

# THE HIGH COURT

[2024] IEHC 102

[Record No. 2017/6737P]

**BETWEEN**

**PADRAIG LOWRY**

**PLAINTIFF**

**AND**

**DARYL THOMPSON**

**AND**

**D. THOMPSON CONTRACTING LIMITED**

**DEFENDANTS**

**JUDGMENT of Ms. Justice Reynolds delivered on the 19th of January 2024**

## **Introduction**

1. The plaintiff's claim is for damages for personal injuries sustained by him in a life altering farm accident which occurred in January 2015, resulting in the amputation of his dominant right lower arm.
2. At the time of the accident, the plaintiff (who was then just 22 years of age) was working for the defendants in New Zealand. The first named defendant had carried out a recruitment drive in Ireland in June 2014 for seasonal farm workers and the plaintiff successfully applied for a position.

3. He travelled to New Zealand in October 2014 and was working with the defendants for several months prior to the accident.

4. The plaintiff's injuries have had devastating and life changing consequences for him. His ability to run the family farm has been significantly impaired, and his normal enjoyment of life has been drastically curtailed.

### **Background**

5. The plaintiff is a farmer, having obtained a certificate in agricultural studies. He comes from a farming background; both his father and grandfather operated a mix of farming enterprises including dairying, cattle, and tillage. The family farm based in the Midlands comprises approximately 251 acres.

6. The first named defendant, Mr. Thompson, is a farmer and proprietor of the second named defendant, D. Thompson Contracting Limited, which carries out farming contract works based in Invercargill, New Zealand.

7. The plaintiff became aware of a job opportunity involving seasonal farming work in New Zealand and contacted the first named defendant expressing his interest. The parties met in Kells, County Meath, in late June 2014 resulting in the plaintiff's engagement to work for the defendants.

8. The plaintiff travelled to New Zealand in October 2014 and thereafter commenced work with the defendants. The accident occurred in late January 2015 in circumstances where the plaintiff contends that the machinery supplied by the defendants malfunctioned, thereby causing the injuries complained of.

### **The proceedings**

9. By Order of the High Court (Humphreys J.), dated 24 July 2017, the plaintiff obtained leave to issue proceedings against the defendants outside the jurisdiction pursuant to Order 11, rule 1(e) of the Rules of the Superior Courts.

**10.** Order 11, r.1(e) of the Rules of the Superior Courts provides that a plaintiff may serve proceedings outside the jurisdiction if:

*“(e) the action is one brought to enforce, rescind, dissolve annul, or otherwise affect a contract, or to recover damages or other relief for or in respect of the breach of a contract:*

*(i) made within the jurisdiction; or*

*(ii) made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction;”*

**11.** The Order provided the defendants with a period of six weeks from the date of service of notice of the proceedings within which to enter an appearance.

**12.** It was open to the defendants to apply to set aside service of the proceedings upon them prior to entering an appearance but they chose not to do so.

**13.** Further, no appearance was entered on their behalf.

**14.** By Order of the High Court (Cross J.) dated 29 June 2020, judgment in default of appearance was granted. In granting the Order, the court was satisfied, *inter alia*, that good service had been affected on the defendants and that there was default in entering an appearance.

**15.** The Order further provided:

*“...That the Plaintiff do recover against the First and Second Named Defendants such amount as the Court may assess in respect of the Plaintiff’s claim herein for damages and the costs of suit such costs to include the costs of this Motion and of the assessment when adjudicated and that such assessment be had before a Judge without a jury and be set down for hearing accordingly”.*

**The evidence**

16. At the outset, I was satisfied having regard to the evidence before the court that the order for judgment in default of appearance had been properly served on the defendants and further, that the defendants were adequately and properly notified of the hearing date for the assessment of damages (14 November 2023). There was no appearance by or on behalf of the defendants on that date and the court proceeded to hear the case.

17. Evidence was heard from the plaintiff and several expert witnesses whose reports were also before the court.

**The plaintiff**

18. The plaintiff stated that he was reared on the family farm and that it was always his intention after college to return home to assist his late father, eventually taking over the running of the farm from him. He stated that he had two younger sisters, neither of whom had shown any interest in the farm and so the burden fell to himself and his mother to keep the business going.

19. He recounted how he heard of a job opportunity in early 2014 to do seasonal farming work in New Zealand. He met with Mr Thompson who offered him employment. That meeting took place in County Meath and the terms of his employment were agreed at that time.

