

# THE HIGH COURT

[2023] IEHC 541

RECORD NO 2015 / 9275 P

NAMALIE GOONETILLEKE

PLAINTIFF

V

EDUARD BUJEVICS AND NORBERT SZENTE

DEFENDANTS

## **Judgment of Mr. Justice Mícheál P. O'Higgins delivered on the 31<sup>st</sup> July 2023**

### **Introduction**

1. This is a claim for damages for professional negligence arising from allegedly shoddy dental work and treatment carried out by the defendants on the plaintiff on three dates in the month of May 2013. The case proceeded as an undefended case before me on the 9<sup>th</sup> of June 2023 in circumstances which I will presently outline.

2. On the morning of the hearing, the legal team for the defendants made an application to Coffey J. after the callover of the personal injuries list for an order permitting the defendants' solicitor to come off record. The affidavit grounding that application indicated that initially the defendants had instructed their solicitors to enter an appearance to the proceedings in February 2016. However, since that date communications with the defendants had been slow and sporadic. In the lead up to the present hearing date, instructions were

sought from the defendants by way of a number of letters in September 2022 and January 2023. However, no instructions were forthcoming. Despite further attempts being made to obtain instructions by way of several letters sent during the month of May 2023, with follow up telephone calls and emails, no further contact from the defendants was forthcoming. On that basis, Coffey J. acceded to the solicitor's application to come off record.

3. During the hearing I heard oral evidence from the plaintiff, Namalie Goonetilleke, and from Dr. Kevin Gilmore, a dental specialist and prosthodontist based in Galway. In addition, the court had the benefit of two reports prepared by Dr. Gilmore dated the 6<sup>th</sup> of October 2015 and the 3<sup>rd</sup> of October 2017. The court was also provided with reports from other dental experts who were not present to give evidence, namely Dr. Emily Clarke, a periodontologist and expert in implantology, and two reports from Dr. Jason McEvaddy, a dentist based in Lower Salthill in Galway. As the latter reports are not admissible in the absence of their authors, and were not exchanged as part of the S.I. 391 process, I propose not to have regard to the reports of the other experts, save insofar as Dr Gilmore referenced those reports for context in his oral evidence.

4. When the case was called before me, there was no appearance by or on behalf of the defendants. I am satisfied, however, that the defendants were served with the proceedings; that they instructed their then solicitors to enter an Appearance in February 2016; that Notice of Trial was served in October 2017; that additional particulars of negligence were served in May 2018; that Elizabeth Howard & Company Solicitors formally came on record for the defendants in October 2018 (effectively by way of change of name of solicitors); that Notice of Intention to Proceed was served on the solicitors on record for the defendants on the 15<sup>th</sup> of September 2022 and that proof of such service is set out in the affidavit of Jurgita Nangle, law clerk sworn herein on the 29<sup>th</sup> of September 2022.

5. It is also clear that the solicitors on record for the defendants were aware and were notified of the hearing date of the action and that they, in turn, notified the defendants that the matter was listed for hearing on the 7<sup>th</sup> of June 2023. A copy of the letter of Elizabeth Howard & Company to the defendants dated 12<sup>th</sup> of May 2023 was exhibited to the affidavit of Laura Duffy, Solicitor in Elizabeth Howard & Company which grounded the application to come off record. The salient parts of the letter read as follows:

*“ .. I note that you were obtaining an expert report however, you did not provide further details and also (sic) not in fees.*

*In the event that you wish for me to continuing (sic) acting in this matter it is imperative that you provide me with your urgent instructions, or I will have no option but to come off record.*

*In the event that you do not attend on the date of the hearing judgement will be rewarded against you.*

*I look forward to hearing from you as a matter of urgency.”*

6. In the circumstances, I am satisfied that the defendants were notified of the hearing date; secondly, were aware that their solicitors intended applying to come off record, on account of the defendants’ failure to provide instructions and engage further with the proceedings; and thirdly, were notified that in the event they did not turn up for the hearing, the case would proceed in their absence and damages could be awarded against them. Prior to the case proceeding before me, the defendants were again called and again there was no appearance. In these circumstances, I was content for the case to proceed as an undefended action.

