

**THE HIGH COURT**

[2022] IEHC 195  
[Record No. 2019/2247P]

**BETWEEN**

**JOSEPH COUGHLAN**

**PLAINTIFF**

**AND**

**KERRY INGREDIENTS (IRELAND) LIMITED**

**DEFENDANT**

**JUDGMENT of Mr. Justice Barr delivered electronically on the 23rd day of March, 2022.**

**Introduction.**

1. The plaintiff is a married man with two children. He is 58 years of age, having been born on 6th January, 1964. He has worked all his life since leaving school at the age of 16 years. For the past 22 years he has been employed by Golden Vale Foods, which was subsequently taken over by the defendant.
2. On 23rd July, 2017, while acting in the course of his employment with the defendant, the plaintiff fell partially into a hole. He struck his lower back against the edge of the hole. The court had the benefit of watching a CCTV recording of the accident. Liability for the accident is not in issue.
3. The plaintiff worked on for the remainder of his shift, for approximately one hour. He went home at approximately 16.00 hours. He returned and did a further shift from midnight to 08.00 hours.
4. Two days after the accident the plaintiff went to his GP complaining of severe lower back pain. He remained out of work until 9th October, 2017. The plaintiff took extended holidays in November and December 2017. He returned to work in January 2018. He was out sick again with the flu for two weeks in February. The plaintiff then went out sick again due to a flare-up of his back pain in early March 2018. He returned to work in June 2018, but had to stop work again in July 2018 due to ongoing back pain. He has not worked since.
5. The plaintiff's case is that he has developed chronic pain in his back, which has rendered him unfit for work. He states that he is significantly disabled in all aspects of his life. He has been treated by a pain specialist, who has administered five/seven epidural injections and/or nerve denervation procedures. He has had extensive physiotherapy treatment since the time of the accident. He is on a cocktail of strong pain relieving medication. He states that he continues to experience pain most days, but would have approximately two good days per week.
6. In essence, the plaintiff's treating doctors and expert witnesses, are of the view that the plaintiff suffered a soft tissue injury, which was superimposed on pre-existing degenerative changes, which had been asymptomatic prior to the accident. It is their view that the plaintiff has gone on to suffer chronic pain, which will require a multifaceted approach to treatment, in the form of pain relieving injections and nerve denervation; pain medication; physiotherapy and psychological treatment. They are of the view that he

will never be fit for his pre-accident employment, but, with completion of an intensive rehabilitation programme, he may be fit for light work in the future.

7. The defendant's medical evidence was to the effect that the plaintiff suffered a minor soft tissue strain to his back, which should have recovered within twelve/eighteen months at most.
8. The defendant's medical experts are of the view that his ongoing complaints of pain are referable to the pre-existing degenerative changes in his back. They further argue that he has allowed himself to become physically deconditioned, by not exercising and by not doing any work, which has led to the muscles in his back becoming weak, which in turn, has caused or exacerbated the pain that he suffers due to the degenerative changes in his spine.
9. The defendant's expert, Mr. Kaar, was further of the view that there were considerable psychological factors leading to the plaintiff's ongoing complaints of pain and disability. In particular, he stated that it was only after the MRI scans had revealed extensive degenerative changes, that the plaintiff became aware of such condition in his back and that it was probably as a result of learning that information, that he came to view himself as being permanently injured. It was their view that the plaintiff had assumed an invalid role, which had led to his withdrawal from activity, which in turn had led to his becoming physically deconditioned, leading to further exacerbation of his pain.
10. In short, the defendant's doctors are of the opinion that the plaintiff's current symptoms and disability are not referable to whatever minor soft tissue injury the plaintiff may have suffered at the time of the accident. However, Mr. Kaar conceded that the plaintiff was a genuine person.
11. The core issue for resolution by the court is whether the plaintiff's current complaints of pain and resultant disability are referable to the accident.

**MRI Scans of the Plaintiff's Lumbar Spine.**

12. An MRI scan taken on 1st September, 2017, was reported as showing facet ligamentous hypertrophy, with moderate central canal stenosis, most pronounced at L3 - 4 and L4 - 5; with moderate bilateral osteolytic L3 - 4 exit foraminal stenoses. That was summarised as showing: moderate degenerative disc disease in the lower lumbar spine, with central canal stenosis at L3 for exit foraminal stenoses as described.
13. The follow-up MRI scan taken on 19th June, 2018 showed the following: at L3 - 4 there was a broad-based disc extrusion, asymmetric to the right, contacting and displacing the thecal sac and contacting the right exiting nerve root, in combination with facet joint arthrosis, leading to bilateral neural foraminal stenosis on the right greater than the left. At L4 - 5, there was a central disc bulge affecting the thecal sac. There was bilateral facet joint arthrosis. Bilateral neural foraminal stenosis, on the left greater than the right. At L5 - S1, there was a mild central disc bulge. The summary stated that there was normal

signal from the conus. There were degenerative changes most marked at L3 - 4 as described.

**The Plaintiff's Pre-accident History.**

14. As there is considerable debate about the cause of the plaintiff's symptoms and disability since the time of the accident, it will be useful to look at his pre-accident history. The plaintiff left school in 1980, having passed the Group Certificate examination. Between 1980 and 1989, he worked as a general operative with Emdown Bedding, which was a company that manufactured beds. Between 1989 and 2000, he was employed as a general operative with Horgan Meats, which was subsequently bought over by Galtee Meats.
15. From 2000 to the date of the accident, the plaintiff was employed initially by Golden Vale, which was subsequently bought over by the defendant. The plaintiff worked as a general operative in the milk drying facility. His role involved operating large machines that produced powder from milk. The finished product is used in the food industry for the manufacture of infant formula milk. The plaintiff stated that the work was physically demanding, particularly when clearing blockages of dry milk powder from large machines. The plaintiff was required to physically loosen the powder with a hammer. His role involved monitoring the operation of machines from the control room. He also had to make regular patrols of the plant to inspect the machinery. This involved climbing step ladders up to various points in the processing equipment. The plaintiff stated that essentially his role was that of a general operative, ensuring the smooth running of a huge milk drying machine that took up the entirety of the building.
16. As previously noted, the plaintiff returned to work for various periods between the date of the accident and July 2018. He has not returned to work since that date. However, he remains technically employed by the defendant, in that he remains on their books as an employee, although he has not been paid since in on or about 2018. The defendant has indicated that if and when the plaintiff is certified as being fit to return to light work, they will endeavour to make a suitable position available to him within the plant.
17. Prior to the date of the accident, the plaintiff had had one period out of work in 2015, when he had injured his neck while turning a large rotation wheel on a door in the plant. He was out of work for approximately 20 weeks thereafter. He made a full recovery from that injury. There were no legal proceedings brought in relation to that injury.
18. Other than that injury in 2015, it was accepted that the plaintiff had had a very good work history with the defendant. The plaintiff stated that while his basic working week was of forty hours, he often worked sixty hours per week, as he was anxious to earn money and provide for his family. At the time of the accident, his pre-accident earnings were in the region of €58,000 per annum, which resulted in a net weekly wage of approximately €891.00.
19. The plaintiff stated that prior to the accident, he had not experienced any pain in his lower back. This was corroborated by the evidence of his GP, Dr. Lucey, who confirmed

that the plaintiff's back had been asymptomatic pre-accident. He further stated that prior to the accident, the plaintiff had been a happy outgoing man, who enjoyed working and was of great assistance to his wife and other members of his family.

