

**THE HIGH COURT**

**[2023] IEHC 617**

**[2022/170 CA]**

**BETWEEN**

**BERNARD FAUGHNAN**

**PLAINTIFF**

**AND**

**JASON KEARNEY AND MOTOR INSURERS' BUREAU OF IRELAND**

**DEFENDANTS**

**JUDGMENT of Mr. Justice Heslin delivered on the 9th day of November, 2023.**

**1.** This matter came before the court on 19 October 2023 by way of a *de novo* hearing of an appeal from the Circuit Court. The proceedings arise out of a road traffic accident which occurred on 20 November 2016. Liability was not in issue.

**2.** As I did at the conclusion of the case, I want to express my sincere thanks to Mr McGrath SC (for the plaintiff) and to Mr O’Keeffe SC (for the defendants) who conducted the case, on behalf of their respective clients, with skill and professionalism and made oral submissions which were of great assistance, and to which I will presently refer.

**The plaintiff’s evidence**

**3.** The sole witness during the hearing was the plaintiff, who gave sworn testimony which can be summarised as follows.

**Pre-accident**

**4.** The plaintiff was born in 1982. He and his family reside in Kilkenny although he is not from there originally. Before the accident, the plaintiff trained for and participated in triathlons and duathlons. The plaintiff had not been a great swimmer, but took up the sport in order to participate in triathlons. He played golf and he used to snowboard. In addition, he is someone who had played underage football. Not being from Kilkenny, the plaintiff found his involvement in triathlons a way to meet people and develop a social circle. This was something he enjoyed, describing it as great for him, both physically and mentally.

**Accident**

**5.** The accident itself occurred when he and his family were driving from Dublin to Kilkenny. The plaintiff had a green light in his favour and was proceeding through the traffic lights when a jeep

came from the right, colliding with the front right side of the plaintiff's vehicle, driving it up onto the footpath where the plaintiff's vehicle collided with a stone wall.

### **Severe impact**

**6.** In his evidence the plaintiff described the impact as "very severe" and the objective evidence entirely supports that characterisation. The plaintiff's car was "written off". Such was the damage to the car as a result of the impact that it was impossible for the plaintiff and his family to drive to Kilkenny.

### **Immediate aftermath**

**7.** The plaintiff's sworn evidence was that he hit his head off the window and was "knocked out" briefly. He went on to say, with respect to the immediate aftermath of the impact, that his wife and children were crying hysterically on the footpath "it was mayhem". Passers-by brought the plaintiff's family into the rear of a public house. He rang emergency services. The fire brigade and Gardaí attended the scene. The plaintiff was breathalysed. He had not consumed any alcohol and this was confirmed by the results. The driver of the other vehicle failed the breathalyser test. This individual also had a cast on his leg. In opening the case, counsel for the plaintiff indicated that the driver of the other vehicle was uninsured and that, at the time of the accident, was subject to a 15-year driving ban. It is in this context that proceedings were brought against the second named defendant.

**8.** The plaintiff confirmed that he and his family were examined at the scene. His evidence included to say that, at that stage, they did not see any immediate need to seek medical attention. The professionals at the scene advised them to seek medical attention if there was a change in their presentations. The plaintiff had a friend who lived in Tallaght. The plaintiff and his family went there. The plaintiff's wife called her brother and he drove from Kilkenny to collect the plaintiff and his family. During the wait of one and a half to two hours the plaintiff began developing back and neck pain. In addition, there was a "bump" on the plaintiff's head, which was tender, where it had impacted with the window. The plaintiff described the children as being in shock. His wife managed to calm them down.

### **Return to Kilkenny**

**9.** On the drive back to Kilkenny, their youngest child started crying unconsolably. On return to the plaintiff's home, he and his wife tried to get the child to sleep but could not. The child was physically sick. The plaintiff and his wife brought the child to an 'out of hours' doctors' service, 'Caredoc' who advised them to attend 'A & E' which they did. Their child had a mark on his neck from the seatbelt. A & E examined the child. They were worried in case there had been internal damage. The child was kept in hospital overnight for observation and the plaintiff and his wife also remained overnight. They all left the hospital at 1pm or 2pm the following day.

### **Initial treatment / time off work**

**10.** That evening, the plaintiff went to his GP. At that stage, the plaintiff had a headache; neck pain; shoulder pain radiating down his left hand side; and lower back pain. The plaintiff gave evidence that he was 'off work' for three months. During that time, the treatment included rest, painkillers and anti-inflammatories. Towards the latter part of that three month period, the plaintiff attended physiotherapy. He was given exercises and stretches to do.

### **The Plaintiff's work**

**11.** In the context of explaining why it was not possible to go back to work during the said period, the plaintiff explained that his work as a fitter is very physical. It involves "*awkward work on heavy machinery*". The plaintiff's evidence was that he could not go back to work because his back and neck were very sore and it would not have been possible for him to perform the tasks involved in his work. The plaintiff explained that he now works as a fitter in a pharmaceutical company. There, the work is "*definitely easier*" than in his previous employment, even though it still involves "*lifting and bending*". The plaintiff stated that he currently works on packaging machinery for different tablets. He described *inter alia* moving "*trolleys with 200 kg or more*" as well as "*changing parts*", from both above and underneath the machinery in question. The foregoing comprises "*lighter work*" than his previous employment.

