

## THE HIGH COURT

[2013 No. 637 SP]

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

BETWEEN

LOUISE LOURDAN

APPLICANT

AND

THE MINISTER FOR PUBLIC EXPENDITURE AND REFORM

RESPONDENT

**JUDGEMENT of Mr. Justice Bernard J. Barton delivered the 19th day of January, 2015.**

1. The applicant was born on the 27th April, 1973. Having obtained a diploma in computer programming she joined the force as a student garda in 1993 and passed out of Templemore College on the 4th August, 1994. Thereafter the applicant served in a number of stations throughout south Tipperary. She is currently stationed in Cahir. She has a daughter, Ciara, who was born in 2001. At the time of the incident giving rise to these proceedings on the 20th November, 2007 the applicant was assigned to work in the Garda Traffic Corps. She was a garda patrol car driver. Since 2011 the applicant has been assigned to and occupied the position of a court presenter. She took up that position when a vacancy arose. She set about reorganising that office and has made the role, which she enjoys, her own.

2. On the 13th November, 2007 she was on duty as an observer in a marked garda patrol car driven by her colleague, Garda Mark Darmody on the old Cashel to Cork road. Whilst on patrol they recognised the driver of a car who was known to them to be involved with illicit drugs. There was a female passenger in that car. A siren and lights were activated with the intention of making the driver of that vehicle aware of the presence of the garda patrol car and of the fact that the car was to pull over. The reaction of the driver, however, was to take off at speed. The applicant gave evidence that the driver of the car whom they were trying to apprehend drove in a highly dangerous manner. In this regard there was evidence that the driver failed to observe a stop sign, drove diagonally through a junction without yielding right of way to oncoming traffic, appeared to pay no heed nor to have any regard whatsoever for other vehicles on the road, whether stationary or moving, struck a number of vehicles with glancing blows, struck a concrete pillar, and despite having sustained a blow-out, kept driving at such a speed that the wheel rim of the deflated tyre became exposed to the road surface leaving sparks behind it. Eventually the car could proceed no further and came to a halt.

3. The female passenger exited the car and she was chased and apprehended by the applicant. Meanwhile the driver of the car was apprehended by Garda Darmody.

4. It became apparent almost immediately that both the driver and the passenger were under the influence of drugs. They were both physically and verbally abusive. In an attempt to arrest the female passenger the applicant sustained a very severe blow to the left hand side of her face from what appears to have been a large heavy handbag. The female passenger was extremely violent. The applicant was concerned that her assailant would head-butt her so she kept her assailant at arms length by gripping both of her arms. Her assailant spat at her and being unable to head-butt the applicant struck out with one or other of her feet kicking the applicant on the backs of her legs. It transpired from the evidence that the applicant was also the subject of an assault and battery by the car driver when she went to the assistance of her colleague Garda Darmody. For her troubles the applicant received a number of heavy blows again to the left hand side of her face and also to her neck. It appears from the evidence that the struggle between the gardaí the driver and his passenger was only ultimately brought under control when, on a request for help by Garda Darmody, two young men from a part of a crowd that had gathered round, came to their assistance. A call for garda assistance to the local station had by then also been made. Ultimately further members of the gardaí arrived at the scene and brought the situation under control. The applicant estimated the duration of the struggles described in evidence to have been at least twenty minutes.

**The injuries.**

5. The applicant was both physically and mentally traumatised by her involvement in what was a prolonged verbally abusive and physically violent assault and battery upon her person the consequences of which I am quite satisfied continue to affect her to this day.

6. The applicant has been examined and reported upon by Dr. Sean McCarthy, Dr. James Morrison, Professor Michael Molloy, Mr. Daniel O'Connell, and Professor Duncan Sleeman and from whom reports were obtained for the assistance of the court and which have been exhibited in the applicant's affidavit.

7. The applicant was also examined and reported upon for the respondent by Dr. Tom Walsh, the chief medical officer, by Dr. Pat O'Neill, and by Dr. Devitt, consultant psychiatrist. The admission of all reports into evidence was agreed between the parties.