**The Plaintiff's Evidence.**

20. As already noted, the accident occurred while the plaintiff was assisting in manoeuvring a large sheet of metal. In the course of so doing, he slipped into an opening in the floor, which contained a drop of approximately twenty feet. However, the plaintiff was fortunate in that he did not fall completely into the hole, but only fell partially into it, striking his back against the edge of the opening. The court had the benefit of viewing the accident in real time on CCTV.
21. The plaintiff stated that immediately after the accident, he experienced severe pain in his back. He lay on the floor for some time. He then got up and began walking around. He found that the pain eased off. He continued working until the end of his shift, which was approximately one hour later. The plaintiff then went home. He returned to the plant and did a further shift from 12 midnight until 08.00 hours on the following morning. He stated that he had difficulty carrying out the demands of his job, but he felt that he had to do that shift, as he had been rostered for it.
22. The plaintiff attended at his GP medical practice on 25th July, 2017, where he was seen by a locum GP. At that stage he was complaining of severe pain to his lower back and gluteal area, with the pain on his right side being worse than on the left side. He had severe tenderness to the coccyx and lumbo-sacral joint. He was noted to be still visibly shaken from the accident. He was referred to the local injury unit in Mallow General Hospital for further investigation. X-rays were taken of the sacroiliac joint and pelvic area. He was advised by his GP to attend for physiotherapy and was prescribed non-steroidal anti-inflammatory drugs.
23. The plaintiff remained out of work until 9th October, 2017. In cross-examination, it was put to him that there was a note in his GP records from late August 2017, indicating that he had stated to his GP that he had suffered pain in his back after dancing at a function. The plaintiff stated that he had been encouraged by his GP to keep as active as possible. He had attended a social function, where he had engaged in some dancing for less than ten minutes. He stated that his back was particularly sore on the following day and for that reason he had attended with his GP. The court does not regard this entry in the GP records as indicating that the plaintiff was engaging in activities that were inconsistent with his level of reported pain. The court accepts that the advice that he was given by his GP to remain active, was good advice and that the plaintiff was merely following that advice when he engaged in dancing at a social function.
24. The plaintiff took extended time off during the latter part of November 2017 and during December 2017. He returned to work in January 2018 and worked until he was out sick with the flu for two weeks in February 2018. Thereafter he returned to work until he experienced a severe flare-up of back pain when he had cleared some snow from the front of his house on 6th March, 2018.

25. The plaintiff stated that he had tried to do certain activities when he was at home. He had tried some gardening and in particular had cut the lawn, but the pain was so bad that he had to give that up and go to bed to lie down. He stated that if he tried to use the power washer on his car, he would experience severe pain in his lower back. He accepted in cross-examination that he had felt capable of undertaking these activities, when he had decided to cut the grass and clear the snow from in front of his house.
26. The plaintiff returned to work in June 2018, but due to ongoing severe pain in his lower back, he was obliged to go out sick again in July 2018. He has not worked since that time.
27. Due to the severity of his symptoms, the plaintiff was referred by his GP to Mr. Chris Lim, Consultant Neurosurgeon, to see if any surgical solution could be found. Mr. Lim was of the view that surgery would not be appropriate. He referred the plaintiff to Dr. James Shannon, consultant in pain medicine and anaesthesia. He saw the plaintiff for the first time on 17th August, 2018.
28. The plaintiff has received between five/seven injections and interventions from Dr. Shannon. Unfortunately, the exact dates on which treatment was administered to the plaintiff, has not been clearly set out in the medical reports. Doing the best that I can from the evidence and the medical reports before me, it would appear that the plaintiff received treatment either in the form of epidural injections, or ablation of the nerves in his lower back from Dr. Shannon on 19th September, 2018, 6th December, 2018, 27th July, 2020, 11th September, 2020, 6th December, 2020, February 2021 and November 2021. The plaintiff stated that while these treatments gave some beneficial results of varying duration, none of them has so far given him permanent relief from pain.
29. In his evidence to the court, Dr. Shannon stated that he had carried out a number of epidural injections at the L3/4 level, together with radio frequency ablation to the L5/S1 area. Most recently, in November 2021, he had repeated the lumbar radio frequency denervation.
30. Dr. Shannon noted that prior to the accident in July 2017, the plaintiff had had no specific back, or leg pain issues. He then suffered an accident in the workplace. He stated that it was likely that the plaintiff exacerbated underlying degenerative changes in his spine. He has been left with chronic mechanical pain. He stated that that had proven to be difficult to treat. The plaintiff has required multiple procedures. He stated that the plaintiff had engaged well with all his medical supports.
31. Dr. Shannon was of opinion that it was likely that the pain was not due to any disc herniation, or disc bulge. It was likely that the plaintiff's pain was complex and may be due to the underlying anatomical change exacerbated by the injury he sustained. Given that he had responded reasonably well to radio frequency denervation, he was of the view that it would probably be necessary for the plaintiff to have one treatment of radio frequency denervation per annum in the future. He stated that it was unlikely that the plaintiff would be fit for his pre-accident work, or that he would reach a full resolution of his symptoms. He stated that the plaintiff always struck him as a genuine person.

