

THE HIGH COURT

[2006 No. 330 SP]

IN THE MATTER OF THE GARDA SIOCHANA (COMPENSATION) ACTS 1941 – 1945

BETWEEN

HUGH REYNOLDS

APPLICANT

AND

THE MINISTER FOR FINANCE

RESPONDENT

JUDGEMENT of Mr. Justice Bernard Barton delivered the 18th day of December, 2014.

1. The applicant was born on the 2nd September, 1953, is a married man with five grown up children and having applied for compensation on the 16th December, 1995, he was authorised to bring these proceedings by the Minister for Justice, Equality and Law Reform on the 4th July, 2006. The applicant joined the force as a young man and served 32 years before retiring on the 10th October, 2005.

2. These proceedings arise as a result of an incident which occurred in the course of the applicant's duties on the 17th November, 1995, near a branch of the Ulster Bank at Chapel Street, Ballyjamesduff, County Cavan. The incident occurred at about 12.30 am and involved the applicant in restraining an individual identified as a Mr. Lynch from assaulting his partner Elizabeth Donaghue.

3. In the course of the intervention by the applicant he was kicked by Mr. Lynch whom the applicant described as a big strong man and whom the applicant perceived was intent on kicking Elizabeth Donaghue. It seems that these individuals were fighting over cigarettes. The applicant grabbed a hold of Mr. Lynch who resisted the attempt to restrain him. In his evidence the applicant described and demonstrated how he kept a hold of Mr. Lynch and ultimately how they both fell onto the road with the applicant striking his right shoulder against the kerb. In the process of the fall the applicant described how he turned on his right leg and how this was in a certain manner caught behind him.

4. The applicant claims that he sustained a number of injuries and losses as a result of the incident giving rise to these proceedings and these may be summarised as follows:

(a.) Soft tissue injuries to his neck and back.

(b.) Soft tissue injuries to his right shoulder.

(c.) Soft tissue injuries to his right knee.

(d.) Psychological injuries in the form of an adjustment disorder with mixed anxiety and depressive symptoms, and,

(e.) Pecuniary losses.

The principal issue in controversy between the parties relates to the question of causation.

5. In relation to the applicant's injuries the respondent contends that those relating to his right shoulder and to his right knee have no causal connection to the incident and that there are items of special damages which are also not causally related.

6. The applicant has a relevant past and post incident medical history which has been the subject matter of discovery and which is encapsulated in a medical report prepared for the assistance of the court on behalf of the respondent by Dr. Pat O'Neill dated the 11th November, 2013.

7. That history insofar as it applies to the applicant's neck and back is not in any significant way an issue between the parties. Mr. McMurray, consultant surgeon who examined and treated the applicant both in relation to his relevant pre incident medical history and in relation to the incident the subject matter of these proceedings, wrote a report on the 17th January, 1996, in which specific reference was made by him to a report which he had made to the applicant's solicitors regarding a road traffic accident which occurred on the 27th April, 1995, and as a result of which the applicant had also injured his neck and back.

8. The applicant instituted proceedings by way of civil bill dated the 20th February, 1997, in respect of the injuries sustained by him following and consequent upon the road traffic accident. Those injuries may be summarised as follows: soft tissue injuries to the plaintiff's neck, chest, upper and lower back, right sacroiliac joint and psychological sequelae in the form of post traumatic stress, depression and dizzy spells.

9. For the purposes of those proceedings Mr. McMurray prepared three reports which were dated the 4th July, 1995, 9th July, 1996, and the 29th September, 1997.