### **Duathlon**

**12.** The plaintiff's evidence was that his physiotherapist and doctor advised him to try and recover his pre-accident fitness. The plaintiff confirmed that approximately five or six months after the accident, he participated in a duathlon (running and cycling). His testimony was to say that, in the days after this event "*my back was in a lot of pain*".

### **Triathlon**

**13.** In June or July 2017, the Kilkenny Triathlon Club were doing a charity triathlon. The plaintiff's evidence was to say "*I knew I couldn't do the triathlon*" going on to say that "*I did the swim*". His evidence was that he "*got on all right*" in that he completed the swim and "*felt alright after it*". He was very clear in his evidence that, due to the accident, it was not possible for him to do the run or cycle and he did not do so.

### **Head**

**14.** The plaintiff went on to say that, over time, he continued to suffer from headaches. His evidence included to say that he was "*irritable*". In addition, he described himself as being "*tired all of a sudden*", describing this as "*like a light switch*" being flicked. The plaintiff went back to his doctor. In relation to headaches, the plaintiff's evidence was to say that, whilst he still experiences them, "*they're less frequent*" also describing them as "*less intense*". His evidence was that "*in the early stages, I took painkillers a couple of times a week*" but that he no longer takes painkillers.

**15.** He also indicated that he had "*memory issues*" in the wake of the accident, and gave examples from his home life. His evidence was that the difficulties with his memory were a source of

frustration. The plaintiff's evidence was that his concentration has improved and he feels that his memory difficulties have resolved. In relation to irritability, the plaintiff's evidence was that there has been an improvement.

### **Neck and shoulder**

**16.** Although the plaintiff could not say how long it took, he confirmed that his shoulder pain has now resolved. In relation to neck pain, and reflecting the contents of the pleadings, the plaintiff's counsel opened the case on the basis that this is something the plaintiff continues to suffer from, whilst it varies in intensity from 2/10 to 5/10. The plaintiff gave evidence consistent with this, saying that whilst there has been "*an improvement*" he still experiences pain. His evidence was that when he engages in "*normal movement*" he has no issue, going on to say that "*if I have to lie down on the ground to work on machinery*" or "*hold my head*" in a certain way, this can aggravate the plaintiff's neck pain. When this occurs the plaintiff experiences pain "*on either side*" of his neck. As to the present situation in relation to the plaintiff's neck pain, his evidence included to say "*when I'm working it will be sore at the time, but once I get up and move around, it will resolve*".

### **Lower back**

**17.** In relation to the plaintiff's lower back, his evidence was that he had "*intense back pain*" in the wake of the accident and he related this to his time off work in particular. His testimony was that his lower back pain "*has not fully resolved*". In relation to treatment for his lower back, the plaintiff referred to Pilates, stretches and needling. He also underwent injections which did not help. The plaintiff also gave evidence that "*last year there was a flare up*" in his symptoms, as a result of which he attended his doctor and physiotherapist. By way of treatment, the plaintiff referred to undertaking "*about six sessions of physiotherapy*" which helped. The plaintiff's evidence was to the effect that he is now back to his pre 'flare-up' state.

**18.** In relation to the current position, the plaintiff described himself as "*managing*" his pain, going on to say that this was by doing stretches; exercises; and taking painkillers, periodically. Depending on the particular day, the plaintiff "*can have aches, stiffness, and sharp pain*". Regarding his lower back, the plaintiff evidence was that "*when I get up first thing, it is mostly stiffness. Sometimes there is shooting sharp pain*". His testimony is that "*if I have stiffness, I do stretches. I would always have some level of stiffness – sometimes very low and other times more*". The plaintiff gave evidence to the effect that, on days when he experiences sharp pain, "*the ache can last a bit*".

**19.** The plaintiff's children are involved in a range of sporting activities including hurling, football and horse riding. Between himself and his wife, they take the children to such activities. On times that the plaintiff can remain to watch, he described the standing involved as producing back pain for him.

**20.** The plaintiff's evidence with respect to current back pain was to say "*it depends on the day*". The plaintiff's wife works nights and the plaintiff's evidence included to say that "*if there is a busy day at home*" he may need to take painkillers in relation to his back pain.

### **Home**

**21.** In his testimony about experiencing pain when he has a difficult day at home, the plaintiff referred to his children wanting to play; general lifting of the children; and general housework. He also gave evidence to the effect that, prior to the accident, he would "*throw clothes in the washing machine*" whereas "*now I kneel down to throw clothes into the washing machine*". He also gave evidence that he has difficulties in doing odd jobs around the home, but does these notwithstanding, there being no alternative.

### **Driving**

**22.** At para. 20 of the personal injuries summons, which issued on 16 January 2019, it is pleaded *inter alia* that the plaintiff "... is required to drive for 3-4 hours during the course of work". With respect to driving, the plaintiff's evidence was to say "*no two days are the same*", going on to say that "*if I 'get in' with back pain, I will 'get out' with more pain*". The plaintiff also stated that "*twisting to get out of the car can produce sharp pain*".

