

THE HIGH COURT

[2018 No. 10179 P.]

BETWEEN

LOUIE DUNPHY

PLAINTIFF

AND

HELEN O'SULLIVAN

DEFENDANT

JUDGMENT of Ms. Justice Bronagh O'Hanlon delivered on the 18th day of December, 2019

1. This accident relates to a rear ending of the plaintiff's taxi, registration numbers and letters O4KE 9679 on the public highway at Cuffe Street in the City of Dublin when the defendant's motor vehicle registration numbers and letters O7D 27079 collided with the plaintiff's vehicle as a result of which he brings the within action seeking damages for personal injuries, loss and damage.
2. The within proceedings have been authorised by the Personal Injuries Assessment Board and a certificate has been issued pursuant to s. 14 of the Personal Injuries Assessment Board Acts, 2003 and 2007, issued on 16th April, 2018 record no. for such authorisation under no. ML030720186873.

Background to the case

3. The plaintiff's date of birth is 10/07/1952 and he is a married man with three children. The plaintiff gave evidence that the accident occurred on 11/02/2017 at the junction of Cuffe Street and Cuffe Lane and that he had one passenger in his taxi vehicle at that time. He described himself as having been in a stationary position at the beginning of the yellow box when he observed the traffic ahead of him beginning to move and described how he took his foot off the break and that the defendant's Volkswagen vehicle crashed into the back of him. He agreed that the damage to his bumper was minimal and that the internal seatbelts were problematic and had been checked during an NCT test and that the belts had been fine before but not after the accident. He described the impact as a rear bumper one and that there was considerable damage to the defendant's vehicle following what he described as a moderate impact to the front of the vehicle and that €4,500 was the cost of the defendant's repairs to her own vehicle.
4. This witness said that he was on his way to Café En Seine with his passenger and that the gardaí at the scene indicated that if no one was injured they would leave it as a civil matter. He was dissatisfied with this and the following day attended at Crumlin Road Garda Station and ensured that the matter was properly recorded at that station.
5. The plaintiff said that four to five days after this accident he was unable to get out of bed and was suffering from lower back pain. He also described having a chest lipoma and indicated that the medical evidence would be to the effect that such a condition could not have been caused by the accident.
6. This witness was referred by his general practitioner to Naas Hospital where he had spinal x-rays which showed significant degeneration to his back which had been entirely

asymptomatic prior to this accident but had been rendered symptomatic by it and that these x-rays took place on 21st February, 2017.

7. An MRI was carried out on 26th June, 2017 which showed significant stenosis described as an underlying condition showing narrowing of the spinal cord. He was described therefore as having a vulnerable back. He was off work for one month following the accident and he modified his working habits because he was suffering from intermittent and significant pain in the lower spine.
8. As stated in the opening introduction to the case, Mr. Gary O'Toole Consultant Orthopaedic Surgeon does not expect improvement in the plaintiff's condition at this stage. The plaintiff attended his general practitioner initially on 01/02/2018. An amended defence in the case refers to a low velocity impact and there was no consent to the filing of the said amended defence.

Evidence of the plaintiff

9. The plaintiff gave evidence that he had been driving a motor vehicle since 1999 and that this included driving in Dublin, Naas and Carlow but mainly in Dublin. He described himself as a married man with two daughters and one son all of whom live at home. The witness described the accident as occurring at the junction of Cuffe Street and Cuffe Lane on a Saturday night at 8:15pm where there was a lot of traffic. He described a number of cars backed up and that he was in the first car and that he let the car in front of him move off and that his car was towards the middle of the yellow box. He was rear-ended and he described the defendant as admitting liability at the accident when she said to him "I am very sorry, I am completely at fault." Photographs were taken on mobile phones of the damage to the defendant's car and the photograph taken by mobile phone of his vehicle was not clear. He said that the gardaí arrived, did a U-turn but then moved off again and he felt duty bound to report the accident and did so, to Kevin Street Garda Station that night. The garda said that no one was injured so that he could leave it at that. However, he was dissatisfied with this and he described attending at Crumlin Road Garda Station where he met a ban-garda who told him he was quite correct to take the action he did in insisting on having the accident recorded. He said he was very concerned that the gardaí had not been willing to take a formal note of the accident on the night.
10. The next day he attended at Sundrive Road Garda Station and he was worried about his passenger and also about the lengths he had to go to ensure that it was reported.
11. This witness said that on the Monday following the accident he was contacted by his insurance company regarding the accident on Saturday night in order to assess his motor vehicle but he said that he wasn't able to move his body on that occasion and that first thing, the following Thursday morning he attended his general practitioner and was given Tramadol for pain and was referred to Naas Hospital for x-ray. He was put on difene medication but this was disastrous for him because he couldn't tolerate the medication and he was then given Tramadol and Voltarol for pain relief. He felt that the top half of his legs remained stationary even when he was trying to walk. He went for physiotherapy for one hour a week but after that, he had to go to bed because he found the pain too

