

THE HIGH COURT

2019 No. 9062 P.

IN THE MATTER OF A FATAL INJURIES CLAIM PURSUANT TO PART IV OF THE CIVIL LIABILITY ACT 1961 (AS AMENDED)

BETWEEN

ALISON WOLOHAN

PLAINTIFF

AND

PATRICK MCDONNELL

DEFENDANT

**JUDGMENT of Mr. Justice Garrett Simons delivered on 26 March 2020**

**INTRODUCTION**

1. This judgment addresses a net point of law in respect of fatal injuries claims pursuant to Part IV of the Civil Liability Act 1961. Specifically, it addresses the question as to whether it is necessary for the statutory dependants of a deceased, who are of full age and not under any legal disability, to obtain court approval for a proposed settlement of a fatal injuries claim. On the facts of the present case, all of the statutory dependants of the deceased are now of full age. (The youngest dependant reached his age of majority in October 2019, shortly prior to the institution of these proceedings).
2. For the reasons set out in detail below, I have reached the conclusion that court approval is not necessary in the present case. This conclusion highlights an anomaly in the treatment of (i) those claims which are compromised on the basis of the (intended) parties agreeing to an assessment made by the Personal Injuries Assessment Board (“PIAB”), and (ii) those which are compromised on some other basis. The approval of the court is always necessary where the (intended) parties agree to accept a PIAB assessment. In all other circumstances where there is agreement between the dependants, the approval of the court will generally only be required where one or more of the statutory dependants is a minor or otherwise under a legal disability.
3. As explained towards the end of this judgment, notwithstanding my conclusion that court approval is not strictly speaking necessary, I will make certain orders in this case. I do this in circumstances where the representative plaintiff has brought the matter before the court for directions, and to avoid any unnecessary delay in the payment out of the settlement.

**TECHNICAL TERMS USED IN THIS JUDGMENT**

4. A number of technical terms will appear throughout this judgment, and it may be of assistance to explain these briefly now. First, reference will be made to the “*statutory dependants*” of the deceased. This refers to those members of a deceased person’s extended family (as defined) who are entitled to claim damages for wrongful death. It should be emphasised that a statutory dependant who comes within the definition will not necessarily have been *financially* dependent on the deceased as of the date of death. Put otherwise, the concept of dependency has a broader meaning in this context than it does in everyday speech.

5. Secondly, reference will be made to the "*representative plaintiff*". This is the person in whose name proceedings have been brought on behalf of all of the other statutory dependants. Although that person is the only plaintiff formally named in the proceedings, he or she represents the other dependants. On the facts of the present case, the representative plaintiff is Alison Wolohan, the deceased's eldest child.
6. Thirdly, reference will be made to a type of damages known as "*the solatium*". This is a statutory sum allowed as compensation for mental distress caused by the wrongful death. It is currently fixed at a maximum of €35,000.
7. Finally, the shorthand "*the CLA 1961*" will be used, where convenient, to refer to the Civil Liability Act 1961.

#### **FACTUAL BACKGROUND**

8. These proceedings arise out of a tragic road traffic accident which occurred on 13 February 2016. The accident resulted in the death of Jacqueline Wolohan ("*the deceased*"). The deceased had been driving on the M4 motorway near Kinnegad when her vehicle was struck by a vehicle being driven by the defendant. The deceased died as a result of the severe injuries which she received in this accident. The deceased's teenage son, Andrew, and one of his friends, who had both been passengers in her car, also suffered personal injuries. These personal injuries are the subject of separate legal proceedings.
9. The defendant has subsequently pleaded guilty to a charge of dangerous driving causing death.
10. The deceased had been a widow, and has been survived by her three children, Alison, Sarah and Andrew; and by her father, John. As of the date of the accident, the two younger children, Sarah and Andrew, were both financially dependent on the deceased, and the deceased provided accommodation, care and support to them. The deceased had also provided care for her elderly father.
11. To her great credit, the deceased's eldest daughter, Alison, undertook responsibility for the care and financial support of her younger siblings and her grandfather. In particular, Alison brought Andrew to live with her in her home, and also supervised the care of her grandfather.
12. Alison undertook responsibility for pursuing a claim for damages against the defendant for the wrongful death of the deceased. This claim has been pursued on behalf of all of the statutory dependants.
13. To assist the reader in understanding the progress of the claim, it is necessary to pause briefly, and to explain the procedure governing fatal injuries claims. As a result of amendments introduced under the Personal Injuries Assessment Board Act 2003 ("*the PIAB Act*"), personal injuries proceedings (including fatal injuries proceedings) cannot normally be brought without the prior authorisation of the Personal Injuries Assessment Board ("*PIAB*"). It is a necessary first step, therefore, for a claimant to apply to PIAB for