32. In cross-examination, Dr. Shannon stated that the purpose of the interventions administered by him, was an attempt to break the cycle of pain, so as to afford the plaintiff an opportunity to engage with a rehabilitation programme in a meaningful way. He stated that he would only perform a treatment if he thought that it would be of benefit to the patient. Unfortunately, he had not seen prolonged improvement in the plaintiff's symptoms at this stage. However, he would be prepared to give the necessary treatment, if it was providing some symptomatic and functional improvement. He had seen some improvement after the treatments administered to the plaintiff, albeit of limited duration.
33. It was put to the witness that in this case there was a background of degenerative changes shown on the plaintiff's MRI scans, which would have predisposed him to pain in any event. Dr. Shannon stated that they often saw a complex situation, where pre-existing degenerative changes and psychosocial aspects, together with a loss of condition in the muscles due to disuse, would combine to produce chronic pain. When the issue of the plaintiff going dancing was put to the witness, he stated that he thought that it was unavoidable that activities will cause a flare-up in the plaintiff's pain. The witness stated that while the plaintiff had not specifically told him about a flare-up in his back pain after shovelling snow, the plaintiff had told him that he suffered flare-ups of pain after activities. He felt that it was likely that the plaintiff would experience flare ups of pain after engaging in certain activities.
34. The witness agreed with the opinion given by Mr. Steven Young, Consultant Neurosurgeon, that the plaintiff would be in a position to return to work at light duties in the future. The witness accepted that the plaintiff had had pre-existing degenerative changes in his lower back. He stated that if there had been no accident in July 2017, it would be difficult to say if he would have experienced pain in his back at some point in the future. Some people could have degenerative changes in their back, but would not experience pain.
35. Returning to the plaintiff's evidence, he stated that he had had extensive physiotherapy treatment since the accident. At present he was attending with the physiotherapist approximately ten/fifteen times per annum. He had paid for all sessions of physiotherapy treatment. The plaintiff stated that he had also had some treatment from an osteopath. The plaintiff stated that he continues to be on a cocktail of strong medication of Lyrica, Arcoxia and Tizanidine. He stated that the side effects from the medication were unpleasant, in that they made him quite dopey. In addition, he often felt frustrated and irritable due to the ongoing nature of his complaints. He stated that he had liked going to work and being with his work colleagues. He missed work greatly. The plaintiff also stated that his injuries and the medication that he was taking had had a bad effect on his relationship with his wife, in that his libido was greatly reduced. All of these things have put a strain on his marital relationship.
36. An issue which took up quite an amount of time at the hearing of the action, concerned whether the plaintiff had engaged with proposals that were made by the defendant's HR Department in April 2020, for his return to work at light duties. Some of the reports which

had been obtained on behalf of the defendant, were predicated on the assumption that the plaintiff had not engaged with the proposals that had been made by the HR department at that time. However, when Ms. Rossiter, of the defendant's HR department gave evidence, this issue was resolved in a way that did not indicate a lack of engagement on the part of the plaintiff.

37. Ms. Rossiter stated that the plaintiff had been reviewed by the defendant's occupational health physician from time to time. In a review of 1st April, 2020, the occupational health physician became more positive about the plaintiff's ability to return to work at light duties. The plaintiff was cleared for a return to work on modified duties. To that end, the HR department began to put a plan in place for the plaintiff's return to work. Ms. Rossiter contacted the plaintiff on 3rd April, 2020 by phone and told him of the positive outcome of the review by the occupational health physician. She told the plaintiff that she would put in place a return to work programme. She stated that the plaintiff said that he would "give it a go", but he himself did not think that he was fit to return to work. She stated that that was just a general conversation about the issue. They did not go into specifics at that stage.
38. In the following weeks, she liaised with people working in the plant, as she was based in the company's HR headquarters in Naas. A role was found where the plaintiff could work in the milk intake area, detaching and attaching pipes to tanks and carrying out sanitising in relation to Covid-19. She tried to telephone the plaintiff on 10th and 17th April, 2020, but was not able to get through to him. She eventually got through to him on 21st April, 2020. She told him that they had a proposal for him to work in the milk intake area and to carry out additional sanitising duties. The plaintiff told her that his GP had not cleared him to return to work. Unknown to Ms. Rossiter, the plaintiff had attended with his GP for a fortnightly review. The GP had issued a certificate stating that he was not fit to return to work. The plaintiff had submitted the certificate to that effect to the receptionist at the defendant's plant on 20th April, 2020. However, that sick certificate had not made its way to the HR department in Naas, when Ms. Rossiter had her telephone conversation with the plaintiff on the following day.
39. Ms. Rossiter stated that in light of what the plaintiff had told her, she referred him back to the defendant's occupational health physician, who agreed with the view of the plaintiff's GP, that he was not fit to return to work. She stated that she did not think that the occupational health physician had ever altered his view that the plaintiff remained unfit for work. She confirmed that the occupational health physician continued to review the plaintiff on a regular basis.
40. The court is satisfied from this sequence of events, that, while the plaintiff had expressed doubts as to his fitness to return to light duties in the course of the telephone call on 3rd April, 2020, he had at least indicated a willingness to give it a go. That position changed when he attended with his GP prior to the second telephone call with Ms. Rossiter, by which time his GP had countermanded any idea of his returning to work. That opinion of the GP was subsequently endorsed by the occupational health physician, who was asked

to review the plaintiff after the telephone conversation between Ms. Rossiter and the plaintiff on 21st April, 2020.

41. The court is satisfied that this sequence of events, does not support the proposition that the plaintiff failed to engage with the defendant in relation to a possible return to work. By the time that the second conversation took place on 21st April, 2020, the plaintiff would have been going contrary to his own medical advice, if he had attempted to return to work at that stage. It is significant that the occupational health physician changed his mind and came to the view that the plaintiff was unfit for work, when he reviewed the plaintiff after 21st April, 2020 and, according to Ms. Rossiter, has remained of that view ever since.

**Other Medical Evidence Called on Behalf of the Plaintiff.**

42. Evidence was given by Dr. Gerry Lucey, the plaintiff's GP. He confirmed that the plaintiff had been a patient of his for twenty/thirty years. He stated that apart from the neck complaint in 2015, the plaintiff had not suffered from pain in his spine prior to the accident in 2017; in particular, he did not suffer from lower back pain. He stated that prior to the accident, he did not see the plaintiff very often at his clinic. He stated that the plaintiff was a helpful type of man to his wife and wider family. He stated that he was not a complainer.
43. Dr. Lucey stated that prior the accident the plaintiff had had degenerative changes in his lower back, together with osteophytes and spondylolisthesis. This meant that the plaintiff was a bad candidate to have an injury superimposed on such a condition, leading ultimately to persistent problems.
44. He stated that the plaintiff had not improved over the years. He had deteriorated both physically and mentally. He was of the view that the plaintiff was depressed, however, he had not placed him on anti-depressant medication, due to the fact that he was already on significant medication. He confirmed that he had advised the plaintiff to be as active as possible. He stated that the plaintiff had told him that he missed work greatly.
45. Evidence was given by Mr. Steven Young, Consultant Neurosurgeon, who saw the plaintiff on one occasion on 11th February, 2022. He stated that having reviewed the MRI scans and from his examination of the plaintiff, he thought it likely that the plaintiff's symptoms were due to a soft tissue inflammation in the lumbar spine, probably chronic inflammatory change in the facet joints and musculoligamentous tissues of the lumbar spine, as well as perhaps chronic inflammation in the coccyx itself. He was of the view that the degenerative changes in the plaintiff's spine were probably asymptomatic prior to his accident and had been rendered symptomatic by the accident.
46. Regarding his capacity to work, the plaintiff had told him that there had been no improvement in his symptoms and that simply standing or sitting for prolonged periods could provoke severe pain. He was able to drive a car, but he found it extremely uncomfortable. The plaintiff had told him that gardening, such as using a strimmer or lawnmower, had been extremely uncomfortable.



