Neutral Citation: [2016] IEHC 355

THE HIGH COURT

[2014 No. 2986 P.]

BETWEEN

DONNA WOODS

PLAINTIFF

AND

JOSEPH TYRELL JUNIOR

DEFENDANT

JUDGMENT of Mr. Justice Cross delivered on the 24th day of June, 2016

1. The plaintiff is a pleasant secondary school teacher who was born on 8th July, 1969 who was involved in a road traffic accident while jogging on the public highway with a friend on the Ballynacarragy to Mullingar Road.

2. The plaintiff set out jogging two abreast with a friend on the morning which started bright and crisp, it had been cold and frosty that January and she encountered pockets of fog. The plaintiff was on the inside and was facing oncoming traffic when a tractor and trailer being driven by a friend passed her going in the same direction on the far side of the road and then she saw the defendant's van which almost immediately went onto the grass margin and the plaintiff felt her line of escape was cut off, did not know what to do but went on to the grass margin hoping that the van would go back on to the highway but unfortunately the van continued on the grass margin and the plaintiff was struck with the mirror of the van and suffered quite significant injuries.

Liability

3. The defendant accepts that some liability must attach to him but pleads that the accident was in the main caused, or contributed to, by reason of the negligence of the plaintiff in her jogging two abreast (though she was on the inside) on the highway on a foggy morning rather than being on the grass margin which the defendant alleges caused the defendant driver to react by going on to the margin to avoid another vehicle following the tractor and being driven by a Mr. Keegan. In this vehicle Mrs. Keegan was a passenger.

4. The engineer, Mr. Glynn of Denis Woods and Associates, gave evidence. He examined the locus on the 31st January, 2013 just over a week over the accident in which he could clearly see tire marks of the defendant's van on the grass margin. The total width of the road was 6.7m, the carriageway being 3.1m on the plaintiff's side with a margin of 0.2m. The carriageway was slightly wider on the other side, i.e. 3.2m with 0.02m hard margin.

5. Mr. Glynn gave uncontested evidence as to the duties of drivers and indeed of pedestrians and stated that the width of the defendant's vehicle was 1.63m. Two persons running reasonably close together would take up approximately 1m.

6. The plaintiff stated that as she was running she saw the tractor pass her by and then she saw the defendant's van. She gave a distance to Mr. Glynn that the vehicle would have been when she first saw it as about 50m or 60m away but when she gave evidence in court she estimated the distance at approximately the length of court number two, a considerable distance less.

7. The defendant's counsel make the point that if she was 50m to 60m away that the van travelled some distance on its carriageway before it turned into the grass.

8. The plaintiff however states that when she first saw the van shortly afterwards it moved onto the grass cutting off her escape line.

9. The defendant himself did not give evidence but statements from Mr. and Mrs. Keegan who were travelling behind the tractor travelling in the same direction but on the other side of the road as the plaintiff were read into evidence by agreement in the absence of Mr. and Mrs. Keegan.

10. The Keegans essentially say that there was "dense fog", that they were going slowly, that they were keeping a distance behind the tractor and trailer when Mrs. Keegan noticed the plaintiff and her friend, who was wearing a grey jacket, on the side of the road and "when they were level with the joggers I saw a blue van coming in the opposite direction". Mr. Keegan does not think that the van was travelling fast. Mrs. Keegan before she saw the van remarked apparently that an accident was likely and the Keegans saw the accident in the driver's door mirror.

11. I accept that the morning became somewhat foggy. I have photographs taken by the plaintiff's friend at some time after the incident when the ambulance was still on the locus and you would describe the weather there not as dense fog but as misty or somewhat foggy.

12. The plaintiff has also been criticised for not having a high visibility jacket and while she did not have a high visibility jacket her clothing at the time was shown to me and there is no doubt that it was bright. In any event the defendant does not make the case that he did not see the plaintiff until late in the day. As indicated the defendant's driver has not given evidence at all but I believe that the defendant and her friend were there to be seen.

13. The accident was clearly caused by the defendant's driver miscalculating. Had he continued along the road even had the plaintiff not stepped into the grass margin, which I believe she would have done so, there was sufficient room for the defendant's vehicle to pass by the plaintiff and her friend still jogging at the side of the road even if the other carriageway was taken up by the Keegans' vehicle.

