Neutral Citation Number: [2011] IEHC 135

THE HIGH COURT

2007 445 P

BETWEEN

BLAINE MURPHY

PLAINTIFF

AND

COUNTY GALWAY MOTOR CLUB LIMITED, IRISH MOTOR SPORT FEDERATION LIMITED (MOTOR SPORT IRELAND), MOTOR SPORT SAFETY TEAM AND BRIAN MELIA

DEFENDANTS

JUDGMENT of Mr. Justice Brian J. McGovern delivered on the 6th day of April, 2011

1. The plaintiff is a twenty-five year old man, having been born on 23rd June, 1985. On 5th February, 2005, he was a spectator at a stage of the Galway International Motor Rally which took place in a restricted area where the roads had been closed to other drivers. Whilst a spectator at the rally, he was struck by a motor vehicle taking part in the event, and he suffered very serious injuries resulting in an above-knee amputation of his left leg. He also suffered lacerations to his left upper forearm and left hand, resulting in numbness to a finger.

2. Liability is in issue in this case and there is a plea of contributory negligence.

3. The fourth named defendant, Mr. Brian Melia, was driving the rally car which struck the plaintiff. No evidence was given to the court to suggest that he was driving otherwise than in a manner that would have been expected from a participant in a motor rally on a closed road special section. Furthermore, when he was cross-examined, it was not suggested to him that he had acted recklessly, or that he had an opportunity to observe the plaintiff, and he was not questioned at all about the manner of his driving. At the conclusion of the plaintiff's case, counsel for the defendants applied for a non-suit against the fourth named defendant and this application was granted.

4. It became clear at an early stage of the hearing that there were two issues affecting liability which had to be decided. The first was whether or not the first, second and third named defendants were negligent in and about the manner in which they organised, conducted and supervised the rally. The second was whether - in the event that the defendants were found guilty of negligence - the plaintiff was guilty of contributory negligence for placing himself in a position which he knew, or ought to have known, was unsafe.

5. As a child, the plaintiff had attended a number of motor rallies with his father. He said that this particular rally was the third one he had attended as an adult. He gave evidence that he was always interested in cars. I am satisfied that the plaintiff was somewhat familiar with the procedures that would be in place at a motor rally and was someone who would have a general appreciation of the risks and dangers associated with attending such an event. The plaintiff attended the rally with three friends and two of them gave evidence. Neither appear to have been very familiar with motor rallies and one of them said it was his first such event. The plaintiff and his group went to the village of Kilchreest, and from there they drove down an access road to the place where the off-road stage of the rally was to take place. Having parked the car, they walked approximately 3.7 km. to a point where there was Marshal and where the road was closed. They crossed the road to a point where the Marshal was standing and they watched the start of the rally and remained there for about twenty minutes. The plaintiff was using a Camcorder. Just prior to the commencement of the event, a number of safety cars known as 'OO Cars' went around the course. These vehicles are apparently used to check on the course one last time before the competitors are released onto the course and it also serves as an indication to members of the public that the event is about to commence. The plaintiff and his friends remained at that point for approximately twenty minutes and then they decided to move on. The Marshal did not say anything to them as they moved off across country. The plaintiff said that they were on the road some of the time. It took them about five minutes to get to the point where there was a crest in the road. Before they reached the crest, the plaintiff stopped to film a number of the cars going over the crest. He had not reached the crest at that point. The film footage shows that the wheels of a number of cars left the road as they went over the crest. In the course of the hearing, evidence was given that at some crests, cars will 'lighten' but not leave the road. *'Lightening'* is where the cars rise up on their suspension but the wheels remain in contact with the road.

6. The film taken by the plaintiff contains information at the bottom of the picture. On the bottom left-hand side, there is a figure which shows the time which has elapsed since he started filming. On the bottom right is the date and the time of day at which the events were being filmed. The figures at the bottom left of the screen show that at approximately 2.53, 3.24 and 4.52 minutes, cars going over the crest left the road.