7. Moving to the substance of the proceedings, the defendants operated a dental practice at Woodquay in Ennis, Co. Clare and the plaintiff attended their practice for treatment on the 2<sup>nd</sup> of May, 8<sup>th</sup> of May and 15<sup>th</sup> of May 2013. The plaintiff had quite extensive dental work

done, including crowns, implants and the insertion of a bridge. I will come back to a more detailed description of the dental work carried out presently.

**8.** The plaintiff was born on the 27<sup>th</sup> of March 1963 and was aged 50 at the time of the dental treatment the subject of these proceedings. She was employed in Galway as a pre-school assistant. She was originally from Sri Lanka and came to Ireland in 1999. The plaintiff had had difficulties with her teeth in her forties. She lost her lower incisor teeth in 2012 and implants were replaced in 2013. There was a positive history of periodontal disease in her family. The plaintiff is a non-smoker.

**9.** In April of 2013 she had a consultation with the defendants, and she was given an outline of the cost of the dental work that the defendants proposed to carry out for her. As she was not a person of significant means, she had to borrow the money from her local credit union. The plaintiff attended the practice of Dr. Jason McEvaddy (in respect of whose work there is no complaint) and over the following years his practice, Middle Court Dental, tended to her general dentistry requirements and also periodontal maintenance and occasional dental emergencies. In 2013, a friend recommended that she attend the defendants' practice for implant and bridge work that she needed done and, as I have mentioned, she attended a consultation with the defendants in April of 2013.

**10.** Following consultation with the plaintiff, the defendants put in an 8 unit bridge from lower right 4 (first premolar) to lower left 4 (first premolar). The defendants also put in two implants in lower left 1, lower right 1 positions and, for reasons that remain unclear, all teeth and implants were linked together in one 8-tooth bridge.

**11.** I note that in additional particulars of negligence and breach of duty dated the 23<sup>rd</sup> of May 2018, it was alleged that the defendants designed and inserted a bridge that was inappropriate in that the implants and teeth should not have been linked together and that the teeth and implants should have been kept separate or treated separately. In the same pleading

there was criticism of the fact that the bridge involved the natural teeth in restoring the missing four anterior teeth, and that this complicated unnecessarily the remaining natural dentition and implants by connecting the teeth and implants together.

**12.** In her oral evidence, the plaintiff explained that after the dental work carried out by the defendants was completed in May 2013, her gums and teeth were painful and she had considerable sensitivity in her teeth, particularly on the left side. She had pain extending to her jaw and head which she assumed was a headache, so she initially attended her general practitioner. She reported what she thought was ear pain and she was given antibiotics and it was recommended that she attend another dentist. The plaintiff explained that she did not have the money for further treatment and so she did her best to put up with her ongoing pain and discomfort.

**13.** In March of 2015 she came under the care of Dr. Emily Clarke, periodontist, in respect of whom, it should be made clear, no complaint is being made. Dr. Clarke saw the plaintiff on the 9<sup>th</sup> of March 2015.

**14.** Dr. Clarke's report indicates that the plaintiff had a non-vital lower right first premolar and lower left first premolar, both of which were crowned and part of the bridge that had been put in by the defendants. I am satisfied from the evidence and from the reports referenced by Dr Gilmore that these teeth were then causing considerable pain for the plaintiff. This is entirely consistent with the plaintiff's own evidence in the witness box in which she outlined that she had been suffering ongoing pain and discomfort throughout the period since the work was carried out by the defendants in May 2013. She was getting swollen gums and also referred pain which she thought was ear pain. She reported that she had significant sensitivity to cold or hot drinks. She stated that she had no real improvement in her symptoms in the affected areas in the ten-year period since.