an assessment of damages. The assessment is then notified to the claimant and the respondent, i.e. the party alleged to have caused the personal injuries. The legislation provides for two contingencies as follows.

- (i). If either the claimant or respondent *rejects* the assessment, then PIAB will issue an authorisation which authorises the claimant to institute legal proceedings.
- (ii). If the claimant and respondent both *accept* the assessment, then the assessment becomes enforceable as an "order to pay". The payment of the amount specified in an order to pay constitutes a "satisfaction" of the claimant's personal injuries claim. In the case of a fatal injuries claim, an *additional* procedural requirement must be complied with as follows. An application must be made to the appropriate court for approval of the acceptance of the assessment (section 35 of the PIAB Act 2003). I will return to consider this requirement in further detail towards the end of this judgment.

14. On the facts of the present case, PIAB notified its assessment to the solicitors acting on behalf of Alison Wolohan, Thomas Loomes & Co., on 28 August 2019. The assessment was for a sum of €216,585.50, made up as follows.

Loss of dependency	176,240.00
Solatium (mental distress)	35,000.00
Funeral expenses	5,345.50

15. As required under section 21(3) of the PIAB Act 2003, the assessment specified the proportion of the damages to which each of the statutory dependants was to be entitled.
16. This offer was rejected by Alison Wolohan on behalf of the statutory dependants. Shortly thereafter, the insurance company acting on behalf of the defendant, Allianz, made an improved offer of €241,240. The insurers also indicated their agreement to pay the legal costs associated with the court approval ruling (such costs to be taxed in default of agreement). The terms of settlement have since been set out in a letter dated 26 November 2019 from Allianz to Thomas Loomes & Co. The letter records the basis on which the statutory dependants wish to have the damages apportioned.
17. The within proceedings were instituted on 25 November 2019. Although Alison Wolohan is the named plaintiff, the proceedings are being pursued on behalf of all of the statutory dependants of the deceased. I will refer to Alison as "*the representative plaintiff*" to emphasise the capacity in which the proceedings have been taken.
18. An *ex parte* application was then made to the High Court (Simons J.) on 16 December 2019 for an order approving the terms of settlement. The matter was adjourned on that date until 27 January 2020 to allow for the preparation and filing of written submissions on the question of the court's jurisdiction to approve a settlement in circumstances where all of the statutory dependants are now of full age.

19. In this connection, it should be recorded that the deceased's youngest child, Andrew, turned eighteen years of age in October 2019. Andrew has thus reached the age of majority, and is no longer a "minor" or "infant" in the eyes of the law. The significance of this is that Andrew now has legal capacity to enter into agreements and settlements in his own right.

**CIVIL LIABILITY ACT 1961**

20. The right to bring a claim arising out of a fatal injury is provided for under Part IV of the Civil Liability Act 1961 ("*the CLA 1961*"). Section 48 of the CLA 1961 reads as follows.