7. The plaintiff and his friends went beyond the point of the crest and the plaintiff then sat down on a rock in a drain or ditch approximately 50 metres beyond the crest. There was some disagreement as to precisely where the plaintiff was sitting, but the discrepancies were not very significant and did not amount to more than a few feet. Mr. Tony O'Keeffe, an engineer, gave evidence that the point indicated to him as being the location of the plaintiff at the time of the accident was 52 metres from the crest. It seems clear that the plaintiff sat down at that point in order to get some dramatic pictures of the cars coming over the crest. His Camcorder had a facility which enabled him to switch from moving film to still photographs. He took a number of still photographs from that point, including a photograph of the car immediately preceding the one driven by the fourth-named defendant, which struck the plaintiff. It is not clear whether the camera kept running until the time of the accident. It appears that it did not, although the camera does appear to have become activated just at the moment the plaintiff was struck because there was moving film of the sky and the audio track recorded, very graphically, what had occurred, and the pain and distress suffered by the plaintiff.

8. Of the three friends who were with the plaintiff, two of them, Mr. Cormac McCarthy and Mr. David Crowe, gave evidence. Mr. McCarthy described how the group moved from their initial location beside a Marshal down to where the accident happened. He said

that they moved both on and off the road to where the accident occurred. They were constantly moving about. He said that the Marshal would have seen the group as they moved down and that nobody said anything to them about moving to the location near the crest. He felt they were safe where they were. He shouted a warning to the plaintiff as a car came over the crest and veered to the right and then left and went into the drain, striking the plaintiff. As he saw the car coming towards him, he turned and ran and shouted a warning. Mr. McCarthy said he had no recollection of having a programme, although he did see a map of the stage. The issue of a programme arose in the context of warnings contained therein for spectators at the event. The plaintiff accepted that he probably did have a programme. I found Mr. McCarthy to be a credible witness.

9. Mr. David Crowe gave evidence of attending the rally with the plaintiff and others. He did not have a programme and he did not think that anyone else in the group had one. He said he was not really a motor rally fan and would not need to keep one as a memento. He described how the plaintiff and the group arrived at the location where there was a Marshal and remained there for a while before moving down across country to where the accident happened. He described how they traversed boggy ground and each person in the group made their own way. He was standing near the crest at the time of the accident and he knew the car was going to leave the road and he jumped to avoid it. He saw the plaintiff stand up momentarily after being hit and then collapsing again. The plaintiff had been sitting on a rock in the drain and was looking through the viewfinder of his Camcorder when he was struck. He agreed that the plaintiff's reaction would have been somewhat slower on that account. Both he and Mr. McCarthy agreed that because they were standing and the plaintiff was sitting, his ability to react and get out of the way of the vehicle which struck him was impaired. I found Mr. Crowe to be a reliable witness.

10. The plaintiff and his friends who gave evidence were clear that no Marshal or other official attempted to stop them moving across country down to where the accident occurred. It is also clear that no Marshal was stationed at the crest in the road and no tape, warning or other markers or barriers were placed in that area.

11. Engineering evidence was given by Mr. Tony O'Keeffe on behalf of the plaintiff and Mr. Peter Johnston on behalf of the defendants. The engineering evidence concerning the topography of the area was similar. There was some minor disagreement as to precisely where the plaintiff was sitting at the time of the accident. But the variation in this evidence only amounted to 5.4 metres. One of the locations is 2.7 metres from the edge of the road and the other is 2 metres from the edge. I am satisfied, from the engineering evidence, that when the plaintiff and his friends left the area where the Marshal was standing, they would have been in view of the Marshal for a time and then temporarily out of view as the contour of the land altered and they proceeded downhill. It is also clear from the photographs and engineering evidence that after a time, they would have been visible again from the point at which the Marshal was standing as they came nearer the crest. This is clear from maps and photographs produced and also from the video evidence taken by the plaintiff from various locations on the day of the accident. When the plaintiff sat down on a rock in the drain in order to take some further film and still photographs of cars coming over the crest, he said that as far as he was aware, he could see the Marshal back up the hill. I am satisfied, from the engineering evidence, that he would not have been visible to the Marshal when he was sitting down.