10. It is significant and of assistance to the court that when Mr. McMurray was reporting for the purposes of the road traffic accident proceedings he did so in full knowledge of the incident giving rise to the present proceedings. The first of his reports predates the incident in November 1995. It describes the applicant as having a lot of low back spasm and with having limited movements of his neck and lower back. His neck pain was radiating into his shoulders. On the 20th June, 1995, Mr. McMurray administered an injection of steroid into the applicant's neck. Thereafter, he noted that the applicant's neck symptoms were improving as were the

psychological symptoms. At that stage the applicant still had some tenderness in his right sacroiliac joint. His opinion of the applicant's injuries was that the applicant had sustained a severe whiplash strain to his neck, a strain to his lower back and a strain to the right sacroiliac joint together with nervous upset with anxiety and depressive symptoms.

11. He gave a prognosis in respect of the applicant's injuries which was that the applicant could expect to have some pain and discomfort for at least a year from the time of the accident and maybe longer but that the psychological upset was likely to trouble the applicant for some six months.

12. Of course, we know that in November, 1995 the applicant was involved in the incident with which the court is now concerned. The applicant was seen in respect of that incident on the 16th January, 1996. The applicant was further reviewed by Mr. McMurray in March, 1996 and again in June, 1996. It is clear from the report of July, 1996 that when Mr. McMurray saw the applicant in January, 1996 it was principally for the purposes of examining and reporting on the applicant in respect of the incident on the 17th November, 1995, and in respect of which Mr. McMurray wrote the first of his reports prepared for these proceedings on the 17th January, 1996.

13. In his report of the 9th July, 1996, Mr. McMurray, having expressed a view in relation to the applicant's injuries resulting from the road traffic accident in 1995 and how these had progressed, referred to the incident in November, 1995 in the following terms:-

"Then, unfortunately, he had an injury at work on the 21st November, 1995, in which he was thrown around and strained his right sacrospinalis and sacroiliac joint again. He also relapsed psychologically and he required hospitalisation to sort out his back and also his nervous upset. Over the succeeding six months, he has gradually improved and has returned to work initially on a part time basis but then subsequently full time, but in a different area....he has made a good recovery from his depression and post traumatic stress syndrome and also his physical injuries are now well settled. However, he is always at risk of having further back and neck pain if he is involved in an affray which, of course, could happen in his line of work."

14. Mr. McMurray again reported for the applicant in connection with his circuit court proceedings on the 29th September, 1997. In that report, he referred to the applicant as still having soreness in his neck as well as a backache. In addition, reference is made to psychological sequelae lasting for about two years but that the applicant was then off all medication apart from difene for low backache.

15. Clinical examination at that stage showed the applicant to have a 90% range of normal neck movements albeit with slight soreness on full rotation. Lower back movements were full.

16. As to the contribution between the two events to the plaintiff's injuries, Mr. McMurray states:-

"He had not fully recovered and then he was involved in an assault at work which made his symptoms recur and in addition, he developed depression and nervous upset requiring treatment. Initially, he suffered quite a lot of pain and discomfort and I feel that it would have taken around a year from the time of accident in April, 1995, for his symptoms to settle. He had another injury at work in November, 1995, with severe back strain and a psychological relapse. These symptoms then lasted for a further year. I note that he has had two accidents, one magnifying the other and I feel that it is impossible on medical grounds to differentiate the two."

17. I should observe that in these reports reference is made by Mr. McMurray to the plaintiff having to return to work due to pressure from his superiors. However, in his evidence I was certainly given to understand by the applicant that he had returned to work because this was something he wanted to do. I did not understand him to say that he had returned to work because he felt under pressure from his superiors. Having heard all of the evidence and having observed the demeanour of the applicant in the course of the hearing whilst giving evidence I am satisfied that nothing of significance turns on this, rather, the real problem appears to have been a difference of opinion between the applicant and his superiors as to the nature cause and seriousness of his injuries.

18. In his report of the 17th January, 1996, Mr. McMurray refers to an examination which he carried out on the 12th December, 1995. At the time of that examination the applicant told Mr. McMurray that he had sustained a further strain to his back a few days previously whilst at a football match and that that had caused an ache to go down both of his legs. Mr. McMurray continued:-

"...he had no problem with his neck. His right sacroiliac joint was very tender and I injected the area with steroids. He also complained of feeling depressed and upset and I referred him to my consultant psychiatric colleague, Dr. Vincent Russell. Dr. Russell prepared a report for the purposes of these proceedings dated the 2nd November, 1998."

