Neutral Citation [2012] IEHC 106

The High Court

Record no: 2008/5709

Between

Robin Quinn

plaintiff

and

Jane Bradbury and James Bradbury

defendants

Judgment of Mr Justice Charleton delivered on the 18th day of April 2012

1. Before the accident in issue in this case, the plaintiff Robin Quinn was a professional horseman. A tall young man, and well built, he had no hope of pursuing a racing career as a jockey simply because of his natural body shape. Born in November 1978 and brought up within a family that kept horses in a small way, Mr Quinn had ridden since being a boy and had represented Ireland in youth tetratholon competitions. On leaving Wesley College he had studied for a time at an equine college in England but found the course did not suit him, "too high falutin" as he said, and returned to Ireland. Because of his reputation, he found a job with the defendants.

2. James Bradbury, the second named defendant, owns horses in the context of a stables and Jane Bradbury, his daughter, the first named defendant, also buys and breeds horses. Jane Bradbury breaks in horses from about the age of three; the aim being to produce a well schooled half blood sport horse or a responsive thoroughbred racehorse. References were made in evidence to breaking a horse requiring only 6 to 8 weeks of intensive work. That is correct as far as it goes, but after that process a horse still requires further schooling. The temperament of a horse develops further from that time with appropriate training. The work of the defendants is a successful and well-managed business. Mr Quinn was a key part of it in riding out thoroughbreds, assisting in breaking them in and, to a lesser degree, performing the same duties with the half blood horses. Irish sport horses have a high reputation for temperament and are generally easier to ride than race horses. Mr Quinn was a key member of the staff of the defendants and was rightly admired as a horseman. Before the accident described later in this judgment, he justifiably hoped to continue making his living in riding or in producing horses.

3. All of that came to an end when he fell from a horse while working for the defendants on Monday the 21st of November 2005. The horse jumped a metal gate. The horse fell on top of him and badly smashed his right arm. He claims that Ms Bradbury is responsible for the accident because she directed him to ride the horse by an obstacle which had previously spooked it in circumstances where she had to gain control over the horse by very serious measures and where the temperament of the horse made that direction extremely unwise, in the sense of being inappropriate in an employment context. Ms Bradbury claims that she depended upon Mr Quinn as an experienced horseman to use his discretion appropriately and that his failure to exercise proper control or to take manoeuvres, such as dismounting the horse or leading it through the area in question, means that he was the author of the misfortune or was guilty of a high degree of contributory negligence.

Principles of liability

4. Horse riding is a sport. It is easy to confuse the nature of tort liability for horse riding accidents in a recreational setting with the liability of an employer in the context of an equestrian business. People who play sports take the ordinary risks associated with their sport and face difficulty establishing any liability in tort if injuries occur which are inherent and in the expected course of play in accordance with the rules and perhaps accidental and tolerable breaches of same. (See, in particular, Cox & Schuster, Sport and the Law (2004 First Law) at chapter 5). An employment relationship is different. An employer owes to an employee a duty to take reasonable care for his or her safety. This is set out in statutory form in s. 8 of the Safety, Health and Welfare at Work Act 2005. This provides:-

> (1) Every employer shall ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees.
>
> (2) Without prejudice to the generality of subsection (1), the employer's duty extends, in particular, to the following:
>
> > (a) managing and conducting work activities in such a way as to ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees;
> >
> > (b) managing and conducting work activities in such a way as to prevent, so far as is reasonably practicable, any improper conduct or behaviour likely to put the safety, health or welfare at work of his or her employees at risk;
> >
> > (c) as regards the place of work concerned, ensuring, so far as is reasonably practicable—
> >
> > > (i) the design, provision and maintenance of it in a condition that is safe and without risk to health,
> > >
> > > (ii) the design, provision and maintenance of safe means of access to and egress from it, and
> > >
> > > (iii) the design, provision and maintenance of plant and machinery or any other articles that are safe and without risk to health;

(d) ensuring, so far as it is reasonably practicable, the safety and the prevention of risk to health at work of his or her employees relating to the use of any article or substance or the exposure to noise, vibration or ionising or other radiations or any other physical agent;

(e) providing systems of work that are planned, organised, performed, maintained and revised as appropriate so as to be, so far as is reasonably practicable, safe and without risk to health;

(f) providing and maintaining facilities and arrangements for the welfare of his or her employees at work;

(g) providing the information, instruction, training and supervision necessary to ensure, so far as is reasonably practicable, the safety, health, and welfare at work of his or her employees;