12. There was a general acceptance by witnesses in this case that members of the public attending motor rallies tend to gather at places where cars and drivers will be tested. This could be at a bend or junction or a crest in the road, which is sometimes known as a jump or a 'yump' which, apparently, is a Scandinavian derivation of the word 'jump' used in the context of a motor rally. Some debate took place in this case as to whether the crest close to the accident point was a jump or a 'yump'. Witnesses for the defendants argue that it was not because it is a point where one would not expect the wheels of vehicles to leave the road. This was because it followed a bend in the road which would require vehicles to slow down. However, it is clear from the video footage taken by the plaintiff that the wheels of a number of vehicles did, in fact, leave the road at this point. The brochure to the event contained, at page ten, warnings about areas under the heading 'Spectator Safety'. This section contained drawings of acute bends, a fork in the road and junctions and other features where it might be hazardous to stand as a spectator. One of the drawings shows a 'Crest/Jump'. The grey shaded area in each drawing is described as a 'No-Go' area and in the case of the crest/jump, it is shown to be an area on either side of the jump and in its immediate vicinity.

13. Mr. Tony O'Keeffe stated that the accident happened within 280 metres of where the nearest Marshal was located and that because of the typography of the area, he could see the plaintiff and his group located in the position of the rock where the accident occurred and that this gave rise to serious questions as to the organisation of the rally from a health and safety point of view. He says that the plaintiff and his friends had not been warned about the area from which they were observing the rally when the accident occurred and that nobody had tried to stop them going there. Furthermore, there was nothing to indicate to the group that they were viewing the rally from a prohibited location. His opinion was that the organisers of the rally had not taken proper and reasonable precautions for the safety of persons attending the rally as spectators. He accepted that the plaintiff could not be seen at the point where he finally sat down to take pictures and that people should not be viewing the rally from that point or where his friends were. But he said they were visible as they proceeded down to that point. The area should have been cordoned off or marked as a no-go area. Having examined the scene, he said that the crest was immediately obvious to him as a place of danger when he did his inspection. I accept his evidence.

14. Mr. Peter Johnson said that it should have been obvious to the plaintiff and his friends that the location where they placed themselves at the time of the accident was dangerous and obviously so and that they should not have remained there. At that point, the road falls away from its edge into a drainage ditch and it is just after a crest. The plaintiff was sitting on a rock only 2.5 metres from the edge of the road and below the crest and at a place where he could not be seen by an approaching driver. So far as the organisation of the rally was concerned, he deferred to the evidence of Mr. Robert Parkin, who is a director of the Royal Automobile Club Motor Sports Association and a Council member of the MSA, which approves and ratifies all motor sport rules. A report from Mr. Parkin containing his Curriculum Vitae was provided to the court and he is clearly a person who is very experienced in the rules and safety procedures that are required at motor rallies and how they should be organised. He had seen the safety plan for the stage in which the accident occurred and he had no criticism of it. His view was that the point where the accident occurred should not be specified or designated as a dangerous area and that it was not a 'jump'. He said it was neither reasonable nor practical to cordon off all areas. He conceded that there was no mention in the safety plan of the area where the accident occurred. He was of the view that spectators should know, as a matter of commonsense, where not to go. He thought that the pre-planning of the event by the organisers was good.

15. Mr. Parkin concluded that the advance planning and preparation for the rally was of a very high standard which compared favourably with similar events worldwide. He also concluded that the planning and preparation undertaken was independently checked by experienced personnel from the governing body, Motor Sport Ireland, and that this independent check was carried out in a thorough and professional manner and that the safety plan was checked on the day by many experienced and properly licensed rally personnel, both from the local organising team and Motor Sport Ireland.

16. Ms. Sheila Patrick, the Deputy Clerk of the course, gave evidence as to the safety procedures put in place, and that no special

hazard was identified at the accident location because of the openness of the countryside and the fact that there was a bend before the crest which slows cars down. She agreed that the accident location was not in the safety plan, as it was not identified as a place of risk. She also said that the organisers of the rally do not designate spectator areas, but rather, areas where spectators cannot go.