**15.** As to the plaintiff's own evidence, I am satisfied that she gave her evidence in a straightforward and low key manner and I accept that she suffered significant pain and discomfort as a result of the dental work carried out by the defendants, which ultimately led to the plaintiff's teeth becoming seriously infected and causing further pain. She stated that throughout the period since the defendants put in the bridge and implants in 2013 she had ongoing pain and discomfort, but she was hampered in getting the necessary dental repairs done by her lack of financial means and straightened circumstances.

**16.** The plaintiff also testified that she suffered emotionally as a result of having to put up with the long-standing pain and discomfort caused by the allegedly defective bridge and implants. On occasion, this pain and discomfort affected her sleep and also led to a number of infections and to her teeth becoming swollen. I accept the plaintiff's evidence that this affected her overall mood and outlook and on a long term basis impacted her ability to get on with things and enjoy daily living and recreation.

**17.** I am satisfied from the evidence that there was a loss of vitality of the lower right first premolar and lower left first premolar. In addition, there was also a failed implant at the lower left central incisor. When the plaintiff's now treating specialist reviewed the plaintiff, the bridge and the lower arch included natural teeth and implants. The natural teeth were the lower right and lower left first premolars and both lower canines. All of these teeth and implants were linked together in one unit. I am satisfied from the expert evidence that this is not standard practice. Natural teeth should only be connected to implants and a bridge as a last resort. Usually in a situation like this, two implants and a four-unit bridge would be used to replace the lower four incisors and the canines and first premolars if requiring crowns, should be crowned as separate units.

**18.** I am satisfied from the evidence that in order to remove the failed implant at the lower left central incisor sites, the entire bridge needs to be removed or sectioned in order to

remove this tooth and implant from the bridge. A new bridge or bridges will then need to be made. The area that the implant will have been removed from will need to be grafted and that implant will possibly need to be replaced with another implant at a later stage.

**19.** In addition, both teeth at the lower first premolar sites which are now non-vital will need to have root canal treatment carried out. It seems that this will require either drilling through the existing crowns and either repair, or more likely replacement, of the existing crowns.

**20.** As a periodontist and implant specialist, Dr. Clarke's role was to treat the gum disease and carry out the surgical aspect of the plaintiff's implant therapy. The plan moving forward is that Dr. Kevin Gilmore, as a prosthodontist, to whom the plaintiff was referred by Dr. Clarke, will deal with the failed prosthesis anteriorly.

**21.** The court heard in person from Dr. Gilmore who provided oral evidence consistent with his reports of the 8<sup>th</sup> of October 2016 and 5<sup>th</sup> of October 2017. Dr. Gilmore explained the background to the matter leading to the plaintiff's presentation before him on the 28<sup>th</sup> of April 2015. The plaintiff gave a history of pain and swelling of the lower anterior incisor teeth at times spreading back into the temporo-mandibular joint on the right hand side. The patient initially thought that this was an earache and went to her own GP as she thought it was an ear infection. She eventually went to her own dental practitioner, Dr. Jason McEvaddy, who advised her that the pain and swelling was from the LL1 implant. He explained to her that the bridge had been done incorrectly and he referred her to Dr. Emily Clarke, periodontist, for a second opinion. Dr. Clarke referred the plaintiff then on to Dr. Gilmore for an opinion on her overall dental condition and to make a treatment plan to restore her to dental health.

**22.** In his report of the 8<sup>th</sup> of October 2016, Dr. Gilmore observes that clinically the plaintiff has an 8-unit bridge from lower right 4 (first premolar) to lower left 4 (first

premolar). There are four missing anterior incisor teeth, namely lower left 2, one lower right 2, one front incisor. There are two implants in lower left 1, lower right 1 positions and all teeth and implants are linked together in an 8-tooth bridge. As of the time of presentation on the 28<sup>th</sup> of April 2015, there was currently infection of the lower right 4, lower left 4, and the lower left 1 (central incisor). Implants had failed with associated infection.