It is quite clear that by that time the applicant was reporting to Dr. Russell that he had no significant psychological problem and that he was back working on a full time basis, being fulfilled both in his personal and work life.

19. This report deals with the applicant's abuse of alcohol and how that abuse developed to the point where it was interfering with every aspect of the applicant's life following the incident in November 1995. Ultimately, however, the applicant realised that he was in need of help and which came about when he was admitted to the Rutland Centre for treatment. The applicant benefited from the treatment he received and which enabled him to deal with his alcohol addiction.

20. A diagnosis of an adjustment disorder with mixed anxiety and depressive symptoms in the context of re-injuring his back in the course of his duty in November 1995 was made. Dr. Russell was of the view that the incident compounded pre-existing problems of alcohol abuse which was to be seen as the primary diagnosis. It is also quite clear that as a result of the road traffic accident of 1995, the applicant had developed a post traumatic stress disorder with symptoms of depression. Prognosis at the time of this report was excellent and the applicant appeared to have made a very good recovery.

21. The applicant made little or nothing of his neck injury and with regard to his back injury gave evidence that he was "grand", provided he was careful. From this I took it that he has become a back conscious person. It is clear, however, that there were a number of contributory causes to such back pain as the applicant did suffer both before and after the incident with which the court is concerned. Firstly, there was the road traffic accident in April, 1995 and which resulted not only in lower back pain but also in pain in the right sacroiliac joint which required an injection of steroid, and then apart altogether from the incident of November, 1995 the applicant was involved in an accident in February, 2008 when he fell off a ladder, landing awkwardly on his back. Mr. Khayyat, consultant orthopaedic surgeon, in a letter dated the 13th March, 2008 to the applicant's GP, Dr. Brian Fay stated in connection with this that:-

"[s]ince that time he is complaining of severe low back pain radiating to both buttocks."

22. Apart from being examined and reported upon by Dr. Pat O'Neill for the respondent, the applicant was also examined and reported upon by Mr. Joe Sparks, consultant orthopaedic surgeon, also for the respondent, and his opinion and prognosis is contained in a report prepared for the assistance of the court dated the 20th October, 2014. So far as the applicant's neck and back injuries are concerned, when examined on the 20th October, 2014, the applicant was entirely asymptomatic and there was a normal range of movement in relation to the applicant's back. There was some limitation of movement and some complaint of mid-line lumbar pain.

23. Mr. Sparks expressed the opinion that there was some re-aggravation of symptomology in respect of the applicant's neck and back as a result of the incident in November, 1995.

24. Dr. Pat O'Neill thought that the symptoms referable to what he described as the middle and lower back in the occupational injury incident of November, 1995, would have been expected to gradually diminish to the pre-injury severity level within a period of twelve to eighteen months, which would be broadly in line with the views expressed by Mr. McMurray in his reports to which reference has already been made.

Conclusion in relation to the injuries to the applicant's neck and back.

25. Whilst the applicant was complaining of symptomology in relation to both his neck and his back when examined by Dr. O'Neill in November, 2013 and was also complaining about back pain when seen by Mr. Sparks in October, 2014, I am quite satisfied that so far as the incident in November, 1995 is concerned that it amounted to an aggravation of pre-existing back, neck and right sacroiliac joint symptoms. Although Mr. McMurray reported some soreness in the right trapezius muscle of the applicant's neck when examined in December, 1999 and some tenderness in the right sacroiliac joint, it is clear that the applicant was making no complaint in respect of those areas when examined and reported upon in March, 2002. At that stage, the applicant described his back as fairly well settled.