### **Non-physical**

**23.** In a medical report dated 22 December 2017 Dr. Paul Crowley, a consultant neurologist who evaluated the plaintiff on 08 December 2017, opined *inter alia* that "...*there may be an element of post-traumatic stress disorder aggravating his symptoms*". When asked during his 'examination in chief' about the non-physical effects of the accident on the plaintiff, his testimony can be summarised as follows. For a period after the accident, the plaintiff was nervous about driving. It was "*a big shock*" for this to happen to the plaintiff and his family. As a result of the accident, the plaintiff was concerned for his children. Not remembering things (something he attributes to the accident) was also stressful. In addition, there was stress on the plaintiff's family life.

### **Golf**

**24.** Recently, his children's grandfather gave them golf clubs. The plaintiff went to the driving range with his children. On twisting, he experienced sharp pain. The plaintiff confirmed that he has not been able to return to playing golf.

### **Snowboarding**

**25.** The plaintiff engaged in snowboarding from the age of 21 or 22 and this is something he really enjoyed. His evidence was that he no longer does this "*because of my back*". His evidence was that snowboarding "*involves a lot of twisting and turning*" as well as a lot of "*getting up and sitting down*". The plaintiff's evidence is that "*I have done skiing instead of snowboarding*". He confirmed that he is able to ski and said, when skiing "*I take it easy*".

## **Future**

**26.** In relation to the future, the plaintiff referred to managing his pain by doing stretches; exercises and taking painkillers to the extent needed. His evidence included to say "*if I see pain increasing, I will do more stretches*", adding that he would also take painkillers if needed.

## **Medical reports**

**27.** The parties provided the court with a book of medical reports, the contents of which were admitted into evidence without formal proof. I have carefully considered the contents of all reports and I propose to refer to them on a chronological basis.

### **Dr. Marina Hennessy – 13 February 2017**

**28.** The plaintiff's GP, Dr Marina Hennessy, examined the plaintiff on 06 February 2017 and her medical report is dated 13 February 2017. With respect to the injuries sustained, this report states: "*Mr Faughnan may have lost consciousness for a few seconds. He sustained soft tissue injuries to his neck, shoulders, ribs and lower back*".

**29.** In relation to "*present complaints*" Dr Hennessy states: "*Mr Faughnan complains of occasional pain and stiffness in his lower back. He has some pain in his neck and L shoulder. He suffers from occasional headaches.*"

**30.** With respect to the Dr's "*clinical findings on examination*" these are stated to be "*immediately after the accident Mr Faughnan had tenderness of trapezius and sternomastoid muscles. He exhibited some features of concussion with headaches and irritability. He had severe low back pain. His symptoms gradually improved over the following weeks, with gradual mobilisation. On examination on 6/2/17 there was tender [sic] in the subscapular on both sides. There was some low back pain on forward flexion. No neurological signs.*"

**31.** Under the "*clinical description of claimant's illness/accident/disablement*" where the doctor was asked to indicate, if any, the degree to which the claimant's condition has affected his ability in a range of areas, the majority were indicated to be "*normal*", but "*mental health*"; "*lifting/carrying*"; and "*bending/kneeling/squatting*" were indicated to be "*mild*" (the other options being "*moderate*"; "*severe*" and "*profound*").

**32.** No treatment was anticipated into the future and Dr Hennessy's "*general comments and observations*" were that: "*Mr Faughnan has made a good recovery from his injuries and while he not completely symptom free, he has returned to work*".

### **Dr. Marina Hennessy – 4 October 2017**

**33.** Dr Hennessy furnished a second report, which is dated 04 October 2017. This short report was furnished following an examination of the plaintiff which took place on 29 September 2017. It states, under the heading "*present condition*" the following: "*Bernard informs me that he has resumed limited training. He continues to suffer from pain in his back, lower thoracic and upper*

*lumbar areas, especially after driving even short distances. He has requested referral for an MRI scan on the advice of his physiotherapist and he will have this done shortly. I will send an update following the MRI scan."*

**34.** There is no inconsistency between the contents of Dr. Hennessy's reports and the evidence given to the Court by the plaintiff, bearing in mind that Dr. Hennessy furnished a third report, dated 9 December 2020 to which I will presently refer.

**Dr Malachy Coleman - 23 October 2017**

**35.** The third, in time, of the medical reports was prepared by Dr Malachy Coleman and is dated 23 October 2017. Dr Coleman is a member of "*The Keogh Practice – specialists in family medicine*" and he examined the plaintiff on 23 October 2017 at the request of the defendant. In cross-examination, the plaintiff referred to having sent a complaint to the Personal Injuries Assessment Board, in the wake of the examination by Dr Coleman in circumstances where, according to the plaintiff, he was only seen "*for three minutes*". I want to make very clear that this Court is not in any position to, nor is it being asked to, make any findings touching on the foregoing. Given that the contents of Dr Coleman's report have been admitted without formal proof, it is appropriate to refer to what the report contains.

**36.** Under the heading of "*present complaints*", Dr Coleman's report states: "*He continues to complain of upper lumbar thoracic discomfort particularly if he sits for lengths of time. He complains of occasional neck and shoulder discomfort as well. He feels that the blow to his head has affected his memory and he continues to get headaches which he tells me he did not suffer from prior to the accident*".