17. Mr. Noel Clarke, the Chief Motor Sport Ireland Steward, said that the area of the accident was not identified as an area of significant risk and that it was a crest and not a jump or 'yump'. He confirmed that, had he seen the plaintiff close to the crest, he would have moved him. However, he also said if he had seen the plaintiff and his group going down to that point, he would not have stopped them.

18. Mr. Alex Sinclair, the Chief Executive Officer of Motor Sport Ireland, gave evidence concerning the arrangements that would be put in place for such a rally. The court also heard from Mr. Joe Corcoran, a voluntary Safety Officer with Motor Sport Ireland, who gave evidence as to the safety steps taken that day, and he informed the court that he did not deem the area of the accident to be a place which required special attention. He said that you expect people to have commonsense.

Liability

19. The defendants had a duty to take reasonable care for the safety of the plaintiff and other spectators at the event. As there was no evidence given against the driver of the vehicle (the fourth named defendant), he was dismissed from the proceedings at the end of the plaintiff's case. Persons attending car rallies in closed road situations have to take reasonable care for their own safety and exercise commonsense. I agree with the witness who stated that it was neither reasonable nor practical for the defendants to cordon off all areas of the course.

20. Certain sporting events and activities carry with them inherent risks. Motor rallying is one such sport. In a closed road section where trials are taking place in the course of a motor rally, the drivers of vehicles are permitted and expected to carry out manoeuvres which would be wholly unacceptable and dangerous on a public highway. It would be wholly unreasonable to expect competitors in such events to drive in a similar manner to motorists on a public highway. To do so would be to emasculate the sport where it would cease to be motor rallying at all. What the defendants are obliged to do is to take reasonable care for the safety of persons attending the event in the knowledge that competitors would be driving at some speed on a narrow country road which will involve junctions, bends and crests or jumps. They will also know that spectators are likely to gather at places where drivers' skill will be most severely tested. It is clear that the area of the accident was not mentioned in the safety plan for the event because it was not regarded as an area of danger or hazard. Mr. Tony O'Keeffe gave evidence that in his view, it was an area of danger and the people should not be viewing the rally from that point. His view on the latter issue appears to have been shared by Mr. Peter Johnson who said that he did not believe the plaintiff should have been allowed to remain at that point. He also said that if he had seen people near the road at the point where the plaintiff and his friends were, he would have moved them and would not have allowed them to go to that point. I accept the evidence of Mr. O'Keeffe that the area was hazardous and I draw that inference from the evidence of Mr. Johnson and Mr. Clarke when they indicated they would have moved the plaintiff from that location if they had seen him there. The evidence is that the plaintiff and his friends were visible at various points when they moved down to the location of the accident and also at a point when they were close to the accident spot. I am satisfied that nobody warned them that they should not go there and nobody gave them any warnings or directions in that regard. The defendants claim that this was not an area of danger because it was not a jump, but rather, a crest. However, the evidence adduced in court suggests otherwise. A number of vehicles were filmed by the plaintiff with their wheels off the ground as they went over the crest. In my view, the defendants should have identified this crest as a jump or at least a crest where, from time to time, vehicles were likely to have their four wheels off the road surface. Accordingly, it should have been identified as an area of significant risk and should have been identified as a prohibited area for spectators. There were a number of extra Marshals present at the event that day, and the defendants could have stationed one of them at or near the crest. If this had been done, it is almost certain the plaintiff and his friends would not have been permitted to stay so close to the road at that point.

21. Accordingly, I hold that the first, second and third named defendants were negligent in failing to identify this area as a hazard and in failing to designate it as a prohibited area and give warnings to persons attending the event that they should keep away from it.

Issue of Contributory Negligence

22. The defendants state that there was a warning in the programme concerning 'No-Go Areas' and that this is to be found at page ten of the programme. I hold that, as a matter of probability, the plaintiff did have a programme and if he chose to read the programme, the Spectator Safety Notice would have been seen by him. In any event, I accept the evidence of a number of witnesses for the defendants to the effect that commonsense would suggest that a person attending the event would not put himself in a position of danger by being too close to the road, particularly just after a blind crest.