14. It does seem to me that from the Keegans' evidence that the Keegans' vehicle had clearly passed by the locus of the accident and the right hand carriageway was available to the defendant's driver but in any event had it not been available the left hand

carriageway would have been available even had the plaintiff continued jogging on the highway.

15. Unfortunately the defendant's action in driving his vehicle onto the grass margin is indicative of either that he was not keeping a sufficient lookout until the last minute or that he was driving at an excessive speed or in any event that he entirely miscalculated the situation thinking that he should drive onto the grass margin thus clearly cutting the plaintiff off from her natural line of escape on to the grass margin.

16. I find that had the defendant continued on the roadway the plaintiff would have gone on to the grass margin and no accident would have occurred.

17. The weather conditions were not as foggy as the Keegans believed, it may be that they had just emerged from a pocket of denser fog. The fact that the Keegans did not see the plaintiff on the far side of the road until shortly before the impact is of course of no relevance as the Keegans had no business to be looking on to the right hand side of the road in the first place.

18. The plaintiff is, as has been admitted entitled to succeed against the defendant, I do not find any contributory negligence against the plaintiff, she was entitled to be on the public highway, there was not excessive traffic, a tractor and trailer passing by with another car behind it is not excessive traffic. As soon as the plaintiff saw the defendant's motor vehicle coming against him, it moved onto the grass margin and accordingly, she is not to be faulted for being on the public highway and her natural line of escape onto the grass margin was denied by the actions of the defendant. Accordingly, the plaintiff is entitled to succeed against the defendant in full.

Damages
19. By sensible, if late agreement between the parties, special damages have been agreed in the sum of €14,000.

General Damages
20. It is trite law to say that the purpose of general damages is to place a plaintiff in the same position as he or she had been before the commission of the tort. In relation to general damages for pain and suffering, of course, this is an imprecise exercise. If a person has lost an eye in an accident caused by the negligence of the defendant, it is impossible to place that person in the position that they were prior to the accident.

21. An award of money is, of course, all that the courts can do, and is "notional or theoretical compensation to take the place of that which is not possible, namely actual compensation" – see *Rushton v. National Coal Board* [1953] 1 Q.B. 495 at 502.

22. A judge in a personal injury action must place himself or herself in the position of a jury and to provide reasonable compensation for the pain and suffering the plaintiff has endured and will likely to be endured in the future. The process of assessment must be rational, bearing in mind that the particular effect of an identical or nearly identical injury will vary considerably between different persons.

23. In *M.N. v. S.M.* [2005] 4 I.R. 461, Denham J. (as she then was) held that there were a number of relevant factors when considering the assessments of the level of general damages:-

(a) An award of damages must be proportionate;

(b) it must be fair to the plaintiff and to the defendant;

(c) it should be proportionate to social conditions, bearing in mind the common good; and

(d) it should also be proportionate with the legal scheme of awards made for other personal injuries.

24. As was eloquently made clear in the judgment of the Court of Appeal in *Gill Russell v. HSE*, there is no place in our jurisprudence for a public policy approach to damages.

25. Accordingly, while any award for compensation cannot restore to a plaintiff a lost eye or limb, or heal a chronic pain, an award of general damages will provide the basis by which a plaintiff can compensate himself or herself for what they have lost. Such award of general damages may finance vacations, which would otherwise not be affordable, a new kitchen or bathroom for the home or indeed a better home in the first place, or possibly may allow a plaintiff to indulge a passion for motor cars to provide for regular purchases. A plaintiff may use his general damages to give himself or herself the security of knowing that his family are provided for or that his children are given a third level education. The list is, of course, endless and shows that an injured plaintiff can utilise his compensation to provide himself degrees of happiness in other fields which would not otherwise be possible.

26. In assessing general damages, a judge must always remind himself or herself of the warning that would have been given to juries of old that they must fair to the plaintiff and fair to the defendant and must not allow emotions to take hold and, in effect, he must assess damages bearing in mind the principles outlined in the Supreme Court in *M.N. v. S.M.* (above).

27. In a number of recent decisions, the Court of Appeal has emphasised the entirely clear proposition that modest claims should get modest damages, moderate claims should get moderate damages, and serious injuries should get, in effect, serious damages.

28. This case is not, of course, a issue of catastrophic damages but in a number of recent decisions the Court of Appeal has referred to the "cap" on general damages and it has been suggested that the "cap" should, in some sense, be a yardstick for other cases involving less damages and accordingly, the position of the "cap" must be examined.