**23.** The plaintiff reported to Dr. Gilmore that she had been getting pain and swelling from the implant teeth and the teeth that were part of the bridge which had been installed by the defendants.

**24.** Dr. Gilmore outlines in his report the initial treatment plan which in phase one involved removing active disease and root canal treatments in the lower left 4, lower right 4. Each of these will cost €550. Dr. Emily Clarke will also have to arrange the removal of the implant. According to the plan, if the bone in the lower left 1 position is satisfactory to take another implant, then another one should be placed there at a cost of €1,050 with Dr. Clarke. Dr. Gilmore recommended replacing the four anterior teeth with two implant abutments, a four-unit bridge and replacing the lower left 3, 4 and lower right 3, 4 with single unit crowns rather than the linked ones that are currently in place there. The costs of two implant abutments was €500 each and the 8-unit crown and bridge work would be approximately €1,000 each, making a total of €8,000 for the bridge. In Dr. Gilmore's view, he would expect this crown and bridge work to be replaced every fifteen years or so.

**25.** As to liability, Dr. Gilmore stated in evidence – again consistent with his reports – that the design of the bridge installed by the defendants was inappropriate, the implants and teeth should not have been linked together and the teeth and implants should have been kept separate or treated separately. It was his opinion that there was no need to involve the natural teeth in restoring the missing four anterior teeth. In his view, connecting the teeth and

implants together only serves to complicate and cause problems with the remaining natural dentition and implants.

26. In addition, Dr. Gilmore explained that the infection may have been due to the breakage of cement in the defective bridge. The court was provided with black and white photographs of the plaintiff's teeth, and also with colour photographs on a computer tablet, which showed clearly the areas of infection and poor design. I am satisfied that the design of the bridge was inappropriate and that insufficient groundwork was performed on the plaintiff's teeth and gums to prevent infection and avoid damage to bone and gums. There was also evidence of significant mouth abscesses which in Dr Gilmore's view would cause the plaintiff's teeth to be "exquisitely tender". This in turn would cause referred pain and in his view was consistent with the plaintiff's reporting of jaw and ear pain. In Dr. Gilmore's view, the plaintiff would not have experienced these symptoms and problems if a proper bridge with appropriate dental groundwork had been put in place.

27. Dr. Gilmore reviewed the plaintiff on the 3<sup>rd</sup> of October 2017 regarding the plaintiff's ongoing remedial dental treatment. She had had root canal treatments in her lower left first premolar and lower right first premolar teeth. She was currently wearing a temporary bridge and needs to proceed to the next phase of treatment. Broadly speaking, in terms of the plan moving forward, Dr. Gilmore indicated in evidence that he agreed with the plan outlined by Dr. McEvaddy in his reports.

**Treatment received by the plaintiff to date as outlined by Dr. McEvaddy**

28. I am satisfied from the evidence and from the booklet of special damages that the plaintiff had eight visits to Dr. McEvaddy's practice in 2017 and eight visits in 2018. These visits were for various purposes including full restorative assessment, composite fillings, general scale and polish, x-rays, non-surgical periodontal therapy and various check-ups. In

addition, she had an emergency appointment in March of 2018 and a number of sessions of non-surgical periodontal therapy. Treatment continued in 2019 with a consultation and also a scale and polish. The proposed treatment plan includes 2 x Straumann implants and 2 x Straumann abutments and 8 x units deluxe bonded crowns. The plaintiff attended Dr. McEvaddy's practice three times in 2021, on the 19<sup>th</sup> of April, 21<sup>st</sup> April and the 19<sup>th</sup> of July. In 2022, she attended on some five occasions, on the 17<sup>th</sup> of January, 31<sup>st</sup> of March, 28<sup>th</sup> of April, 3<sup>rd</sup> of May and 11<sup>th</sup> of July. The last three visits were for an extraction, in respect of pain from an extraction and in July of 2022, to fill a fractured tooth.