(h) determining and implementing the safety, health and welfare measures necessary for the protection of the safety, health and welfare of his or her employees when identifying hazards and carrying out a risk assessment under section 19 or when preparing a safety statement under section 20 and ensuring that the measures take account of changing circumstances and the general principles of prevention specified in Schedule 3;

(i) having regard to the general principles of prevention in Schedule 3, where risks cannot be eliminated or adequately controlled or in such circumstances as may be prescribed, providing and maintaining such suitable protective clothing and equipment as is necessary to ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees;

(j) preparing and revising, as appropriate, adequate plans and procedures to be followed and measures to be taken in the case of an emergency or serious and imminent danger;

(k) reporting accidents and dangerous occurrences, as may be prescribed, to the Authority or to a person prescribed under section 33 , as appropriate, and

(l) obtaining, where necessary, the services of a competent person (whether under a contract of employment or otherwise) for the purpose of ensuring, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees.

(3) Any duty imposed on an employer under the relevant statutory provisions in respect of any of his or her employees shall also apply in respect of the use by him or her of the services of a fixed-term employee or a temporary employee.

(4) For the duration of the assignment of any fixed-term employee or temporary employee working in his or her undertaking, it shall be the duty of every employer to ensure that working conditions are such as will protect the safety, health and welfare at work of such an employee.

(5) Every employer shall ensure that any measures taken by him or her relating to safety, health and welfare at work do not involve financial cost to his or her employees.

5. The stable area of the defendants and its curtilage was a place of work within the meaning of the Act of 2005, which at s. 2 defines that concept as including any place or any part of a place (whether or not within or forming part of a building or structure), land or other location at, in, upon or near which work is carried out whether occasionally or otherwise. Section 8 of the Act of 2005 reiterates the duty to take reasonable care. What matters here is not the static condition of any workplace but the direction as to how work was to be carried out. The issue is what instruction was given and what precautions were reasonably to be regarded as appropriate.

6. In s. 2(6) this definition appears as referable to the duty of care of an employer to take such precautions as are reasonably practicable for the safety, health and welfare of employees as set out in s. 8 of the Act of 2005:

> For the purposes of the relevant statutory provisions, "reasonably practicable", in relation to the duties of an employer, means that an employer has exercised all due care by putting in place the necessary protective and preventive measures, having identified the hazards and assessed the risks to safety and health likely to result in accidents or injury to health at the place of work concerned and where the putting in place of any further measures is grossly disproportionate having regard to the unusual, unforeseeable and exceptional nature of any circumstance or occurrence that may result in an accident at work or injury to health at that place of work.

This section, in the judgment of the Court, expresses what previously would have been the common law duty of care of an employer towards workers and requires little analysis. The duty of an employer is to take such measures as are reasonable and practicable in the circumstances of the work performed in order to ensure that no employee is injured while at the workplace. The more hazardous the work involved, the more stringent is the duty on the employer to take precautions. Even apparently simple and straightforward work, however, may carry the risk of an accident occurring and this must be guarded against by reasonable measures which are practicable in the circumstances. The ordinary duty of care can be fulfilled by guarding against hazards; by the issuing of a warning (in the rare circumstances where a warning is sufficient); by the provision of proper plant and equipment; by appropriate training; by requiring the implementation of appropriate safety measures with commensurate discipline; and by establishing and enforcing a sense of awareness as to what may occur should the procedures and precautions for avoiding accidents not be followed. The Court accepts that as a matter of common law and in accordance with s. 8(2)(i) of the Act of 2005 that some hazards can never be totally eliminated. The aim must be to make a hazardous task as safe as it can reasonably and practicably be made. The general principles of prevention are set out in the Third Schedule to the Act as:

1. The avoidance of risks.

2. The evaluation of unavoidable risks.

3. The combating of risks at source.

4. The adaptation of work to the individual, especially as regards the design of places of work, the choice of work equipment and the choice of systems of work, with a view, in particular, to alleviating monotonous work and work at a predetermined work rate and to reducing the effect of this work on health.

5. The adaptation of the place of work to technical progress.

6. The replacement of dangerous articles, substances or systems of work by safe or less dangerous articles, substances or systems of work.

7. The giving of priority to collective protective measures over individual protective measures.

8. The development of an adequate prevention policy in relation to safety, health and welfare at work, which takes account of technology, organisation of work, working conditions, social factors and the influence of factors related to the working environment.