severe for him and later he had physiotherapy but at a slower pace and yet still had to go to bed immediately thereafter. This witness described how he had three to four sessions with a Mr. Mick Spillane but felt that this was of no benefit to him. His two feet were unaligned and when he was examined by the physiotherapist in order to correct this, weight was placed on his back and the physiotherapist tried to realign his body by pulling on his hips and he said he found it stressful and strenuous and was only fit to go to bed after it. He took the view that he was so worn out by the physiotherapy that he felt that it was making him worse in 2018.

12. The plaintiff described the effect of these injuries on him as causing him to be very careful and that if he didn't feel right he didn't go to work and he didn't feel he could sit in a car for between one and two hours at a stretch. He described himself as not a person for slacking but that he couldn't go for walks with his wife because the pace was too fast but that he did walk at his own pace and he would have to take his time going along and that before the accident he was unaware of his spinal problems.
13. The plaintiff described how he first saw Mr. O'Toole, Orthopaedic Surgeon in May, 2018. The witness described how he knew that it was a question of mind over matter to some extent and that he had to keep going and that if he did not keep moving he would cease up, so in that regard he went swimming and walking and took half hour breaks and then went back to work. He described his condition as being worse as soon as the weather gets colder and that his whole shin area feels as if it wants to explode because of the pain in his legs and that is with him all the time. He said between his back and his legs he is not able to turn around really quickly. He says that if he is sitting the pain in his neck and shoulders goes through him and that he has to get up and walk away from it. He splits his working day starting at 2pm and that he pulls in and relaxes and walks and keeps going and that if he isn't able to keep going he just returns home. He has constant pain in his shins with a burning sensation right up through his body. He gave an example of how the previous week he had to wear a tracksuit and trousers as he was so cold and ceasing up. Prior to this he described himself as a walker and that he did hill climbing and normal pursuits.
14. Under cross-examination this witness confirmed that he was only the driver of his Mercedes motor vehicle and he described himself as having been a normally active person and that for five to six weeks in the summer of 2017 he went to Spain on holiday and that last Christmas for example he spent days away on holiday and that he did not go to Spain in the 2019 summer period. It was put to this witness that there were pictures of him on facebook during that period posted by his friends.
15. He agreed that it was a wet evening on the date of the accident and that the defendant's vehicle impacted the rear of his own vehicle. He denied that it was a very mild impact and that the only damage to his vehicle was to the paintwork. He described four malfunctions among which was one where the seatbelt would not retract properly and he was told that that would be looked at.

16. It was put to this witness that he never mentioned the personal injuries aspect of his claim at the time of the accident. Concerning his work pattern following this accident which happened on the Saturday night, he said that he did not work on the Sunday and that they had notification of the accident on the Monday. He said he worked in the ordinary way until he found that the seatbelts were not working but he couldn't work with faulty seatbelts. He said on the Wednesday following the accident he was not capable of doing any work or on the following Thursday, although he tried and wasn't able to. He described his motor vehicle as being examined on the 27th February, 2017 and on the 15th March, 2017.
17. It was put to this witness that he did 2,286 km in sixteen days or an average of 142.87 kms a day and he said he couldn't dispute the reading and that he couldn't move at the same time. Figures concerning his net income were put to him as follows:

2014:	€9,440
2015:	€6,956
2016:	€20,129
2017:	€14,880

and that in 2018 he had €23,039 profit and he said he couldn't explain the figures for 2018 and that he is in receipt of a pension since he was 66 years of age and that that would account for some of the increased income.

18. When it was put to this witness that his passenger brought no claim for personal injuries he said he didn't know that. It was also put to him that the defendant was in advanced state of pregnancy yet her body did not reach the steering wheel or make contact with it and that her vehicle was badly damaged as previously stated. On re-examination of this witness his earnings were again referred to as actually having been €15,217 in the year 2014, €15,975 in the year 2015, €4,229 in the year 2016 and €31,640 in the year 2019 and he agreed that 2019 had been a busy year for him and he agreed that in 2018 he earned €41,153. He agreed that he did not take off longer than one-month post-accident. His car had been passed just between one month and six weeks prior to the accident and he had no prior malfunctions on his car concerning the brakes which he felt were problematic afterwards.