8. The applicant was brought to South Tipperary General Hospital, Clonmel where she was examined; X-rays were taken of her skull, neck and facial bones. She was informed that there was no evidence of any bony injury or fracture. She attended her GP Dr. Quirke on the day following the incident. Dr. Quirke recorded the following in his notes:

"Involved in a dreadful situation last night. She and her partner chased a vehicle and apprehended two people who fought them. Louise tells me she sustained blows to the left side of her face and neck. She also sustained kicks to her legs. She was seen in A & E and x-rayed etc. On examination tender left zygoma and TMJ. Some clicking of her TMJ but movement ok. Tender neck muscles at that side. Impression...bruising and muscle sprain injuries."

9. A report from Dr. Sean McCarthy dated the 22nd November, 2007 describes the applicant attending him on the 15th November,

2007 and that clinical examination showed the applicants face to be extremely swollen with a haematoma and marked swelling under her left eye accompanied by very marked tenderness over the left maxilla; the applicant was also complaining of difficulty in chewing and swallowing.

10. Clinical examination of the applicants cervical spine showed extreme stiffness and global movements were reduced to 40% of normal with extreme tenderness in the left and right paravertebral muscles and over the left supraspinatus and left deltoid muscle. Bruising was noted on the applicant's back and on the left side of her neck.

11. Examination of the lumbar spine revealed forward flexion being reduced to 40% of normal with marked bruising on both gluteal areas.

12. Clinical examination of the plaintiff's lower legs showed tenderness over the calf muscles with marked bruising where the applicant had been kicked by her assailant.

13. Analgesia and pain killing medication was prescribed. Dr. McCarthy initially certified the applicant as unfit to perform any type of garda duty for at least three to four weeks. However, the effects of the injuries upon her were such that she did not ultimately return to work until the summer of 2009.

14. In addition to physical injuries Dr. McCarthy also reported that in his view the applicant suffered a severe psychological trauma for which she was being treated and advised that he was referring her to Dr. Morrison, consultant psychiatrist for specialist review.

15. Dr. Morrison prepared a report dated 7th December, 2007. He diagnosed the applicant as developing a severe post traumatic stress disorder with insomnia, disturbed sleep, flashbacks, acute panic attacks, fear and apprehension about returning to her employment duties. At that time he described the applicant as having become emotionally labile where she could weep easily and was affected by the reading of any traumatic type material in the papers or whilst watching television. He advised her regarding some behaviour modification techniques. He was unable at that stage to provide a definite prognosis. The plaintiff was, however, continued on appropriate medication. He prepared a number of further reports concluding with a report dated the 8th April, 2011. At that stage he noted that the applicant had made improvement psychologically and physically to the extent that she had been back at work since in or about June 2009. He observed that the applicant's main psychiatric symptoms were difficulty in sleeping, increased anxiety, irritability and apprehension, especially when prisoners were brought to the duty room. At the time of this medical report the applicant was working as a station orderly. In Dr. Morrison's view she was fit for the duties involved in that position but noted that the applicant was still a very vulnerable person and needed to avoid confrontational situations.

16. Dr. McCarthy regularly reviewed the applicant and prepared reports in 2009, 2010, 2011 and finally prepared the report of October the 9th, 2013. At the time of his most recent medical report he described the applicant as having become quite depersonalised due to her injuries and was still suffering significantly. He thought she would remain symptomatic despite the fact that the initially severe post traumatic stress symptoms had resolved considerably. In this regard he described the applicant as still having been left with a residual depression causing a loss of self esteem, loss of confidence, deep introversion and feelings of failure.

17. Dr. Patrick Devitt in a report of the 15th November, 2012 dealing with the applicant's psychological sequelae concluded that the applicant had experienced symptoms of post traumatic stress disorder of a moderate nature for a period of approximately a year. He recognised, however, that the applicant was afraid of confrontational duties and that the applicant was still prone to some anxiety especially in relation to possible contact with her assailant. He thought her residual psychological symptoms of anxiety would improve further as time went on, although he accepted that any question of the applicant re-engaging in confrontational duties was impractical as that would have a psychological impact upon her. Dr. John Walsh, the respondent's chief medical officer, confirmed and agreed with this assessment of her. In relation to the applicant's physical injuries these essentially involved the plaintiff's face, neck and lumbar spine as well as some bruising to her legs where she had been kicked by her assailant.

18. The applicant was referred by Dr. McCarthy to Professor Michael Molloy, consultant physician and rheumatologist who has also prepared a number of reports for the purpose of these proceedings. He reported on a series of x-rays and MRI scans taken in 2008. A bulging disc at C6-C7 was noted on the MRI scan of the 14th February, 2008. A haemangioma was also noted at D12. These results were described by Professor Molloy as encouraging and reassuring. The haemangioma was most likely congenital. The disc bulging at C6-7 did not involve any nerve or cord compression.