9. The giving of appropriate training and instructions to employees.

7. Some doubt may be possible as to the applicability of the Act to the circumstances of horse training and schooling. Prior legislation, such as the Factories Act 1955 as amended, tended to focus protection on particular industries by reference to the definition of the applicable scope of employers' duties to those running factories or other facilities such as abattoirs or food plants. There is a general duty under s. 8(1) of the Act of 2005, by reasonably practicable measures, to ensure the safety, health and welfare at work of employees. That requirement is not limited to a definite space or to a particular industry. Such definitional limitations are absent from the Act of 2005. This must be deliberate. There is nothing in the wording of the Act to exclude such activity from the definition of work to which the legislation applies. The Court is obliged to give the ordinary and natural meaning to the words of the enactment in accordance with the fundamental tenets of statutory construction; *JC Savage Supermarket Ltd & Anor v An Bord Pleanála* [2011] IEHC 488. This case is not concerned with the physical condition of the premises within which work is carried on or the work-tools of employees and their appropriateness. Rather, the core focus of the case is the nature of precautions that were required to be taken to avoid an accident and, in particular, the appropriateness of the instruction in question given by the defendants as employers to the plaintiff as employee. That must be judged in the context in which the instruction was given and that is in dispute. Even were the Act of 2005 not to be applicable, I have also analysed what follows from the point of view of the ordinary common law duties of care which an employer owes to employees. The result is the same.

This accident

8. Horses are inherently dangerous. A rider is mounted on a saddle 1.50m to 2.00m from the ground on an immensely powerful animal with a will of its own, individual as to temperament and which is prone to responses of flight from what it perceives to be areas of hazard. Although a very good rider can be expected to control a horse in almost all circumstances, it remains the fact that the animal is markedly stronger and swifter than a person. A horse cannot always be dominated or directed. Where a horse panics, it will not always respond to assurance, much less to reason, but only to the confidence which its training has imbued in following the signals of the rider over the deeply imprinted instinct of fleeing from danger that developed over millions of years of evolution. In some situations the phyologentic development of the animal will overpower any education. For the purposes of this case, the expert on each side agreed that panic in a horse can reasonably be marked on a scale of 1 to 10; where 1 involves simply shying momentarily at a bag on the ground or a bird in a bush and where 10 describes the state of complete captivation of the animal by the instinct to flee, or sometimes to fight against, a perceived danger. About this the rider can be expected to do nothing, except perhaps to dismount and hope to lead a horse until the memory of its training returns or its panic dissolves. In addition, there are other relevant instincts. A horse will feel comfortable in a stable where it has been well treated, thus it is likely to want to return there, and a horse will also have a tendency to respond to a herd instinct to follow its fellows.

9. There were two expert witnesses in the case, one for the defendants and one for the plaintiff. Both of these were strongly criticised during their testimony. John Watson, the expert for the defendants, is a distinguished international Irish three-day event rider with gold, silver and bronze medals in European and World championships. He was challenged for being intent on pursuing a case against the plaintiff. I completely reject any criticism of Mr Watson. He showed himself a thoughtful witness who was capable of giving objective and very valuable thought to the serious issues in the case. Throughout his evidence, he demonstrated an intention to assist the court. Sandra Blake Power, the expert for the plaintiff, was testifying as an expert witness for the first time. She was challenged as to whether she was expert at all. The Court is fully satisfied that she is. She has over 20 years of experience in riding horses and in assisting in breaking horses. She has a specialist interest in dressage. She is competent at grand prix level and she represented Ireland at Hickstead in 2011, obtaining a very creditable fourth place in that extraordinarily demanding and exacting discipline. Her views on the appropriate treatment of horses are not outside the mainstream but represent a respected and tenable view within the horse industry. Moreover, under cross-examination she demonstrated that she was listening carefully to each question and answering it both on its merits and by reference to wide experience. The court has gained much from listening to both of these experts.

10. Where a horse has a frightening experience, whether real or perceived, it can predictably associate a place with the recurrence of the danger which spooked it. Where any rider is faced with a situation of a horse going out of control, appropriate aids need to be applied, and perhaps sometimes more, if the safety of the rider is to be secured. In that respect, the Court has no difficulty with the proposition that securing the rider from serious injury may require aids of a serious kind. It is reasonably foreseeable that if a horse has gone out of control in a particular location, because something in that area has frightened the animal, but to where the horse is expected to return, then serious precautions need to be taken against the reawakening of panic. Where a rider had once needed to control a horse through the application of force in a particular location, a probability is established that in addition to the original cause of the instinct to flee a new factor is added which is the remembrance of what the rider has had to do. An exacerbation of panic, on returning to the same location may thereby be established, depending on the evidence. Serious precautions may include leading the horse habitually past the place where it has been spooked; removing the apparent cause of fright; accompanying the horse with another person on foot; and accompanying the horse with another mounted horse.