20. The plaintiff travelled to New Zealand in October 2014 with the intention of returning to Ireland in March 2015.

21. The plaintiff described the day of his accident in late January 2015 and how events unfolded. In his evidence, he stated there was a problem with the combine harvester that he was operating. It became apparent that there was a blockage in the chute. He stated that he switched off the machine and got the appropriate tools to rectify the problem. Unfortunately, a safety alarm which should have alerted him to the fact that there were dangerous moving

parts still whirling in the machine malfunctioned and/or had been deactivated. In any event, as the plaintiff sought to remove the oats wedged in the harvester, his right arm was sucked into the moving parts of the machine, thereby causing his right hand and lower arm to become entangled, with devastating consequences.

**22.** The plaintiff stated he suffered excruciating pain and thereafter went into shock. Fortunately, two workers came to his immediate assistance and alerted the relevant authorities. The plaintiff was thereafter removed by local air ambulance service for appropriate medical treatment. He stated he was initially treated in Southland, New Zealand for approximately three weeks before returning to Ireland and his admission to the National Rehabilitation Centre.

**23.** His treatment in New Zealand consisted of amputation below the right elbow together with a skin graft taken from the right thigh to cover the exposed area of his residual arm. Throughout this period, he was treated with high doses of morphine and other painkillers to control the nerve pain associated with his limb loss.

**24.** The plaintiff stated that he found his return home to Ireland exceptionally difficult as he was acutely conscious of the loss of his lower arm. He continued to suffer from severe pain, particularly when his morphine was switched to a milder and less potent opiate resulting in worsening pain. Thereafter, the plaintiff was trialled on various medications, but he stated he soon realised that he would have to live with some level of pain (described as 4 out of 10) going forward and did not wish to become dependent on medication.

**25.** The plaintiff described how he came under the care of Ms Breda Clancy, Prosthetist/Orthotist, in May 2015 with a view to restoring some function in his right dominant arm as the functional deficit was impacting his ability to resume farming work and to carry out many of his day-to-day activities. He described how to date he has been fitted with several upper limb prostheses including two passive hands, three hooks and a myoelectric

hand, all of which have been funded by the Health Service Executive. The plaintiff stated that he requires to alternate between the prostheses, depending on the task/s that he is carrying out.

**26.** In evidence, he stated that his domestic and social life have been significantly curtailed since the accident in circumstances where he has difficulty carrying out many of his pre-accident activities. Further, he remains very conscious of his prosthetic arm and tries to avoid unfamiliar surroundings or social situations where he feels it may become the subject of attention.

**27.** In addition, the reduced function of his right arm has impacted upon his ability to carry out many of his pre-accident farming activities. Matters were further compounded by his father's premature death in 2018. He stated that dairy farming was no longer viable as he was unable to carry out any husbandry duties and whilst his focus then turned to tillage, only 60% of the land was suitable for that purpose.

**28.** The plaintiff stated that he would have been unable to keep the farming enterprise afloat had it not been for the unwavering support of his mother who has stepped in to take on tasks which the plaintiff would otherwise have been expected to do. To keep the farming business afloat, additional machinery was purchased to assist him in carrying out a lot of the regular mundane farming tasks that he would otherwise have been unable to entertain. He stated that the family are regularly assisted by obliging neighbours, particularly in the busy season.

**29.** In addition to his physical injuries and the limitations they have imposed on his ordinary daily living, the plaintiff gave evidence of having suffered significant psychological sequelae including sleep disturbance, flashbacks, panic attacks and other debilitating symptoms. He stated that his personality has changed; he is now less outgoing and sociable and is very conscious of his prosthesis which he constantly tries to disguise. He stated that he

worries about the future and the impact of his physical limitations to his domestic and family life. His medical advisors have recommended that he attend for cognitive behavioural therapy.

**30.** The plaintiff stated that he is further precluded from returning to many of his pre-accident leisure activities, including swimming, hurling, and cycling. This is a further source of upset and distress for him.

**Breda Clancy**

**31.** The plaintiff was referred to Ms. Clancy, Prosthetist/Orthotist, for prosthetic assessment in late 2015 and remains under her care. Ms. Clancy gave evidence that to date the plaintiff has been fitted with diverse types of prostheses, having regard to the nature of the tasks he is carrying out at any given time. She stated the plaintiff's initial priority at referral was to get back working and it was only subsequently that they examined options for good aesthetic effect.

**32.** Her evidence was that whilst there is still muscle power in the residual limb, the remaining short lever arm effectively reduces the functional strength of the plaintiff's limb. She stated that he continues to suffer from altered sensation in the limb and intermittent severe phantom pain in the right upper limb and right shoulder, consistent with over-use on the non-amputated side.

**33.** Her assessment of the plaintiff's prosthetic needs going forward are as follows: -

- (1) Body Powered €9,890 (every 1.5 years for life);
- (2) Cosmetic €5,700 (every 1.5 years for life);
- (3) Myoelectric €60,500 (every 5 years for life);
- (4) Gloves €2,850 (every year for life);
- (5) High-definition Dorset silicon €12,000 (every 1.5 years for life);
- (6) Spare body powered €9,890 (every 4.5 years for life);

- (7) Spare high-definition €12,000 (every 4.5 years for life);
- (8) Spare myoelectric €60,500 (every 4.5 years for life);
- (9) OT myoelectric training €800 per day (as required).