26. As it happened, that was the same terminology used by Mr. McMurray in his reports prepared for the purposes of the applicant's circuit court proceedings. In his report of the 9th July, 1996, Mr. McMurray described the applicant's physical injury as being "now well settled."

27. Given that Mr. McMurray examined, treated and reported upon the applicant in respect of both the April, 1995 road traffic accident and the incident of November, 1995 and wrote his reports recognising and referring to both incidents and the effects of those on the applicant, I accept as evidence the content of his reports as most likely reflecting the most accurate overview from a medical perspective in relation to the cause and nature of the applicant's injuries.

28. In relation to the applicant's psychological sequelae it is also clear, in my view, that there were mixed causes including a history of alcohol abuse but prior to the date of this incident, and a diagnosed post traumatic stress disorder with depressive symptoms consequent upon the road traffic accident of 1995. No doubt the incident of November, 1995 accentuated matters but symptomologically the applicant was well recovered before Dr. Russell's report of November, 1998. Indeed, in his report of July, 1996 Mr. McMurray stated that the applicant had made a good recovery from his depression and post traumatic stress syndrome. Accordingly, it seems to me and I find that insofar as that aspect of matters was concerned, whilst the incident of November, 1995 contributed to his previously diagnosed post-traumatic stress disorder, he had actually fully recovered in relation to that condition by July, 1996.

Causation of the applicant's shoulder and knee injuries.

29. As has already been referred to in this judgment, the respondent contends that the injuries to the applicant's shoulder and right knee have no causal connection to the incident in November, 1995. In this regard, reliance is placed on the absence of any reference to a shoulder or knee injury in the application form of the 16th December, 1995.

30. It was suggested on behalf of the respondent that if the applicant had sustained an injury to his shoulder and to his knee as he claims then, surely, he must have been aware of that at the time when he completed the application form. The applicant's response to this in his evidence was that as far as he was concerned he was unaware of suffering any significant injury in relation to either his knee or his shoulder at that time. On the other hand he gave evidence that he was in acute pain with his lower back and that was of concern to him because he was conscious of the injuries he had sustained in that regard already consequent upon the RTA of April, 1995.

31. It was the evidence of the applicant that it was not until some considerable time after the incident in November, 1995, that he became bothered by his right shoulder and by his right knee. Ultimately and as time passed, he noticed that his knee started to pop out. He gave evidence as to how he could, so to speak, put his knee back in again but ultimately the problem worsened to the extent that he had to be referred to, and was seen by Mr. Sharif, consultant orthopaedic surgeon, who reported for the applicant and gave evidence to the court. He diagnosed what he described as a bucket handle rupture of the medial meniscus and which he repaired by way of arthroscopy.

32. For the reasons set out in their reports, neither Dr. Pat O'Neill nor Mr. Joe Sparks considered that there was any causal connection between the condition diagnosed and treated by Mr. Sharif and the incident of November, 1995.

33. In December, 1999, when reporting for the purposes of these proceedings, Mr. McMurray referred a history in which the applicant told him that his right knee became more painful in April, 1999 whilst working on his boat but that he had had no direct injury to his knee since the assault.

34. Reference was also made in his report to the applicant's admission at Navan Hospital under Mr. Kutty for a week with a diagnosis of a septic arthritis or bursitis.

35. The only reference to a knee injury in contemporaneous medical records with a close temporal relationship to the incident of November, 1995 was in the report of Mr. McMurray dated the 17th January, 1996, in which Mr. McMurray records that as a result of the incident in November, 1995 the applicant:-

"...had bruising and abrasions on his right knee but movements were full."

36. In Mr. McMurray's report of 9th December, 1999 reference was made to the applicant complaining of his right knee hurting him going on stairs but it had never locked.

