

**BETWEEN****STEPHEN MCGOVERN****PLAINTIFF****AND****KATHLEEN TULLY AND SINEAD TULLY****DEFENDANTS****JUDGMENT of Mr. Justice Bernard J. Barton delivered on the 16th day of June, 2017.**

1. Motorcycles have been a passion for the plaintiff. As a member of the Dublin Motorcycle Touring Club he has travelled all over Ireland, the United Kingdom, and the continent of Europe. It was during a club tour to Achill Island on the 22nd March, 2014, that the plaintiff was unfortunate enough to be involved in a serious motor cycle accident for which he bears no responsibility but as a result of which he suffered severe personal injuries which have given rise to these proceedings.

2. Liability for the accident having been conceded by the defendants, the case was one for the assessment of damages only.

3. The plaintiff was born on the 29th September, 1960, and is a married man with three grown up children. Like his father and grandfather before him he has worked all of his life as a plumbing contractor, the last 25 years of which has been in partnership with another plumber, Mr. Christie Meams trading under the name C & P Plumbing. The partnership was successful in surviving the consequences of the financial crash which the plaintiff attributed partly to the fact that the firm was a small operation and partly to the fact that they had stayed from getting involved in the general building industry. It's said the firm had developed a niche business around boiler replacement and bathroom restoration and renovation for private homeowners.

4. The plaintiff incorporated in his proceedings a claim for special damages. At the commencement of the hearing the Court was advised that a measure of agreement had been reached between the parties in relation to certain heads of that claim but not in relation to the claim for loss of earnings. Following the ventilation of that issue at the trial the Court was informed that the parties had finally reached agreement in relation to that head of damage, accordingly, the only matter which falls for determination concerns the plaintiff's injuries and the assessment of general damages.

5. Three medical reports were prepared on behalf of the plaintiff, two by Mr. Ciaran O'Shea, consultant orthopaedic surgeon dated the 26th November, 2014, and the 30th November, 2015, and one by Mr. Conor Hurson, consultant orthopaedic surgeon, dated the 7th January, 2015. No medical evidence was led on behalf of the defence and it was agreed between the parties that the contents of the plaintiff's medical report should be admitted as the medical evidence in the case; the reports have been read and considered by the Court.

6. The plaintiff gave evidence concerning his injuries and how these affected him but both in relation to his personal and vocational abilities as well as in relation to his hobby of motorcycle riding. As to the latter the plaintiff very fairly said that the reason he had been unable to return to motorcycling was attributable to nervousness rather than any physical disability consequent on the injuries, however, he was hopeful that he would be able to return to his favourite hobby in the future.

**The Injuries**

7. The plaintiff suffered a multiplicity of injuries as a consequence of the accident and which may be summarised as follows:

- (i) Soft tissue injuries to the lower back
- (ii) An oblique fracture of the middle phalanx of the left ring finger extending into the proximal interphalangeal joint
- (iii) A fracture of the proximal phalanx of the left thumb
- (iv) A significant comminuted intra articular fracture of the right distal radius.

8. The right wrist injury required treatment by an open reduction and internal fixation of the fractures. This surgery was carried out by Mr. Khan, consultant orthopaedic surgeon at Our Lady of Lourdes Hospital, Drogheda on the 27th March, 2014. Thereafter the plaintiff came under the care of Mr. Conor Hurson, consultant orthopaedic surgeon. The plaintiff attended at St. Michaels Hospital, Dun Laoghaire being near to where the plaintiff resides.

9. A CT scan carried out on the 7th August, 2014, showed incongruity of the distal radioulnar joint and non union of the ulnar styloid process, which remains ununited. The right wrist fracture involves both the distal radioulnar and radiocarpal joints.