**29.** I am satisfied from the evidence that I have heard that, across a ten year period, the plaintiff has suffered significant symptoms of pain and distress as a result of the defective work carried out by the defendants. While I take into account the family history of periodontal disease and also the fact that the plaintiff herself had pre-existing difficulties prior to her attendance with the defendants in May 2013, it is nonetheless clear from the expert evidence that I have heard that the defective dental treatment and services provided by the defendants was the predominant cause of the plaintiff's ongoing difficulties. No argument or evidence has been advanced by the defendants to challenge the plaintiff's evidence.

**30.** The plaintiff has had a very difficult time of it in the ten-year period since the work was carried out by the defendants. Apart from the disruption to her life caused by the inflammation, swelling, infection and abscesses, the plaintiff was also affected psychologically by her injuries during the ten-year period. On occasion, her sleep was affected, and she feels that the extent and duration of the symptoms affected her emotionally and also affected her confidence. In addition, I must take into account the fact that the plaintiff has a number of additional procedures to look forward to, a prospect which itself brings stress and discomfort.

**31.** The court has been provided with a detailed breakdown of the plaintiff's special damages and these have been appropriately vouched by receipts and statements of account set out in booklet form. I find the past special damages to be reasonable, and the plaintiff is in my view entitled to recover the full amount of the special damages claimed. The special damages to date total €14,844.28. These are made up of €4,420 in respect of oral healthcare carried out in 2013, bills of €1,300 in respect of work performed by Dr. Emily Clarke, €3,200 in respect of work performed by Oranmore Endodontics, €1,050 in respect of work performed by Dr. Kevin Gilmore in 2015, 2016 and 2017 and €4,847 in respect of work performed by Dr. Jason McEvaddy and Associates. In addition, there is modest travel expenses claimed in respect of dental visits on the 10<sup>th</sup> of March 2019.

**32.** As to the cost of the proposed future treatment, the figure claimed is €14,545 and I find that it is reasonable. This work will be undertaken by Dr. McEvaddy and will include the installation of two implants, the installation of 4 x screw retained bridge and 4 x deluxe layered crowns. In addition, in his oral evidence, Dr. Gilmore indicated that there will be an additional costing for taking out one of the implants which he estimated would be between €400 and €500. He himself does not perform the surgery.

**33.** I am satisfied to allow the special damages claimed in full as in my view they are reasonable, properly supported and arise as a consequence of the defective work carried out by the defendants.

**34.** I am satisfied that the plaintiff's case meets the threshold for professional negligence set out by the Supreme Court in the well known case of *Dunne v. National Maternity Hospital* [1989] IR 91. The test is whether the medical practitioner has been proven to be guilty of such failure as no medical practitioner of equal specialist or general status and skill would be guilty of if acting with ordinary care. Insofar as it is necessary, I am also satisfied from the expert evidence, coupled with the plaintiff's own evidence, that the treatment course

which the defendants took was one which no dental professional of like specialisation and skill would have followed, had he been taking the ordinary care required from a person of his qualifications. It seems to me that the plaintiff's case meets a "but for" causation test. In other words, I am satisfied that but for the defendants' breach of duty to their patient, the plaintiff would not have suffered the injuries and losses that she has suffered.

**35.** As to general damages, the court's task is to arrive at a figure which is fair to the plaintiff and the defendants, proportionate to social conditions, bearing in mind the common good, and proportionate within the scheme of awards made for other personal injuries (see the judgement of the Court of Appeal (Irvine J.) in *Shannon v. O'Sullivan* [2016] IECA 93).

**36.** In *Shannon*, Irvine J set out at paragraph 43 a non-exhaustive list of factors to which the court might have regard when arriving at an appropriate valuation for general damages for pain and suffering. Some of the factors within the list will have little or no relevance to a medical negligence action; some of the factors – e.g. factor (vi) whether the plaintiff was capable of independent living and able to dress and toilet herself; and factor (vii) whether the plaintiff was wheelchair bound, on crutches or whether she had her arm in a sling - may have greater relevance in the context of serious accidents or traumas resulting in indefinite disruption of a plaintiff's enjoyment of life and daily living.

