

THE HIGH COURT

[2013 No. 305 S.P.]

IN THE MATTER OF AN GARDA SÍOCHÁNA (COMPENSATION) ACT, 1941-1945

BETWEEN

EDEL DORE

APPLICANT

AND

THE MINISTER FOR FINANCE

RESPONDENT

JUDGMENT of Mr. Justice Bernard J. Barton delivered on the 21st day of July, 2017.

1. The Applicant was born on the 20th January, 1978. She was authorised to bring these proceedings on the 2nd May, 2013, in respect of an incident which occurred on the 12th June, 2003, when Applicant, an official observer in a patrol car driven by Garda Paul Moran, was assaulted by a woman whom she was attempting to arrest.
2. The officers had responded to a call to attend an incident on Leeson Street, Dublin. On arrival they encountered an altercation between a man and a woman in the course of which the woman was forced onto the ground. Garda Moran intervened to restrain the man but when he did so the man assaulted him; the women got up off the road and joined in the assault by jumping on Garda Moran's back.
3. The Applicant went to the assistance of her colleague and managed to place a cuff on one of the woman's wrists. As soon as she did so the woman grabbed and very forcibly pulled on the links to the other hand cuff which the Applicant was wearing on her left arm, wrenching it in the process. This caused immediate and severe left shoulder pain accompanied by what the Applicant described as a 'popping' sensation. The assailant was then arrested by another officer who had come to the scene in answer to a call for back up.
4. The Applicant was taken to the casualty department at St. Vincent's Hospital where she was clinically examined and reviewed. In evidence she recalled being aware of severe left shoulder and neck pain which was followed by the development of a numbness / paraesthesia sensation throughout her left arm and into the fingers of her left hand. She was given pain killing medication, non steroidal anti inflammatories and discharged back into the care of her GP.
5. Her left arm was immobilised for a time in a sling. Throughout the Months of July and August she continued to suffer considerable pain and discomfort accompanied by neurological sequelae already described which prevented the Applicant from being able to return to work; she was certified unfit by her GP and was only able to return to light duties after an absence of eight months.
6. Unfortunately for her, instead of resolving as had been anticipated, the Applicant's symptoms persisted, accordingly, she was referred for review by Dr. Michael Hutchinson, Consultant Neurologist, who first saw her on the 8th September, 2003. He carried out further reviews that year on the 11th October and 22nd of December. His findings on examination and his opinion in relation the injuries are set out in a report dated 3rd March 2004, in which he concluded that the Applicant had sustained soft tissue injuries, including a traction injury to her left brachial plexus.
7. Several rehabilitation modalities were followed by the Applicant, which included a course of physiotherapy, to which she responded reasonably well but her symptoms continued at a level which caused functional difficulties when she tried to carry out certain tasks and activities such as swimming, looking after her young baby or undertaking heavy household chores.
8. Throughout 2004 the Applicant continued to experience intermittent painful symptoms in her left shoulder and neck with radiation into her left hand and fingers; she was unable to return to full duties until November 2004. Although gradual, her recovery reached a point where she was able to manage her official duties with the assistance of pain killing medication.
9. Prior to the accident the Applicant was very physically fit and a keen swimmer; she had been a life guard in her spare time and although she tried to return to swimming as part of her rehabilitation programme she had had to give that up as it tended to provoke symptoms in her shoulder. Her attempts to rehabilitate did not result in a full resolution of what were low grade symptoms which flared up from time to time over the next couple of years; when these occurred she attended the outpatient departments of several hospitals during this period including Naas, St. Vincent's, the Adelaide and the Meath.
10. The Applicant was assigned to office based duties between 2006 and 2010 and got on with her life as best she could. Vocationally she obtained a professional qualification which enabled her to interview children under 14 years of age who had been subjected to physical and/ or emotional trauma. In October, 2010 she was transferred to Thomastown, Co. Kilkenny, where she returned to full uniform duties until March 2013, when she was transferred to Tullow, Co Carlow; each transfer was at her own request.
11. While her symptoms had remained relatively quiescent over the previous three years she continued to experience episodic flare ups for which she was further investigated in 2008 and 2009; in the Summer of that year she experienced a sudden onset of excruciating pain in her neck and left shoulder the severity of which prevented her from continuing a journey to go on holiday.
12. She had been referred to Professor Trevor Duffy, Consultant Rheumatologist in 2007 because of continuing problems in her shoulder. His findings and opinion are set out in a report dated the 13th August, 2014 which was also admitted. Having regard to those findings he referred the Applicant to Mr. John Lunn, Consultant Orthopaedic Surgeon at the Hermitage Medical Clinic, Lucan, whom she first saw on the 16th March, 2009.
13. Professor Duffy had advised further investigation by way of an MRI arthrogram of the left shoulder which was carried out on the 13th May 2008; the result suggested anterior inferior labral damage. The Applicant had an arthroscopy undertaken by Mr. Lunn on the 8th May, 2009. At surgery he found a pronounced subachromial bursitis which was resected.
14. An MRI scan of the cervical spine carried out on 31st August, 2009, revealed mild degenerative changes at the C5/C6 level. Mr.

Lunn prepared a number of reports in which he outlines his findings and gives his opinion; these have been read and considered by the Court; Mr Lunn also gave evidence.

15. The Applicant's career as a member of An Garda Síochána was brought to an end following an incident in October, 2013 when she was hit by a baton on her right hand while assisting a colleague in attempting to affect an arrest of three men. She sustained very serious injuries for which she has had to have several surgeries. As a result she tends to compensate by using her left hand which can sometimes cause an occasional exacerbation of her low grade intermittent neck and shoulder symptoms. The Court is not otherwise concerned in these proceedings with the injuries sustained in the incident of 2013.