**37.** The report goes on to ask and answer the following questions:

<i>"Aggravation of pre-existing condition</i>	<i>Yes.</i>
<i>If yes, please give nature of pre-existing condition?</i>	<i>Backpain.</i>
<i>Give details of previous accident history, if any.</i>	<i>Road traffic accident 16 years ago.</i>
<i>Was pre-existing condition symptomatic before accident?</i>	<i>Not in past 4 years."</i>

**Aggravation of pre-existing back pain**

**38.** I pause here to note that Dr Coleman's view was that the index accident aggravated a pre-existing condition, namely back pain, which had not been symptomatic for 4 years prior to the accident.

**39.** With respect to "*clinical findings on examination*" Dr Coleman's report: "*On examination he has some discomfort on flexion at the cervical level lateral movement both sides is well preserved with no discomfort. He has internal and external rotation of his left shoulder joint with no discomfort. Resisted movements of his abducted left arm is also pain free. Upper lumbar thoracic*

*region. He has normal flexion at the lumbar level. Lateral movement to both sides is also well preserved. He has normal straight leg raising on both sides with no evidence of sciatica."*

**40.** Thereafter, Dr Coleman records as "normal" the degree to which the plaintiff's condition has affected his ability in a number of areas, but records as "mild" the effect on the following: "Lifting/carrying"; "bending/kneeling/squatting"; and "sitting".

**41.** Dr Coleman's opinion includes: that no further investigations are required; that a full recovery is expected; and that the plaintiff has recovered; with no expectation of late complications; and no further specialist reports recommended. Dr Coleman's general comments and observations are as follows:

*"In summary this man was involved in a road traffic accident almost a year ago in which he sustained a musculo-skeletal strain to his neck, left shoulder, upper lumbar region and he hit his head off the side window. Within a day he had developed discomfort in his neck, shoulder and lower back which required anti-inflammatory medication and painkillers. He also had intensive physiotherapy to the region. He was reviewed by his own doctor three months after the accident when he was felt to have made a good from his injuries.*

*In view of his complaints of headaches and forgetfulness his doctor has arranged an appointment with the neurologist. As there was no confirmed period of unconsciousness and if there had been it was of very short duration, his persistent headaches and forgetfulness are unlikely to be associated with the head injury at this remove and cannot be explained by the accident as prescribed.*

*Because he has discomfort in his back his doctor arranged MRI scans of his lumbar and thoracic vertebrae. These show degenerative changes at the thoracic level and some evidence of disc protrusion at the lower lumbar levels particularly on the left side. He has no symptoms in relation to this protrusion and again I would feel that these changes are unconnected with the accident as described. They may be associated with the previous accident sixteen years ago in which he sustained a back injury.*

*I would feel that he has recovered from the specific injuries associated with this accident".*

### **Degenerative changes**

**42.** Whilst Dr Coleman felt that the degenerative changes noted on MRI scans were unconnected with the index accident and may be associated with the previous accident 16 years before, Dr Coleman noted *inter alia* that pre-existing backpain *had* been aggravated by the index accident. In other words, but for this accident, there would *not* have been an aggravation of the plaintiff's pre-existing backpain.

**43.** It can also be said that, whilst Dr Hennessy commented, after examining the plaintiff on 06 February 2017, that he "has made a good recovery from his injuries and while he is not completely

*symptom free, he has returned to work*", almost 9 months later (following Dr. Coleman's examination on 23 October 2017) the plaintiff was continuing to complain of back pain, particularly if sitting for lengths of time; occasional neck and shoulder discomfort; and headaches. Dr Coleman also found some discomfort on flexion at the cervical level.

#### **11 months post - accident**

**44.** Furthermore, as of 23 October 2017, namely 11 months post-accident, Dr Coleman was of the view that it was continuing to affect the plaintiff when "*lifting*"; "*carrying*"; "*bending*"; "*kneeling*"; "*squatting*"; and "*sitting*". Given the nature of the plaintiff's work, coupled with the fact that it also involves sitting whilst driving for significant lengths of time, and given that these activities infuse many aspects of a person's waking life, the evidence allows for a finding that, as the first anniversary of the accident approached, numerous aspects of the plaintiff's life, including his working life; his family life; his sporting; and his social life continued to be adversely affected as a consequence of the accident.

#### **Dr Paul Crowley – 22 December 2017**

**45.** Dr Paul Crowley, Consultant Neurologist, met with the plaintiff for clinical evaluation on 08 December 2017. Dr Crowley's report, dated 22 December 2017 states, *inter alia* the following:

*"Bernard Faughnan is a 35-year-old married fitter with two children. He is a non-smoker and drinks minimal alcohol. There is no past history of note.*

*He was involved in a road traffic accident on 26/11/2016. His whole family were in the car. He went through a junction which was governed by traffic lights. His way was clear with a greenlight. However a jeep coming from the side allegedly broke the red light and crashed into his side pushing the car across the road and into a wall. The airbags went off. He was wearing a seatbelt and had a headrest. He feels his head hit the window. He has no retrograde amnesia but did have some anterograde amnesia for a few seconds. He was able to get out of the car and walked away. He was 'shocked' at the time of the accident. He was concerned about other family members.*