- 48(1) Where the death of a person is caused by the wrongful act of another such as would have entitled the party injured, but for his death, to maintain an action and recover damages in respect thereof, the person who would have been so liable shall be liable to an action for damages for the benefit of the dependants of the deceased.
- (2) Only one action for damages may be brought against the same person in respect of the death.
- (3) The action may be brought by the personal representative of the deceased or, if at the expiration of six months from the death there is no personal representative or no action has been brought by the personal representative, by all or any of the dependants.
- (4) The action, by whomsoever brought, shall be for the benefit of all the dependants.
- (5) The plaintiff shall furnish the defendant with particulars of the person or persons for whom and on whose behalf the action is brought and of the nature of the claim in respect of which damages are sought to be recovered.

21. The somewhat tortured language of section 48(1)—in particular, the phrase "but for his death"—reflects the fact that, at common law, the right of action of a person who had been tortiously injured was a *personal* action, which did not survive for the benefit of their estate on their death. See *Cox v. Ergo Versicherung AG* [2014] UKSC 22; [2014] A.C. 1379, [6].
22. The common law position has been mitigated by legislation. A statutory right of action was first created under the Fatal Accidents Act 1846 (sometimes referred to as "*Lord Campbell's Act*"). This Act had been repealed and replaced in this jurisdiction by the Fatal Injuries Act 1956, which was itself replaced by the provisions of Part IV of the Civil Liability Act 1961.
23. Section 48 of the CLA 1961 stipulates that only one action may be brought against the same defendant, and that that action shall be for the benefit of all the dependants.
24. The term "dependant" is defined as a spouse, civil partner, parent, grandparent, step-parent, child, grandchild, step-child, brother, sister, half-brother or half-sister, of the

deceased. The definition also includes former spouses and civil partners, and co-habitants.

25. On the facts of the present case, the surviving dependants of the deceased were her father, her three children and her two siblings. (It should be noted that the deceased's two siblings, to their credit, have waived their right to any share in the claim).
26. The manner in which damages are to be assessed is set out at section 49 of the Civil Liability Act 1961 as follows.

49.(1)(a) The damages under section 48 shall be—

- (i) the total of such amounts (if any) as the judge shall consider proportioned to the injury resulting from the death to each of the dependants, respectively, for whom or on whose behalf the action is brought, and
- (ii) subject to paragraph (b) of this subsection, the total of such amounts (if any) as the judge shall consider reasonable compensation for mental distress resulting from the death to each of such dependants.

(b) The total of any amounts awarded by virtue of subparagraph (ii) of paragraph (a) of this subsection shall not exceed €35,000.

(c) Each amount awarded by virtue of paragraph (a) of this subsection shall be indicated separately in the award.

27. Sub-section 49(1A) provides for the possibility of the total amount of the compensation for mental distress ("*the solatium*") being increased from the current figure of €35,000, by way of Ministerial Regulations. Provision is made under sub-section 49(2) for damages to be awarded in respect of funeral and other expenses incurred.

28. The next two sub-sections are more immediately relevant to the issue which has arisen in these proceedings.

(3) It shall be sufficient for a defendant, in paying money into court in the action, to pay it in one sum as damages for all the dependants without apportioning it between them.

(4) The amount recovered in the action shall, after deducting the costs not recovered from the defendant, be divided among the persons entitled in such shares as may have been determined.

29. As appears, notwithstanding that damages must ultimately be apportioned between the statutory dependants, a defendant may nevertheless avail of the costs protection afforded under Order 22 of the Rules of the Superior Courts by making a lodgement or tender of a single, overall sum. Put otherwise, the defendant does not have to correctly anticipate what damages might be awarded to the respective statutory dependants. It is sufficient that the sum lodged or tendered exceeds the *aggregate* of the damages apportioned to the individual statutory dependants: the costs protection will then apply.