10. The plaintiff attended for outpatient medical review under Mr. Hurson on the 17th April, 8th May, 6th June and 24th July, 2014, at each of which x-rays were taken. Following the initial surgery the plaintiff's right wrist was placed in a plaster of Paris cast. After removal of the cast the plaintiff's wrist was gradually mobilised. Clinical examination disclosing significant limitation of range of movement accompanied by pain. Mr. Hurson decided to refer the plaintiff to Mr. Ciaran O'Shea who saw the plaintiff on the 24th November, 2014. Having regard to the x-rays, the nature of the injuries and the complaints made he decided to admit the plaintiff as a day case to remove the plate and screws which had been inserted during the initial surgery to reduce the fracture. Having regard to the appearances on x-ray it was also decided to debride the distal radioulnar joint in an attempt to improve the mobility of the plaintiff's forearm in rotation.

11. There was some controversy between the parties as to when the plaintiff was at a risk of developing post traumatic osteoarthritis in his right wrist. An x-ray taken on the 17th February, 2015, (the most recent x-ray of the wrist) confirmed healing of the right distal radial fracture but showed continuing non union of the ulnar styloid process. A bony prominence arising from the sigmoid notch of the distal radius at the distal radioulnar joint was also seen.

12. In his report of the 26th November, 2014, Mr. O'Shea gave a prognosis for the right wrist injury in which he observed that having

regard to the intra articular nature of the fracture there were certainly risks that the plaintiff would develop progressive arthritic symptoms in the effective joints of the wrist.

13. In his report of the 7th January, 2015, Mr. Hurson commented upon the CT scans and x-rays available to him at that time and in respect of the right wrist injury he observed that there were already post traumatic degenerative changes seen in the radioulnar joint.

14. In his final report on 30th November, 2015, Mr. O'Shea's prognosis for the right wrist injury was that as the fracture involving the distal radius and distal radioulnar joint was intra articular there was a risk of the development of progressive arthritic changes within the wrist, however, he quantified the probability of that condition becoming clinical significant as low.

15. The surgery to remove the metalwork improved the plaintiff's symptomology and range of movement to the extent seen for the results of a post operative medical examination of the right wrist are compared. However, it is clear from the most recent medical report of November, 2015 that notwithstanding the improvements achieved following the removal of the metalwork the plaintiff continues to have a reduction in the range of movement of his right wrist accompanied by a deficit in wrist strength to the extent recorded and in respect of which Mr. O'Shea prognosticates that there is unlikely to be any further improvement.

16. I have had an opportunity to view the limitation of movement of the wrist as demonstrated by the plaintiff in Court which is clearly apparent and which is accompanied by significant post operative cosmetic scarring running up the forearm from the wrist for several inches but in respect of which the plaintiff, in fairness to him, makes little or no complaint. When the medical reports are read together I am satisfied that whilst the plaintiff has already developed post traumatic arthritis in his right wrist the risk of that progressing to a point being clinically significant is low.

17. Turning to the injuries involving the left ring finger the plaintiff has been left with a mild malrotational deformity and a slightly restricted mobility with reduced composite flexion in the ring finger. Examination of the left thumb in November 2015 showed that the ulnar collateral ligament had reached a position of stability. Commenting on the x-rays of the thumb and ring finger Mr. Hurson observed that the oblique fracture to the intermediate phalanx of the left ring finger extended into the proximal interphalangeal joint. The consequence of that finding in terms of prognosis meant that the development of significant future osteoarthritis in the joint could not be ruled out.

18. Whilst the plaintiff has no ongoing pain as such in his right wrist he has limitation of rotational movement as described and experiences discomfort especially at the end of a days work. He continues to experience markedly reduced power in his right wrist which he quantified at approximately 60% when compared to the left. At the end of a heavy day at work or after heavy activity the plaintiff can experience a cramping and aching pain in his injured wrist, however, as time passed he was gradually able to get back to carrying out most of the work tasks performed prior to his accident and since the late autumn of 2016 he has been working on his own following the dissolution of the partnership.

19. The plaintiff's soft tissue injuries to his back initially resulted in acute symptoms which gradually reduced over a relatively short period of time. The plaintiff suffered from back aches and pains prior to the accident especially at the end of a hard days work. X-ray examination after the accident showed moderate degenerative changes with some disc narrowing at the L5/S1 levels of his spine. Especially after his return to work he experienced acute episodes of lower back pain and told Mr. Hurson in January, 2015 that he could be in agony at the end of a days work sometimes needing to take pain killers or anti-inflammatories on average once a week. The level of pain was more severe than that experienced pre-accident. It would seem reasonable to infer that the soft tissue injury sustained by the plaintiff to his lower back resulted in an exacerbation of a pre-existing condition, evidenced on x-ray, which was likely to have continued to manifest itself in the future as it had done in the past.