47. In relation to work, he did not think that the plaintiff would be fit for his pre-accident employment, which was fairly strenuous in nature, but he felt that there was potential for the plaintiff to return to light work, particularly if it was non-strenuous in nature and if he was provided with adequate assistance.
48. In cross-examination, the witness accepted that the MRI scans did not show any acute injury to the spine. However, the plaintiff had chronic inflammation in his spine, which can give rise to chronic pain. Mr. Young stated that with such degenerative changes in the back, it was possible to have chronic pain from even a minor injury. When it was put to him that the defendant's expert, Mr. Kaar, was of the opinion that it had been a relatively minor injury, the witness accepted that it may have been a relatively minor injury from which one would expect an ability to return to work, but all he could say was that on the one occasion when he examined the plaintiff, he found him to be a genuine man. He did not agree with the findings made by Mr. Kaar on his examination, that the plaintiff had a good range of back movements. He had not exhibited that at the time of his examination of the plaintiff. However, he accepted that by stopping work and reducing activity, one could become deconditioned to such an extent that it could lead to pain. He further accepted that ongoing litigation can contribute to the persistence of symptoms in the longer term. He did not think that the presence of degenerate changes in themselves would have made him unfit for heavy work. He said that people could have such degenerative changes and be fit for work; however, on the plaintiff's presentation to him, he was clearly not fit for heavy work.
49. When the circumstances of the accident were put to the witness in re-examination, he stated that it did not sound like a minor accident. In relation to his attempts to return to work, he was not surprised that the plaintiff was not able to stay at work on the three occasions that he had returned to it. The plaintiff had had chronic pain since the accident. While he had not suffered a serious acute injury to his back at the time of the accident; the accident had given rise to chronic pain since then. He stated that he did not expect much improvement in the future.
50. Evidence was given by Mr. John Mangan, Consultant Orthopaedic Surgeon, who saw the plaintiff on 10th February, 2022. At that stage, the plaintiff had told him that while he had had physiotherapy treatment, he was not doing a daily exercise programme. The plaintiff told him that he had good days and bad days. He stated that there had been some inconsistent findings on his physical examination of the plaintiff; in particular, the plaintiff had complained of back pain on a rotation test, which involved rotation of the hips, which should not have been positive, due to the fact that the spine itself did not move in such exercise.
51. As against that, Mr. Mangan stated that he had seen evidence of spinal recoil, when the plaintiff was returning to an upright position for a forward flexed position. Spinal recoil occurred where there was a jump in the returning movement of the spine to the upright position. It was not possible to simulate it. It was an indication that there was something going on in the plaintiff's spine. It was also indicative of weakness in the back muscles.

52. Mr. Mangan noted that the plaintiff demonstrated "typical illness behaviour", which was a common finding in people with chronic pain. Such behaviour was demonstrated by a patient grabbing his back, grabbing chairs or the couch while in the consultation room. It showed that they had adopted a particular behaviour towards their condition. However, it was not necessarily indicative of malingering.
53. Mr. Mangan stated that it was his opinion that the plaintiff had a chronically degenerative symptomatic spine. He had not worked since 2018. He thought that the plaintiff would have back pain in the future, with good days and bad days. However, if he were to undergo a multi-disciplinary intensive rehabilitation programme, he should be able to return to some form of light work, although that may be difficult given his lack of tolerance for sitting for long periods.
54. In terms of a prognosis, he was of the view that with the successful conclusion of a rehabilitation and exercise programme, the plaintiff could get back to a level where he could function, albeit it with pain. He was of the view that the plaintiff had become both physically and psychologically deconditioned, which had led him to become physically and mentally unfit for the activities of daily living.
55. In cross-examination, the witness agreed with the opinion given by Mr. Young, that the plaintiff could return to some form of light work; however, he was not overly optimistic in that regard. It would be necessary to address both his physical and psychological deconditioning. However, that was reversible by adherence to an intense rehabilitation programme. He thought that it would take at least six months of an intensive rehabilitation programme, before the plaintiff could consider returning to any form of light work. He accepted that that would be a good goal for the plaintiff to aim for.
56. Mr. Mangan accepted that the plaintiff had pre-existing disc degeneration in his lower back. He also had a spondylolisthesis, which can be either congenital or developmental. He stated that in essence, the plaintiff now had a "crooked back".
57. The witness accepted that the plaintiff had suffered a soft tissue injury, but pointed out that that term simply meant an injury that was not skeletal, or involving the bones. He disagreed with the opinion of Mr. Kaar that this was a "minor soft tissue injury". He stated that the events that had occurred since the time of the accident, proved that it was not minor. He did not agree that the plaintiff's symptoms were unexplained. He felt that they were explained by virtue of the onset of injury onto pre-existing degenerative changes. He did not agree that the injury at the time of the accident was minor, as the plaintiff had told him that he had suffered "fierce pain" at that time.
58. The witness stated that he disagreed with the opinion given by Mr. Kaar, as he had not said what had caused the plaintiff's symptoms. Mr. Mangan stated that it was clear that the accident of July 2017 had caused the symptoms and they had not resolved. He was of the view that the subsequent activity, such as shovelling snow and cutting grass, had merely caused flare-ups of the symptoms. He stated that his examination of the plaintiff had been different to that carried out by Mr. Kaar. He had found loss of lumbar lordosis

and other findings. And in particular, the plaintiff had demonstrated a restricted range of movement of his spine, when he had examined him. Mr. Mangan agreed that chronic pain was multifaceted. He noted that Mr. Kaar seemed to accept that the accident at work had been the main cause of the plaintiff's symptoms. He agreed that the adoption of a chronic illness role by the plaintiff, would be averse to recovery. However, it was important to note that people did not choose to adopt that role, they simply fell into it.

59. He accepted that a plaintiff must actively engage in rehabilitation, but it was necessary also to bear in mind that people who are in pain, are also in fear of pain, so it was difficult to engage in rehabilitation. It was necessary to have psychological assistance to understand that a level of pain was acceptable.
60. Evidence was given by Dr. Sasha Hennessy, a consultant in occupational medicine, who saw the plaintiff on 4th February, 2022. She noted that during her examination of him he appeared quite uncomfortable. His movements were quite limited due to pain. She noted that he was on a cocktail of pain relieving medication. She was of the opinion that the plaintiff would not be capable of doing any heavy manual work, but he may become fit for some form of sedentary light work. It will only be possible to know that with certainty, if and when he has a good response to pain relieving medication and treatment. She was of the view that the plaintiff may be able to return to some form of sedentary work. She put his chance of so doing at approximately fifty percent. However, if his pain were to continue at its present level, she did not think that he would ever be fit to work again. She stated that when pain has lasted for longer than one year, it is deemed chronic in nature. Such pain is very difficult to shift and it becomes very difficult for a person to return to the workplace.
61. She felt that a six-month rehabilitation programme, followed by a return to work, was probably somewhat optimistic. She remained of the view that he had a fifty percent chance of returning to some form of light work. She accepted that the plaintiff was receiving pain relief treatment from Dr. Shannon and that it appeared to be having some beneficial result for him.
62. Finally, evidence was given by Ms. Elva Breen, an occupational therapist and vocational assessor, who had assessed the plaintiff on 2nd July, 2019. She had also had a telephone consultation with him on 2nd February, 2022.
63. It was her view that the plaintiff's best chance of returning to the workforce, was to take up light work with his current employer, if and when he was medically fit to do so. If the plaintiff did not successfully complete a rehabilitation programme, she felt that his chances of obtaining alternative employment with another employer, would be very low. There were a number of barriers to his securing alternative employment on the open market, being his pain levels, his low level of education, the fact that he had presented with chronic pain and disability – all of these would make him very uncompetitive in the labour market, where he would be competing against fit and educated people. She felt that it would be unlikely that he would get employment on the open labour market.