Evidence of Alison McDonald General Practitioner

19. This professional witness gave evidence that her practice is at Friary Road, Naas, Co. Kildare and that she is five years in the practice. Since 2005 she confirmed that the plaintiff is a patient of the practice. He first came to her on 11th February, 2017 and he saw Dr. Fay on 17th February, 2017. She saw him first therefore on the Tuesday in the week following the accident and she described how he walked into reception complaining of pain in his neck, head, shoulder and chest and she said he had anterior chest pain of a significant dimension that day and that he also complained of lower back pain. She immediately referred him to Naas Hospital. He was prescribed physiotherapy and

medications for chronic pain. She described his lower back pain travelling down into his legs as being worse when walking and described this as an orthopaedic referral. He had one presentation in 2010 and from 2010 to 2014 he hadn't attended the practice. Her diagnosis was of mechanical neck pain and she found that he had a lot of muscle spasm and she felt that it was due to wear and tear and that there was no disc involvement and no soft tissue involvement and she said that time of his visits could be correlated definitely to the time of the accident and on 14th November, 2017 that his chest pain began at that time. She found a lump in the chest but she said that was coincidental and that there was a real problem with the lower back, neck, shoulder and chest and that he had restriction and mild neuropathy i.e. nerve pain in the leg. The MRI showed an extra bone growth which can cause pain. He gave a primary care referral for seven physiotherapy sessions and the aim was to enhance his mobility and to try prevent attacks of acute pain. He was referred on two years ago and was still waiting.

20. He presented within five days of the accident with lower back pain and this witness described this as lumbar spinal stenosis and gave her professional opinion that the impact of this accident contributed to making this condition worse. She described him as having new symptoms since the accident including a burning sensation in his legs. She said there that was no further investigation although he is on the waiting list for public orthopaedic intervention. In the interim the plaintiff was prescribed pain killers for pain relief and most recently she had referred the plaintiff to a pain specialist and that that consultation occurred in the last month. Spinal stenosis is a chronic condition and it is unlikely that the plaintiff would be pain free in her view in the future. This witness agreed that for the first five days following the accident the plaintiff had no neck or lower back pain but that within ten days he did complain of same. She said that the level of degeneration he had was not surprising for a person in their mid-sixties. The plaintiff said that there was a benign fat collection in the chest. It was put to her that it was a mild impact collision but she wouldn't think it was significant impact but she said that she agreed that the rest of his movements were painless and she was asked did she agree with Mr. Fenlon who said that there was a restriction in the neck but it was not painful and she agreed with that, and it was put to this witness that Mr. Fenlon will say that he is surprised that the plaintiff hasn't recovered from what was a low velocity accident and this witness replied that she would have expected him to have recovered.

Evidence of Mr. Pat Culleton Forensic Engineer

21. Mr. Culleton outlined his qualifications to the court and he is a chartered physicist, mechanical engineer and chartered scientist and he described the rear-ending which occurred in this accident and he said that the defence had supplied him with the assessor's computer printout from a Mr. John Barnville who said it was a light rear impact produced from the image which was a small thumbnail image and who described an ESP electronic sensory anti-lock braking service brake. He described a sophisticated car with electronic control that possibly related to the impact. He said that there was resistance to motion and that it was very distinctive push with impulse acceleration and that the picture relies on a good estimate to resistance to action. He said that an 0.3 impulse would give

you 11.5 miles per hour. This witness however described the Mercedes vehicle as moving and stopping and that there was substantial damage to the grill.