37. Mr. Sharif, who operated on the applicant, in a report of the 11th February, 2000 describes the mechanism of the injuries to the applicant's right knee in the following terms:-

"He twisted his right knee and fell on the ground. It was difficult for him to get up after this fall. However, he got up and was limping. The following day his right knee swelled up and because of this he was off from work for about a week to ten days. He returned to work but his knee continued to give him trouble...he was not looking after his right knee... However, throughout the years the knee would swell up off and on... He tells me he continues to have swelling off and on and pain on the inner side of the joint...this would resolve on its own. However, after approximately a year and a half to two his knee started to lock, and he had to manipulate this in order to strengthen the knee. He used to flex the knee fully in order to straighten the knee afterwards...this would happen about every six to eight weeks or more often if he was doing any manual or heavy work."

38. According to this report the applicant came to see Mr. Sharif in September of 1999 because his knee symptoms did not resolve and because "...the knee locked again on a couple of occasions..."

39. Mr. McMurray's report of the 9th December, 1999, nearly three months after the date on which the applicant says that he first came to see Mr. Sharif is contradictory with regard to the onset of the locking of the applicant's right knee.

40. With regard to the plaintiff's right shoulder injury, Mr. McMurray's report of 9th December, 1999, records a history of an onset of symptoms over a period of some two years. If that history is correct then the symptomology complained of by the applicant in relation to his right shoulder did not first arise until the later stages of 1997 two years after the incident giving rise to these proceedings.

41. In this regard, Mr. McMurray refers to the fact that it was likely that the applicant had an injury to his right shoulder that had not been documented.

42. Mr. McMurray was aware of the fact that the plaintiff had had a previous injury to his right knee when he was a young man. It transpired from the evidence that the plaintiff had actually sustained a kick to the very same knee playing football at the age of seventeen. He described the plaintiff's right shoulder as being tender with a click over the acromioclavicular joint but that movements were full. No abnormality was seen on examination of the plaintiff's right knee apart from some minimal crepitus.

43. By March, 2002 when the applicant was last examined and reported upon by Mr. McMurray, the applicant's right knee was still aching quite a lot despite the fact that he had had surgery carried out by Mr. Sharif. He was also still complaining of an ache in his right shoulder and an MRI scan of the 17th August, 2000, had shown degenerative changes with inflammatory responses in the acromio-clavicular joint with swelling of the bursa around the joint. There was also evidence of degenerative change in the supra-spinatus tendon.

44. Mr. McMurray thought that the applicant would benefit from an administration of a steroid injection in relation to his right shoulder. The findings reported upon by Mr. Sharif in relation to an MRI scan of the right knee were, in Mr. McMurray's opinion, consistent with an injury received as a result of the assault. Mr. McMurray's assessment of the applicant in terms of his character and personality was expressed as follows:-

"I have always found Mr. Reynolds to be a very genuine person, who in no way exaggerates the physical and psychological problems he has experienced."

45. Mr. Sharif carried out an arthroscopy on the 7th January, 2000, which showed a large bucket handle rupture of the medial meniscus which was totally free from the posterior horn attachment and was floating. The only attachment was on the anterior horn of the medial meniscus. That was removed and arthroscopically it looked like an old tear. Post-operatively, Mr. Sharif says that the applicant did very well and that he was referred for physiotherapy.

46. When reviewed for the purposes of that report, the applicant confirmed that he had no longer any symptoms of locking since the operation albeit that he did have a slight aching pain on the medial side of the joint which, according to Mr. Sharif, was to be expected as the tear was associated with some degenerative changes on the tibial plateau as well as the femoral condyle on the medial joint line.

47. Clinical examination of the applicant's right knee at that time was noted to be stable but with some minimal tenderness over the medial side of the joint.

48. In Mr. Sharif's opinion the applicant sustained an injury to his right knee which was initially a partial meniscal tear which gradually got worse with time ultimately leading to a full bucket handle tear some two years after the injury. This resulted in recurrent locking of the knee accompanied by recurrent effusions. In his opinion it was probable that the bucket handle tear of the medial meniscus was directly related to the incident in November, 1995.