**37.** Whilst a claim such as this for damages for professional negligence may be difficult to fit neatly in to Irvine J's list of indicative factors, it is nonetheless helpful to consider the plaintiff's claim through the lens of the various factors that Irvine J identifies. Adopting that course and applying the factors in sequence, it seems to me the following conclusions can be drawn:

- i) The breach of duty / defective treatment in this case has undoubtedly caused the plaintiff a significant level of distress and this has been sustained;

- ii) The plaintiff did not require hospitalisation but she has been required to undergo a number of dental procedures already to undo and repair the damage to her teeth and dentition caused by the defendants' negligence. Moreover, she also has to look forward (if that's the correct expression) to additional visits (plural) to a dental specialist into the future;
- iii) The plaintiff suffered considerable and sustained pain and suffering as a result of the defendants' defective work. Experiencing dental pain on a largely continuous basis across a ten year period would be likely to "get in on" even the most stoic of individuals, and would seriously impact a person's enjoyment of life and daily living. Having said that, the court should make some allowance for the likelihood that the plaintiff would have suffered some level of dental pain across the ten year period, unrelated to the defendants' negligence. I am referring in that regard to the plaintiff's history of periodontal disease in the family, the fact she had been experiencing some level of dental difficulties prior to attending the defendants and the possibility that complications can sometimes arise from dental treatment and procedures anyway, absent breach of duty on the part of the treating dentist. Nonetheless, these factors aside, I am satisfied that the bulk of the plaintiff's difficulties and symptoms have arisen as a result of the seriously defective treatment and services provided by the defendants in this case.
- iv) The plaintiff was never hospitalised but, as outlined above, she was required to undergo a number of remedial procedures and will have to undergo further dental procedures into the future.
- v) The plaintiff did not have to attend a rehabilitation facility.

- vi) It is not part of the plaintiff's case that she was incapable of independent living.
- vii) While the plaintiff was not dependent on others for her personal needs, she has been required to wear a temporary bridge in her mouth for an extended period.
- viii) The plaintiff was not specifically prevented from pursuing leisure or sporting pursuits, save that her sleep was disrupted for a long period which undoubtedly affected her ability to pursue hobbies and enjoy life to the fullest possible extent.
- ix) No claim for loss of earnings is being maintained.
- x) Other than in a general sense affecting mood and humour, the plaintiff's relationship with her family was not interfered with.
- xi) The nature and extent of the remedial treatment and medication required by her condition has been set out above.

**38.** In terms of the valuation of damages, this is an "old regime" case and is not subject to the *Personal Injuries Guidelines*. The *Book of Quantum*, while not binding, offers indicative values for a broken tooth and for the total loss of a tooth. The suggested range for the loss of a single tooth is €10,300 to €12,700. The notes accompanying the band valuations in the Book of Quantum say that the level of severity and amount will vary depending on the degree of discomfort and the extent of such treatment. Any difficulty with eating will also be a consideration. That is a relevant factor here because I accept the plaintiff's evidence that her eating was affected as she had intolerance to hot and cold.

**39.** In *Bourke v. Bennett* [2022] IEHC 398, Simons J. had to assess damages in a case where the plaintiff suffered injury in an unprovoked assault by the defendant. The incident occurred in the defendant's yard and involved two punches to the plaintiff's mouth resulting in the eventual loss of 3 front teeth. The plaintiff's two central upper incisors were knocked

out at the time of the incident and a number of days later a third tooth, his left upper outer incisor, had to be removed. Simons J. awarded the plaintiff €17,500 by way of general damages for the loss of the three teeth and €7,500 by way of aggravated damages for the assault and psychological trauma.

