

THE HIGH COURT**[2010 No. 4500 P]****BETWEEN****MARTIN LAFFAN****PLAINTIFF****AND****DARREN QUIRKE AND GLOBAL RAIL SERVICES LIMITED****DEFENDANTS****JUDGMENT of Mr. Justice Hogan delivered on the 27th June, 2012**

1. The plaintiff in these proceedings, Mr. Laffan, is a forty-seven year old self-employed car dismantler. He is divorced, but he now lives with his Czech partner. He has four grown up children with his first wife and three by his present partner. Unfortunately, he was involved in an accident on 12th June, 2009, which has materially affected his quality of life.

2. Liability for the accident has been conceded by the defendants, so that in these personal injury proceedings I am now required to assess damages only. The accident itself occurred on 12th June, 2009, in Connolly Street, Mountmellick, Co. Laois when a van driven by the first defendant and operated by the second defendant collided with the plaintiffs own vehicle, an 02 Fiesta. The accident happened in the afternoon when the plaintiff was driving with his (then) two year old son in the backseat. As Mr. Laffan approached a right hand bend and the defendants' van was travelling in the opposite direction, the van turned across his path with the intention of turning into the road on Mr. Laffan's left. Unfortunately, as the van came across the road, it hit the right front corner of his car.

3. The impact of this was so severe that the airbags in the car deployed and hit Mr. Laffan in the face. His face was bruised, he bit his tongue, there was a friction burn from the sudden jerk of the seatbelt and there were injuries to his elbow, neck and back. The acrid smoke from the explosive charge of the airbag hung in the air and Mr. Laffan first thought that the car was on fire. He quickly opened the passenger door and lifted his child - who was by that stage screaming and traumatised - to safety. Mr. Laffan was then comforted and assisted by local residents. But before the emergency services arrived, Mr. Laffan felt pain in his leg and his neck. He also thought that he must have internal injuries, as he was spitting blood. It was only later that he realised that he had bitten his tongue. Mr. Laffan was then taken to Portlaoise General Hospital in a neck brace and backboard. He was shocked and frightened, not least when he contemplated that both his son and himself might easily have been killed.

4. Fortunately, however, Mr. Laffan had not suffered any fractures or internal injuries. Although he was very sore in the weeks and months after the accident (and his sleeping pattern was disrupted), he has (largely) recovered from the injuries which he suffered to his neck, sternum, shoulder and ankle, even if these soft tissue injuries still have the capacity to flare up and cause soreness from time to time.

5. His major complaint is that he continues to suffer from recurrent back pain which proves resistant to treatment. Thus, for example, steroid injections into his back administered by a pain specialist have, he said, had absolutely no effect beyond producing thoroughly unpleasant and frightening side effects. His sleeping patterns have been disturbed by the pain, although sleeping tablets have helped. While his back might prove unproblematic after a good night's rest, the pain becomes progressively worse during the day, not least if he were in a standing or sitting position for a longer period.

6. Over and above all of this, there is no doubt, however, that the entire experience was a deeply shocking and unpleasant experience which has over the long term appreciably affected Mr. Laffan's capacity to work and to enjoy life. Before I proceed to examine the nature of these injuries and their potential long term consequences, I should first record that the parties are agreed that the plaintiffs special damages (which include the damage to the vehicle) come to €2,109.

7. Mr. Laffan gave evidence that he has been a self-employed car dismantler since July, 1990. Although he left school at an early age, he became adept at doing heavy physical work and later proceeded to doing heavy physical work. In 1996 he set up his own end-of-life vehicle centre which involved the de-commissioning of vehicles. The serviceable parts he sold on and the non-serviceable ones he sold as scrap. His speciality was the repair of the gear boxes of mid-range transit vans. This was and is heavy physical work involving considerable upper body strength. I am quite satisfied that Mr. Laffan was absolutely dedicated to his business of which he had a specialist knowledge and he was further prepared to work long hours in a business which was his life's vocation as much as it was his means of livelihood.

8. By the mid-2000s, however, Mr. Laffan found that his life was in some turmoil. He ran into difficulties with the Revenue Commissioners by reason of the late filing of his accounts and it would appear that he still has some tax liabilities. His first marriage was dissolved and the family home was sold. Thereafter, however, he met his new partner in 2005 and they now have three young children. Paradoxically, perhaps, the severe economic down-turn in the economy came as a boon for him, since there is now a huge demand for the repair of motor trucks. Thus, as an economy measure, companies which might otherwise have sold such vehicles are now opting to have their vans re serviced by the installation of new gear boxes.