30. In summary, the effect of section 49 of the CLA 1961 might be described as follows. First, it provides for a substantive right of action to recover damages for the wrongful death of another. This right is confined to those members of the deceased's extended family, i.e. the "statutory dependants" as defined, who have suffered injury and/or mental distress as a result of the wrongful death. Secondly, it provides for a *procedure* whereby the individual claims of the statutory dependants must be prosecuted in a single set of proceedings.
31. The Supreme Court has emphasised in *O'Sullivan v. C oras Iompair  ireann* [1978] I.R. 409 (at 421) that the statutory right of action is given to the dependants as individuals, so that each of them is entitled to be compensated for the loss resulting to him or her personally. Put otherwise, the legislation does not provide for what might be described informally as a "class action", whereby a global sum would be awarded to the statutory dependants as a class. As discussed presently, the *personal* nature of the right of action is relevant when considering the manner in which fatal injuries proceedings might be settled or compromised.
32. In the event that a claim for a wrongful death comes on for full hearing, the court must assess the individual damages which each of the statutory dependants is to be awarded. The individual damages must be proportionate to the injury resulting to the particular dependant from the deceased's death. The damages are to be based on the reasonable expectation of the pecuniary benefit which would have accrued to the particular dependant but for the wrongful death of the deceased. See *Davoren v. Health Service Executive* [2016] IECA 39, [28] to [30].
33. The individual damages payable to any particular dependant will be informed by their connection with the deceased. For example, in the case of a minor child claiming for the wrongful death of a parent, the damages would seek to compensate for the loss of direct financial support provided by the deceased parent, and for the loss of what are quaintly described in the case law as "domestic services". The deceased parent might not only have been providing financial support, e.g. paying for accommodation, food, education and other necessities, but may also have been providing care and support. For example, the deceased parent may have been responsible for minding a pre-school child at home. An attempt will have to be made to put a monetary value on the loss of such child minding, e.g. to assess what the cost of employing a professional child minder, to provide a level of care and support equivalent to that previously provided by the deceased parent, might be.

#### **DETAILED DISCUSSION**

34. On the facts of the present case, the deceased had been providing a home to, and financial support and care for, her two younger children, and providing care to her elderly father. Had the proceedings come on for full hearing before the High Court, it would have been necessary for the trial judge to assess the individual damages payable to each of the dependants, by reference to the statutory criteria set out under section 49, and in accordance with the principles established in the case law (including, in particular, *Davoren v. Health Service Executive* [2016] IECA 39).

35. The question which arises for determination in the present case is whether it is necessary for the court to carry out a similar exercise of apportioning damages in circumstances where all the dependants (i) have agreed to compromise the proceedings on the basis of an offer made by a defendant (or their insurers), and (ii) have also agreed the individual damages to be paid to each dependant.
36. It might assist in answering this question to take as a starting point the position in respect of conventional personal injuries proceedings, and then seek to extrapolate from those principles.
37. A person of full age and legal capacity is entitled to compromise a personal injuries claim brought in their name without any requirement for court approval.
38. The position in respect of proceedings taken on behalf of an infant (minor) suing through their next friend is different. No settlement or compromise on behalf of an infant is valid without the approval of the court. This is provided for under Order 22, rule 10 of the Rules of the Superior Courts as follows.

10.(1) In any cause or matter in which money or damages is or are claimed by or on behalf of an infant or a person of unsound mind suing either alone or in conjunction with other parties, no settlement or compromise or payment or acceptance of money paid into Court, either before or at or after trial, shall, as regards the claims of any such infant or person of unsound mind, be valid without the approval of the Court.

(2) No money (which expression for the purposes of this rule includes damages) in any way recovered or adjudged or ordered or awarded or agreed to be paid in any such cause or matter in respect of the claims of any such infant or person of unsound mind, whether by verdict or by settlement, compromise, payment into Court or otherwise, before or at or after the trial, shall be paid to the plaintiff or to the next friend of the plaintiff or to the plaintiff's solicitor unless the Court shall so direct.

[...]

(9) This rule shall apply *mutatis mutandis* to:

- (a) money recovered on a counterclaim;
- (b) money recovered by a person of unsound mind whether so found by inquisition or not so found;
- (c) any action settled on behalf of an infant before trial.