16. Sequelae of the injuries the subject matter of these proceedings are intermittent and low grade; however, there was an issue between the parties in relation to causation of the ongoing symptoms and the acute exacerbation in 2009. The MRI arthrogram carried out in May, 2008 reported some changes already mentioned but did not identify a pronounced subchromial bursitis which Mr. Lunn found when he carried out the shoulder arthroscopy on the 8th May, 2009. In passing I note that when Professor Duffy was subsequently writing his report in 2014 he expressed the view that the arthroscopic findings were consistent with the clinical examination carried out by him.

17. In his reports and in evidence Mr. Lunn expressed the opinion that the symptoms experienced by the Applicant in 2008/ 2009 were not new symptoms but an exacerbation of a condition resulting from the assault. Although his findings at arthroscopy were not apparent on an MRI arthrogram taken the previous year, he expressed the opinion that it was not correct to suggest that there was no causal connection with the assault.

18. He had had the advantage of visualising the scar tissue; what he found at surgery was consistent with a soft tissue injury to the neck muscles the severity of which was objectively demonstrated on an MRI scan taken shortly after the assault which confirmed that the neck muscles were in spasm.

19. He explained the interaction between the neck, scapular and shoulder musculature, how the mechanical inter relationship between them can be interfered with by soft tissue injuries to the neck, and how, over time, that can lead to the condition which he found during surgery.

20. The arthroscopy was successful; so far as prognosis is concerned, Mr. Lunn's opinion was that any intermittent symptomology as maybe experienced by the Applicant from time to time will be low grade and should continue to improve and ultimately resolve.

21. Dr. Pat O'Neill gave evidence on behalf of the Respondent. He also prepared medical reports which were admitted for the assistance of the Court. He accepted that the Applicant had sustained a complex soft tissue injury involving her neck and left shoulder, however, in his opinion it was significant that the MRI of the left shoulder taken in May, 2008 disclosed no identifiable subachromial bursitis.

22. Had such a condition been present his view was that the sensitivity of the MRI arthrogram was such that it would have identified the inflamed tissue. As against that Mr. Lunn gave an explanation as to why what he found would not necessarily be identified on the scan. By way of opinion as to the cause of the condition found at arthroscopy, Dr. O'Neill expressed the view that the subachromial bursitis was consistent with a classical overuse musculoskeletal injury rather than with an acute traumatic injury.

23. He considered this to be the likely explanation having regard to the Applicant pre assault recreational activities, particularly swimming, all of which were commonly associated with overuse musculoskeletal injuries and conditions of the shoulder such as that found by Mr Lunn.

24. Whilst not disagreeing that such activities could cause such conditions, Mr. Lunn explained that stopping such activities generally leads to resolution without the necessity of surgical intervention. That did not happen in the Applicant's case, she did not experience a complete recovery, on the contrary she remained symptomatic albeit for most of the time at a low level. While acknowledging that Mr Lunn's opinion offered an explanation for causal connection, it was not an opinion with which Dr O'Neill felt he could agree.

Decision

25. At the outset I consider it pertinent observe that there is no suggestion the Applicant is anything other than a truthful witness on whose evidence the Court is entitled to rely. Furthermore, that Plaintiff suffered complex soft tissue injuries involving her left shoulder and neck, including an injury to the left brachial plexus resulting in painful symptomology as already described in respect of which she is entitled to compensation, is not in issue.

26. After the acute phase of the injuries, the Applicant's evidence, which I accept, was that she did not make a full recovery but continued to suffer from intermittent and low grade symptoms culminating in the acute episode of 2009. The kernel of the controversy between the parties is concerned with the cause of the condition and symptoms for which the Applicant was investigated in 2007/2008/ by Professor Duffy in 2008 treated by Mr Lunn in 2009. The Court is tasked with resolving that issue; the onus of proof lies with the Applicant: both parties led expert medical evidence.

27. Where the outcome on such an issue is dependent upon the reconciliation or resolution of a difference of opinion between respected medical experts given in evidence on matters of medical fact and one or more of the experts have provided professional advice or therapeutic treatment to the claimant (whether as a Plaintiff or as an Applicant) , the Court is entitled to have regard to the duty of care owed and the professional responsibility involved in the provision of such services consequent upon that relationship as the basis or ground upon which to prefer the opinion of such experts and is warranted in so proceeding, particularly where the expert has a special professional interest and expertise in the matter at issue, unless there is compelling evidence or other good and sufficient reason to do otherwise.

28. Mr Lunn professes a special interest and expertise in shoulder surgery; in performing the arthroscopy he afforded advice and therapeutic treatment to the Applicant over which he must stand and for which he is responsible. While acknowledging the undoubted expertise and respected opinion of Dr O'Neill, for the reasons already given I prefer the evidence and opinion of Mr Lunn on the issue; accordingly, the Court finds as a matter of probability that the symptoms and condition for which the Applicant was subsequently investigated and treated was caused by the assault of 12th June, 2003.

29. With regard to prognosis, Dr. O'Neill and Mr. Lunn are in agreement, accordingly, the Court finds that any continuing intermittent and low grade sequelae caused by the assault as may arise will continue to improve and resolve.

Conclusion

30. Having regard to the reasons given, the findings made, the conclusions reached and having considered the submissions of counsel, the comparators offered and the revised Book of Quantum, the Court considers that a fair and reasonable sum commensurate with the injuries sustained to compensate the Applicant for pain and suffering to date and into the future is €50,000. And the Court will so order.