23. The plaintiff accepts that it was unwise to place himself where he was at the time of the accident. He said it was *". . . a bad location, looking back at it".* I take the view that even looking at the matter with foresight, it should have been obvious that it was a bad location in which to place himself, since he was below the level of the road and close to it beyond a blind crest where he had already seen vehicles passing over the ramp with all four wheels in the air. I hold that the plaintiff recklessly exposed himself to danger in sitting where he did in order to take photographs of cars coming over the crest and that he must accept a substantial degree of responsibility for the accident. The plaintiff did not require to be warned by a Marshal or other official as to the dangers involved. The danger should have been obvious to him at the time. Furthermore, by sitting down in that position, he allowed himself less time to react to an emergency than would have been the case if he was standing.

24. I assess the plaintiff's proportion of responsibility at two-thirds and the defendants' responsibility at one-third.

Damages

25. The plaintiff presented as a pleasant and well-motivated young man who did not in any way exaggerate his injuries or disability. In the accident, he suffered a compound fracture to the mid-shaft of the left tibia, a disruption of the head of the upper tibiofibular joint, a subluxation of the left knee joint and a laceration to the left upper forearm and dorsoulnar aspect of the left hand. The arm injury was not of any great significance but the leg injury was very severe indeed. The soundtrack on the Camcorder which kept running at the time of the accident left one in no doubt as to the horrendous nature of his injuries. He could be heard screaming with the pain and shock of what had happened to him. His friends, who gave evidence, described how they made a tourniquet from a

camera strap to stem the flow of blood. His left lower leg was completely mangled and was found to have no pulse and when he was taken to hospital, his leg required to be amputated through the knee. Some time later, he developed an infection and Cellulitis on the lower lateral aspect of the stump and he then had to undergo further surgery on 15th February, 2005, some ten days after the accident, when a further amputation took place above the knee.

26. The plaintiff has made a good recovery and is wearing an above-knee prosthesis. He seems to be managing well on it and his mobility in the courtroom was not noticeably diminished. He struck me as a man who is quite uncomplaining by nature and stoical about his injuries. He is only twenty-five years of age. At the time of the accident, he was nineteen years old. He will, therefore, have to endure his entire adult life with the disability associated with amputation of a leg and this is a significant burden to bear. After ten or fifteen minutes of walking, the stump becomes sore and sometimes it cuts and oozes blood. After prolonged standing, it becomes painful. Obviously, he can no longer play any sport that involves running and he has difficulty in walking down any steep incline. He cannot cycle a bicycle and he can only use a car with modified controls. Apart from his leg injury, he has been left with scarring on his arm and the border of his left hand and there was some numbness at the back of the left little finger which has resolved.

27. His amputation stump will shrink after a while and he will be prone to developing arthritis in other weight bearing joints as a result of compensating for his prosthesis.

28. In assessing general damages, I am obliged to have regard the Book of Quantum published by the Personal Injuries Assessment Board. I have regard to the fact that this was published in June 2004, which is almost seven years ago. The Book of Quantum is a useful guide, but no more than that, as each individual case must be assessed on its own merits. It does not allow for significant differences that can arise out of the fact, for example, that a person may be either very young or quite old at the time of a significant injury. Nevertheless, I have had regard to the Book of Quantum in arriving at a sum for general damages in this case.

29. Having regard to the circumstances of the accident and that the plaintiff had to undergo two amputation procedures with all the consequent pain and trauma in between the operations, and having regard to his young age at the time he sustained the injury, I assess general damages as follows:

(a) Pain and suffering to date: €100,000.