39. The requirement for court approval is intended to ensure that the interests of the infant are protected. Not only does the infant not have legal capacity to enter into a binding settlement themselves, in some instances there may be the risk of a conflict of interest between the infant and the next friend acting on their behalf. If, for example, the next friend has their own claim for personal injuries arising out of the same incident, and the defendant seeks to settle both claims for an overall sum, the next friend might be

tempted to have a greater share of the pot apportioned to their own claim at the expense of the infant's claim.

40. It seems to me that similar principles should apply to the settlement or compromise of a fatal injuries claim. On the facts of the present case, all of the statutory dependants are of full age and none are under any legal disability. The statutory dependants have legal capacity to enter into contracts, and there does not appear to be any principled reason for saying that they cannot make an informed decision to enter into a settlement or compromise of their entitlement to damages under Part IV of the Civil Liability Act 1961. There would not appear, therefore, to be any requirement for the court to assess the *adequacy* of the proposed settlement (save, perhaps, in the context of the division of the compensation in respect of mental distress, i.e. the solatium).
41. It would seem to follow that the function of the court in such circumstances will be more limited. The principal concern of the court will be to satisfy itself that all of the statutory dependants have full legal capacity; are on notice of the proceedings; and have consented in writing to the terms of settlement (including, crucially, the apportionment of damages between the statutory dependants). Only one action for damages may be brought against the same person in respect of a wrongful death. It is essential, therefore, for the court to ensure that no statutory dependant has been excluded from consideration. (See, by analogy, *O'Mahoney v. Electricity Supply Board* (1959) 93 I.L.T.R. 4).
42. The practical consequences of leaving a dependant out of consideration were described as follows in *Avery v. London and North Eastern Railway* [1938] A.C. 606 (at 613).

“[...] One action alone can be brought, and the persons who stand out stand out for ever. If they have been improperly excluded from the action by the representative plaintiffs they may, no doubt, before the verdict of the jury, apply to be named as parties to benefit; or, possibly, they may have some legal or equitable remedy against the representative plaintiffs. But after verdict they have no possible claim against the defendant.”
43. The court will also have a function where, as allowed for under section 48(3) of the CLA 1961, a defendant has paid into court one sum as damages for all the dependants, without apportioning it between them. At least in cases where the dependants cannot agree the apportionment thereafter, the court will have to decide on the proper division of the damages.
44. There does not appear to be any Irish judgment which addresses the specific question of whether court approval is required for an agreed settlement where *all* of the statutory dependants are of full age and none are under any legal disability. Counsel on behalf of the representative plaintiff, Mr Michael Coen, BL, has very helpfully referred me to the analysis of Part IV of the Civil Liability Act 1961 in White, *Irish Law of Damages for Personal Injuries and Death* (Butterworths, 1989). The learned author states that an



adult statutory dependant who is *sui juris* may validly accept a sum of money in satisfaction of their own claim. See, in particular, the discussion at §13.2.09 to §13.2.13.

45. The judgment of the High Court of England and Wales in *Jeffrey v. Kent County Council* [1958] 1 W.L.R. 927 is cited in support of this statement. That case concerned a fatal injuries claim brought by a widow, as administratrix of her deceased husband, on her own behalf and that of her two infant children. The widow had entered into a settlement agreement with the defendant for a lump sum to cover both her own claim and that of the infants. This agreement had been reached prior to the institution of proceedings, but it was then necessary to bring proceedings for the purposes of seeking court approval of the settlement as infants were involved. However, the Master refused to approve the settlement on the basis that he was not satisfied that the amounts were adequate in the circumstances of the case.
46. The issue before the High Court was whether the widow, having agreed to the proposed settlement, was *bound* by same. (It was accepted that the infants could not be bound in the absence of court approval).
47. The High Court held that the *entire* agreement was void in the absence of court approval. Neither the widow nor the infants were bound. This holding appears to have been predicated on the fact that the (void) settlement agreement had provided for a single lump sum to cover both the widow's own claim and that of the two infants. The fact that the proportion of the lump sum which the widow was to take was *subsequently* agreed did not save the settlement.