19. In relation to the applicant's neck and back injuries, extensive investigations were carried out with a view to determining the cause of what were in fact significant symptoms continuing over a prolonged period of time. By November 2011 the symptoms in relation to the applicant's lower back had, according to Dr. McCarthy, improved considerably although she was still left with a residual stiffness in her lumbar spine with gross limitation of forward flexion in that she could only touch to the junction of the upper third and middle third of her legs. She also had reduced straight leg raising on both sides. He diagnosed what he described as a classical whip lash injury. Symptoms in relation to the applicant's neck were considered by him to be improving gradually but were still quite symptomatic. At that stage Dr. McCarthy's assessment was that the applicant had reached a plateau in terms of recovery. When reporting in October 2013 Dr. McCarthy described the applicant as continuing to have chronic neck and low back pain. It was his opinion that the applicant would have to live within the constraints of her disabilities and that most of the symptoms about which she was then complaining would be permanent and would be ongoing and continue into the future. In light of this he suggested that further MRI examinations to be carried out in respect of the plaintiff's neck and back.

20. Finally with regard to the applicant's facial injuries, apart from what appears in the reports of her GP and Professor Molloy, the applicant was specifically examined and reported on by Professor Duncan Sleeman who prepared a report for the assistance of the court dated the 6th April, 2011.

21. The applicant gave evidence that she had sustained significant injuries to the molar teeth on the left hand side of her face as well as to her upper left central incisor.

22. She indicated to the court the necessity of having her left central incisor restored. That tooth had been damaged and required root canal treatment as a consequence of which the tooth had become non vital. Professor Sleeman had noted that the tooth had already become mildly discoloured at the time of his report. That discoloration was particularly noticeable by me at the time when the applicant was giving evidence in court. Professor Sleeman was of the view that the discoloration at that time did not then warrant a permanent restoration, he being of the view that whether or not the upper central incisor would need a long term restoration would depend on whether there was further discoloration than that seen at the time of his examination. I take it from this, therefore, that in the event of there being further discoloration his opinion was that such a restoration would then be appropriate. Given his description and what I was able to observe myself it would seem that further discoloration has in fact now taken place since the time of his

reporting.

23. With regard to the injuries to the molar teeth, the applicant gave evidence that whilst she was aware at the time of the incident of having sustained several blows to the left hand side of her face from both assailants and that the side of her face had become hot and swollen she was then unaware that she had in fact sustained significant dental injuries. It transpired, however, that she had with the result that both upper left sided molars required to be crowned and a bridge utilised to replace the upper left missing premolar.

24. Finally, with regard to the facial injuries the applicant had given evidence of what she described as some migrainous type of pain under her left eye and circling her eye up into her forehead. This pain had been present since shortly after the assault. The applicant described it as beginning on the left cheek bone area and then radiating to the left side of the eye. It could last anything between three hours to three days at a time. There didn't appear to be any specific precipitating or relieving factors. The applicant had been treated with nonsteroidal anti-inflammatories by her GP but this was not controlling the applicant's symptomology.

25. When Professor Sleeman saw the applicant on the 15th September, 2009 his feeling was that the symptomology was neuropathic in nature and that it was susceptible to two options in terms of treatment, one by of an injection of local anaesthesia and the other by prescription of Lyrica. The anaesthesia numbed the symptomology but did not provide long lasting relief. Accordingly Professor Sleeman prescribed Lyrica and this certainly assisted in the control of the pain although it has not completely abolished it.

26. When the applicant was reviewed by Professor Sleeman on 19th March, 2011 for the purposes of his report of the 6th of April, 2011 he noted that if the applicant stopped taking Lyrica the painful symptoms in relation to this particular condition would return. His prognosis is significant, namely that it was difficult to see how in the long term the applicant would ever be free of a requirement to take Lyrica. He was also in no doubt but that the neuropathic pain was secondary to the injury.

