1986 No. 8500P

JOSEPH McGOURAN

.v.

LOUIS REYNOLDS & MAIREAD REYNOLDS

Judgment of Mr. Justice O'Hanlon delivered the 27th day of April 1988.

The Plaintiff was born on the 12th February 1924, and is now 64 years of age. He was employed for over 40 years as a Watchman with the Revenue Commissioners, carrying out varied duties, sometimes as a Messenger in the Customs and Excise, sometimes as a helper in a Van used for the purposes of his employers.

He was taken ill with respiratory troubles in the year 1985 and suffered from pleurisy and pneumonia. He attributed that illness to inhalation of asbestos dust in the course of his work, and later commenced proceedings for damages in respect of same, but these proceedings have not as yet progressed beyond the issue (and, presumably, service) of a Plenary Summons. That illness occurred early in the year 1985.

Later in the same year, on the 9th October 1985, while travelling as a helper in a Customs and Excise van, he was involved in an accident when a car owned by the first-named Defendant and driven by the second-named Defendant came into a violent collision with the vehicle in which the Plaintiff was travelling, striking it broad-side on, on the driver's side.

The driver was uninjured, but the Plaintiff said he was "fired gainst the side" of the van, and was taken to hospital and detained there for one week. He was complaining of injuries to is neck, right shoulder, right side of his body, abdomen and runk. X-Rays disclosed no bone injury. He was allowed go home after one week, wearing a cervical collar, and underwent a ourse of physiotherapy. He complained then, or later, of pain in both hips, both knees, and the left ankle. He said he was aking Ponstan tablets for some time, as pain-killers, and then anadols when the Ponstan tablets affected his stomach.

The Plaintiff says that he has never recovered from is injuries; that he had to give up much of his social activities which included active participation in the running f a GAA Club for boys; that he never could go back to work, nd that he eventually took early retirement on full pension in January, 1987. He would, in the normal course of events, have een entitled to stay on until January, 1990.

Mr. Hyacinth Browne, Consultant Surgeon, said that the laintiff after the accident had a lot of contusions, mainly on he right side of the body. His principal injury was to the neck. He had a lot of stiffness and pain on movement in the eck, and the neck injury caused pain radiating into the head and right shoulder. The witness felt the Plaintiff had eceived a severe jolt from the impact. By October 1986 he was till enduring a lot of stiffness and pain in the neck, adiating into the right arm. The neck movements were educed. He felt the Plaintiff had probably reached the limit of his improvement when he saw him in November, 1986. He ertainly could not do heavy work as described by the Plaintiff imself. The witness thought, but could not be sure, that he

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had advised the Plaintiff to try for light work.

Professor Muiris Fitzgerald was consulted with reference to the Plaintiff's respiratory troubles in February 987. He found "wheezes" in both lungs; some bronchial irritation or inflammation; moderate obstruction of the air passages, with just over 60% of normal expected values. He had uite a significant respiratory problem; his lungs were over-inflated; he had a history of breathlessness, coughing, heezing, and obstructed airway. He (the witness) concluded that the Plaintiff was definitely not fit to continue with eavy, physical work with impairment of the lung function of he order found in February 1987. He could probably do sedentary work.

There was also evidence that the Plaintiff suffered a black-out on one occasion since the accident, but this is not attributed to any condition produced by the accident. He was eferred for examination on that occasion to a heart specialist, but I have not been told of the outcome of that xamination.

I have come to the conclusion that the Plaintiff uffered a serious respiratory condition which either commenced r became incapacitating early in the year 1985; that it was a condition which was irreversible and by the early part of the ear 1987 (if not before) was of a nature which would have led to the Plaintiff's early retirement from his employment. The vidence did not establish as a matter of probability ~~and~~ that his respiratory trouble was materially worsened by reason of the accident, nor has this been pleaded in the Statement of laim. I also conclude that the Plaintiff suffered substantial injuries in the accident which occurred in the month of October

1985, and for which the Defendants are liable. From the description of the accident as given by the witnesses, and of the injuries as recounted by Mr. Browne, I conclude that the Plaintiff was flung violently around in the van and was thrown violently against the side of the van, in a manner which would probably have been minimised to a significant extent were he wearing a seat belt at the time. The driver who was able to steady himself up by holding onto the steering wheel sustained no injuries, or negligible injuries. The Plaintiff and the driver say that it would have been impracticable to use the seat belts having regard to the number of stops and starts involved in their work, but I do not accept that this was a valid reason for not using the seat belts. It was estimated by the driver that the journey was "a good half mile" between their previous stop and that to which they were proceeding. There was reference in the evidence to a crate in the back of the van which moved on impact, but I do not attach any importance to this, as its weight as given was about two stone, and the movement was one of sliding along the floor and jamming under the Plaintiff's seat, not of any violent impact with the seat or with the Plaintiff.

The Plaintiff in his general appearance in Court appeared to be reasonably fit, mobile, and not suffering from any obvious stiffness or limitation of movement in the neck or otherwise. Nevertheless I accept the medical evidence and his own evidence that he is still suffering from significant after-effects of the accident; that these are likely to be permanent, and that they curtail his enjoyment of life to a material extent.

The Defendants have admitted liability, but have

entered a plea of contributory negligence against the Plaintiff based on his failure to wear a seat belt. I find that there was contributory negligence on the part of the Plaintiff and I apportion fault as between the parties as follows - as against the Defendants 85%, as against the Plaintiff 15%

I assess damages in favour of the Plaintiff as follows:-

Pain and suffering to date	£15,000
Pain and suffering for the future	£15,000
Loss of overtime to date of retirement	£ 1,250
Diminution in Gratuity on retirement by reason of loss of overtime to date of retirement	£ 1,250
TOTAL	£32,500

I do not consider that the Plaintiff has suffered any further special damages by reason of the accident as I have come to the conclusion on the evidence that even had the accident never occurred he would have been driven, in any event, by his respiratory troubles to retire from his employment at latest by the early part of the year 1987.

Abating the gross figure of £32,500 by 15% in respect of the finding of contributory negligence and apportionment of fault as against the Plaintiff, produces a figure of £27,625 and I will give judgment for the Plaintiff for that sum.

R.J. O'HANLON

27th April 1988

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