64. Ms. Breen noted that the plaintiff had been awarded an Invalidity Pension. That was awarded where a person was deemed incapable of work either on a permanent basis, or where they had been deemed incapable of work in the previous twelve months and it was thought that they would remain unfit for work for a further twelve months thereafter. She noted that the plaintiff had been assessed as being unfit for work and had been awarded this pension.
65. In cross-examination, Ms. Breen accepted that she had advised the plaintiff to try to take up alternative light work, if same should be offered to him by his employer. She stated that taking up such employment with his current employer, was his best chance of returning to the workplace. She felt that at this stage, his only option was to return to some form of very light work in an office. She did not think that he would be capable of being a warehouse operative, which may involve ascending and descending from a forklift truck on a frequent basis.
66. She did not think that the plaintiff would be fit to work as a security guard, as he would not be able to manage any fracas or disturbance that may arise, nor was he fit for prolonged standing. She remained of the view that his best opportunity of returning to work was to get some form of light work with his present employer.

**The Defendant's Evidence.**

67. The plaintiff was seen by Mr. Harish Kapoor, Consultant Orthopaedic Surgeon, on behalf of PIAB on 27th July, 2018. He subsequently saw the plaintiff on 10th May, 2019 and 25th June, 2021, at the request of the defendant's solicitor. He issued three medical reports. Mr. Kapoor was not called to give evidence at the trial. His medical reports were admitted as being his evidence.
68. Having noted the findings on the MRI scans taken on 1st September, 2017 and 19th June, 2018, Mr. Kapoor formed the opinion that the plaintiff had suffered a minor sprain to his lower back, from which he could be expected to make a full recovery within approximately twelve/eighteen months from the date of the accident.
69. When seen on the second occasion on 10th May, 2019, the plaintiff had had two epidural injections from Dr. Shannon in the interim. Mr. Kapoor was of the opinion that the plaintiff had extensive degenerative changes in his spine, as demonstrated in the MRI scans. He felt that his ongoing symptoms were largely constitutional and related to underlying structural degenerative pathology, which pre-existed the accident. He noted that the cause of both lumbar disc degeneration and lumbar disc herniation, was believed to be attributable to a complex multi-factorial process driven by innate internal factors; in essence, due to an individual's genetic pre-disposition to such degeneration, rather than an individual's exposure to external effects caused by occupation, exercise, or accident related factors.
70. Mr. Kapoor stated in his report that the plaintiff had a chronic degenerative back condition. He had sustained a minor soft tissue strain in the incident. None of the changes present on both the MRI scans had any relation to the accident and were largely

constitutional. They would require treatment of their own accord, as necessary in the long term. The plaintiff's ongoing absence from work would be largely attributable to his degenerate back condition, rather than any traumatic cause.

71. Mr. Kapoor's opinion remained the same following his third examination of the plaintiff on 25th June, 2021. He remained of the view that the plaintiff's main problem was his pre-existing degenerative back condition. He stated that the plaintiff described vague subjective symptoms, which were low grade and mechanical in nature. As noted before, the disc degeneration and disc herniation were due to an individual's genetic predisposition. He noted that the plaintiff had developed a knee complaint. The knee had not been injured in the accident. He was of opinion that the plaintiff also had a constitutionally degenerative knee. He stated that the plaintiff's absence from work at this stage could not be related to the accident. He stated that while he had not reviewed the plaintiff's GP records, a similar period of aggravation of symptoms of twelve-eighteen months, or the bringing forward of symptoms in the absence of previous symptoms, may not be unreasonable.
72. The defendant's solicitor referred the plaintiff to Mr. George Kaar, consultant neurosurgeon, for an examination and report. The plaintiff was reviewed by the doctor on 21st July, 2020. Mr. Kaar stated that the plaintiff told him that he spent a lot of the time lying on the couch. As a result, his weight had increased by 3.5kg. He had told the doctor that he wanted to return to work and was hopeful that the company would "sort something out" for him.
73. On examination, Mr. Kaar noted that the plaintiff grimaced with pain during the examination. However, he found no muscle spasm, no scoliosis or tenderness. While the plaintiff complained of intermittent pain in his spine, his range of movement was excellent. His diagnosis was that the plaintiff had long standing degenerative changes in the lower back. He had suffered some minor soft tissue strain to the lower back in the accident. His persistent chronic symptoms were unexplained. His opinion was that any injury, if there was one, was a minor one. There was no documented injury to the lumbar spine at the time of the accident. If there had been a serious injury to the spine, one would expect the onset of immediate severe pain and incapacity. That had not happened in this case, as the plaintiff had worked out his shift and had then returned for a later shift that evening. There were no post-traumatic findings on the MRI scans.
74. Mr. Kaar stated that he felt that the plaintiff's symptoms were consistent with a minor soft tissue strain. Such symptoms would normally resolve within a number of weeks, or within three/six months at most. The word strain is used where tissues are stretched and bruised, but remain intact. Mr. Kaar stated that he felt that the plaintiff's return to work in October 2017, was consistent with a recovery having been made by him from any injuries sustained in the accident.
75. He stated that the MRI scans suggested ongoing significant degenerative changes in the spine. However, there was no evidence on the scans of any significant injury. He felt that the plaintiff's ongoing symptoms three years' post-accident, were very unusual. There

were inconsistent findings on examination. He had complained that he had pain at a level of three-five out of ten, yet he had said that he had to lie down for long periods due to pain. He felt that the plaintiff's complaints of pain were out of proportion to the clinical findings. He felt that the plaintiff had lost a lot of strength in his spine, due to lack of exercise. The plaintiff's overall condition and complaints of pain may be influenced by his knowledge of the existence of the degenerative changes in his spine, which he had learnt from the MRI scans. He noted that the plaintiff had been treated for chronic pain, which was seen by some as a disease in itself, and unrelated to any injury. In addition, it had to be borne in mind that the plaintiff had ongoing litigation.