**William J. Martin**

**34.** Mr. Martin, Agricultural Consultant, gave evidence of having inspected the family farm and financial accounts for the purpose of ascertaining the extent of farm losses incurred. He confirmed that the family farm was historically operated on a mix of enterprises including dairying, dry cattle, and tillage.

**35.** He analysed the farm accounts for the period 2015 to 2020 and stated that the farm has always shown a net profit and is doing extremely well.

**36.** In assessing the impact of the plaintiff's injuries on his farming career and income earning potential, Mr. Martin stated as follows: -

- “• *He has been unable to develop a dairy cow enterprise on the farm.*
- *He is now constrained to operating a dry cattle and tillage system of farming*

*with:*

*(a) The use of suitable machinery capable of being operated with his handicap.*

*(b) Relying on support labour.”*

**37.** In summary, Mr. Martin assessed the farm losses due to the plaintiff's incapacity under the following three headings: -

- (a) Machinery investment;
- (b) Support labour for cattle/tillage system; and
- (c) Loss of income potential – dairying versus cattle/tillage.

**38.** Undoubtedly the plaintiff incurred financial expense arising from investment in farm machinery to assist him with tasks that he would otherwise be precluded from carrying out.



However, in respect of the other losses claimed, namely support labour and loss of income potential, I must consider the premature death of the plaintiff's father who would otherwise have been available to assist on a fulltime basis on the farm and the fact that no actual losses accrued during the relevant period.

39. Further, it was clear from Mr Martin's evidence that the farm continues to do well, and that the plaintiff is "an excellent farmer."

### **Nigel Tennant**

40. Mr. Tennant, Consultant Actuary, provided an actuarial assessment of the plaintiff's financial losses.

41. He assessed the special damage claim as follows: -

- Past farm losses (including machinery costs and loss of income) €194,954.00
- Future farm losses (to age 65 at €672 net weekly loss) [000] €981,120.00
- Future prosthesis costs €3,651,841.00
- Future medical care (CBT) €1,500.00

### **Analysis**

42. It is clear from the evidence that the contract of employment was entered into between the plaintiff and the defendants in County Meath and the proper law of contract is Irish law.

43. Whilst the defendants initially instructed an Irish firm of solicitors to engage with the plaintiff's solicitors after service of the proceedings, no further correspondence ensued, and no appearance was entered. The matter now comes before this Court for an assessment of damages in circumstances where judgment was granted on 29 June 2020.

44. Undoubtedly the plaintiff sustained a life altering injury which had a profound effect on him as outlined in his evidence. He has taken a very pragmatic and stoical approach to his situation and prioritised a return to work from the outset. He remains unable to resume some of his farming duties, in particular heavy-duty activities and those tasks requiring bimanual

dexterity, despite significant investment in specially adapted farm machinery. It is to his credit that the farm has at all times continued to do well, despite the physical limitations that his injury has imposed on him.

**45.** To date, the funding for his prosthetic needs have been met by the Health Service Executive but in the event that the within judgment is enforced as against the defendants, the plaintiff will thereafter be required to meet these costs.

### **Issue of quantum**

**46.** This is a case to which the Book of Quantum applies, the proceedings having issued prior to the commencement of s.99 of the Judicial Council Act 2019.

**47.** In assessing the level of general damages, I am mindful that any award must be reasonable and proportionate having regard to the circumstances of this case.

**48.** The plaintiff has suffered a lifelong and disabling injury which occurred when he was just 22 years of age. He is now left with a permanent disability and will require ongoing medical care as outlined above. He has suffered and continues to suffer significant pain and discomfort at the site of the injury together with ongoing adverse psychological sequelae. His quality of life has been significantly impaired, and he has been precluded from returning to many of his pre-accident recreational activities. Further his ability to carry out his farming duties has been curtailed and he requires specialised machinery to carry out heavy duty activities.

**49.** In all the circumstances, I assess general damages as follows:

(a) Damages for pain and suffering to date - €175,000.

(b) Damages for pain and suffering into the future - €75,000.

**50.** In relation to the pecuniary loss claim, I am satisfied that no actual farm losses have accrued for the reasons as outlined above.

**51.** In respect of the other items of damage claimed, I propose to award the following: -

Machinery costs (to date and into the future) - €150,000.

Future prosthesis costs - €3m.

Future medical care (CBT) - €1,500.

**52.** The total award therefore is a sum of €3,401,500.00. The plaintiff is entitled to costs, to include any reserve costs, to be adjudicated in default of agreement.