49. As to prognosis Mr. Sharif stated:-

"It is evident from the literature that a follow up of the patients of ten-fifteen years who have had a total rupture of the medial meniscus or has had a total meniscectomy in the past, has led to arthritis in the medial joint line as approximately 70% of the weight transmits through the medial joint line."

50. Nine years later on the 30th March, 2009, Mr. Sharif prepared a further report in which reference is made to the plaintiff still having some low grade symptomology in relation to his right knee. As a result of that complaint, the plaintiff had an MRI scan undertaken on the 3rd February, 2009, which showed a small joint effusion with some degenerative changes in the patellofemoral joint. The medial meniscus showed a small residual remnant with superimposed degenerative change. The applicant was noted to be walking without a limp and had a full painless range of movement of the right knee with no tenderness on the medial compartment. As to these changes Mr. Sharif felt that they were indirectly related to the incident for the reasons set out in that report. It was his opinion that these degenerative changes had been probably brought forward some ten years earlier than might otherwise have been the case by the incident in November, 1995. He felt that some injection therapy would help to lubricate the joint and ease off symptoms in the short to medium term.

51. The applicant gave evidence in relation to his sporting career which was, to put it mildly, quite impressive and that in later life he was involved in training a local football team.

52. Apart from sustaining a direct injury to his right knee as a result of a kick when he was seventeen years old the applicant was unable to recall any other specific injury to his right knee. He also said that he had some soreness in his shoulder at that time but

that the soreness he felt was referred from his neck out towards his shoulder; in other words, it was a radiating type of injury whereas his evidence in relation to the development of symptomology subsequent to the incident in November, 1995 was that the shoulder symptoms were local – that is to say they were localised in the shoulder.

53. In connection with the shoulder injury the applicant gave evidence that when he fell he was still clutching or grabbing hold of Mr. Lynch, whom he described as a big man, and it was his evidence that it was his right shoulder that hit the kerb of the footpath.

54. In relation to his right knee the applicant gave evidence that he had sustained what has been described as an abrasion on the inner side of his right knee, but what his spouse described as a large cut or laceration to which she had to apply steri strips.

55. The applicant did not accept the history set out in the report of Dr. Pat O'Neill relating to the locking and unlocking of the plaintiff's right knee when playing sport during his sporting career. It was accepted by counsel for the respondent after the resumption of the hearing following a luncheon interval that that pre incident history as recorded by Dr. O'Neill in relation to the plaintiff's right knee had not come from the applicant.

56. Dr. O'Neill gave evidence and indeed states in his report of November, 2013 that he could not conclude that the applicant had sustained any injury to his shoulder as a result of the incident in November, 1995 due to the absence of any temporal relationship between the accident and any medical record relating to symptoms referable thereto. Likewise he felt that in the absence of any document in medical records of sustaining any acute injury or developing injury induced symptoms and in the absence of clinical findings in the immediate, early or intermediate period after sustaining the alleged injury to his right knee it was not possible to conclude that the applicant had sustained any occupational injury involving his right knee in November 1995.

57. Mr. Sparks, consultant orthopaedic surgeon, examined and gave evidence on behalf of the respondent; he also having prepared a report dated 20th October, 2014, for the assistance of the court. With regard to the knee injury, the upshot of his evidence was that he did not think there was a substantial tear at the time of the incident in November, 1995. In his view it was not impossible to say whether the incident gave rise to a tear at all or whether there might have been some minor tear there as a result of the applicant's playing career, but in fairness, all the indications were that the applicant was asymptomatic in relation to his knee. Of significance, however, it seems to me, was the evidence of Mr. Sparks to the effect that having listened to the applicant giving evidence and having watched the applicant's demonstration of the actions in which he was involved in the course of restraining Mr. Lynch, it was now his view that that would most likely result in a significant twisting of the right knee and that the nature of the bucket handle injury which ultimately developed was consistent with that mechanism and the condition which was seen by Mr. Sharif. It was also his opinion that that condition was not caused as a result of, nor was it a consequence of, the kick to the knee which the applicant had sustained when he was in his teens.