"The conclusion to which I have come is that where the administrator enters into an agreement with the defendant to take a lump sum to cover all the dependants, that agreement is not a valid agreement unless (a) each of the dependants who is *sui juris* and desires to claim has approved thereof and (b) the court has sanctioned the agreement as being one for the benefit of each of the dependants who are infants. The court has no power to sanction an agreement unless (a) is fulfilled as well as (b)."

48. The judge applied these principles to a pre-action settlement as follows.

"I apply these principles to a settlement made before any action is brought. If the claim is not the claim of the administrator, but the claim of each dependant separately, I do not see how the administrator has power to accept a sum of money in settlement of the whole of the defendants' liability unless each of those persons who has a claim has given him authority so to do. He is certainly not given any such power by the statute. In the case of an infant, of course, the infant cannot give any authority which is binding upon the infant, and apart from that it is to be remembered that the interest of the administrator may be in conflict with the interest of the infant if the administrator is a dependant."

49. The relevance of this judgment for present purposes is that the High Court of England and Wales accepted, in principle, that an adult dependant with full capacity can settle or compromise their own claim, without the necessity for court approval.

“Where, however, the administrator has with the approval of any dependant who is *sui juris* entered into an agreement with the defendant that the defendant should pay to that dependant (whom I shall call the settling dependant) a sum of money which is agreed to be sufficient as being proportionate to the injury suffered by the settling dependant, then the settling dependant is bound by the agreement as he would be if he personally entered into such agreement, but the claims of the other dependants still remain to be settled by the court and the court in judging what is the proper amount to be paid to each of the remaining dependants does not take the sum paid to the settling dependant into account unless the amount so paid affects the loss which has been suffered by and of the other dependants.”

50. The High Court then gave the example of a widow accepting a sum of money which is too small. I will return to consider this example at paragraph 57 below, when discussing the role of a court in the context of a settlement involving a minor dependant.
51. Notwithstanding that the principles in *Jeffrey v. Kent County Council* were stated in the context of a different legislative regime, I think that the approach articulated has much to commend it. It seems to me that there is no reason in principle why an adult dependant, who is not under any legal disability, should not be entitled to authorise the representative plaintiff to settle or compromise his or her individual claim for a particular sum. The position is analogous to that applying in a conventional personal injuries action, where an adult plaintiff can settle their claim without the necessity for court approval.
52. As noted earlier, there does not appear to be any Irish judgment directly on point. It should be acknowledged, however, that there is an established practice whereby parties seek the approval of the court for the division of the solatium, i.e. the statutory compensation payable in respect of mental distress under section 49(1)(a)(ii) of the Civil Liability Act 1961. This practice tends to be observed even in circumstances where all of the statutory dependants are adults with full legal capacity.
53. The rationale for this approach is, presumably, that the assessment of the appropriate division of damages for mental distress is especially sensitive, and should be performed by a judge in accordance with the principles laid down in *McCarthy v. Walsh* [1965] I.R. 246, rather than by the parties themselves.
54. I must admit that it is not immediately apparent to me, from a consideration of the wording of section 49(1), that the legislation makes a distinction between those damages which must always be approved by a judge, and those damages which statutory dependants of full age and legal capacity can agree themselves. Both sub-sections (i) and (ii) of section 49(1)(a) envisage that damages will be fixed at a sum which the judge “considers” to be appropriate. Whereas there is a slight difference in the wording between the two sub-sections, i.e. they speak of the amounts “considered” by the judge

to be “proportioned to” or “reasonable”, respectively, this does not explain the difference in approach which underlies the practice of always approving the solatium. It seems to me that both sub-sections are addressed to the role of the court upon a *full hearing* of the proceedings. They do not expressly address the role of the court in the context of an agreed settlement or compromise.

