

**THE HIGH COURT
GALWAY**

[2021] IEHC 341
[RECORD NO. 2020 492 P]

**BETWEEN
PATRICIA DUNNE**

PLAINTIFF

AND

**JOSEPH CREGGY, AINE FEELEY AND THE MOTOR INSURERS' BUREAU OF IRELAND
DEFENDANTS**

JUDGMENT delivered on 7th May 2021 by Mr. Justice Tony O'Connor

1. On the 26th January 2018 the plaintiff then aged 60 was driving her car when it was hit violently and in such a way that it spun around and ended up close to a wall. It was a frightening experience for which the defendants accept liability. The Court is asked to assess the general damages to be recovered by the plaintiff.

Removal to Mullingar

2. The ambulance crew took the plaintiff and her husband who was a passenger to Mullingar Hospital.

Left hand

3. The plaintiff's principal pain initially was in her left hand, in fact the second, third and fifth left hand fingers were broken; more accurately oblique fractures of her second, third and fifth metacarpal bones were diagnosed. They were wrapped in plaster of paris at Mullingar Hospital and subsequently treated conservatively. The plaintiff attended the Mater Hospital on her return home. The plaintiff according to Mr. Macey, consultant orthopaedic surgeon, in his report of the 25th March 2019 had differences between grip strength and finger alignment when compared with her right hand. After displaying photographs, he commented upon the swollen appearance of the distal interphalangeal joint of the right little finger and the recession of the left fifth metacarpal head which suggests shortening of this fracture. Having viewed the plaintiff's hand, the Court describes the past and present condition as mild to moderate. Physiotherapy helped the plaintiff particularly in regard to these complaints. Since 2020 the plaintiff merely has some difficulty with zips, jars and picking things up with her left hand.

Sternum left shoulder

4. The safety belt and the sudden impact caused a fracture of the plaintiff's sternum and bruising in the upper right hemi thorax. The plaintiff struggled to get up the stairs for a few weeks. She and her injured husband slept downstairs during that time. She thinks that she slept on a couch in their sitting room for three or four weeks while her husband slept on a makeshift bed. Her sleep pattern was severely impacted. Mr. Macey's supplementary report of the 15th January 2020 noted that shoulder movement was then satisfactory on both sides with some residual restriction in internal rotation on the left. Again, these mild to moderate injuries have largely resolved with some residual restrictions.

Low back pain

5. The low back pain mentioned by the plaintiff was not commented upon by Mr. Macey whereas Mr. Gleeson in his report following his examination on the 14th January merely said that the plaintiff by then no longer had any difficulty with her chest or lower back. So the plaintiff's low back pain, however it was caused, was rather minimal.

Psychological

6. The plaintiff understandably lost confidence in driving and more particularly when navigating in various circumstances. She used to drive herself and her husband up and down the country. The court found the plaintiff to be candid about the effects on her driving and whenever she is reminded of the terror and trauma that she suffered through as a result of the defendants' negligence. The plaintiff has benefitted from cognitive behaviour therapy ("CBT") which she started thanks to the advice of her own general practitioner. The plaintiff was referred by her solicitor to Dr. Mary Maguire for an opinion in the context of this litigation. Dr. Maguire reported as of the 23rd January 2021 that the plaintiff remained stressed by dermatitis which flared up after the accident. Dr. Maguire opines that the acute symptoms of post – traumatic stress disorder have reduced in intensity. The lack of sleep, crying and nightmares endured by the plaintiff for the initial few months have decreased if not evaporated largely at this stage. The plaintiff does not like taking tablets.

The trial

7. The plaintiff mentioned her anger at what happened and is certainly aggrieved about the suffering (physical and psychological), which she has had to endure. She maintained her composure throughout the hearing, up to the end of the cross – examination by Mr. Walsh for the defendants. The plaintiff's summary was that: -

"I lost the strength of my arm and my neck and when I'm driving I'm terrified and how come I'm left like that? So I'm not lying about nothing. Do you think I wanted this accident to happen? I wouldn't have wished it for anyone. I was in the car, not the doctors".

8. This partial outburst was in reply to the question posed by Mr. Walsh based upon Professor Thakore's report of the 1st April 2021 which opined that the plaintiff has not suffered a recognisable psychiatric injury. In fact, there is little contention between the reporting experts about the good prospects of a full recovery. In this regard the Court notes the opinion and prognosis of Dr. Mary Lynch dated 20 November 2020 and the last sentence of Dr. McGuire's report of 23 January 2021.

Conclusion

9. In setting out the above summary, the Court has regard to the judgment of Irvine J. (as she then was) in *Nolan v. Wirenski* 25th February 2016 [2016] IECA 56. The questions posed by Irvine J. inform the summary which is set out above.
10. Counsel made submissions having regard to the book of quantum. Page 45 of the book of quantum for hand fractures and page 73 for the chest were referenced by counsel for the defendants. Counsel for the plaintiff agreed that damages for chest bone injury fall within the band of €13,700 to €45,900 while they referenced the band of €22,000 to €60,900

for a shoulder arm complaint. The court does not find that band to be relevant. Both sets of Counsel are agreed that there is no guided band for the psychological complaints. Having regard to the facts that it is now 40 months since the trauma, the plaintiff has physically recovered bar the continuing difficulties with her left fingers and that CBT has helped the plaintiff considerably, the Court awards €36,000 for general damages to date. The future is brighter for the Plaintiff. The Court recognises the psychological dent and undermining of the plaintiff whether one describes it as continuing driver anxiety (Professor Thakore), reduced symptoms of PTSD (Dr. McGuire) or no recognisable psychiatric as opposed to psychological injury (Professor. Thakore). The plaintiff will also have some residual left hand symptoms for the rest of her life. The appropriate award given the exercise of proportionality required in the context of the maximum general damages for personal injuries which may be awarded to a severely disabled person for past and future pain and suffering is €20,000 for the future. That totals with agreed special damages to a sum of €56,737.00 which is ordered to be paid by the defendants to the plaintiff.

Solicitors for the plaintiff: Tracey Solicitors

Solicitors for the defendants: Shaffrey & Company

Counsel for the plaintiff: Michael Byrne SC and Mark Byrne

Counsel for the defendants: Edward Walsh SC and John G O'Donnell