though she was still not symptom free and continued to experience a significant reduction in wrist movement.

9. The Applicant has been left with significant scarring as a consequence of the surgeries. There is a well-healed scar measuring 8 centimetres over the dorsal aspect of the right wrist, together with a well-healed scar over the volar radial aspect of the carpus measuring 4 centimetres and a transverse scar in the mid-volar aspect of the arm measuring 2 centimetres. There are also a number of small punctuate scars at the site of the initial arthroscopy carried out by Mr. Hynes.

10. When Mr. O'Shea reviewed the Applicant in May 2013 he noted that, in addition to the scarring, there was a limitation of wrist movement which he reported upon. The range of motion of the right wrist was to 40 degrees of flexion compared with 80 degrees on the left. Extension was to 40 degrees on the right compared with 80 degrees on the left. Radial deviation was to 10 degrees on the right compared to 30 degrees on the left. Ulnar deviation was 30 degrees on both sides. At that time, Mr. O'Shea prognosticated that the Applicant could lose between 30% and 50% mobility of her wrist and that this would be accompanied by loss of approximately one third to one half of the strength which would ordinarily be expected to be found in a normal wrist.

11. The Applicant described how, notwithstanding further physiotherapy, she continued to experience both limitation of wrist

movement as well as a significant reduction in wrist strength. When she was reviewed by Mr. O'Shea on the 24th February, 2014 she told him that she rated the functionality of her wrist at approximately 75% that of a normal wrist. She described how her wrist would tire easily, that she continued to suffer from pain over the volar aspect of the wrist in the region of the base of the thumb, that her symptoms would sometimes cause her to awaken at night and that certain activities aggravated her symptoms. In this regard, she gave as an example having pain in her wrist when holding a steering wheel while driving or after carrying anything heavy other than for the shortest periods of time. Clinical examination by Mr. O'Shea in February 2014 disclosed flexion to 65 degrees on the right compared to 90 degrees on the left, and extension to 50 degrees on the right compared to 75 degrees on the left. On testing for the integrity of the scapho-lunate ligament, Mr. O'Shea noticed a palpable click and crepitus.

12. Although the Applicant had made some considerable progress towards improvement in the year subsequent to the surgery, the position as described by Mr. O'Shea in February 2014 was considered by him to be essentially permanent. Over time his view was that any improvement was likely to be modest. He also prognosticated that the Applicant was at a risk of developing arthritis. Concerning the quantification of that risk, Mr. O'Shea indicated that, having regard to the nature of the injury, it was difficult to be precise but that, insofar as he could do so, he thought the risk of developing symptomatic progressive wrist arthritis in the future was 20% to 30%. As and when or if that situation presented itself, the Applicant would most likely require further medical intervention. However, apart from that, no further treatment for the injuries was envisaged by him.

13. The medical reports prepared by the Applicant's GP, by Dr. Una Geery, Consultant in Emergency Medicine, by Mr. Hynes and Mr. O'Shea were admitted and have been read and considered by the Court.

14. The Applicant was also examined and reported upon by the Chief Medical Officer whose report was also admitted. The addendum of the Chief Medical Officer, dated the 30th April, 2014, refers to notes made by the Assistant Chief Medical Officer following a review of the Applicant on the 3rd March, 2014, and from which it appears that, insofar as her vocational prospects within the Gardaí were concerned, it was considered likely that she would be restricted to non-confrontational duties. In that regard, Dr. Walsh observed that the Assistant Chief Medical Officer had recommended that she consider a career path within the force that would involve less risk of confrontation.

15. At the time of the assessment by the Assistant Chief Medical Officer in March 2014, the Applicant had commenced a three year career break to which reference has already been made. She is currently employed in an administrative capacity by a firm of solicitors in the UK. It was her evidence that, subsequent to the assault, she was never certified medically fit to return to full policing duties but was, in essence, restricted to light, office based duties. That continuing state of affairs affected her morale. She had not joined the force to carry out the duties of a P.A. She realised that administrative tasks were an essential part of her duties; however, she also enjoyed and joined the force so that she could be involved in carrying out full policing duties in the community.

16. Prior to the assault, the Applicant was fully physically fit. Indeed, she was a person who engaged in outdoor activities which required a significant degree of physical fitness and, in this regard, her evidence to the Court was that the pastime she most enjoyed was skydiving; a pastime in which she was also a qualified instructor. Her evidence was that she would perform about 250 jumps a year. Subsequent to the surgery, she had been able to return to skydiving but was limited in a number of respects: firstly, in the number of jumps she could perform – which she indicated were now restricted to about 50 per year – and, secondly, she was no longer able to perform the functions of a parachute jump instructor.

17. She explained the effort involved in manoeuvring a student in the air during freefall and how the injury to her right wrist limited her capacity to perform that task. Moreover, even when performing a jump on her own she described the forces exerted on the arms and legs. She gave evidence that whilst the limitation in wrist movement had no significant impact on this pastime, the weakness in her wrist constituted a particular disability. When her wrist strengths were measured in January 2016, she had a 22 kilo strength capacity in her right wrist as compared to a 36 kilo strength capacity in her left wrist. The effect of this during a sky dive was simply to limit her capacity to hold out her right hand and maintain it in position against the resistance caused by the fall of the body through the air.