22. He described it as having a plastic bumper and that there was damage to the bonnet edge between the centre and the light reflection. This witness said that there were white spots on the photograph where the paint was knocked off and that the car is made of heavy gauged steel and that it was distorted and damaged and that indicates a substantial impact.
23. Reference was made to Mr. Barnville's report who had a desk top valuation and he read the description of the defendant's vehicle which same was indicative of substantial impact damage and that it rendered the car beyond economic repair. If the weights of the Volkswagen car are 1,076 kilos and agreed that the weight of Mercedes was 1,565 kilos and that it was a heavier vehicle. He said it was correct to say that the Mercedes had done approximately 2,000 km in ten days following the accident and he agreed was that was approximately correct.
24. Mr. Culleton agreed that the Mercedes repairs cost €563. He said that the Mercedes bumper was misaligned and that clips hold it in place and that there was no reference to the damage to the reinforcing bar. It was put to him that this was a very light impact to the Mercedes and he said that it was not enough impact to cause permanent damage to the bumper and that it was not severe but that it was a substantial impact and he said that the Mercedes can take a sufficient hit and that it was plausible that the problem was not damage to the seat belt, that it wasn't a replacement problem. He also said that the Volkswagen nosed down on breaking and that that was his presumption and he agreed that the damage to the Volkswagen was more considerable. He noted that in 2010 €14,000 was spent on repairs to the Defendant's vehicle and that it is hard to believe that now this damage is being explained and he disagrees that it is not significant impact and he knows from the damage that there was substantial impact to the Mercedes.
25. He thought severe breaking would reduce speed and he thought that the person was going at more than ten kilometres per hour and was doing a minimum of sixteen kilometres per hour and that the accident aftermath was similar to one he had seen, with travelling at that speed. He said that he thought the defendant had agreed that she was travelling at 25 kilometres per hour. He said that is not a slow speed in terms of impact potential and that it is simple momentum calculation both vehicles sustained the same impact but that it is just that the damage is different but not because the impact is less to the Mercedes than to the Golf car. This witness said that because the Mercedes was a heavier vehicle it gave it a lesser speed than the Volkswagen's energy which transferred from the Mercedes.
26. This witness indicated that there was certainly a probability of some injury to the plaintiff driving the Mercedes and that some people will be injured in such circumstances and others won't. He also added that it is the impulse acceleration from the rear which causes the injuries. This witness further indicated that where studies are carried out of an impact at three to five mph there is a change in velocity and that 50% of those will not be

injured. He described this accident as a minor impact but sufficient to cause injury and he said it was a substantial impact and that both vehicles sustained the same impact in terms of physics.

Ms. Helen O'Sullivan, the defendant

27. Ms. O'Sullivan indicated that she resides in Dublin and she said that she is familiar with certain parts of the city more than others and that on the night of this accident there had been very heavy rain and her wipers were on low at the time of the accident and that the rain was sufficient to cause drops on her coat. She described herself as on her way to a work colleague's celebration and that she was 37 weeks pregnant at the date of the accident. She described the night as a typical Saturday night with a fair amount of traffic. She was sure that she was driving at between 20 to 25 km and that she was in second gear in a queue of traffic with cars to the front and she said there were brake lights ahead of her and the lights were red and that she jammed on her brakes and that her car started to slow down and that she probably braked a second time. It was a wet evening and she hit the car in front and there was an impact to the car in front. She described her own vehicle as coming to a standstill and she went into minor shock. She didn't make contact with the steering wheel herself and she said she would describe it as a mild impact and she did get out of the car after a few moments. She confirmed the plaintiff's version of events insofar as each took a photograph on the mobile telephone of the other person's vehicle and also that the Defendant had admitted liability at that time. She thought that the plaintiff had suggested calling An Garda Síochána and that she could say that he tried to flag down a garda car. She described one-foot-long damage to the plaintiff's vehicle and she said that her own front grill was caved in and she was not aware at the time of this incident that her own vehicle had been crashed before and she described debris from her own vehicle on the ground and steam coming from her bonnet. This witness confirmed that the passenger in the plaintiff's vehicle made no claim against her. She confirmed under cross-examination that the estimate for repair to her own vehicle was €4,100 approximately and that €4,000 had been its pre-accident value and that the damage to her car exceeded the pre-accident value and that her vehicle was treated as a right off. This witness confirmed that she accepted her own motor assessor's analysis in that it was a moderate impact to the front of her vehicle and that she felt it was mild. She confirmed significant damage to her own vehicle.

Evidence of Mr. John Barnville, Motor Engineer, for the Defendant

28. Mr. Barnville gave his qualifications to the court and describes himself as a motor engineer and he gave evidence that the plaintiff suffered a light impact to his rear bumper. He said that no parts were replaced and agreed that the plaintiff's bill for repairs was just over €500. The Mercedes mileage was 640 kilometres and he said that was a significant number of kilometres on the clock. He said it was plastic front panel damaged on that vehicle. In relation to the defendant's vehicle he confirmed that same was previously written off with Aviva Insurance and that there was evidence of very poor repair and heavy corrosion on the front bonnet. Under cross-examination this witness agreed that he was relying on computer generalised photographs and that his analysis was based on a desk top analysis. He confirmed his qualification as having an honours

degree in motor vehicle and transports studies and that he was a member of the institute and he further confirmed that he considered it to be a light impact situation. He further confirmed that the same impact applied to both vehicles although the damage was different and that the Volkswagen Golf had absorbed more of the impact. Reference was made to the reinforced steel bar and he said it was clearly deformed and that there was moderate impact damage to the Volkswagen.