58. Mr. Sparks explained in evidence that had there been a small tear at the time of the incident either existing or caused as a result of the incident, and that that would take some considerable time to progress. Moreover, if untreated, it would ultimately result in the bucket handle tear described in the evidence of both himself and Mr. Sharif. This would also explain the late onset of the symptoms of the knee popping out. It was his view that it was not possible to attribute at this remove the significance or otherwise of the reference to an abrasion to the right knee at the time of the incident. A question had also arisen relating to the aetiology of the scar, given that Mr. Sharif had only performed an arthroscopy. As to the significance of the evidence given by the applicant's spouse that she had to apply steri strips to what she described as a significant cut or laceration, this was of assistance to the court in that it helped to explain the existence of the scar which the respondent's physicians had noted on examination and had taken to be the result of surgery but which, it transpired, was not a surgical scar at all. Had that scar been the result of surgery, Mr. Sparks would have expected that fact to have been noted by Mr. Sharif.

59. Also of significance was the bruising which is recorded very shortly after the incident in the report of Mr. McMurray dated the 17th January, 1996. Mr. Sparks accepted that that bruising constituted subcutaneous bleeding and that its occurrence evidenced a sufficient trauma the force of which would also have been absorbed by the knee.

Conclusion on causation.

60. The burden of proof is by law placed on the applicant to prove his case. The onus of proof in a case such as this is to establish the case on the balance of probabilities.

61. With regard to the plaintiff's shoulder injury, it seems to me that the best that can be said about that is that there may have been some exacerbation of shoulder pain which had predated the incident and which had resulted from the road traffic accident in April, 1995. There was not, in my view, any convincing medical evidence led on behalf of the applicant which would establish on the balance of probabilities that the symptomology and condition which ultimately became apparent at some two years remove from the date of the incident in November, 1995 was causally related. I accept the applicant's evidence that he fell on his right shoulder. This may have aggravated some pre-existing symptomology but there is, as I have said, no convincing medical evidence to explain the delay in the onset of the localised symptomology in the right shoulder and, therefore, the causal connection between that and the incident in November, 1995. Accordingly, the applicant has not, in my view, established that the shoulder problems which were subsequently reported to Mr. McMurray in 1999 and more laterally to Dr. O'Neill and Mr. Sparks were caused by the incident with which the court is concerned.

62. Finally, with regard to the plaintiff's right knee injury, although for the reasons set out in their reports Dr. O'Neill and Mr. Sparks had come to the conclusion that what ultimately developed necessitating surgical intervention was not caused by the incident in November, 1995, it is clear to me that on a perusal of all of the medical evidence that there is in fact an explanation consistent with the mechanism of the injury and the delay in the onset of significant symptomology, namely, what was in all probability a partial ligament tear which ultimately progressed to a full bucket handle tear of the ligament which became symptomatic and which also explains the popping out of the applicant's knee. Mr. Sparks' evidence in this regard was, as I have already observed earlier in this judgment, particularly significant in relation to the issue of causation. Having heard the evidence given by Mr. Sharif and by the applicant and having seen the applicant demonstrate what he was doing at the time of the incident giving rise to these proceedings, Mr. Sparks fairly accepted that the action of the applicant in turning around and falling while still restraining Mr. Lynch would necessarily have involved a twisting of the right knee and that the bucket handle tear of the ligament described and repaired by Mr. Sharif was in fact consistent with that mechanism. Moreover it was also clear from the evidence of Mr. Sparks, as indeed it was from the evidence of Mr. Sharif, that a small or moderate tear, if left untreated, can take several years to progress to a point where it becomes a full bucket handle tear resulting in the type of symptomology – including the popping out of the knee – described in the evidence.