18. The Applicant demonstrated the limitation of range of movement of her right wrist in the course of giving her evidence. I also had an opportunity to view the scarring. Vocationally, her evidence was that it was highly unlikely she would be certified medically fit for full policing duties at the end of her career break in March 2017. There had been no significant change in her physical status vis-à-vis the injuries since her last examination by the Assistant Chief Medical Officer. She had no reason to believe that a different view would be taken now to that expressed in the medical reports of the Chief Medical Officer. Mr. O'Shea had told her that for all intents and purposes she had reached the final position and that if there was any further improvement, it would be modest. Her evidence was that no further improvement had taken place since she was last examined by him.

19. With regard to her future vocational prospects, the Applicant's evidence was that she now thought it unlikely that she would return to serve in the Gardaí at the end of her career break. She explained that if she was to be restricted to administrative, office-type duties in her policing career, then she had better prospects and a greater range of options open to her elsewhere in the market place than in the Gardaí.

20. The Applicant did not advance a pecuniary claim in relation to that aspect of matters but invited the Court to take into account the loss of opportunity to return to full policing duties and to pursue a career in the force or elsewhere which would require full physical strength and use of her right wrist.

Submissions.

21. It was submitted on behalf of the Applicant that this was an unusual case. The injuries sustained are serious and permanent. Although there has been a significant improvement in painful symptoms, these have not completely abated. Moreover, she has been left with a limitation of movement in her wrist which affects her in a number of ways when attempting certain tasks requiring manual dexterity and full movement of the hand. Furthermore, the power in her wrist is unlikely to improve and certainly it will never return to normal. The loss of power impacts not only in her social and recreational life but also in her chosen profession. As if that was not enough, she also has a palpable risk of developing painful arthritis in her wrist in the future and for which she will likely require further treatment.

22. It was submitted on behalf of the Respondent that concerns about the future were really based on speculation rather than on medical evidence; the Court could not conclude from the content of the report of the Chief Medical Officer that, at the end of her career break, the Applicant would not be certified fit to return to full policing duties. On her own evidence, she had regained a 75% range of movement in her right wrist and she had experienced a significant improvement in her painful symptoms, especially following the surgery.

Decision.

23. I accept the medical evidence offered on behalf of the Applicant in this case. Having due regard to the content of the Chief Medical Officer's reports, it seems to me that there is in point of fact little if any difference of medical opinion concerning the Applicant's injuries. The Chief Medical Officer, in an addendum of the 30th April, 2014, does not demur from the content of the reports of Mr. O'Shea. Indeed, in his report of the 14th August, 2013 he stated that whilst he was hopeful that there might be some improvement in the range of movement of the right wrist, he also expressed the opinion that such deficit as would remain was likely to be permanent and that he would expand on that opinion once he had an opportunity to review a final report by Mr. O'Shea. Having had the opportunity of doing so, Dr. Walsh has not expressed a view contrary to that found in the final medical report of Mr. O'Shea.

24. On the medical evidence there is unlikely to be any significant improvement in wrist power and function over and above that found and commented upon by Mr. O'Shea in his last medical report and evident at the time of the hearing. That being so and having regard to the Chief Medical Officer's observations on the notes of the Assistant Chief Medical Officer, I find, as a matter of probability, that if the Applicant were to return to serve with An Garda Síochána at the end of her career break in March 2017, she would not be certified fit for full policing duties but most likely would be certified fit for and confined to light and generally office based administrative duties. I accept the Applicant's evidence that, in light of the continuation of her existing disabilities and the limitation that these will place upon her vocationally in terms of pursuing a career in the police force, she will, in all probability, pursue an administrative-type vocation elsewhere.

25. I also accept her evidence that, while she would likely remain active in skydiving for the foreseeable future, her capacity to engage in her favourite hobby has been permanently affected in a way which restricts the number of times she will be able to skydive each year, and that it is unlikely that she will ever be able to return to perform the duties of a sky dive instructor.

26. On the evidence, I am satisfied that the current loss of power and restriction of wrist movement will persist for the foreseeable future and that, in the long term there is a 20% to 30% risk that painful wrist arthritis will develop. The scarring, which is visible and constitutes a cosmetic deficit but about which the Applicant makes little complaint, will also be a permanent feature of her life.

27. Having due regard to the medical evidence, it was not surprising that counsel for both parties acknowledge that, unlike many wrist injuries, those in this case fall to be categorised as unusual. I am satisfied that this is so and that the consequences of these will have to be borne by this comparatively young woman for the remainder of her life.

Conclusion.

28. Applying the well settled principles of Tort law to the assessment of general compensation, which require provision to be made not only for actual pain and suffering but also for the interference caused by the injuries with the enjoyment of the ordinary amenities of life which go with the living of it, and which, in the circumstances of this case, include the interference to date and into the future with the Applicant's favourite pastime as well as the diminution in her ability to perform full policing duties in her chosen career, the Court considers that a fair and reasonable sum to compensate the Applicant to date is €50,000 and for the future is €40,000, to which will be added the sum of €9,459.94 agreed by the parties in respect of the Applicant's pecuniary expenses.