Evidence of Mr. Seamus Walsh, Forensic Collision Investigator called on behalf of the Defence

29. Mr. Walsh described himself as a forensic collision investigator with a city and guilds certificate and that he had been a garda for 35 years including having worked as a sergeant and that he was a qualified motor mechanic with a diploma in same and that he had attended 150 accidents including hit and run accidents and staged motor vehicle accidents. He also had experience as an auto motor engineer in crash data retrieval and he said that what was at work here concerned mathematics and physics and the dynamics involved with the movement of vehicles and that the movement is very central. This witness also stressed that he had court experience and referred to his report dated 16th September, 2019. This witness confirmed that reading the odometer on 15th March, 2017 and on 27th February, 2017 that in those sixteen intervening days the car had travelled 2,286 kilometres. This witness indicated that he didn't physically examine the second vehicle. He said that bumper to the plaintiff's vehicle was likely damaged at the rear bumper and was repairable and there was a slight misalignment at the side panel of the rear bumper. The estimate showed no parts replaced and he noted that the panel is one which is secured with plastic brackets and clicks into position by hand when the plastic bracket is not broken.
30. The evidence of this witness is that the rear of the vehicle the plaintiff's vehicle is designed to absorb the impact and that the load of the impact was on the bumper and that in terms of the chassis extension there was evidence of light damage consistent with light damage to the vehicle.
31. Regarding the Volkswagen Golf vehicle this witness said that the engineer who prepared the report noted that the vehicle had received a moderate impact to the front towards the rear direction. He described the damage as heavy frontal damage and that the car had been previously heavily damaged in the same area and he confirmed that it was treated as a total right off and that sub-standard components had been used in a previous repair and that inferior products were used in the previous repairs and that this resulted in corrosion. He described the plastic bumper on the Golf as designed to limit injury to pedestrians.
32. The evidence to this Court is that the Mercedes had advanced safety technology which affords greater protection to occupants. This witness took the view that even if the Volkswagen Golf was travelling at 10kph it would increase the speed of the Mercedes by 4kph and he said on those speeds that would be minimum impact. This witness was of the view that the relatively light impact had a more obvious effect on the Volkswagen Golf but that this was explained by the structure of the Volkswagen and its history.

33. Under cross-examination this witness said that he was not saying that there was no impact or that nothing happened in terms of impact.
34. He said that if there was a reasonable/moderate impact if there was steel damage that would not related to the speed to cause it. He said that it is moderate if the occupants move to a moderate degree.

Evidence of Mr. Gary O'Toole, UCD Associate Clinical Professor and Consultant Orthopaedic Surgeon

35. Mr. O'Toole indicated his qualifications to the court and referred to his reports of the 12th May, 2018 and the 4th June, 2019 and the referral by the general practitioner Dr. McDonald. Radiological investigation was done in Clane Hospital on the 6th June, 2017 and Mr. O'Toole stressed that the MRI was not available for him at the date of his report but that the report on MRI scan was available. The MRI report showed degenerative disc disease throughout his lumbar spine in the plaintiff with multi-level disc bulges and protrusion with facet joint hypertrophy and mild spinal stenosis. An MRI of the thoracic spine was also carried out and this was reported as normal.
36. An x-ray of the 16th June, 2017 showed mild degenerative changes in the plaintiff's hips and he also had an ultrasound scan of a legion on his left thoracic anterior rib cage done in Naas Hospital on 7th December, 2017 which was reputed to be consistent with a lipoma of this area. Mr. O'Toole stressed that the lipoma has nothing to do with this accident.
37. The terms of the patient's current condition at that time and the patient described to Mr. O'Toole pain of approximately between 4 and 5 out of 10. It was intermittent in nature which can increase in severity at times. He described using lumbar support in his car and is unable to carry out any domestic chores.
38. In terms of the amenities of life, the plaintiff described to Mr. O'Toole how he enjoyed walking which is now restricted as an activity for him. In his working life, he is involved in long shifts but he can no longer tolerate these shifts and must take regular breaks during the day. Pain in the lower back causes him to wake at night and also causes him to have difficulty getting to sleep. The plaintiff took fifteen days off work and had to take seven weeks off work in June, 2017 as a result of pain. Difficulties include soreness in the shins and decreased grip strength in the right hand in relation to the fourth and fifth ray of his right hand where he feels he cannot get a proper grip. On examination, of particular concern was straight leg raising, limited to 60 degrees bilaterally before the plaintiff felt tightness in his hamstrings and he has some pain with deep palpitation of his para lumbar vertebrae. His reflexes and neurological examination in his lumbar spine are normal. The plaintiff at that stage was attending physiotherapy in respect of his lower back neck and shoulder pain. He was also attending physiotherapy and pain remains constant and he is debilitated.
39. Mr. O'Toole stressed that it is his practice to judge scans himself and that on this occasion he only had the report available to him. He found degeneration in the joints but mild spinal stenosis. He found chronic wear and tear difficulties in the lumbar spine. In