63. There is some conflict in the evidence as to precisely when the applicant's knee started to pop out. On any view of that evidence, however, it was not until at least two years after the incident in 1995 when that condition appears to have manifested

itself. That would be consistent with the medical evidence which I accept. Accordingly, in my view the applicant has discharged the burden of proof placed upon him to establish, on the balance of probabilities, that his right knee injury is causally related to the incident in November, 1995.

64. There was some issue between Mr. Sharif and Mr. Sparks in relation to degenerative changes in the plaintiff's right knee. Mr. Sharif has explained in his evidence and indeed in his report why this particular injury would have resulted in some degenerative change now radiologically viewed and that this has in all probability been brought forward by about a decade. Mr. Sparks, whilst not in any way challenging what is evident from scanning in respect of degenerative changes, queries the basis upon which it can be said that the injury brought forward those changes by a period of some ten years, especially in circumstances where the applicant's knees would have been subjected to very significant stresses in the course of his life; he having played all sorts of sports including physical contact sports at a very high level. In this regard, Mr. Sparks specifically referred to the fact that crepitus, which indicated degenerative changes in the right knee, was also present in the applicant's left knee.

65. From a surgical perspective, Mr. Sharif obtained a very good result in relation to the applicant's right knee injury. Whilst the development of some degenerative changes which were subsequently confirmed on MRI scanning and referred to in his report of March, 2009, it seems to me that this does nothing more than confirm the prognosis given in Mr. Sharif's report of February, 2000, which was that there was a risk of the applicant developing some degenerative changes and that the applicant was likely to continue to have what he described as minor aches and pains in the medial side of the joint.

66. There is evidence, which I accept, of crepitus in both the applicant's left and right knees and that this finding indicates the existence of degenerative changes. The court does not have any scanning or radiological findings in connection with the left knee so it is not possible to know whether the arthritic or degenerative changes as are most likely present in the left knee are the same as the changes now evident in the right knee and if so the extent to which it can be said that any of these are actually referable to wear and tear consequent upon the applicants significant sporting life which included his involvement in contact sports at a high level.

67. Mr. Sharif was the applicant's treating surgeon and as such I accept his evidence not only that the degenerative changes seen on the MRI scan are compatible with the injury and the resulting surgery, but also with the development of some aches and pains which were originally anticipated. I am fortified in accepting this evidence by the absence of any symptomology or condition complained of by the applicant in relation to his left knee. On the balance of probabilities, therefore, the minor aches and pains which the applicant has experienced and will continue to experience from time to time in his right knee are symptomatic of the right knee injury referable to the incident of November, 1995.

Award in relation to special damages.

68. A sum of €6,081.45 had been agreed between the parties in respect of special damages. However, by the time the matter came on for hearing before this court the total amount of special damages claimed was €7,230.87.

69. Whilst the applicant did suffer and had to be treated for bursitis of the right knee back in 1999, it would appear from the evidence that this condition was not in fact referable to the incident giving rise to these proceedings. According, I will allow the figure of €7,230.87 claimed in respect of special damages less any item of special damage referable to the condition of bursitis.

Award in relation to general damages.

70. As to general damages it is quite clear that any compensation to be awarded by the court to the applicant in respect of neck, back or psychological sequelae are, upon the court's findings, limited in time and are clearly in the past. In relation to the applicant's right knee injury, however, there is a persisting sequela albeit of low grade and at a low level. However, consideration must also be had for the period of time which has elapsed since the events giving rise to these proceedings and, therefore, the duration of symptomology, albeit that in connection with the plaintiff's right knee injury this was low grade and at a low level following the surgery. The prognosis in this regard to the future has not changed. Taking all of these matters into consideration the court will award the applicant the sum of €75,000 by way of general damages in respect of all injuries both physical and psychological attributable to the incident of the 17th November, 1995.