*He brought his child to the hospital but did not attend himself for treatment until he met his general practitioner the following day. His main concern was of bruising and pain around the back, neck and left shoulder. These symptoms have all settled as one would have expected.*

*He has however been left with mild cognitive disturbance with poor concentration and memory. He can remember if he is reminded. There are no other cognitive symptoms. He describes headaches which are global and short lived and occur for a few minutes to hours. These are aching pains. These are reducing in frequency and severity. His neurological examination today was unremarkable with no evidence of focal neurological deficit or raised intracranial pressure. He did score 24/30 on a MoCA cognitive assessment losing the points mostly on delayed recall. It is difficult to know whether this is*

*a true reflection of his cognitive state or whether it reflects the psychological aspects i.e. the concern and stress associated with his symptoms.*

*He clearly has a Post-concussional Syndrome. This would be judged to be mild. It is improving and I suspect will ultimately fully settle.*

*He went on to have an MRI scan of the brain which was reassuringly normal. There was no evidence of iron on the gradient echo which suggests there was no intracerebral bleeding or contusion at the time of the accident.*

*He gives a fairly typical story of a Post-concussional Syndrome. This usually settles with time. It can be aggravated by social or psychological circumstances. For instance he describes the fear associated with the accident as a reminder of a fatal accident he witnessed some years ago. This also involved a jeep. Therefore there may be an element of post-traumatic stress disorder aggravating his symptoms.*

*I think with time, reassurance and rehabilitation his symptoms should fully settle. This may take a further six to twelve months.” (emphasis added).*

### **Post-concussional syndrome**

**46.** I pause to observe that the foregoing opinion was proffered over a year post-accident. It allows for a finding that the plaintiff suffered a post-concussional syndrome which Dr Crowley considered to be "*mild*"; then improving; and one expected to "*ultimately fully settle*". It will also be recalled that the uncontested evidence of the plaintiff is that he was briefly "*knocked out*" in the crash. It will further be recalled that, upon examining the plaintiff on 06 February 2017, Dr. Hennessy's clinical findings included "*He exhibited some features of concussion with headaches and irritability*".

**47.** Thus, the medical evidence and the plaintiff's testimony are entirely consistent and establish that the impact caused the plaintiff to sustain (i) a concussion and (ii) post-concussion syndrome, which, a year after the accident, had not resolved.

### **PTSD**

**48.** In addition, Dr Crowley was also of the view that the plaintiff's symptoms may be aggravated by an element of post- traumatic stress disorder ("PTSD"). In terms of prognosis, it was estimated that it may take a further six to twelve months (*i.e.*, up to two years post-accident) before the plaintiff's symptoms would "*fully settle*".

### **Moderate**

**49.** Carefully considering all the evidence I am satisfied that the injuries to the plaintiff's head (comprising of (i) concussion; (ii) post-concussional syndrome, with (iii) the possibility of PTSD involvement not expected to fully resolve until up to 2 years post-accident) allow for a finding of moderate, rather than minor, injuries in this respect.

**50.** To the extent that Dr. Crowley's opinion differs in any way from the views expressed by Dr. Coleman, it seems to me that the court is entitled to place somewhat greater weight on the views expressed by a consultant neurologist, given Dr. Crowley's particular specialism. I now turn to the next medical report, in time.

**Dr. Michael Kelleher - 31 January 2018**

**51.** Mr. Michael Kelleher, a consultant neurosurgeon, reviewed the plaintiff on 31 January 2018. Having referred to the history of the accident itself, Mr. Kelleher's report went on to state *inter alia*:-

*"He attended his local GP on the 23<sup>rd</sup> of November. He was advised to rest and given some medication. He has received physiotherapy and osteopathy treatment over the last 12 months.*

*Bernard reports increasing neck pain over the last 12 months. However, his predominant pain is lower back pain radiating across the back to the right side. He rates his back pain as being constant and varies from 3/10 to 7/10. His neck pain is less constant and rates from 2/10 to 5/10. His pain is aggravated by bending or driving and he can get occasional shooting pain in the left posterior thigh. Bernard's main limitations are that he is unable to cycle as previously. He is unable to play golf primarily due to back pain, but also he finds that this irritates the neck pain.*

*Bernard had an episode of lower back pain 16 years ago following a road traffic accident. He made a full recovery prior to the accident on the 20<sup>th</sup> of November, 2016".*

**52.** The fact that the plaintiff received both physiotherapy and osteopathy treatment during the 12 months prior to his examination by Mr. Kelleher, in January 2018, speaks to the plaintiff's recovery being over a protracted period and, in that respect, being injuries which could fairly be considered to be moderate, as opposed to minor in nature.

**53.** Mr. Kelleher's report indicated that an MRI of the plaintiff's thoracic spine, on 17 October 2017 was normal with no signs of any neurologic compression. Mr. Kelleher also reported that, with respect to an MRI of the plaintiff's lumbar spine on 17 October 2017:-

*"The MRI shows black degenerative disc at the L5 / S1 level. There is facet joint arthropathy bilaterally at the L4 / 5 and also at the L5 / S1 level. There is no significant neurological compromise evident on the MRI".*

**Injections**

**54.** Mr. Kelleher recommended guided bilateral L4 / L5 and L5 / S1 "*facet joint injections*" and advised the plaintiff "*to try and increase his activity levels*" feeling it was important that the plaintiff "*try and improve his strength and fitness over the next number of months*".