55. Approaching the matter from first principles, I would not read section 49(1)(a) as requiring court approval under either sub-section (i) or (ii) in the case of an agreed settlement between adult statutory dependants. There does not appear to be any logical basis for such a differentiation between the heads of damages under the two sub-sections. Indeed, were the court to have any role in approving an agreed settlement, it would seem more important for the court to rule on the damages for pecuniary loss under sub-section (i) as these will tend to be larger. One of the peculiarities of the current practice is that the court must approve the division of a maximum sum of €35,000, but does not have to consider the balance of the settlement which, as illustrated by the facts of the present case, can run to a six figure sum.
56. Notwithstanding these doubts as to the necessity of so doing, I propose to observe the established practice in circumstances where the representative plaintiff has expressly sought a ruling from the court. I will, therefore, next consider the manner in which the solatium is to be divided.
57. In this regard, I will approve the proposed division as suggested by the statutory dependants themselves. It will be recalled that the deceased’s two siblings have both waived any claim. The suggestion, therefore, is that the remaining four statutory dependants, i.e. the deceased’s father, and three adult children, would each take a one-quarter share of the €35,000, i.e. a payment of €8,750 each. This division seems just, especially given the fact that all four dependants are now of full age and all had a strong connection with the deceased.
58. (In a different set of circumstances, there might be something to be said for apportioning a greater share to the children of the deceased. See generally, *Jones v. J & N Sheridan Ltd t/a Heatherfield Nursing Home* [2019] IEHC 82).

#### **SETTLEMENT OF CLAIM INVOLVING MINOR DEPENDANT**

59. For the sake of completeness, it should be emphasised that court approval of a settlement will always be required in the case of a fatal injuries claim where one or more of the statutory dependants is an infant. It will be recalled that although a fatal injuries claim is brought on behalf of all of the dependants (either by the deceased’s personal representative or by one of the dependants), the statutory right of action is given to the dependants as individuals, so that each of them is entitled to be compensated for the loss resulting to him or her personally. An infant’s claim is therefore a separate claim, and in accordance with the general principles under Order 22, rule 10 of the Rules of the Superior Courts, it will be necessary to obtain the approval of the court to any settlement or compromise of the infant’s claim.

60. The court, in deciding whether or not to approve the settlement or compromise of the infant's claim will not normally be concerned to examine the terms upon which the adult dependants have settled. It will, however, be necessary to take an adult's settlement into account where the amount so paid affects the loss which has been suffered by the infant. The reason for this is explained as follows in *Jeffrey v. Kent County Council* [1958] 1 W.L.R. 927 (at 930).

"[...] For instance, if a widow agrees to take a sum of money (not as part of a general lump sum settlement, but individually) which the court considers is too small and which does not result in her having those resources behind her which she would otherwise have had for the bringing up of her infant children, the court in deciding the injury which has been suffered by the infant children by the loss of their father may give sums to such infants much larger than the sums which the court would have awarded had the widow received a proper capital sum. Clearly the ability of the widow to support the children in the future may be affected by the fact that she has too small a capital sum at her disposal and that would increase the loss suffered by the children by the death of their father."

61. The court will also have to consider whether the infant is being afforded their proper share of the compensation in respect of mental distress under section 48(1)(a)(ii) of the Civil Liability Act 1961.

### **PERSONAL INJURIES ASSESSMENT BOARD ACT 2003**

62. It should be noted that the above interpretation of the function of the court in a case where all the statutory dependants are of full age and not under any legal disability has the consequence that there is a marked difference of approach between the acceptance of an assessment made by PIAB, and the settlement or compromise of a claim.

63. It appears from section 35 of the Personal Injuries Assessment Board Act 2003 that it is always necessary to seek court approval before an assessment can be accepted in the context of a (proposed) fatal injuries claim.

35.— (1) This section applies to a relevant claim where—

- (a) a next friend or the committee of a minor or a person of unsound mind is acting on behalf of the minor or person in respect of the claim, or
- (b) the claim relates to a proposed action for damages under section 48 of the Act of 1961,  
and the next friend, committee or, as the case may be, the person proposing to bring that action for damages accepts, subject to the assessment being approved under this section, the assessment made under section 20 of the relevant claim.