76. When reviewed on 29th June, 2021, the plaintiff stated that there had been no great improvement in his symptoms. He stated that he continued to be considerably restricted in the activities of daily living. He was not able to do car washing, or strimming in the garden. He had been walking up to 8km per day, but had had to cut that back due to the development of knee pain. Mr. Kaar noted that despite his complaints of severe pain and inability to work when examined, the plaintiff had had a good functional examination. He felt that the level of pain reported was out of proportion to the physical findings on examination. Mr. Kaar stated that there were psychological inputs into the plaintiff's condition, in that the plaintiff regarded himself as permanently injured, despite the benign findings on physical examination. He felt that the plaintiff had adopted a "chronic illness role".
77. In cross-examination, Mr. Kaar accepted that he had not had the opportunity to view the CCTV recording of the accident. It was put to him that Mr. Mangan had noted spinal recoil, when the spine was returning to an upright position from a forward flexed position. Mr. Kaar stated that he was not familiar with the term "spinal recoil". He was not sure what it was. He stated that he did not see any such manifestation on his examination of the plaintiff.
78. Mr. Kaar accepted that the plaintiff appeared to have been asymptomatic prior to the accident. He accepted that the plaintiff had had symptoms since the time of the accident, but he did not accept that they were related to the accident. The plaintiff had developed chronic pain symptoms, but that was multi-faceted for the reasons set out in his reports. In that regard, there were perhaps ten factors which could give rise to chronic pain. One of those was the possibility of financial gain, which was a known factor in prolonging pain. However, he stated that he had not suggested that the plaintiff was pretending to have pain. He was merely setting out a number of factors that could be feeding into his perception of pain, such as learning of the presence of degenerative changes in his back; the deconditioning of his back due to lack of use; the fact that the accident had happened at work; together with the ongoing litigation and the possibility of financial gain. They were all possible factors leading to his ongoing symptoms.
79. Mr. Kaar stated that in terms of pain being chronic, if it lasted for more than two years, the literature showed that it was not likely to make a full recovery. However, he could not say that an incident, which was not serious and which had occurred in July 2017, could

lead to such serious prolonged symptoms. He felt that the plaintiff's later symptoms were multi-factorial. He did not take issue with the opinion given by Mr. Young, but he did not agree with it. He accepted that there were degenerative changes in the plaintiff's spine, but he had not seen any inflammation.

80. Mr. Kaar stated that he did not suggest that the plaintiff was voluntarily adopting a "chronic illness role", but he could not find a link between the accident and the subsequent symptoms of chronic pain. When it was put to the witness that he had been trying to minimise the plaintiff's level of injury, when the plaintiff had been found by Dr. Shannon to be entirely genuine, Mr. Kaar accepted that the plaintiff was genuine. He accepted that the plaintiff had had no symptoms prior to the accident. However, he stated that the plaintiff was constitutionally predisposed to symptoms, due to the degenerative condition of his back. He did not think that the plaintiff would have remained asymptomatic, even if the accident had not occurred.
81. When it was put to the witness that the plaintiff's symptoms could not be regarded as being "unexplained" when he had received extensive treatment for the symptoms in the form of the treatment administered by Dr. Shannon and the ongoing cocktail of pain relieving medication, the witness stated that the treatment given was for genuine back pain, but not for a specific post-traumatic complaint, even though he has had symptoms since the time of the accident. He accepted that the symptoms had been persistent since the accident in July 2017. There had been some variation in his symptoms, but the question remained as to what source they had come from.

**Conclusions.**

82. The court accepts the evidence of the plaintiff and of his GP, that prior to the time of the accident, the plaintiff's back had been asymptomatic. The court notes that the plaintiff had worked all his life since leaving school. The court further notes that the plaintiff had worked for seventeen years with the Golden Vale, which was taken over by the defendant, prior to the accident; during which time he had worked a significant amount of overtime, often up to sixty hours per week. It was accepted by the defendant that the plaintiff's pre-accident work record was good.
83. The court does not accept the evidence of the defence witnesses that the accident should be deemed a minor one just because no severe acute injury was documented at the time of the accident. It is accepted that the plaintiff did not require hospital treatment. However, to say that the accident itself was minor, is not accurate for a number of reasons. Firstly, the court has viewed the CCTV recording. This shows that the plaintiff fell partially into the hole striking his back against the lip thereof.
84. Secondly, it is noted that the plaintiff stated that he was in "fierce pain" at the time of the accident. He had to lie down on the ground for a period. The pain eased as he moved about. Thirdly, the plaintiff only had to work on for a further period of approximately one hour, until he reached the end of his work shift at 16.00 hours. The fact that he returned and did the night shift is not indicative of a minor injury. The court accepts his evidence that he did not want to let the defendant and his co-workers down, as he had been

rostered to do that shift. The court is satisfied that in finishing out the afternoon shift, and doing the night shift, that was not indicative of the plaintiff having suffered a minor injury, but rather was indicative of a man who had a strong work ethic.

85. The court is satisfied that when the plaintiff went to his GP two days later and when he was out of work from that time until 9th October, 2017, that was only done by the plaintiff, because he was in such pain that he could not cope with the demands of his work. His absence from work was certified by his GP on a fortnightly basis.
86. Insofar as the defendant made reference to the fact that the plaintiff suffered a flare-up of back pain when he had engaged in dancing at a social function in August 2017, the court notes that the plaintiff had been advised by his GP to be as active as possible. That was good advice. To record that a person had been "dancing" does not imply that he was gyrating at great speed on the dancefloor. Very often what passes for dancing, is no more than a shuffling of the feet across the dancefloor. The court does not infer from this entry in the GP's notes, that the plaintiff had engaged in any overly arduous activity. Rather, it is more likely that some modest engagement in dancing at a social function, caused a significant flare-up of the plaintiff's back pain.
87. The fact that the plaintiff returned to work in early October, shows that he was motivated to get better and return to his position of employment. The plaintiff took extended holidays that he had accrued in November and December 2017. He returned to work in January 2018. He was out sick with the flu for two weeks in February 2018. He was then obliged to go out sick again on 6th March, 2018 after a flare-up of pain, when he shovelled snow from in front of his house.
88. By that time, the plaintiff had been working, albeit with difficulty, for a number of weeks. The court does not criticise the plaintiff for engaging in clearing the snow. That cannot be seen as overly arduous exercise. It is a normal thing for a person to do when there has been an accumulation of snow. That activity caused a significant flare-up of his back pain. Thereafter the plaintiff remained out of work until June 2018. He then tried to return to work again and did so for a number of weeks until July 2018. He has not worked since that time. It is important to note that his incapacity for work has been certified fortnightly by his GP, which certificates have been handed in to his employer. In addition, the plaintiff's continued incapacity for work has been accepted by the defendant's occupational health physician.
89. In terms of the treatment of the plaintiff's injuries, in this case the plaintiff attended with his GP two days after the accident. When his symptoms did not settle, the GP referred him to Mr. Lim, who determined that surgery was not an option. He in turn referred the plaintiff to Dr. Shannon, who has administered treatment to date. He has given the opinion that the plaintiff will require treatment in the form of denervation of the nerves, for the rest of his life.
90. When a consultant pain specialist administers treatment to a patient, he or she only does so because he/she is satisfied of two things: (i) the patient is suffering pain and (ii) that



the treatment administered will have a beneficial effect on that pain. In this case, the plaintiff has received five/seven treatments in the form of epidural injections or denervation of the nerves in his lower back. The treating specialist is of opinion that the plaintiff will require such treatment in the future. That evidence has not been contradicted by the defendant's medical experts.