20. There is no doubt that that resulted in significant painful symptomology albeit that that has lessened with the passage of time. He has some problems with dexterity especially carrying out fine tasks but the plaintiff's overall presentment to the Court was of a man who was making every effort to get on with his life as best he could, given his injuries and the resulting limitation in movements, particularly with regard to his wrist, with which he has been left. He was described by Mr. Hurson as a genuine man and that was very much the impression I had of him as he gave his evidence.

21. There was some controversy as to his absences from work, however, I have no doubt that following the initial surgery that the plaintiff was out of work for some twelve weeks and that following the operation to remove the metalwork which had been inserted to fix the fractures that he was unable to work for a further five to six weeks. I accept his evidence and the evidence of Mr. Mearns that after the plaintiff returned to work on each occasion following surgery he was unable and unfit to carry out anything other than the lightest of tasks and that the burden of carrying out the heavy tasks associated with the work fell upon and was borne by Mr. Mearns. Furthermore, I am satisfied that the plaintiff initially experienced a loss of confidence in the quality of his work especially when this involved tightening water connections which he had to have his partner check to confirm that these had been made securely.

22. The plaintiff very fairly accepted that he has improved a lot both in relation to his symptoms and in relation to his abilities to the position in which he found himself following the initial surgery in particular. Nevertheless he still experiences problems with certain types of tasks and explained by way of example that when required to lift or manoeuvre heavy materials he would need assistance which he generally managed to get from drivers delivering to or removing materials from site.

23. The plaintiff presents as a stoical individual who enjoys and takes pride in his work. He expressed an intention and desire to continue in his present occupation at least until he reaches retirement age. My impression of him was that he will do whatever is necessary to achieve that objective.

24. The Court is tasked with assessing the damages to which the plaintiff is entitled in order to compensate him for the pain and suffering which he has experienced to date and will likely experience in the future, a task which is to be carried out in accordance with the well settled principles of tort law. In carrying out that exercise the Court is required and has had regard to the revised Book of Quantum and in respect of which counsel made submissions which have been duly considered.

25. Having regard to the medical evidence the Court is satisfied that the injuries suffered to the plaintiff's right wrist fall within the series of permanent category in the revised Book of Quantum. The fracture of the left thumb I would categorise as minor. Accepting the evidence of Mr. Hurson in relation to the intra-articular nature of the fracture to the left ring finger I am satisfied that that injury falls between the moderate to moderately severe category particularly as the risk of developing significant post traumatic arthritis in the joint cannot be ruled out.

26. The law requires the Court to consider all of the injuries sustained holistically. I accept the medical evidence as comprised in the admitted medical reports from which it is clear that the ongoing symptoms and restrictions of rotational movement with which the plaintiff has been left in his wrist are unlikely to improve further. The injuries are not the only consequence of the accident; inconvenience, upset, distress, annoyance and general interference with the amenities of life caused by the accident and resulting injury compensatable and encompassed in the term "pain and suffering".

27. The plaintiff's hobby has so far been significantly affected; he no longer rides a motorbike though he did test drive a motor cycle on one occasion since the accident. The enjoyment he derived from this hobby, and particularly from participating in motor cycle tours, a favourite pastime, is I am satisfied a consequent of the accident. The Court is mindful, however, that this state of affairs is attributed by the plaintiff himself to nervousness rather than any physical disability, moreover, the plaintiff is hopeful that he will eventually return to riding motor cycles, a process which it is hoped may well be assisted by the conclusion of this litigation.

28. Having regard to the findings made and the reasons given the Court considers that a fair and reasonable sum to compensate the plaintiff for pain and suffering to date consistent with his injuries is €45,000 and for future pain and suffering a sum of €20,000 making an aggregate a sum of €65,000 to which will be added the amount for special damages agreed between the parties. And the Court will so order.