general terms he said that 80% of the population suffer from low back difficulty at some stage but that prior to the accident the plaintiff had a normal experience. He described ten as the worst pain and four to five as intermittent with increased severity.

40. He described the plaintiff as having some pain down in the lower part of his legs and that he walks with a normal gait but he has difficulty on toe to heel walking which indicates muscular/neurological difficulties. He also found that he had pain in the lower back and shoulder and at the time of the accident when he saw him that he felt that his improvement had plateaued after sixteen months and did not expect him to improve.
41. With regard to his second report, the doctor stressed that on this occasion he did have a sight of the MRI scan and he did look at it and it was no surprise in that the examination was the same as on the previous occasion and he felt that the plaintiff had done all in his power to improve.
42. He reiterated his finding of stenosis i.e. narrowing of the spinal cord and degeneration and disc protrusion and he said it was a classic sign of this condition that the plaintiff found it easier to walk uphill not downhill but he said it was very difficult to diagnose but easy to tease out with history. He referred to the fact that the plaintiff was a sixty-six-year-old man in terms of his spine and his age. He found that he had straight leg raising with 600 degrees bilaterally and that the swelling on his left anterior lower ribcage was exquisitely tender to touch and was similar to a benign lipoma but he said this was not showing up on the MRI scan. He described the plaintiff as a sixty-six-year-old right hand dominant taxi driver who continues to complain of pain in the lower back, his neck and his shoulder subsequent to the accident in question.
43. The opinion of this medical witness is that the plaintiff's clinical situation has plateaued and he does not expect him to improve into the future and indeed he is pessimistic about him ever achieving his pre-morbid level of mobility.
44. Under cross-examination this doctor described the body's response to what is similar to a blunt trauma injury from behind as depending on the pre-accident body of the person concerned. He stressed that he was interested in cars himself and he noted that the plaintiff was out of work for a fifteen-day period. He felt that the plaintiff's reaction was that of "fight or flight" mode and he was very aware that the plaintiff had suffered stiffness and pain in his back over five days.
45. The doctor stressed that his patient told him that he had no immediate pain but that it had progressed in the days following the accident. He outlined his present complaints as consistent with his definition of same as set out in the MRI scan on radiological examination as of 6th June, 2017 and reiterated these and he stressed that his complaints are presenting as complaints consistent with the MRI scan and reports and he said that his difficulties were skeletal not muscular and that he has spinal stenosis and it is very typical of wear and tear in the lower back and that he has arthritis.

46. Mr. Fenlon Consultant Orthopaedic Surgeon prepared a report dated the 14th May, 2019. Mr. Fenlon noted on examination an overweight patient with restriction of rotation of his neck and extension but movements did not appear to be painful and found that in his opinion there was no spasm or tenderness of the para vertebral or trapezius muscles and he could illicit no neurological deficit in his upper limbs. He did note on examination an extremely stiff lower back and found that while the plaintiff could bring his fingertips to his mid-shins on forward flexion there was marked restriction of lateral flexion to right and left sides and extension of the back indicating significant degenerative wear and tear. Straight leg raising was bilaterally equal at 70 degrees in his opinion with no neurological deficit in his lower limbs and by way of incidental finding found a thickening which felt plaque like and he thought it was too firm to be a lipoma on the lower anterior chest wall. He agreed in his report that the MRI scan of the patient's lumbar spine from June, 2017 confirms multi-level degenerative wear with stenosis noted at L4/L5 and that the thoracic spine MRI scan was basically normal for his age.

In conclusion, he found that the plaintiff suffered a jolt to his neck and back in a rear ending incident in February, 2017 and while he said it appeared to have been a low velocity accident he is surprised he has not made a full recovery despite the fact that he has pre-existing long standing arthritis throughout his spine and that he does not need further medical input in the form of physiotherapy or manipulations which in his view would only make matters worse as he has severe arthritis and he didn't believe that this accident would result in advancing degenerative wear developing in his neck or back. This witness accepted under cross-examination that he had no back pain for seven years prior to the accident and he did agree that this was relevant and that he had being active but was not active pre-accident but was now very stiff and he said that there was marked wear and tear and yet he denied that he had no symptoms for seven years in his back and he denied that this was relevant to the accident and said that the man was older and cast doubt on developing back pain as a result of what he called a low velocity accident. This witness disagreed fundamentally with Mr. O'Toole's evidence with what was put to him the incident was a traumatic event and as such it would be known to cause injury of this type that trauma causes problems but he did not agree with this.