11. There has been much criticism of the credibility of the plaintiff. This was based on the pleadings and apparent inconsistency with later replies to particulars of the initial letter and the personal injury summons. These issues have been carefully considered in the context of the demeanour of the plaintiff and of the entirety of the evidence. The assessment of the Court is that the plaintiff Robin Quinn was at all times doing his best to tell the truth. An issue was also raised as to the appropriateness of an expert report being discussed with counsel. It is clear, however, that nothing untoward happened and that no expert witness in this case was influenced by anything other than a desire to assist the court. Much of the cross examination on each side focused on an incident a few days prior to the accident. Of central importance to the resolution of that issue is the reaction of the horse to being in the same area where it had previously been spooked.

12. What is crucial to this case is how the accident occurred; that, in turn, is to be related to what the horse might have been expected reasonably to have remembered and how a rider would be expected to respond. I am satisfied, relying in particular on the evidence of Mr Watson, that should such a serious danger present itself by requiring a horse to return to where it has previously seriously panicked, a rider should stack the cards carefully in favour of the rider. A similar duty to ensure that measure of safety arises as a precaution which an employer must take in fulfilment of the duty of care, both at common law and under the Act of 2005, towards any employee where an employer requires a rider to return to the scene where a horse will have such a memory and is therefore likely to panic in a serious way. I must therefore describe the accident in the context of the memory which the horse was likely to have of the circumstances associated.

13. The horse in question is called Gary. It was bought by Jane Bradbury as a three year old gelding a year previous to the accident. She described it as being a good horse which was not difficult. She began breaking in the horse immediately. She remembers asking for very little help from Mr Quinn. The horse had been hunted on two occasions, she said, indicating a very high level of training, so that it was almost ready to be regarded as a fully finished sport horse. Continuing the training through hacking and other appropriate exercise remains appropriate, however. Mr Quinn has a different recollection of this horse. His main job was in schooling thoroughbreds. Problems had arisen during training with the horse and he had been asked to help out. A strong rider, he is also physically a very strong person. This was one of the main issues with the horse, which tended at that stage, he said, to have a hard mouth and a very strong flight instinct. On occasions, this particularly strong animal would take an idea and rush off, only capable of being controlled by putting its head into vegetation to curb its flight. Its two hunting trips were described by Mr Quinn as not successful. On occasion the horse would run while in an open field and Mr Quinn would have to steer the horse into the hindquarters of Jane Bradbury's horse to hold it back. Jane Bradbury has a different recollection but it seems to the Court, on the entirety of the evidence, that she has dealt with very many horses and that her recollection of this horse is not as clear as that of Robin Quinn.

14. On the Friday before the accident, Jane Bradbury and Robin Quinn left the stables of the defendants. The normal route was to pass through an open 5 foot high spiked gate by leading the horses, past the residence of the defendants, and onto a driveway leading to the road, or to a separate path to the public road, where there was a mounting block. Various estimates have been given as to how long an unusual feature was in place around the house. This feature was the presence of builders and the equipment associated with them. On the one hand it is said that builders were there with scaffolding and a skip for between 7 and 10 days, while on the other hand the defendants' case is that builders had been in place for 10 or 11 days. However long these features were around the house and in the path of the horses which were expected to return mounted through this area, through the gate and into the stable yard, it is clear to the Court that the horses had not got used to the feature, and particularly the horse Gary.

15. On this Friday, when Jane Bradbury and Robin Quinn went out for a hack on the public road, this usual practice of passing the house by leading, mounting the horse at the mounting block and returning on horseback from a hack on the public road right through to the stable yard, was followed. The Court accepts that at this stage of its training, Gary was a relatively difficult animal and Jane Bradbury, in particular, has described the horse as being easily spooked. When the horse approached the skip and the scaffolding around the house, after the hack, two versions of what occurred have been given in evidence. Jane Bradbury testified that all that happened was that the horse shied momentarily, required only light aids to be brought under control and walked back through the gate, which was open, into the stable yard. The Court is satisfied that this recollection is less accurate than that which was given by Robin Quinn. It is not necessary to record the incident in detail beyond stating that his recollection is fully accepted. One of the most important reasons for accepting the recollection of Robin Quinn in preference to that of Jane Bradbury is that the accident which occurred on the following Monday is simply not explicable, having regard to the entirety of the evidence, had not the horse had implanted in memory what had occurred on the previous Friday. The high level of respect shown by Robin Quinn, and correctly so, towards his former employers convinces the Court that his recollection is not coloured by the accident which befell him. Rather, it seems likely that the shock of a serious accident occurring has undermined the genuine efforts of Jane Bradbury to recollect what occurred. Over the weekend following that incident, nothing of note happened.