91. The essential dispute between the medical witnesses in this case, was as to the causation of the plaintiff's current symptoms and disability. Before coming to a conclusion on that conflict in the opinions expressed by the doctors, it is necessary to note that the defendant's expert, who gave evidence at the hearing, Mr. Kaar, accepted that the plaintiff was genuine. This means that he accepted that the plaintiff was not malingering, or exaggerating his stated complaints of pain.
92. Turning to the issue of the causation of the plaintiff's complaints of chronic pain, it is well known that the aetiology of chronic pain and the treatment thereof, is complex: see judgment of this court in *O'Sullivan v. Brozda* [2020] IEHC 129.
93. Having considered the conflicting evidence on this issue, the court prefers the evidence given by the plaintiff's treating doctors, Dr. Lucey and Dr. Shannon, which is supported by the evidence of the plaintiff's reporting doctors, Mr. Young and Mr. Mangan. The court is satisfied that the plaintiff's pre-existing degenerative changes in his lower back were asymptomatic prior to the accident. The court accepts the evidence of the plaintiff that he did not suffer from back pain before the accident. That is supported by the evidence of his pre-accident work record and the evidence of his GP, who has treated the plaintiff for twenty/thirty years.
94. The onset of symptoms of intermittent and at times severe back pain, is fixed in time to the occurrence of the accident. While the defendant laid emphasis on the various activities engaged in by the plaintiff as a possible cause of his ongoing pain, the court is satisfied that the activities engaged in by the plaintiff of dancing, gardening, shovelling snow, changing a car wheel and hovering the inside of the car – all of which caused significant flare-ups of pain, should not be seen as the cause of the pain, but are more properly seen as flare-ups of an underlying symptomatic back, which had had symptoms of varying intensity on an intermittent, but fairly frequent basis, since the time of the accident.
95. The court prefers the opinion evidence of Mr. Young that the plaintiff's symptoms are due to soft tissue inflammation in the lumbar spine *i.e.* probable chronic inflammatory change in the facet joints and muscular ligamentous tissues of the lumbar spine, as well as perhaps chronic inflammation in the coccyx itself. The court prefers the evidence of Mr. Young that the degenerative changes in the plaintiff's spine, which were revealed on the MRI scans, were probably asymptomatic prior to the accident and have been rendered symptomatic by the accident. The court finds that that is a more probable explanation for the onset and continuance of his symptoms than the opinion given by Mr. Kaar. In particular, the court finds it difficult to regard the accident as being minor in nature, when

it has given rise to significantly disabling symptoms over five years since they became onset as a result of the accident.

96. The court was impressed by the evidence given by Mr. Mangan. He gave his evidence in a very fair and forthright manner. The court prefers his opinion that the plaintiff's degenerate spine did not become symptomatic spontaneously, but became symptomatic as a direct result of an accident and injury. The court accepts his view that the persisting spinal symptoms suffered by the plaintiff, are the result of an injury which aggravated a previously asymptomatic degenerate spine. The court accepts his view that chronicity of spinal symptoms after an injury is more likely in the presence of pre-existing spinal degeneration.
97. Insofar as Mr. Kapoor in his reports gave an opinion that the onset of degeneration in the spine was probably due to genetic factors, that may well be true. The plaintiff's case is not that the degeneration as shown in the MRI scans was caused by the accident, but rather that he was one of those people, who had degeneration in his spine, but had been totally asymptomatic prior to the date of the accident and unfortunately, thereafter became markedly symptomatic. The court is satisfied that the onset of those symptoms was caused by the accident and the persistence of the symptoms is, as explained by Mr. Young and Mr. Mangan, due to the injury being superimposed upon pre-existing degenerative changes in the spine.
98. While the court has had regard to the medical reports of Mr. Kapoor as being his evidence, the court cannot attach the same weight to that evidence, as to the other medical evidence in this case, as it was not subject to the rigours of cross examination.
99. In summary, therefore, the court prefers the evidence of the plaintiff's expert witnesses that this injury was superimposed on a significantly degenerative back, which has given rise to persistent symptoms. That their chronicity may be due, to some extent, to psychological factors, is not relevant, as long as the court is satisfied that the plaintiff is not deliberately malingering, or trying to exaggerate his symptoms and disability. Having watched the plaintiff give evidence over a number of days in the course of the trial and having regard to his pre-morbid functioning, the court is entirely satisfied that that is not the case.
100. While it may be that one plaintiff, who is injured in an accident very similar to another plaintiff, may recover much more quickly, as long as the court is satisfied that the plaintiff who does not recover as quickly, is not malingering or trying to exaggerate their symptoms, the defendant must take the second plaintiff as he finds him. This is known as the operation of the "eggshell skull rule", which provides that a tortfeasor must take his victim as he finds him. This principle has long been accepted in Irish law. It was described in the following terms by Clarke J. (as he then was) in *Walsh v. South Tipperary County Council* [2011] IEHC 503, at para. 5.6: -

*"Likewise, in the oft quoted case of the injured party with the so-called "eggshell skull" it can, on occasion, turn out that, due to some weakness or predisposition, a*

*particular injured party suffers much more severe consequences from a relatively innocuous incident than might be expected. However, it again remains the case that, if personal injury is a foreseeable consequence of whatever wrongdoing is concerned (say the negligent driving of a motor vehicle), then the fact that those injuries may, in the peculiar circumstances of the case, be much more severe than might have been expected, does not deprive the injured party from an entitlement to recover whatever may be appropriate for those injuries. In McMahon, B. & Binchy, W., Law of Torts (3rd Ed.), at para. 3.32, the authors describe the rule in the following terms:-*

*"The 'egg-shell skull' rule has survived the reasonable foreseeability rule introduced by Wagon Mound (No 1) [[1961] 2 WLR 126]. According to this rule if the defendant could foresee a particular type of physical or psychological injury to the plaintiff then he or she will be liable for all the physical or psychological injury that follows on account of the plaintiff's particularly vulnerable pre-accident condition, even if it turns out that the injuries to the plaintiff were far more than might reasonably have been expected in normal circumstances. [...]"*

*Wagon Mound (No 1) therefore provides authority for the proposition that a type of injury which was not foreseeable by a defendant at the time of an accident cannot be the subject of any order for compensation whereas, in contradistinction, the egg-shell skull rule provides that a plaintiff will be liable for the consequences of a foreseeable injury regardless of the severity of that injury."*