The extent of the plaintiffs back injury

9. This brings us to the heart of the plaintiff's case. His claim is that he suffered from a debilitating back injury as a result of the accident which has simply not repaired itself over time. While he can still buy and sell vehicles and he can inspect the gear box, he maintains that by reason of his back pain he simply can no longer physically strip down gear boxes.

10. This assessment is supported by his own consultant, Dr. Sean O'Rourke, who is a consultant in emergency medicine in the Midlands Regional Hospital. Dr. O'Rourke has seen and treated Mr. Laffan since the accident and in his report of April, 2012 he concluded that:-

"Mr. Laffan has persistent soft tissue injury to the neck consistent with whiplash. It is likely that these symptoms will be

present in the long term. Mr. Laffan's lower back pain is consistent with soft tissue injury but also represents pain due to degenerative disease of the lumbar spine as was identified in the MRI scan. He had no back pain prior to the accident. He has no symptoms or sign of nerve root irritation. These symptoms will persist in the long term. Further improvement is, however, possible with physiotherapy and I have advised him to return to physiotherapy and undertake a rehabilitation programme. He will not be in a position to return to heavy lifting which was an important part of his work prior to this accident. He will not make a full recovery."

This view was confirmed by Dr. O'Rourke when he gave evidence before me. He noted that the MRI scan taken in September, 2010 had shown minor degenerative disease and a disc bulge in the back. While he accepted that back pain was to some degree subjective, he made the point that the plaintiff's other soft tissue injuries had all but healed so that the injury to his sternum, neck, shoulders and knee had all significantly improved.

11. The consultant called by the defendants, Dr. Robert McQuillan, Director of Emergency Medicine South East Dublin, took a different view. In his report Dr. McQuillan concluded:-

"Following a road traffic accident this man sustained soft tissue injuries to his spine and right leg. He is making very poor progress to date to a large extent because of psychological overlay. He did attend counselling up to December, 2010 but appears to require further counselling and psychological support. He has a lot of physical complaints but, in fact, very little to find of significance. There is no doubt that he did have a tear of his calf muscle and has residual deficit in his muscle and could be experiencing some discomfort in that. I would expect little other physical disability related to this accident. Full recovery will not take place until he has had further counselling. There will be no long term complications."

At the hearing Dr. McQuillan gave similar evidence along these lines

12. So far as the psychological problems to which Dr. McQuillan alludes, I should record that the psychiatric reports which were furnished to the court show that the plaintiff suffered from a mild moderate Adjustment Disorder in the wake of the accident. This condition was defined by the plaintiff's psychiatrist, Dr. F. P. O'Donoghue, as:

"The development of clinically significant emotional or behavioural symptoms which was developed within three months after the onset of the stressor. The clinical experience of the reaction is indicated either by marked distress that is in excess of all the experience given the nature of the stressor or by significant impairment in social or occupational function ..."

Dr. O'Donoghue also thought Mr. Laffan exhibited some symptoms of Post Traumatic Stress Disorder, albeit "not to the level where one could diagnose the condition currently". Dr. O'Donoghue thought that with a course of therapy over some ten sessions spread out over about a year "his psychological symptoms should disappear completely". Dr. O'Donoghue also noted the plaintiff had a very distressing experience of morbid thoughts as a side reaction to a steroid injection in his back. So far as this is concerned, Dr. O'Donoghue concluded:-

"Unfortunately, he has had a distressing experience where he got a psychological reaction to a steroid injection, which can happen. (I am relying on his version of events, as I have not had sight of any other medical reports). Fortunately, this has almost disappeared, although he remains particularly wary of taking any medication which may be prescribed for him. His prognosis should be good."

13. It is not easy to resolve this conflict of evidence between the two distinguished consultants in emergency medicine. This is especially so given that it is recognised that a diagnosis of the effects of a soft tissue injury is often impressionistic, relying sometimes in large part on the plaintiff's own life experience post-injury. To my mind, however, the plaintiff's account of these injuries seemed to me telling and convincing. He gave his evidence in a matter of fact fashion and I felt that the plaintiff more than anything wanted to return to the good days when he was master of his own business. His life was devoted to vehicle repairs and he conveyed the air of someone who, along with an evident devotion to his partner and children, was happiest when repairing gear boxes.