47. The defence was of the view that the plaintiff could not have sustained the injury due to what they called a "minimum impact" accident and their amended defence sets this out and relies on it. The plaintiff's counsel pointed out that the evidence does not point to a minimal contact that indeed there was significant contact and that technical evidence and the evidence of Mr. O'Sullivan referred to "moderate impact" and that the jolt to neck and back was referred to in the first line of Mr. Fenlon's conclusion is relevant to this.
48. Submissions on behalf of the defendant are to the effect that it is minimal impact and that on a global view of the evidence it was cosmetic scratching to his Mercedes in terms of material damage which occurred and that Mr. O'Sullivan's report sets out moderate change and that there a lot damage to the defendant's car. Mr. Walsh spoke about the movement of bodies in the car, Mr. Fenlon cannot understand why the plaintiff continues

to suffer and puts it down to the age of the man. He stresses that there was only paint damage to the bumper of the car.

Findings of fact

49. The entire case was defended on the basis that this was a minimal impact collision and that therefore there could not be the degree of injury or any injury as described by the plaintiff. The plaintiff came across as a credible witness who did not exaggerate the situation. However, his injuries are quite specific as set out in the report of Mr. O'Toole who stresses that these difficulties are skeletal not muscular and that the plaintiff has a spinal stenosis which is very typical of wear and tear in the lower back and that he has arthritis. Of relevance to the issue is that this witness the plaintiff himself said he had no back pain for seven years prior to the accident and now very stiff and although Mr. Fenlon the medical witness called on behalf of the defence disagrees fundamentally with Mr. O'Toole's evidence, I prefer the evidence of Mr. O'Toole who stresses that the incident was a traumatic event and as such it would be known to cause injury of this type and that trauma causes problems.
50. Without the agreement of the plaintiff's legal team the defence produced an amended defence claiming that this was a minimum impact accident and this was being relied on. But the evidence relied on by the plaintiff's counsel stresses that the evidence in this case did not point to a minimal contact and that the technical evidence bears that out especially the evidence of Mr. O'Sullivan who refers to moderate impact and even in Mr. Fenlon's report in the first line he refers to a jolt to the neck and back.
51. The evidence of Mr. Pat Culleton describes the Mercedes as having an ESP electronic sensory anti-lock braking service brake. The description was of a sophisticated car with electronic control that possibly related to the impact. He said there was resistance to motion and that it was a very distinctive push with impulse acceleration. Mr. Culleton however described the Mercedes vehicle as moving and stopping and that there was a substantial damage to the grill. He said that the car is made of heavy gauged steel and that it was distorted and damaged and that that indicates a substantial impact.
52. Although Mr. Culleton agreed that the Mercedes repairs cost a mere €563 he still held the view that while it was not severe it was a substantial impact and he said the Mercedes can take a sufficient hit and that it was plausible that the problem was not damage to the seat belt that that wasn't a replacement problem and it was later accepted by both sides that the seat belts were not an issue in this accident.
53. He felt and proposed this as a presumption on this part that the Volkswagen nosed down on impact and he made the point that the €14,000 spent on the Volkswagen by way of repairs in 2010 that was significant and the overall evidence was that the components which may have been used to repair the Volkswagen at that stage were of poorer quality.
54. Mr. Culleton accepted that while there was a simple momentum calculation that both vehicles sustained the same impact but he said that notwithstanding that it's just that the damage is different because the impact is less to the Mercedes than to the Volkswagen

Golf vehicle and he said the reason for this was because the Mercedes was a heavier vehicle which give it a lesser speed than the Volkswagen's energy which transferred from the Mercedes and he said that it was the impulse acceleration from the rear which causes the injuries and his final word was that although this was minor incident it was a substantial impact and that both vehicles sustained the same impact in terms of physics. Mr. John Barnville, motor engineer called on behalf of the defendant actually agreed with this point and he said that the same impact applied to both vehicles although the damage was different and that the Volkswagen Golf had absorbed more of the impact.