101. Insofar as it was suggested that the plaintiff may have adopted the behaviour or role of an injured person, the court accepts the evidence of Mr. Mangan, that that was not done deliberately and that people who fall into that role and exhibit behaviours consistent with being seriously injured, such as grabbing onto the back of a chair for support, or rubbing their back, do not do so in an attempt to exaggerate their symptoms, but fall into that role due to the persistent nature of the pain that they have suffered. The court accepts his evidence that people who experience pain, very often live in fear of pain.
102. In summary, this plaintiff, who had had a long and effective work history with the defendant, was injured as a result of the accident on 23rd July, 2017. Unfortunately, the injuries sustained in the fall were superimposed on a back that was significantly compromised. That has led to persisting symptoms, which have become chronic.
103. The chronicity of the symptoms may be due, to some extent, to psychological factors, such as the knowledge that he has extensive degenerative changes in his back. It may also be due to deconditioning by underuse, partially contributed to by a deterioration in his mental state.
104. The court accepts the evidence of Mr. Mangan that for the plaintiff to return to work, it will require an intensive multi-disciplinary rehabilitation programme, consisting of input from a pain specialist, an expert physiotherapist and a psychologist, who is expert in the

management of chronic pain. As the plaintiff does not have private medical insurance, it is understandable that he has not had this treatment to date. Indeed, the court notes that he has paid for his physiotherapy and injection treatment out of his own, much reduced, income. In this regard, it is noteworthy that the plaintiff's pre-accident net weekly pay was €891, whereas his current social welfare pension is €261.50 per week.

105. There is no guarantee that the rehabilitation programme will be successful. However, the preponderance of medical opinion is that with diligent compliance with such a programme, the plaintiff ought to be fit for light work. The defendant has indicated to the court that it will do its best to provide the plaintiff with light work at its plant, once he is certified as being fit to return to work. The vocational assessors are agreed that having regard to his lack of formal educational qualifications and his work history to date, the plaintiff's best chance of working until normal retirement date, is to obtain light work with the defendant.
106. Accordingly, the court finds that on the balance of probabilities, the plaintiff will be fit to return to light work with the defendant after adherence to an appropriate rehabilitation regime, which will be of at least six months' duration. Thereafter, the plaintiff will have to gradually return to work on a phased basis. Doing the best that I can, I find that on the balance of probabilities, the plaintiff will have returned to full time light work in one year's time. This does not mean that the plaintiff will be pain free within that period, but that his pain will be reduced to a level where he can function reasonably well.
107. In assessing general damages for pain and suffering to date, the court has had regard to the extent of the physical injuries suffered by the plaintiff and the resultant disability that has flowed from them. The court also accepts that as a result of the strong pain relieving medication that he has had to take in the intervening years, his mental health has deteriorated. The court accepts his evidence that his physical and mental deterioration, has had an adverse effect on his marital relationship. These additional factors have meant that the Book of Quantum has not been of great assistance in this case.
108. In summary, the court finds that this plaintiff was a hard-working man, who was proud of the fact that he had provided a good standard of living for his wife and two sons. All that changed after the accident. Since then, he has been greatly affected by chronic pain in the work and ordinary aspects of his life. Taking all of these matters into account, the court assesses general damages to date in the sum of €60,000.
109. The plaintiff will continue to experience symptoms, hopefully on a decreasing scale during the next year, while he pursues the intensive rehabilitation programme as advised by Mr. Mangan, which will hopefully lead to his eventual return to work. The court accepts the evidence of Dr. Shannon that the plaintiff may need further injections to enable him to make this transition. However, the court is not convinced that the plaintiff will require injections for the rest of his life. The court is satisfied that the plaintiff will continue to experience severe pain while he undergoes the rehabilitation programme, and thereafter, will be left with some degree of pain, albeit at a level that will allow him to function. The court awards the sum of €20,000 to compensate the plaintiff for his future pain and

suffering while he undergoes the rehabilitation programme and moves back to a more normal life.

110. In terms of special damages, the court is satisfied that as the plaintiff has been unfit for work since July 2018, he is entitled to recover his loss of earnings down to the present time. When Mr. Tennant furnished his updated report on 7th February, 2022, the past loss of earnings was €165,736. If one brings that period for past losses down to the approximate date of delivery of judgment to 28th March, 2022, that would involve a further seven weeks at a loss of €891.00 per week, giving an additional loss of €6,237. That would give an overall loss of earnings of €171,973 in respect of past loss of earnings down to the anticipated date of judgment. The court has been furnished with an updated RBA certificate, which indicates that the total recoverable amount as of 28th March, 2022 will be €50,000 in round figures. On this basis, the court assesses what will be past loss of earnings as of 28th March, 2022, in the sum of €121,973, net of the RBA deduction.
111. The court further finds that the plaintiff will suffer a loss of earnings into the future. The court accepts that the plaintiff will not be able to earn any money while he is undergoing the rehabilitation programme. Thereafter, if he successfully completes that programme, he will return to work on a phased basis. To what extent and how quickly he may be able to build up his working hours, is very much at large. Ms. Rossiter confirmed that doing full-time light work, he would get full normal pay. Doing the best that I can, the court proposes to allow the plaintiff a further one year's loss of earnings into the future, which would amount to the sum of €46,332 (€891 x 52). Given that the plaintiff would not be able to earn anything during the first six months, this would give rise to RBA liability of €6,799 (€261.5 x 26). There would be no RBA liability in the second six months, as presumably the plaintiff will lose his invalidity pension once he returns to work on a phased basis. This would give rise to a net figure for loss of earnings for the year of €39,533.
112. The court accepts that in making a finding that it is appropriate to allow the plaintiff one year's future loss of earnings, that is inconsistent with its finding that the plaintiff will return to work on a phased basis after completion of the rehabilitation programme after approximately six months. However, the court is satisfied that it is appropriate to allow this sum, as one cannot rule out the possibility that the plaintiff will not be able to return to work on completion of the programme, or the defendant may not be able to find suitable work for him in the plant. If that were to happen, Ms. Breen and the defendant's vocational assessor, Mr. O'Loinsigh, were essentially in agreement, that the plaintiff's chance of finding alternative employment on the open labour market, would be almost non-existent. In these circumstances, the court is satisfied that it is appropriate to allow a figure for future loss of earnings for one year.
113. The court accepts the evidence given by Mr. Tennant in his updated report that the plaintiff has suffered a loss of pension contributions of €17,083.
114. Finally, there were agreed other special damages in the sum of €10,000.

115. Adding the various heads of damages together, gives a total award of €268,589. That figure is net of the RBA amount. The amount for RBA purposes as of 28th March, 2022 will be €49,996.40. On current figures the probable amount for RBA purposes for the following six months thereafter, will be €6,799. However, that matter will have to be clarified with the appropriate authorities as and when that amount falls to be paid. I have already deducted that amount from the plaintiff's future loss of earnings.
  
116. As this judgment is being delivered electronically, the parties will have two weeks within which to furnish brief written submissions on the terms of the final order and on costs and on any other matters that may arise.