29. In the case of catastrophic injuries, an important development was the decision of the Supreme Court in *Sinnott v. Quinnsworth* [1984] ILRM 523, the plaintiff, in that case, was as a result of an accident quadriplegic and totally dependent for his care on others.

30. The plaintiff in that case was awarded £800,000, by a jury for general damages and appropriate damages for future care and future expenses.

31. In *Sinnott*, O'Higgins C.J. referred to the Supreme Court judgment in the case of R*eddy v. Bates*[1983] 1 I.R. 141 at 148:-

> *"…the fact that a plaintiff has been awarded what is considered to be sufficient damages to cover all her prospective losses, to provide for all her bodily needs, and to enable her to live in comparative comfort (having due regard to her*

disabilities), should be reflected in the amount of general damages to be awarded."

32. *Reddy v. Bates* is, of course, also authority that in a case where damages are to be assessed under several headings, a court should consider the total sum of the award to ascertain whether it is in all the circumstances fair and reasonable.

33. In *Sinnott*, the Supreme Court fixed what has been referred to subsequently as a "cap" and general damages at £150,000. Over the time, this "cap", as was anticipated by the Supreme Court in *Sinnott* has been altered.

34. The ratio of the cap was stated by O'Higgins C.J. in the following terms:-

> *"In my view a limit must exist, and should be sought and recognised, having regard to the facts of each case and the social conditions which obtain in our society. In a case such as this (my emphasis added) regard must be held to the fact that every single penny of monetary loss or expense which the plaintiff has been put through in the past or will be put to in the future has been provided for and will be paid to him in capital sums calculated on an actuarial basis. These sums will cover all his loss of earnings, past and future, all hospital and other expenses in relation to past and future and the cost of the special care which his dependence requires and will require for the rest of his life…"*

35. It is clear, therefore that the cap only applies "in a case such as this" i.e. when a person who has been catastrophically injured has all his or her future needs and cares as well as his past expenses paid for. It is fair to say that as litigation has developed, plaintiffs who are catastrophically injured have under the headings of special damages today a considerably greater array of needs catered for than even was the case at the time of *Sinnott*. Specially adapted motor vehicles, special adapted motorised wheelchairs, cost of carers, cost of holiday with a number of carers, cost of adaptation or purchase of new accommodation etc. It follows that for a catastrophically injured plaintiff whose daily needs are going to be provided by special damages, the role of general damages to provide for the range of items I touched on above is not as extensive as in an ordinary case.

36. The most recent and indeed comprehensive review of the "cap" as considered in *Sinnott v. Quinnsworth* was set out by the decision of Quirke J. in *Yun v. MIBI* [2009] IEHC 318, which was referred to with by approval by MacMenamin J. in the Supreme Court in *Carney v. McQuillan* [2012] IESC 43.

37. Quirke J. set out the approach of the courts in the assessment of general damages in very serious or catastrophic cases as follows:-

> *"(i) Where the claimant has been awarded compensatory special damages to make provision for all necessary past and future care, medical treatment and loss of earnings, there will be a limit or 'cap' placed upon the level of general damages to be awarded.*
>
> *(ii) When applying or reviewing the 'cap' on general damages the court should take into account the factors and principles identified by the Supreme Court in Sinnott v. Quinnsworth, and in M.N. v. S.M including 'contemporary standards and money values'.*
>
> *(iii) Where the award is solely or largely an award of general damages for the consequences of catastrophic injuries there will be no 'cap' placed upon the general damages awarded.*
>
> *(iv) Each such case will depend upon its own facts so that: (a) an award for general damages could, if the evidence so warranted, make provision for factors such as future loss of employment opportunity or future expenses which cannot be precisely calculated or proved at the time of trial, (b) life expectancy may be a factor to be taken into account and, (c) a modest or no award for general damages may be made where general damages will have little or no compensatory consequence for the injured person.*
>
> *(v) There must be proportionality between: (a) court awards of general damages made, (i) by judges sitting alone and, (ii) in civil jury trials and, (b) by statutory bodies established by the State to assess general damages for particular categories of personal injuries."*

38. Quirke J. increased the equivalent value in 2008 of the 1984 cap of £150,000, from €400,000 which it then was to €500,000 and then made a downward adjustment due to the reduction in wealth and living standards in the State which had commenced in 2008 in the economic crash and which would be expected to continue for a further period and reduced accordingly the practical limit to €450,000.