(b) Pain and suffering into the future: €100,000

Special Damages

30. At the time of the accident, the plaintiff was working with his father who was a plumber. He obtained a modest Leaving Certificate and he did not pursue any further training. He left school in 2003, following his Leaving Certificate, and worked in Dunnes Stores on a fulltime basis as a sales assistant. In 2004, he commenced working with his father as a first year apprentice plumber, and he was working in this capacity when he had his accident. Following the accident, he was out of work for approximately one year, and then he returned to work with his father, driving a van and doing other bits and pieces. He was well motivated and completed training as a teleporter and mini-digger driver through a FAS course. He did not tell anyone involved in the course that he had a prosthesis. It is accepted by the vocational assessors who gave evidence to the court that he would be obliged to inform an employer of this problem and it might militate against him. Nevertheless, it is to his credit that he got on with life and obtained this further qualification. He never worked, however, as a teleporter or mini-digger operator. Around February 2008, he commenced working as a taxi driver in Galway. He bought a share in a company and a taxi plate and obtained a PSV licence. He worked at that for a time, but while it was profitable, at one point, the earnings gradually diminished. He said that at one time, he as able to earn in the region of €700 *per* week net, but with the downturn in the economy, his income dropped to about €100 *per* week after expenses and taxes. As a first year apprentice plumber, he was able to earn €200 gross *per* week. He has now given up taxi driving and is setting up a business as a mobile mechanic with a view to going to customers and carrying out car servicing and work of that kind. Ms. Paula Smith, the vocational assessor, did not think that this was a suitable occupation for him. I accept that evidence. It was quite clear, from the evidence, that the plaintiff will no longer be able to work as a plumber as such work involves bending and stooping into awkward locations. The same applies to him working as a mechanic. While he is able to work as a taxi driver, that work is not profitable at the moment.

31. Ms. Paula Smith stated that although the plaintiff obtained a modest Leaving Certificate, he is an intelligent young man with ability in the top ten per cent of the population, and when measured against students of University level, he is within the average range. There is no reason, therefore, why he could not proceed to further study and qualification. The plaintiff, for his part, said that he was "*. . . not a big fan of college*".

32. I accept the evidence of Ms. Paula Smith that the plaintiff will be reduced in his options for future work on account of his disability. Anything requiring a high degree of mobility or climbing or working at height, or tasks involving prolonged standing, repetitive lifting, bending or stooping or kneeling would not be an option for him. Ms. Smith believes that he would be best suited to work of a relatively light nature, affording him a degree of flexibility in relation to prolonged standing and walking and where the work tasks are carried out from a sitting position. In her report to the court, she mentioned jobs such as sales assistant, customer services, base controller, clerical officer, telesales and telemarketing. The rates of pay for these jobs are quite low, ranging from €380 to €450 *per* week gross, exclusive of overtime.

33. Salaries at Graduate level, following upon engineering courses or courses in architectural studies and IT would commence at around €25,000/€26,000 gross *per* annum, rising with experience. Ms. Paula Smith seemed to think that the plaintiff would probably be capable of training for such courses. Obviously, that would involve him in being out of the workplace while he is training. If he does not proceed on to further training or education he is likely to be compromised in terms of his overall work and earning capacity.

34. Ms. Anne Doherty, a rehabilitation and employment consultant, also assessed the plaintiff. She was of the view that he might consider a course in Civil Engineering, Mechanical Engineering, Construction Studies with Architectural Design and Autocad. Such courses would take three or four years and would give him a starting salary of €26,000 to €28,000 *per* year. She said that, but for the accident, he would be a qualified plumber now and, at a minimum, would be earning €20 *per* hour to start, €780 gross for a 39-hour week plus 20% overtime giving a total of €936 *per* week or €48,672 *per* year. As a self-employed plumber, he would earn a minimum of €200 *per* day plus expenses.

35. I am satisfied that the plaintiff is generally a well-motivated man. Although he has not shown a preference for college-based activities, he has a duty to mitigate his loss and make the most of his situation as he now finds it. I am satisfied he is well capable of

progressing on to further study and obtaining qualifications which will probably put him in an earning situation in the region of €28,000-€35,000 gross *per* annum in areas such as Engineering Design, Building Services and Technician.

36. Looking at his earnings prior to the accident, it is clear that he was still an apprentice plumber and his earnings were not substantial. I believe it is likely that, if it were not for the accident, he would have continued to work as a plumber. His father sold on the plumbing business to Mr. Mark Guckian, who furnished unaudited accounts for the years ended 30th April, 2006, to 30th April, 2010. The figures for that period are unsurprising. In 2006, the profit for the business was shown at €58,833. The figures for 2007 to 2010 were €191,323, €162,808, €53,059 and €18,329. After drawings, there were losses in 2009 and 2010. The figures mirror somewhat the fortunes of the construction business in Ireland in those years. But plumbing services are not wholly related to the fortunes of the construction trade. There is a significant amount of plumbing work to be done on a private basis and an *ad hoc* emergency basis dealing with burst pipes or installing central heating systems, and there are many other jobs which arise, unconnected with the health of the general construction trade. But there can be no doubt that the health of the construction trade does have a significant impact on the earnings of plumbers.