64. The potential anomalies which this (seeming) difference in approach between the Personal Injuries Assessment Board Act 2003 and Part IV of the Civil Liability Act 1961 can give rise to are illustrated by the facts of the present case. Had the representative plaintiff accepted the assessment made by PIAB in August 2019, it would have been necessary to

apply for court approval of same. In the event, the representative plaintiff rejected the assessment, and, ultimately, achieved a better offer from the defendant's insurers. There is no requirement for court approval of the settlement under Part IV of the Civil Liability Act 1961 (save, perhaps, in respect of the solatium).

65. It is not immediately obvious as to why there should be this difference in approach between the two Acts.

### **CONCLUSION**

66. It should be reiterated that this judgment is confined to the, somewhat unusual, circumstances of this case whereby all of the statutory dependants are now of full age. (Had the application been made to the court prior to his birthday in October 2019, it would have been necessary for the court to approve the settlement of the youngest son's individual claim as he would not yet have reached the age of majority).
67. In circumstances where the statutory dependants are now all of full age and not under any legal disability, the function of the court is more limited. The principal concern of the court will be to satisfy itself that all of the statutory dependants have full legal capacity; are on notice of the proceedings; and have consented in writing to the terms of settlement (including, crucially, the division of same between the statutory dependants).
68. Subject to Ms Wolohan being in a position to comply with the direction which follows, I am satisfied that these criteria are met. The six statutory dependants have all signed a "Declaration of Consent" which has been exhibited. It should be noted, however, that the grounding affidavit omits reference to two of the statutory dependants, namely the deceased's two siblings. It will be a condition precedent to the finalisation of the proposed order that the representative plaintiff, Alison Wolohan, file a supplemental affidavit identifying all of the statutory dependants, and verifying that the deceased's two siblings consent to the proposed settlement and the division of same, and waive any claim that they might have had. No order will be drawn up unless and until this is done.
69. Having satisfied itself of the position of the statutory dependants, the function of the court thereafter is confined to the division of the solatium. The maximum amount which can be awarded for mental distress is currently capped at €35,000. For the reasons set out at paragraph 54 above, I am satisfied that the appropriate division of this amount is that the deceased's father and her three children should each receive a one-quarter share, i.e. €8,750.

### **PROPOSED FORM OF ORDER**

70. Subject to compliance with the above direction to file a supplemental affidavit, the form of order will be confined to the following reliefs. First, a declaration that the court is satisfied that all of the statutory dependants have full legal capacity; are on notice of the proceedings; and have consented in writing to the terms of settlement (including the division of same between the statutory dependants). Secondly, an order that the deceased's father and her three children should each receive a one-quarter share, i.e. €8,750, of the compensation for mental distress under section 49(1)(a)(ii) of the Civil Liability Act 1961.

71. The order of the court will also indicate the separate amount which four of the statutory dependants are to receive in settlement of their claim for damages under section 48 and section 49(1)(a)(i) of the Civil Liability Act 1961. (The fifth and sixth statutory dependants have waived any claim). It should be reiterated that this is the division or apportionment which the six statutory dependants have agreed between themselves. The court has not had to consider the detail of this aspect of the settlement in circumstances where all statutory dependants are of full age and legal capacity.
72. The amounts (exclusive of the solatium) are as follows.
- |                |            |
|----------------|------------|
| Andrew Wolohan | €95,685.50 |
| Alison Wolohan | €56,154.50 |
| Sarah Wolohan  | €20,000.00 |
| John Wolohan   | €34,400.00 |
73. (The funeral expenses of €5,345.50 have already been discharged by the defendant's insurer).
74. I will also make an order directing the defendant to pay the legal costs associated with the application to the High Court to approve the proposed settlement. The costs are to be adjudicated upon by the Office of the Legal Costs Adjudicator in default of agreement.
75. The parties have liberty to apply.

**Appearances**

Michael Coen, BL instructed by Thomas Loomes & Co. Solicitors on behalf of the representative plaintiff