39. Accordingly, the "cap" placed on general damages is not €450,000 but €500,000, as Barton J. stated in *Mullen v. Minister for Public Expenditure and Reform* [2015 No. 1728 P.] (decision 5th May, 2016) that the figure should now, after the comprehensive review in 2008 by Quirke J. clearly be €500,000. I have in a number of other decisions indicated that figure should be capped today given the economic recovery.

40. Accordingly, the role of the "cap" in general damages must be considered in the light of the fact that the determination in *Sinnott* was made after express reliance was placed upon the earlier decision of the Supreme Court in Reddy v. Bates, that the plaintiff had by the special damages been already compensated to cover all her prospective losses and "cap" was expressly stated to apply in "a case such as this". In which:-

> *"every single penny of monetary loss and expenses which the plaintiff has been put in the past or will be put to in the future has been provided for and will be paid to him in capital sums calculated on an actuarial basis."*

41. It has been pointed out by the learned authors in McMahon and Binchy that the injuries suffered by the plaintiff in *Sinnott* though clearly catastrophic were not the most serious possible to imagine. But, in these catastrophic or very serious cases in which they are substantial sums of special damages for past and future care and aids and appliances and in which the loss of earnings are covered, the possible uses to which general damages will be put by such a plaintiff are not the same as in a case of a plaintiff who has suffered similar injuries but for one reason or another was not entitled to significant special damages.

42. The learned authors in *McMahon and Binchy* (4th Ed.) Law of Torts, para. 44.237 to 44.239 are somewhat critical of an approach that takes into account in general damages the fact that special damages have been awarded. However, given the purpose of general damages of personal injuries as I outlined above and the practical effect that full provision of the special damages will have on a plaintiff, I believe a rational distinction can be made and the "cap" can be justified in the cases as provided for in Sinnott.

43. Irvine J. in *Shannon v. O'Sullivan*, in effect, agrees with this criticism and states:-

> *"It cannot, in my view, be correct that a plaintiff can have their general damages reduced on the basis that they are to be awarded a very large sum in respect of their claim for special damage to cover matters such as loss of earnings, future care, aids and appliances, assistive technology etc. That cannot be correct in principle; an injured person is entitled to be compensated in full for all losses flowing from the injuries he sustains. Special damages represent the calculation of actual losses, past and future, which leaves the matter of general damages to be assessed entirely separately."*

With respect to clear logic of that statement, it runs counter to the reasoning in *Sinnott*. I have in the previous paragraph given a possible rational basis for the approach of the Supreme Court both in *Sinnott* and *Reddy v. Bates*. But, be that as it may, the law in this country is settled now since *Sinnott* for the reasons as outlined therein, that the "cap" applies only in those catastrophic cases (in practice the vast majority of them) which have the extensive special damages as pertained in *Sinnott*. Apart from the clear logic of the learned authors and displayed by the judgment of the Court of Appeal, I believe it is clear that the law in this country has developed on this basis, that the "cap" is not the general damages to be awarded, for pain and suffering, to a catastrophically injured plaintiff unless in the circumstances as set out in *Sinnott* apply. This has been confirmed by subsequent jurisprudence.

44. Morris P. in *Kealy v. Minister for Health* (Unreported, High Court, 19th April, 1999) distinguished *Sinnott* on the basis, inter alia, that the *Kealy* case did not involve an award of very large sums for medical care, loss of earnings etc. and on the basis of *Reddy v. Bates* and indeed, *Sinnott*, that the court should have regard to the total sums when considering that the award was reasonable.

45. Similarly, Keane C.J. in *Fitzgerald v. Treacy* [2001] 4 I.R. 405, understood the *Sinnott* "cap" only applying in cases of catastrophic injuries where the plaintiff has received "very substantive damages to allow for nursing care, adaptation of a house the person was living in…etc."

46. It is, I believe, from all the authorities that the "cap" and general damages is not the "price" in general damages intended to put the injured party into the position that he or she would have been had the tort not occurred but rather only occurs in those cases in which they are very substantial injuries with a high element of special damage which, in effect, takes care of all the general needs of a plaintiff.