**55.** At this juncture, it seems appropriate to note that the plaintiff's evidence allows for a finding that he is someone who, at all material times, followed such medical advice as he was given, including the advice to try and improve his strength and fitness. The evidence allows for a finding that the plaintiff's post-accident participation in a duathlon and in the sim event of a triathlon is a reflection of his commitment to follow the medical advice he was given to try and achieve pre-accident fitness. Unfortunately, this did not go well for the plaintiff and it will be recalled that the plaintiff's evidence is that in the days after the duathlon event the plaintiff's back was in a lot of pain.

**56.** The evidence allows the court to find as a matter of fact that as a result of the accident the plaintiff has been unable to return to participation in sports which were previously very important to him and from which he derived pleasure and benefit physically, mentally and socially (in particular, sports involving running and cycling, such as duathlon/triathlon events).

#### **Dr Michael O'Riordan – 30 April 2018**

**57.** The next medical report in time is that of Mr. Michael O'Riordan, orthopaedic consultant, who examined the plaintiff on 30 April 2018, (i.e., some one year and five months post-accident). Mr. O'Riordan's report, also dated 30 April 2018, records inter alia that the plaintiff's length of absence from work was three months; that this absence period was reasonable; that the plaintiff had had 7 GP visits; and 2 specialists visits (and Mr. Kelleher, consultant neurosurgeon, was identified). The foregoing also seems to me to support the proposition that the plaintiff's recovery was protracted.

#### **Lower back injections – of no benefit**

**58.** With respect to "treatment/investigations to date" Mr. O'Riordan's report states: "*He had physiotherapy, he attended an osteopath, he had facet joint injections which were of no benefit. He also had a caudal epidural injection, which was also of no benefit. He was treated with Brufen for pain relief and he had MRI scans of the thoracic and lumbar spines*" (emphasis added)

#### **1 year and 5 months post-accident - 24 medical attendances**

**59.** Mr. Kelleher's report also confirms that the plaintiff had 15 physiotherapy sessions. Thus, as of 1 year and five months post-accident, the plaintiff had no less than 24 medical attendances (between GP; specialist; and physiotherapy visits or sessions) as well as having undergone two sets of injections in addition to his home-regime of stretches and efforts to recover his pre-accident fitness, and 'as needed' use of painkillers.

**60.** The foregoing seems to me to speak to a plaintiff (i) continuing to suffer pain and to be adversely affected by the accident; (ii) making every reasonable effort to aid his own recovery; (iii) which involved both invasive (sets of back injections) as well as non-invasive (physiotherapy/use of painkillers) from different medical professionals; and (iii) despite the aforesaid treatment, full recovery not being achieved; and (iv) his recovery being *protracted* as opposed to prompt.

**61.** Mr. O’Riordan’s report goes on to note the plaintiff’s involvement in a road traffic accident some 15–16 years before, when he had back pain, which resolved. The report states inter alia the following:-

“Aggravation of pre-existing condition?” Yes

*If yes, please give nature of pre-existing condition?* *Degenerative disc disease*

*Give details of previous accident history, if any.* *RTA some 15 – 16 years ago*

*Was pre – existing condition symptomatic before accident?* *No*

...

*Clinical findings on examination (please include photographs if appropriate or requested)*

*On examination Mr. Faughnan appears to be a fit, slim man. He moves normally. There is no tenderness in the spine. He exhibits an excellent range of motion of the cervical spine, lumbar spine and shoulders. He is able to heel walk and toe walk without difficulty.*

*Straight leg raising is 90 degrees bilaterally, neurology in both upper and lower limbs is entirely normal. He can do a sit up without discomfort” (emphasis added)*

**62.** During cross-examination, it was put to the plaintiff that there was no mention of pain in Mr. O’Riordan’s clinical findings on examination. The plaintiff’s evidence was to the effect that it may have been that, on this particular day, he was not experiencing pain. His evidence was to say that the pain “comes and goes” as opposed to being constant. It does not seem to me that the plaintiff’s evidence is undermined by the clinical findings by Mr. O’Riordan, particularly in circumstances where Mr. O’Riordan records the following under the heading of “Present complaints”:

*“Mr. Faughnan continues to have problems with his lower back. He finds that after driving for a few hours his back will be symptomatic. He works as a fitter and this involves a lot of stooping and bending into a lot of awkward spots in some of the vehicles he has to work on. This can cause pain in his neck and back. He gets pain in his left shoulder when lying on it. He used to take part in triathlons but finds he cannot do the cycling aspect of the competition as he used to. He finds he cannot play golf any longer as he cannot twist. There was some element of concussion to his injury and a report should be sought from a neurosurgeon on this aspect of his injury. He also complains that from time to time, he may get pains in his buttock which will radiate down the back of the left thigh to the knee.”*  
(emphasis added)

### **Moderate**

**63.** Mr. O’Riordan’s report then proceeds to a clinical description of the degree, if any, to which the plaintiff’s condition was then affecting his abilities in a range of identified areas. Of the following five options: *none; mild; moderate; severe; and profound*, Mr. O’Riordan’s report records, as “*moderate*”, the effect of the plaintiff’s condition on all of the following:-

*“Lifting/carrying”;*

"Bending/kneeling/squatting"; and  
"Sitting".