**40.** While Simons J, awarded a separate figure in respect of special damages for past and future dental treatment, it may be seen that the damages element of the award in that case totalled 25,000 euro.

**41.** Obviously, when it comes to the assessment of damages in a personal injuries case, every case will turn on its own individual facts. There is no assault element or aggravated damages in play here. However, there is a psychological element which is compounded by the duration of the symptoms and the extent of the referred pain, leading to the plaintiff reporting jaw and ear pain to her dentists and to her GP over a long period. In the present case, the plaintiff's enjoyment of life across a ten year period, her day to day living and her ability to enjoy family life and recreational pursuits was hampered by her ongoing pain and discomfort, frequent bouts of referred pain in the area of her jaw and ear, repeated infections and swelling and ongoing necessity to attend a dentist for treatment and pain relief.

**42.** Moreover, I factor in that the plaintiff was entitled to expect that when saving up and paying out a large sum of money to dental specialists that she would receive competent and professional treatment from the specialists to whom she had entrusted her dental wellbeing. That expectation was seriously disappointed and instead she received poor and unprofessional treatment from the professionals concerned and she has been left to pay the price of their defective workmanship in the ensuing 10 year period. As well as her ongoing symptoms of dental and referred pain which would "get in" on most people, the plaintiff has also been affected psychologically by the defendants' breach of duty and this has affected her ongoing mood, confidence and ability to sleep.

**43.** In the *Bourke* decision of Simons J., the interval of time between incident and judgement was 5 years, the plaintiff was resilient and had managed to get back to work relatively quickly, and he was able to discontinue taking pain killing medication some three to four days after the incident. By contrast, the present case involves a symptom period of upwards of ten years, a high level of ongoing dental pain and gum inflammation, a high level of referred pain in the area of the plaintiff's jaw and ear, frequent visits to a dentist for infections and pain relief, and what seems to be a more involved and protracted future dental care programme involving structural work, gum treatment, root canal treatment, bridge work, grafting and implant surgery.

**44.** Moreover, I note that the only witness in *Bourke* was the plaintiff himself, whereas in the present case I have heard from the plaintiff and from her treating specialist who has outlined the extent of the procedures that lie ahead and also referenced medical reports from other treating dental clinicians.

**45.** Taking the evidence and all of these matters into account, senior counsel for the plaintiff contends that the figures referenced in the Book of Quantum are insufficient to reflect the full extent of the disruption to the plaintiff's life and insufficient to cover the extent of the plaintiff's pain and suffering, past and future.

**46.** I find myself in agreement with that submission. The recent decision of the Court of Appeal in *O'Sullivan v. Brozda* [2022] IECA 163 emphasised the point that the fundamental premise in the process of assessment of general damages is "personal to the plaintiff", albeit that process should be objective and rational (see paragraph 175 of the judgement of Faherty J.).

**47.** In the circumstances, I propose to award damages as follows:

- €50,000 in respect of general damages for past pain and suffering;

- €10,000 in respect of general damages for future pain and suffering, including the pain and stress associated with the necessary procedures and remedial works in to the future;
- an uplift of €10,000 in respect of the plaintiff's psychological injuries, to include the ongoing and sustained impact on her mood and psychological wellbeing, and the ongoing disruption to her sleep which affected her daily living;
- vouched special damages to date of €14,844;
- vouched special damages into the future of €14,545;
- together with the additional sum of 400 euro mentioned by Dr Gilmore at the close of his evidence.

**48.** In summary, Ms. Goonetilleke is to recover the sum of €99,789.

**49.** The plaintiff is also entitled to her costs as against both defendants. A full defence denying liability was delivered though ultimately, as I have mentioned, the defendants did not appear and the case went undefended. Costs are awarded on the High Court scale.

Signed:

Micheál O'Higgins

Appearances:

Conor Maguire SC and Paul Kilraine BL instructed by MacDermott & Allen,  
Solicitors, 10 St Francis Street, Galway.