47. Geoghegan J. in *Gough v. Neary* [2003] 3 I.R. 92 at 132, confirmed the view that the "cap" is not applicable if the special damages are low though the "cap" can be taken into account in a general way in assessing the appropriate general damages in a non-cap case.

48. I believe it follows from the above analysis and indeed, as I stated in *Fagan v. Griffin* [2012] IEHC 377 that *Sinnott v. Quinnsworth* should not be interpreted and cannot be interpreted as requiring that general damages in cases falling short of the most extreme should suffer any pro rata diminution in their damages. The "cap" on general damages be it £150,000 or €500,000 is not a yardstick against which other cases must be measured. It can, of course, be taken into account in a general way while assessing appropriate general damages in a "non-cap" case but no analysis of the authorities can regard the cap on general damages as being the "price" in general damages for catastrophic injuries. To regard €500,000 or whatever the figure may be as being fair and reasonable compensation for catastrophic injuries is an insult not just to the injured parties but to basic intelligence.

49. As Barton J. stated in *Mullen* (above) at para. 35:-

> *"…absent significant claims in respect of pecuniary losses into the future, such as claims for future medical treatment, care, accommodation, aids, appliances and loss of earnings, the Court is not constrained by the so called upper limit or 'cap' applicable to cases involving such claims; though this does not mean that the figure representing the upper limit or 'cap' cannot be taken into account in a general way when an assessment of appropriate general damages or compensation is being made in a non 'cap' case. See Gough v. Neary [2003] 3 I.R. 92 at 132.*
>
> *In such a case an award of general damages or compensation may not only exceed but exceed substantially the 'cap' applicable to an award of general damages in a case where substantial future loss claims are made. See B. v C. [2011] IEHC 88, where Clarke J. awarded €700,000 in respect of injuries which, whilst very serious, were less than catastrophic and where the case did not involve a claim for substantial future medical treatment or care costs."*

50. From the above analysis it is clear in relation to the "cap" in general damages that the following principles may be established:-

> (i) it applies only in cases where there is significant special damages;
>
> (ii) in cases where they are not significant special damages the court is subject to rules set out in M.N. v. S.M. may award general damages significantly higher than the "cap";
>
> (iii) the "cap" since the decision of Quirke J. in *Yun* been fixed at €500,000 and the practice of €450,000 to which it was reduced in consequence of the economic collapse should no longer be applicable;
>
> (iv) the figure of the "cap" is not and never could be held to be the "price" of catastrophic personal injuries; and
>
> (v) a number of cases will arise in which there are significant special damages and the injuries though very serious are not as serious as the injuries sustained by Mr. Sinnott and those cases would be entitled to damages up to the figure represented by the "cap" is not a yardstick but a limit.

51. Accordingly, the "cap" is not and never could be a measure by which other cases should have their damages reduced.

52. However, the provision of the "cap" is one of the many features that may be taken into account "in a general way in assessing the appropriate general damages in a non-cap case".

53. With this in mind, I consider the recent decisions of the Court of Appeal in *Payne v. Nugent* [2015] IECA 268, *Nolan v. Wirenski* [2016] IECA 56, and *Shannon v. O'Sullivan* (Unreported, 18th March, 2016).

54. The decision of *Payne v. Nugent* does not refer to any authorities other than the role of an appellant court as set out by McCarthy J. in *Hayes v. O'Grady* [1992] ILRM and in that case, the court was apparently not referred to any of the authorities I have

discussed above and Irvine J. referred to the "upper range" as being around €400,000. It is unfortunate that the Court of Appeal was not advised of the comprehensive judgment of Quirke J. in 2008.

55. The Court of Appeal concluded that the award of general damages in that case was not reasonable or proportionate.

56. In *Nolan v. Wirenski*, the Court of Appeal did refer to the "cap" of €450,000 as being:-

> *"…the figure generally accepted by senior practitioners and judges alike as the appropriate level for compensation for pain and suffering in cases of extreme or catastrophic injury. In the exercise if its wardship jurisdiction the High Court regularly approves settlements for injuries of this type at this level of compensation."*

57. The court went on to state:-

> *"…I believe it is a useful to seek to establish where the plaintiff's cluster of injuries and sequelae stand on the scale of minor to catastrophic injury and to test the reasonableness of the proposed award, or in the case of an appeal an actual award, by reference to the amount currently awarded in respect of the most severe category of injury. Such an approach should not be considered mandatory and neither does it call for some mathematical calculation; what is called for is judgment, exercised reasonably in light of the case as a whole…."*