37. The accident happened in February 2005, and the plaintiff's plumbing apprenticeship would have lasted for the remainder of the "good years" in the business, so if he had not had the accident, he would have been fully qualified at a time when there was a significant drop in income in the trade.

38. The plaintiff gave evidence that between February 2006 and 2008, he earned approximately €400 *per* week. In 2008, he spent €50,000 in purchasing his share in the taxi business and the vehicle and taxi plate. Some of this related to the vehicle and he would continue to have the use of that. He said in the first six months, he was earning €400 to €500 *per* week and then it went down to €300 *per* week, dropping eventually to €100 *per* week after expenses.

39. Because the plaintiff was working at different jobs during that period, and because he was training to operate a teleporter, it is difficult to assess what sum he lost on a weekly basis. However, it is clear that he lost the best part of a year's earnings as a plumber (albeit an apprentice plumber). For a while, he was earning up to €700 *per* week net as a taxi driver, but that was for a short period of time, and it is clear that overall, he earned a great deal less.

40. Mr. John Byrne, actuary, gave evidence that on the basis of the information supplied to him, if the plaintiff had not been injured and had worked 39 hours *per* week at the applicable minimum rate of pay for an apprentice and qualified plumber, his potential net earnings from 5th February, 2005, to 8th February, 2011, would be €115,000. this would be reduced by net earnings since the time of the accident and by deductible Social Welfare benefits received from 5th February, 2005, to 5th February, 2010.

41. It is clear that the plaintiff has worked on and off since the accident and I have not been given figures concerning the Social Welfare deductions which would have to be made. However, I am satisfied that the plaintiff has suffered loss of earnings to date and I will have to assess these on a somewhat unscientific basis. He did lose money on the purchase of the taxi licence, vehicle and share of the business, and he has been earning less than he would have, if he had been a plumber, and not involved in the accident. Doing the best I can, I will assess the loss of earnings to date at €40,000 net.

42. I accept the evidence of Mr. John Byrne concerning future loss of earnings but prefer to approach the matter on the basis of earnings the plaintiff would have if he worked as a plumber earning the minimum hourly rate. That figure comes out at €229,602. I should say that the multiplier used by Mr. Byrne and Mr. Nigel Tennant are broadly similar and any differences merely arise out of the date on which the multipliers were calculated. I believe that a significant discount will have to be made on the figure of €229,602, having regard to *Reddy v. Bates* and, in particular, the current economic climate. I will net that figure down to €175,000.

43. There are costs associated with the replacement of his prosthesis. The current cost of a prosthesis is €12,160. This will have to be replaced every three years. The transfermoral liner should be replaced every year at a cost of €800. Servicing should be carried out each year and the average yearly costs of a service is €500.

44. I accept the evidence of Mr. John Byrne, consulting actuary, that the capital costs associated with the replacement of the prosthesis every three years is €30,234; that the replacement cost of the liner each year at €800 *per* annum is €24,488 and the servicing costs at €500 *per* annum is €15,305, making a total of €170,027 which I will round down to €170,000 to take account of a margin of uncertainty which exists in looking at such costs into the distant future.

45. Counsel have informed me that the other special damages are agreed at €12,498.

46. To summarise the conclusions on damages, the figures are as follows:

General Damages	€200,000
Special Damages	
Loss of Earnings to Date	€40,000
Loss of Earnings into the Future	€175,000
Future Costs associated with the Prosthesis	€170,000
Other agreed Special Damages	€12,498
TOTAL:	€597,498

47. Having regard to my conclusions on the issue of contributory negligence, the plaintiff is entitled to one-third of the above damages which amounts to a sum of €199,166.

48. I will enter judgment for the plaintiff in that sum.