16. On the Monday, the day the accident occurred, Robin Quinn was directed by Jane Bradbury to hack the horse Gary on his own along the route previously used and to ride it, mounted, on return from the public road. There is very little divergence between the parties as to what direction was given to him that morning. He was to be on his own as his employer had another appointment. He had asked on being given this direction whether he should use the whip and Jane Bradbury had agreed that he should. The only difference between them was as to whether there was a reference to "not doing a Lorcan on it". This was a guarded reference to a rider in the location who was talked of as having used a whip unacceptably some time previously. What matters, from the point of view of liability, is that the Court accepts that Gary could be very difficult; was not yet fully complete in training; had had an experience which was very likely to have been implanted in his mind the previous Friday; was prone to panic; and was not, unlike the previous Friday, accompanied by another horse which might be used to calm him down or to lead him into the stable yard. Within the context of all that the Court accepts, the direction to ride past this obstacle where the horse had previously spooked did not fulfil the duty of care owed to Robin Quinn by his employers.

17. There is no question, on the evidence, of Robin Quinn acting in any headstrong, much less in an insane, fashion. He was a careful horseman but one who was less experienced than Jane Bradbury. There is no issue that he provoked an incident through misriding whereby the horse went out of control. There is some hint of this in one of the expert reports. Nor did Robin Quinn somehow fall from his horse. These would be an issue of fact which a party could justifiably correct in a draft expert report prior to a report being issued. The Court is not influenced by any such suggestion, in any event.

18. Robin Quinn returned from an uneventful unaccompanied hack on Gary on the public road and, as directed on returning, rode the horse up the path in the direction of the house. While on the public road, Gary was "as good as gold". Robin Quinn was of the view that he would be disobeying orders had he not ridden the horse, as opposed to leading the horse, past the place by the house where the incident had occurred the previous Friday. Approaching the skip and scaffolding, the horse started going in little half jumps. Robin Quinn hit him on the quarters with the whip, one which made more noise than inflicted pain, and the horse reacted very badly. It took the bit between its teeth, rushed out of control through an archway, responding to no direction through the hands or legs, turned around and gave the appearance of trotting back as if his temper was easing towards the house. Robin Quinn had already been hit in the face by branches as the horse lunged out of control and was hoping for the best to get the horse back under his command. This expectation was misplaced. The horse was determined to flee into the safety of the stable yard and his stable. Utterly out of control, the horse turned and rushed towards the closed gate of the stable yard and took the jump from a concrete or cobbled surface onto a similar surface. The horse was not capable of this jump of 5 feet or more, to clear the obstacle, and it landed on the gate. It is highly probable that its hindquarters in the area of its knees got stuck on the spikes of the gate because four of these are bent forwards, with one in between left upright. Robin Quinn gripped the pommel of the saddle and tried an emergency dismount. He fell heavily onto the ground of the stable yard, probably fracturing his left wrist in this manoeuvre, while the horse attempted to struggle free, somehow lifted its hindquarters and fell heavily into the stable yard, crashing on top of Robin Quinn and severely smashing his right arm.

Liability
19. This accident happened because of what had occurred the previous Friday. The direction to ride the horse mounted past the area where it had been seriously spooked was not appropriate. Had such a direction been given, there should have been someone on the ground, or as Mr Watson has suggested, another mounted rider. In addition, the horse could have been schooled into passing the area through leading. It is the combination of the incident on Friday; the direction to pass the area mounted; the lack of appropriate precaution; and an apparent belief that merely a whip would have controlled the situation that establishes liability on the part of the defendants. Reality clearly establishes that this horse would not have gone so utterly out of control but for the incident described by Robin Quinn on the Friday having reinforced fear that was already present. The horse went totally out of control on the day of the accident. Any lingering idea that Robin Quinn acted out of character by deciding to take a fixed spiked closed metal gate of grand prix height on a stone or concrete surface, or simply fell, is wrong. It is clear that Robin Quinn had much more respect for his employers and for their animal and for his own safety. The horse went completely out of control.