27. Dr. Pat O'Neill, consultant in sports and orthopaedic medicine, examining and reporting for the respondent following examinations on the 17th April, 2008 and 20th January, 2009 expressed the opinion that there were discrepancies and inconsistencies in relation to co-relating the nature of the applicants subjective symptoms and presenting complaints with the objective findings on his clinical physical examination and with the diagnostic imaging findings on radiographic examination and magnetic imaging of the lumbar spine of her lower back. He referred to the applicant's post and pre assaults medical history. Whilst accepting that the applicant had sustained injuries to her neck, shoulder girdle, lower back and right and left lower legs as a result of the assault he thought that she should have recovered within about twelve months of the assaults. As to why she did not do so he offered the view that the applicant's injuries may have been compromised and retarded by a continuing psychological state and underlying post traumatic psychological conditions or disorders and which, in my view, having regard to the evidence of her own physicians, most likely explains the difficulty expressed by Dr. O'Neill in co-relating the applicant's symptoms to his objective findings.

28. He suggested the applicant be referred to a psychiatrist and in this regard the respondent had the applicant reviewed by Dr. Patrick Devitt, who prepared the report already mentioned. There is no doubt but that the applicant had a relevant pre accident medical history and, indeed, a post accident medical history of relevance and which was the subject matter of discovery.

29. Unfortunately, on the 28th November, 2013 the applicant was again assaulted being pushed into a door frame and ending up on the floor injuring her shoulder and in respect of which she had to have surgery. However, apart from some exacerbation of neck symptomology there was no other impact on the injuries and their consequences arising from the incident with which the court is now concerned.

30. With regard to her back, considerable emphasis was laid by the respondent on the applicant's pre and post accident medical history apparent from her medical notes and records.

31. There is no doubt but that between December 2002 and October 2007 there are a number of references in the medical notes and records to painful symptomology recorded in relation to the applicant's back. Indeed there are references to other medical conditions including depression. She developed a serious problem in relation to her left lung in 2005 which never fully resolved. This was ultimately diagnosed as pneumonia accompanied by a collapse of the left lower lobe of her left lung. The applicant also underwent keyhole surgery on a cyst which had developed on an ovary. There were several references to pleurisy and pleuritic symptoms in the medical notes and records as well as to the laparoscopy; the applicant gave evidence that she still experiences symptoms of pleurisy about once a year.

32. The applicant was cross examined at some length in relation to her previous history of lower back pain. She gave evidence that what presented itself as lower back discomfort and ache in the 2005 and 2006 period was actually not true back pain as a result of a back problem but rather because of what turned out to be pneumonia and a collapse of her left lung.

33. Whilst it was quite proper for the respondent to investigate the nature and cause of the recorded history in relation to the applicant's back and to question the aetiology of her symptomology, I am quite satisfied from my reading of the medical reports and of the medical notes and records that the applicant did not suffer any true mechanical back pain as a result of a back injury or condition in the period from 2005 up to the date of the assaults and that references to back ache and discomfort in the medical notes and records are in effect references to symptoms which presented themselves and were referable to other diagnosed medical conditions including a collapse of her left lung. The applicant was recovering from a laparoscopy in October 2007 when an assault took place in a pub. The applicant exacerbated what is described as pain in her abdomen as a result of that but no reference is made in medical notes and records to the applicant's sustaining or aggravating any complaint of back pain or of a back injury as such.

34. In fact, on her own evidence and, indeed, on the basis of the medical notes and records, the applicant was certified fit and actively undertaking full duties as a police officer in the traffic corps for several weeks prior to the date of the incident giving rise to these proceedings.

## **Conclusion**

35. I am satisfied that on all of the evidence presented in this case that the applicant sustained both physical and psychological injuries as a result of the assaults giving rise to these proceedings. The physical injuries are of two types. Soft tissue affecting the left side of her face, her neck, lower back and lower legs but also dental injuries affecting two of her molars, one pre molar, and her left central upper incisor. The soft tissue injuries involving the left side of the plaintiff's face, insofar as these involve swelling and bruising resolved fairly quickly, however, the applicant has been left with a neuropathic injury which essentially circles her left eye starting at the left cheek bone and going round up into her forehead and which is a permanent condition. This also produces a sharp migrainous type of pain but which is symptomatically controlled by taking Lyrica which has been medically prescribed for her. I accept the evidence of Professor Sleeman that this condition is causally related to the accident, that it is permanent, and that in order to control that symptomology the applicant will most likely have to take Lyrica during her lifetime.