#### **Anticipated treatment into the future**

**64.** With regard to "anticipated treatment required into the future" Mr. O'Riordan opines: "Physiotherapy and occasional analgesics". I pause here to say that the foregoing evidence supports the following findings of fact:-

- (i) the view expressed by Mr. O'Riordan are also consistent with the findings in relation to the concussion aspect of the plaintiff's injury;
- (ii) 1 year and 5 months post-accident, the plaintiff had not recovered;
- (iii) many aspects of his day-to-day life were being adversely impacted (namely lifting; carrying; bending; kneeling; squatting; and sitting);
- (iv) this adverse impact was not mild, or minor, but moderate in nature;
- (v) it was anticipated that he would require further treatment in the future, namely, physiotherapy and occasional analgesics;

#### **Protracted recovery**

**65.** The foregoing speaks to the plaintiff's recovery being protracted. I am fortified in this view by the balance of Mr. O'Riordan's 30 April 2018 report wherein he opines that the plaintiff's injuries are consistent with the accident; and Mr. O'Riordan expected a full recovery as of "November 2018". The then expected recovery date was, of course, a full 2 years after the accident itself, as well as being some 6 months after Mr. O'Riordan's report, which concluded in the following terms:-

*"General comments and observations*

*Mr. Faughnan sustained strains of his neck, back, shoulder and chest as a result of this collision. Clinically he is normal. I reviewed MRI scans of his thoracic spine and these are essentially normal. I reviewed an MRI scan of his lumbar spine and this shows a very degenerative disc at L5 / S1 with a small left foraminal disc protrusion at L5 / S1. This would not appear to be significant. It is certainly not going to require surgical treatment. Ultimately, Mr. Faughnan will attain his pre-accident state with no long term sequelae to his injuries. The degenerative changes at L5 / S1 level almost certainly predate the collision and would be a typical finding in a person of his age". (emphasis added)*

**66.** Mr. O'Riordan's view that "ultimately" the plaintiff "will" recover to his pre-accident state, coupled with his estimate of "November 2018" as to when full recovery could be expected, fortifies me in the view that the period of recovery can fairly be called *protracted*, and the adverse effect on the plaintiff, of his injuries, can be described as *moderate*.

**67.** Later in this judgment I will look at the *nature* of the injuries themselves through the 'lens' of terms found in the 'Book of Quantum' (i.e. 'minor', 'moderate', 'moderately severe', 'severe', 'severe and permanent' etc).



**74.** The balance of Dr Hennessy's report proceeded to ask and answer the following question:

*"Indicate the degree to which you feel the claimant's symptoms/disability have been caused by the accident/event which is the subject of this claim?*

*Based on my assessment of the injury as described by the claimant the accident/events account for...5."*

**75.** The scoring range was 0 – 5, with this score of "5" being the Doctor's assessment that "all of the symptoms/disability" (emphasis added) were caused by the accident.

**76.** The said report went on to include Dr Hennessy's indication of the degree to which the plaintiff's condition "...is currently affecting his ability..." in a list of identified areas (against a scale comprising of *normal; mild; moderate; severe; and profound*). The effect of the plaintiff's injuries on both "*carrying*" and "*standing*" is recorded to be "*mild*". However, Dr Hennessy records, as "*moderate*", the effect of the plaintiff's condition on his ability with respect to "*bending/lifting/stooping*" and "*sitting*".

**77.** The foregoing evidences adverse effect on the plaintiff's ability in a wide range of areas involved in day-to-day life, be that work, sporting, family or social. This is notwithstanding the fact that the plaintiff continued to follow medical advice, with a view to trying to address the adverse effects of the accident. This is further evidenced by the next section of the report which concerns "*anticipated treatment required into the future...*" (emphasis added) and records that "*Bernard continues to use a home exercise programme*" (emphasis added).

**78.** Under the heading "*opinion/comment/latent prognosis*", the report again asks the doctor to indicate the degree to which she feels the plaintiff's symptoms/disability have been *caused* by the accident. Based on Dr Hennessy's assessment of the injury as described by the plaintiff, she confirms that the accident accounts for "all of the symptoms/disability" (emphasis added). She goes on to confirm that all reasonable steps have been taken to alleviate the remaining symptoms.

#### **Approximately 4 years post-accident – a summary**

**79.** Thus, as a consequence of the accident, and despite genuine but unsuccessful efforts to regain his pre-accident state, the plaintiff not only had to give up pursuits he enjoyed (golf, skiing, triathlons, duathlons) and not only had to endure adverse effects on his life (social, working and family life) the plaintiff was also required to continue, into the future, a home exercise programme to try and cope with the legacy of the accident, in circumstances where, he had not fully recovered as the 4<sup>th</sup> anniversary of the crash approached.