58. In the case of *Shannon v. O'Sullivan,* the Court of Appeal restated the approach it adopted in Nolan and stated:-

> *"minor injuries should attract appropriately modest damages, middling injuries moderate damages, severe injuries significant damages and extreme or catastrophic injuries damages which are likely to fall somewhere in the region of €450,000."*

59. With respect, the above analysis with one caveat is entirely correct. The caveat is that if the Court of Appeal was suggesting that the general damages in the case of catastrophic injury are limited to €450,000 (or €500,000) that would be a misinterpretation with respect of the decisions of the Supreme Court in Sinnott and the other cases referred to above. The limit or "cap" only applies where there are significant special damages.

60. Accordingly, I am compelled to conclude that the reference in Shannon to "the region of €450,000" was not to suggest the "price" of catastrophic injury or the most serious injury is €450,000 or (€500,000) and the Court of Appeal in its determination was nearly setting out the very proper proposition that damages must be proportionate to the injuries.

61. I do not find that the remarks in the above cases by the Court of Appeal are to be taken, in any way, as to change the law clearly set out by the Supreme Court in *Sinnott* and the most that has been done, in my view, is to reiterate the proper principle as set out by Geoghegan J. in *Gough v. Neary* (above) and repeated by Barton J. In *Mullen v. Minister for Public and Reform* (above) that a court can take into account the "cap" in a "general way" in assessing the appropriate general damages in a "non-cap" case.

62. If there were to be a radical change in the law and the courts were to fix the amount of the "cap" as being the appropriate quantum for general damages of someone who has catastrophically injured and go on to assess the appropriate quantum of general damages in other cases measured by the price of the "cap" rather than the appropriate compensation for general damages in a catastrophic case then such a decision would run counter to the ratio of the Supreme Court in *Sinnott* and the subsequent decisions I have referred to above.

63. Furthermore, I believe such a radical departure in relation to general damages could only be interpreted as an exercise of public policy contrary to the express observations of Irvine J. in Russell (above) and in Shannon (above) and would require such alteration and departure from established authorities to be made expressly and without equivocation.

64. If established law is to be changed in such a manner it should be changed with "shouts of joy" and "trumpet blast".

65. Adopting such considerations to this case and accepting entirely the observations of Irvine J. in Shannon (above) that:-

> *"…minor injuries should attract appropriately modest damages, middling injuries moderate damages, severe injuries significant damages…".*

I must approach this case on a proportional basis as outlined by Irvine J. above.

66. The plaintiff has sustained what is undoubtedly a significant injury, neither moderate nor very severe. I was furnished with medical reports on behalf of the plaintiff and on behalf of the defendant, neither party accepting necessarily the contents of the other parties' reports. This tactic was adopted, as is frequently the case in personal injury litigation and from the good sense of the representatives of the parties. I have had a total of thirteen reports from a total of ten medical experts on behalf of the plaintiff and five reports from four experts on behalf of the defendant. It is clear that the defendant's experts did not really contradict substantially what the plaintiff and her experts were saying and there was no suggestion that the plaintiff was, in any way, exaggerating her complaints and I found her to be pleasant and entirely truthful witness.

67. The plaintiff did suffer many and somewhat diffuse injuries to her right hand and wrist, right elbow, shoulder, an injury to her jaw with implications for her bite, trauma to her left neck and cervical spine, trauma to her sternum and left breast. She was also suffered psychological injuries, suffered from loss of balance or dizziness and dental pain.

68. The plaintiff was treated with a mixture of counselling and medications and courses in physiotherapy.

69. In relation to her symptoms, these as indicated were various including disorientation sickness, gagging on rotation of her head on the left side and feelings of being off balance and difficulty of holding her head and occasional tinnitus. A balance test indicated reduced balance function in both ears.

70. In relation to her jaw, she has been diagnosed with a chronic inflammation in her left tempormandibular joint and persistent low grade discomfort of her muscles of her face. Some progress was made in this regard. The defendant's experts accept that the plaintiff's imbalance was caused by the accident and the blow to the left side of her head likely to have caused concussion in her ear and the defendant's Oral Surgeon, Mr Brady, accepts that her ongoing jaw and facial complaints are likely to be consistent with having sustained direct trauma to her jaw and he also relates continuing discomfort therein to the plaintiff's significant anxiety

problems which will be discussed below.