36. The applicant's molar injuries have been dealt with by capping, however, although the applicant has had a root canal treatment to the left upper central incisor and that that tooth has been saved it has, nevertheless, discoloured. That was, as I have already observed, more noticeable in the course of the applicant giving evidence. Accordingly I am satisfied that having regard to the evidence of Professor Sleeman contained in his report that the applicant would be warranted, on cosmetic grounds alone, in undergoing long term restoration treatment.

37. The applicant has already had two of the molars treated with bonded crowns. In respect of all of the crowns Mr. Daniel A. O'Connell, dental surgeon, in a letter of the 11th November, 2013 indicated that these may need to be replaced twice in the applicant's lifetime. The actuarial cost of this treatment for replacing the crowns once and twice is the subject matter of an actuaries report prepared by Seagrave Daly and Lynch dated the 12th February, 2014.

38. The court was referred to the judgment of Mr. Justice Cross in relation to the real rate of return in his judgment in the case of Gill Russell and Health Service Executive delivered on the 18th December, 2014. The applicants had invited the court to follow that decision and apply a real rate of return of 1%, however, no actuarial evidence as to the effect of that in this case was lead at the hearing of this application.

39. That being said, it seems to me that it would not be an unreasonable approach in order to meet the justice of the matter and having regard to her age to allow for the higher of the two figures referred to in the report of Mr. Tennant and attributable to the cost of two replacements during the remainder of her lifetime.

40. With regard to the applicant's neck and back injuries these are, in essence, of a soft tissue nature and do not prevent the applicant from undertaking her current duties as a court presenter nor did they prevent her from undertaking the duties of a station orderly after her return to work in June 2009. Moreover, it would appear that apart from absences due to the incident of November 28th, 2013 the applicant had remained gainfully employed. Her symptoms from her physical injuries are not, therefore, vocationally disabling. She has some limitation of movement of both her neck and her back and while she continues to have some symptomology it is more a source of annoyance than disability.

41. Finally, it was clear from the reports of Dr. Morrison, and Dr. Devitt, retained and reporting on behalf of the respondent that the applicant suffered a post traumatic stress disorder as a result of the assaults upon her. Insofar as there is any disagreement between their respective views that would seem to be in relation to the degree of severity of the symptoms. Dr. Morrison described her post traumatic stress disorder as severe in his report of March 2009 whereas Dr. Devitt described the condition as being moderate in nature. Either way both agree that the applicant continued to be affected by the consequences of that injury. Dr. Devitt considered the applicant would be prone to some anxiety specially in relation to possible contact with her assailant and that whilst he thought the applicant should improve further as time proceeded he accepted that it "was likely in her future career that any suggestion that she re-engage in confrontational duties would cause her such anxiety "...as to make this impractical..."

42. Dr. Morrison is the treating physician and as such I accept his evidence insofar as there is a difference of opinion between himself and Dr. Devitt.

43. In his report of the 8th April, 2011 Dr. Morrison described the plaintiff as being a very vulnerable personality whose concentration had still not returned to normal, who is suffering from the sequelae of both her physical and psychological injuries and continuing to experience pain, poor sleep, restlessness, anxiety, irritability and apprehension. The applicant was unable to return to work from the time of the incident until June 2009 and having regard to the medical evidence I am satisfied that this prolonged absence was principally due to the psychological sequelae of her post traumatic stress disorder and which is ongoing.

44. I am also satisfied that accusations made against her in relation to working in a pub whilst out on sick leave, and which were found by a disciplinary tribunal to be baseless, contributed towards the slowness of her recovery path. Although the very severe post traumatic stress symptoms have resolved considerably relative to the first eighteen months to two years following the assault the applicant is still left with residual depression resulting in a loss of self esteem, loss of confidence, deep introversion and feelings of failure. It was evident from her demeanour in court that the applicant is still a very emotionally and psychologically vulnerable person who has been and who is likely to remain traumatised as a result of the totality of her experience consequent upon the events giving rise to these proceedings.

#### **Award**

45. Special damages have been agreed between the parties in the sum of €14,373.54. To this must be added the cost of future dental care and which, having regard to having regard to the evidence of Mr. Nigel Tennant consulting actuary retained on behalf of the applicant, I will allow in the sum of €6,500 making in total a sum for special damages in the amount of €20,873.54.

46. With regard to general damages the court will award €85,000 in respect of past pain and suffering and €50,000 in respect of future pain and suffering making in total by way of general damages the sum of €135,000.

47. Accordingly the court will make a total award in respect of the applicant's claim for general and special damages in the sum of €155,873.54.