55. Mr. Seamus Walsh forensic collision investigator called on behalf of the defendant described this accident were the engineer who prepared the report noted that the vehicle had received a moderate impact to the front in front towards rear direction in terms of the Volkswagen Golf and he described heavy frontal damage and that the car had been heavily damaged in the same area and he confirmed that it was now treated as a total right-off and that substandard components had been used in the previous repair i.e. inferior products and that this resulted in corrosion.
56. He contrasted this with a Mercedes which had advanced safety technology therefore affording greater protection to occupants. He agreed under cross-examination that he was not saying that there was no impact or that nothing had happened in terms of impact. He said if there was reasonable/moderate impact if there was steel damage that would not be related to the speed to cause it and defined moderate impact where the occupants move to a moderate degree.
57. Having analysed this evidence from a technical point of view it seems to this Court that the professional witnesses called on behalf of the plaintiff provide a significant analysis in terms an apparently minor impact can still cause substantial damage/injuries.
58. The clinical evidence from Mr. O'Toole was impressive and he stressed this was a not soft tissue injury this was degeneration a finding of stenosis i.e. narrowing of the spinal cord and degeneration and disc protrusion and he said a classic test was that the plaintiff found it easier to walk up hill not downhill but he said it is very difficult to diagnose until one teases out the patient's history. Relevant to this was the finding of fact here that the plaintiff had no back difficulty for seven years prior to the accident but now had a marked wear and tear and stiffness and had a loss of the amenities of life as described by him which are accepted. His finding of intermittent but severe pain is borne out by the evidence of the plaintiff and medical facts. Mr. O'Toole's evidence is that his condition has plateaued and he does not anticipate any improvement.

Causation

59. In this case, the factual causation is a simple matter, on the balance of probabilities, I accept the evidence given by the plaintiff, that the accident occurred as a result of the unsafe driving of the Defendant.
60. In the factual matrix of this particular case, but for the defendant's failure to drive her vehicle in a safe manner, the plaintiff would not have suffered the injuries he did or as I

have mentioned *supra*. In this nuanced case, on the balance of probabilities the accident was caused by the Defendant's negligence, breach of duty including statutory duty and was reasonably foreseeable.

Quantum

61. In *Shannon v O' Sullivan* [2016] IECA 93 is particularly instructive when considering quantum and the amount of an award to grant to a plaintiff.
62. I am satisfied on the balance of probabilities, that the impact of the plaintiff's vehicle probably exceeded the threshold of velocity which resulted in the plaintiff suffering injuries. I base my findings on the evidence of the plaintiff and the fact that an impact can occur with minor damage to vehicles which can cause injury to an occupant of a vehicle. Construction of bumpers with smooth flexible covers is such that relatively severe bumper to bumper impacts can occur where no visible exterior damage is evident as appears from the evidence herein. In respect of the medical evidence, the court is satisfied that the plaintiff suffered injuries as a result of the road accident, and these are dealt with in detail in the medical report of Mr. Gary O'Toole.
63. It is important to recognise that the plaintiff has according to Mr. Gary O'Toole, Consultant Orthopaedic Surgeon, intermittent but severe pain, he also has pain on both his lower limbs, which manifests itself as a burning sensation, and he continues to complain of pain in his lower back, his neck, and his shoulder subsequent to the accident of the 11th of February, 2017. Mr. O'Toole concludes that: "his clinical situation has plateaued and I do not expect him to improve into the future."

Conclusion

64. I am satisfied on the balance of probabilities, that the impact of the defendant's vehicle could have exceeded the threshold of velocity which could result in the plaintiff suffering the injuries he described. I base my findings on the evidence of the plaintiff and the fact that an impact can occur with minor damage to vehicles which can cause injury to an occupant of a vehicle. Construction of bumpers is such that relatively severe bumper to bumper impacts can occur where no visible exterior damage is evident. The forces at work on even a moderate impact are much less than those for occupants who suffer injuries when they are hit from behind.
65. In respect of the medical evidence, the court is satisfied that the plaintiff suffered and continues to suffer from the injuries he described as result of the road accident, and these are dealt with in detail in the medical report of Mr. Gary O'Toole.
66. In conclusion, on the balance of probabilities, the Court accepts the plaintiff's version of events and recognises the injuries sustained by the Plaintiff and the resulting loss of the amenities of life he suffered and continues to suffer from as a consequence of the incident, which is the subject matter of the within proceedings. Therefore, in the particular circumstances of this case, and having regard to the Book of Quantum, I propose to award damages of €50,000 for pain and suffering to date, €15,000 for pain and suffering into the future, and special damages agreed and determined at €4,193.82.