71. The plaintiff's wrist was immobilised in a cast. Her wrist symptoms improved somewhat over time and her residual complaints in relation to any muscular or orthopaedic problems are centred on her neck and nausea and that she sometimes becomes unwell, she gags as if to vomit. The wrist and hand area was initially thought to have been fractured and then that was ruled out. However, the ultimate conclusion is that she had a flake fracture of her right wrist and the pain here, though it has improved, was significant at first.

72. In relation to her neck, Mr. O'Connor found a reduction of range of motion of cervical spine with a 50% reduction in lateral rotation to the left which results in the nausea and dizziness referred to and Mr. O'Connor is of the view that the plaintiff is unlikely to further improve.

73. The plaintiff's Neurosurgeon, Mr. Nagari, states the plaintiff had a "very severe" musculoskeletal type of injury as a result of the impact which has alleged hyperextension/flexion type of injury leading to "significant soft tissue musculoskeletal pain". The plaintiff has rejected the possibility of injections as Mr. Nagari felt there was only a 50% that these might be of assistance.

74. Of great concern to the plaintiff is that she developed syrinx. Mr. Nagari is of the view that there is a 40 – 50% chance that there is a direct relationship to the injury and is of the view that it is unlikely that this will cause her problems in the next few years but that there is a "20 – 30% chance that in the next ten years that it will expand".

75. The plaintiff is very concerned about this but as the plaintiff's doctors do not place the relationship of the syrinx to the accident being above 50%, I will have to out rule that as a symptom to be attributable to the accident.

76. I do find, however, that one of the most significant aspects of the plaintiff's injuries was the psychological problems that she endured.

77. It is clear, as I note from the defendant's Psychiatrist, Dr. Sinian, that the plaintiff would have been a "vulnerable person" in relation to these problems that she had untreated depression in her late teens after a large dose of steroids to cure her asthmatic condition. She also had a bout of depression in 2002/2003, after that up to the accident she was well. Dr. Sinian agrees that the plaintiff did suffer as a result of the shock of the accident and in particular, the fact that she felt that she was nearly killed in it, symptoms of "Post Traumatic Stress Disorder with anxiety being a prominent feature of it".

78. Her own psychiatrist, Dr. Paul McQuaid, states that the plaintiff conforms to the criteria of:-

> *"(i) Chronic Post Traumatic Adjustment Disorder with associated anxiety and mood features. She is quite troubled and sad; and*
>
> *(ii) Persistent Neurological Disorder.*

79. I have observed the plaintiff giving evidence and on a number of occasions she was clearly distressed by recounting the accident and indeed, her injuries. In this she is supported by doctors on both sides.

80. Prior to the accident, the plaintiff was a very active lady who engaged in triathlons and used to engage in a number of 5km runs and numerous other demanding physical sports. However, since the accident the plaintiff has been unable to participate in her triathlons or 5km runs but she does walk most days some 8km into a local town and keeps herself fit. The plaintiff is a secondary school teacher. She was not working at the time of the accident and was endeavouring to get back into part time work. She is now and has been for a year or two working reasonable full time and there is no case for loss of earnings.

81. The plaintiff has travelled extensively both before and after the accident and some of her treatments were in India.

82. Accordingly, I assess the plaintiff as being someone who has suffered a significant injury with ongoing problems which has had an affect on her life and is likely to persist. However, the plaintiff has managed, despite her psychological difficulties to not have the injury dominate her life and whereas I think the plaintiff will continue to be vulnerable. One is hopeful that once the trauma of litigation is passed that there will be some easing of the psychological symptoms.

83. And whereas none of the individual symptoms have caused significant debilitation to the plaintiff, the combination of all the different symptoms as outlined in the medical reports of both the plaintiff and of the defendant as such that the plaintiff's past injuries must be regarded as significant and it is likely that a number of them will persist indefinitely into the future.

Damages

84. Special damages which are essentially medication and medical expenses have been agreed in the sum of €14,000.

85. The general damages to date for pain and suffering to date, I assess at €80,000. the general damages into the future, I assess at €40,000.

86. The total of the said general and special damages amount to €134,000, which I believe in all the circumstances is fair and reasonable.

87. I have not found the PIAB Book of Quantum to be of any assistance to me in this case.