20. The horse was later sold. By the stage that Mr Watson rode it six months after the accident, the horse presented as well schooled. That does not undermine the finding of the Court.

21. Having found that the responsibility for this accident rested with the employers of Robin Quinn, the court is concerned with the issue of contributory negligence. Under s. 13(1)(a) of the Act of 2005 there is a duty on an employee while at work to protect his safety, health and welfare. Other requirements are also made which are not relevant here. That subsection, of itself, maintains the responsibility of an employee at common law to take reasonable care. In principle, an employee is not required or entitled to completely surrender control over his or her welfare while at work to an employer. Although Robin Quinn was directed to ride the horse past the obstacle and, although that direction was less than the duty of care owed by the defendants to him demanded, he still had discretion as to how to proceed. Dismounting the horse and leading it past was one definite option. The majority of the responsibility for the instruction given, in that regard, must rest with his employers. If the horse was to be ridden through this area, in the context of what had occurred the previous Friday, then at least an accompanying horse mounted by a strong rider was clearly called for. When the difficulty began, the option of dismounting presented itself. That option arose as an emergency measure when the horse had slightly slowed. Possibly, Robin Quinn also ran the risk of some injury had he taken that measure then. All in all, the Court assesses contributory negligence on the part of Robin Quinn at 30%.

Damages
22. Robin Quinn spent weeks in hospital and had two serious operations to attempt to correct his broken left wrist and his smashed right arm. He can expect more operations into the future. He is left with the condition of finding it impossible to pull up the head of a horse which might stop on an ordinary hack to take some grass. His riding career is therefore completely at an end. Apart from the financial loss which this represents, he has been deprived in a serious way of an important aspect of his life Robin Quinn's orthopaedic surgeon, Frank McManus, offered this opinion five years after the accident:

> This young man sustained very significant injuries. The patient is currently 32 years of age and one would have concerns with regard to his long-term prognosis. He sustained a fracture of his left wrist, unfortunately the X rays relevant to his left wrist fractures have not been made available to me but on examination he has lost function. It will therefore be necessary for me to review this man again after a further interval ... With reference to the fracture of the right elbow, this is a very significant injury with destruction of the radial head. The radial head/distal humeral joint is the joint responsible for the pronation/supination movement of the forearm i.e. the swivel mechanism of the forearm. This mechanism has been significantly compromised. This man cannot turn his palm up and in my opinion will not regain this function. I would also have concerns with regard to the longevity of the prosthesis inserted primarily acknowledging this man's age. It is probable that this prosthesis will loosen up within a matter of 10 years and may require replacement and I cannot categorically outgrew the need in the longer term for elbow joint replacement depending on the disability that this man has over the longer period.

23. The left wrist is not now too bad. The right arm is significantly damaged and it causes intermittent pain, difficulty sleeping and impairment of function in an otherwise very healthy and sporting young man. He is living with a considerable burden. I do not regard it as reasonable to simply take the report of Mary Feeley, as a vocational rehabilitation consultant, and suggest that a year after the accident Robin Quinn would have been able to return to employment at a level of remuneration similar to that which he had with the defendants. He was significantly depressed, and understandably so, in coping with a major injury. It was only after months of swimming, attempting to surf and the assistance of his family and his new wife that he has returned to seeking gainful employment. An argument can be made that this case should have been brought on earlier, but that argument is not accepted.

24. In the future, Robin Quinn hopes to be self-employed and presents as being determined to make the best of whatever opportunities come along. There is a loss of earnings from the date of the accident to September 2006 of €8,000. There is a claim for ongoing loss of earnings from that date to the date of judgment herein of €31,620. It is reasonable to allow €20,000 of that loss as attributable to the accident in the context of the immensely serious injury and the change of life that resulted. Medical expenses are claimed in the sum of €2,586. The Personal Injuries Assessment Board book of quantum does not differentiate between general damages to date and into the future. There is significant loss of amenities of life into the future and ongoing pain coupled with the probability of further operations to stabilise, but not to improve, the situation in the plaintiff's right arm. The fractured left wrist cannot be regarded as serious and permanent. The relevant measure of damages would ordinarily be at least €20,000. There is undoubtedly a serious and permanent condition in the right arm which has to attract damages of €80,000. Coupled with the loss of the amenities of life and of pain and disability into the future, taking into account the need for a fair overall award, general damages in this case are assessed at €150,000: if necessary €80,000 to date and €70,000 into the future. Together with special damages, the loss is €180,586.

Decree
25. Reduced by contributory negligence, the decree will be for €126,410.

APPROVED