14. Put shortly, therefore, Mr. Laffan was and is thoroughly dedicated to his work and the concept of malingering or feigning or exaggerating injury is, I think, totally foreign to his nature. I therefore accept the plaintiff's account of his back injury and, indeed, his other injuries. These injuries were not insignificant and had many unpleasant side effects, including adverse psychological reactions to steroid treatment bowel problems. I propose, therefore, to award him €60,000 for past pain and suffering. While I appreciate that most of his injuries have healed, he will continue to have long term back problems, for which I propose to award him €30,000.

The extent of the plaintiff's loss of turnover and income

15. This brings me to the most problematic aspect of the case, namely, the assessment of loss of earnings and other occupational losses brought about by the accident. Mr. Laffan candidly told me that he had no kept proper records between 2004 and 2009 and his accounts for that period had, therefore, to be reconstructed and, in many respects, relied on Mr. Laffan's memory. The accounts for the period from 2006 to 2011 were prepared in this fashion within the last few months

16. Mr. Laffan's accountant, Mr. O'Sullivan, gave evidence that these accounts have been accepted by the Revenue Commissioners, albeit subject to the possibility of a tax audit. Mr. O'Sullivan very fairly accepted that the margin of error for these accounts was greater than would normally be the case for accounts of this nature, with few records to support them.

17. A further consideration is that since the accident Mr. Laffan has taken on another employee, Tomasz Plaskota, who he has trained in the business. Mr. Laffan accepted that, even if there never had been an accident, he would have had to take on another employee to do this work as he advanced in years. His complaint, however, is that he was obliged to retain this new employee at least a decade before this would have been otherwise necessary. In addition, Mr. Laffan has come to be reliant on this employee and his business suffers on those occasions when Mr. Plaskota is ill or is otherwise indisposed.

18. I accept fully that Mr. Laffan has incurred additional costs by reason of the necessity to employ Mr. Plaskota and he has also suffered some loss of business turnover as a result. Given Mr. Laffan's strong physique and evident devotion to his work, I estimate that he would have been able to continue working on this hard manual labour until he was about 58 years of age. Measuring and assessing these figures is, however, an altogether different matter, not least having regard to the difficulties to which I have just alluded.

19. I accept in principle the figure of €43,149 for net after tax loss estimated by Mr. O'Sullivan to cover the years 2009 to 2011 in respect of the loss of income and the additional costs associated with the employment of Mr. Plaskota to date. These figures were

broken down as follows:

2009: €9,574

2010: €18,967

2011: €14,608

20. However, I consider that, in view of the uncertainties and large margin of error associated with these figures, they should in justice to the defendants suffer a discount of some 20% to reflect these uncertainties. This is especially so where, as already noted, Mr. O'Sullivan acknowledged that these accounts had in large measure to be reconstructed with little in the way of supporting documentation. I will therefore award Mr. Laffan the sum of €35,519 in respect of net loss (after tax) of income to date.

21. So far as future losses are concerned, I propose in view of these evidential uncertainties to take the lower figure of €12,000 annual net loss suggested by Mr. O'Sullivan. Taking this figure and applying the appropriate multiplier until the age of 58, Mr. Tennent gave evidence that the appropriate figure for future loss would be €108,000.

22. This figure does not, however, take into account of any *Reddy v. Bates* deduction (*Reddy v. Bates* [1983] IR 141). While I appreciate that the plaintiff's business is to a large degree counter-cyclical (i.e., so that it thrives in recessionary times) and that Mr. O'Sullivan did not think that the €12,000 quite captured the full measure of loss which Mr. Laffan might suffer if business were to have expanded in such times, it is nevertheless appropriate to factor in a *Reddy v. Bates* deduction.

Perhaps I suffer from hopeless optimism, but it is nonetheless realistic to expect that the economy will recover - and perhaps significantly recover - over the coming decade. Human nature being what is, just as we often mistake of assuming that booms will never end, we must nevertheless not make the converse mistake of assuming that these very difficult times will not end at some stage, even if this present recession is one of unparalleled severity. This means in turn that the plaintiffs business will suffer when the general economy recovers. Taking this fact and other possible adverse contingencies into account, I will therefore apply a 20% *Reddy v. Bates*-style deduction to that figure, bringing the figure for future loss to €87,400. This is, of course, a gross figure so far as any possible tax liabilities are concerned.

Conclusions

23. In conclusion, therefore, I propose therefore to award the total sum of €215,028 to the plaintiff, comprising €2,109 for agreed special damages, €60,000 for past pain and suffering, €30,000 for future pain and suffering, €35,519 for past net income loss and €87,400 for future (gross) income losses.