#### **Cross-examination**

**80.** A principal theme of the plaintiff's cross-examination by counsel for the second named defendant was to put, to the plaintiff, the contents of medical reports prepared in 2017 and 2018 (in particular, the view expressed by Dr Hennessy in her 13 February 2017 report that a full recovery was expected and that the doctor anticipated that no further treatment would be required

into the future). That was, of course, the position at that time. However, and with respect, that line of cross-examination does not engage with certain crucial facts. For instance, in the manner examined in this judgment, further treatment *was*, in fact, required. Indeed, Dr Hennessy's December 2020 report confirms that, by that stage, the plaintiff had sought medical assistance no less than 34 times.

**81.** Furthermore, Dr Hennessy's opinion, as of December 2020 was materially different to the opinion she offered in February 2017. In response to the question "*is a full recovery expected?*" Dr Hennessy's view, in December 2020, was to say: "*Recovery has reached a plateau over the past 12/18 months – full recovery not expected*" (emphasis added).

**82.** Thus, the evidence before this Court allows for a finding that, it was not until 2.5 to 3 years post-accident that the plaintiff's recovery reached a 'plateau'. Furthermore, almost 4 years post-accident, full recovery had *not* occurred and was *not* expected by Dr. Hennessy, notwithstanding her earlier views. The foregoing fortifies me in the view that the plaintiff's period of recovery has been very protracted indeed.

**83.** Before leaving Dr Hennessy's report, it is appropriate to quote *verbatim* the observations and information set out on the penultimate and final pages, which make explicit the causal link between the injuries sustained by the plaintiff in this accident and his symptoms, in particular, low back pain:

*"General comments and observations.*

*Bernard continues to have significant symptoms, particularly low back pain, as a result of his injuries. This is episodic and he manages his symptoms with a home exercise programme, pilates to maintain core strength and he takes an NSAID 2-3 times/month.*

*His concentration has improved. He still suffers from headaches weekly.*

*He feels that he has reached a plateau in his recovery and has not noticed any improvement in his symptoms over the past 12-18 months.*

*Additional information.*

*This gentleman continues to have recurrent intermittent symptoms with a limited recovery, almost 4 years after his RTA. This is likely to be the pattern into the future with his job as a fitter being a predisposing factor.*"

**84.** When cross-examined with respect to the contents of *earlier* medical reports, the plaintiff suggested, entirely reasonably, that those earlier reports did not take account of subsequent events. At no stage did the plaintiff dispute the contents of *any* medical report. Nor did he accept the proposition that the effect on him of the accident was *minor*.

**85.** There was no inconsistency between the plaintiff's oral testimony and what emerges from the totality of the written medical evidence, carefully considered. The proposition, advanced on behalf of the second defendant, that these were simply minor injuries with a minor effect on the plaintiff who was expected to make a quick and full recovery is not borne out by a consideration of all the evidence.

**86.** To complete the analysis of the written medical evidence, I now turn to a report, dated 07 September 2021, prepared by Professor Damien McCormack, Consultant Orthopaedic Surgeon, who examined the plaintiff at the request of the defendants.

**Prof. Damien McCormack - 07 September 2021**

**87.** On examination, Professor McCormack found the plaintiff to exhibit "...Full painless range of motion of cervical spine" with no objective neurological deficits and a "...full range of motion lumbar spine...". Professor McCormack's report also stated, inter alia, the following:

*"Current status:*

*At this time, Mr Faughnan remains at work, work involves prolonged driving, sometimes four hours per day around the country. He continues to attend a physiotherapy and Sports Pilates on occasion. He takes paracetamol for pain but nothing stronger. He continues to experience low back pain radiating towards the left knee but not below the knee in keeping with discogenic pain.*

...

*Summary and prognosis:*

*In summary therefore this man suffered a concussion as a result of a road traffic accident as detailed above and also developed low back pain which persisted subsequently and is reflective of ongoing degenerative change in the L5-S1 disc. I suspect that disc was degenerating prior to the accident and made symptomatic again by the accident, it may have been symptomatic following previous road traffic accident as mentioned above. A scan in 2017 shows a small left sided disc protrusion at L5-S1 in keeping with ongoing left sided symptoms. The natural history of same is benign and with maintenance of physical activity, it is quite likely that this man's symptoms will resolve over time. It is very likely that he will require surgical intervention to that disc.* (emphasis added).

**88.** This Court understands the phrase "discogenic pain" to mean pain emanating from a damaged disc. Professor McCormack's report makes explicit that the accident caused the plaintiff to develop low back pain. Consistent with the views of other clinicians (see Dr Coleman's report dated 23 October 2017; and Dr O'Riordan's report dated 30 April 2018) Professor Coleman opines that the accident caused a pre-existing condition (i.e. a degenerative disc) to become symptomatic again. This is entirely consistent with the balance of the evidence which allows for a finding that, at the time of the accident, the plaintiff was free of any lower back pain.

### **5 years post - accident**

**89.** It should also be noted that, as of September 2021, Professor McCormack was not offering the view that the plaintiff had fully recovered or was symptom free. On the contrary, his opinion was that so long as the plaintiff maintained physical activity, it was quite likely that the plaintiff's symptoms "*will resolve over time*" (i.e. at some future unspecified point). Even if that unspecified point was measured in weeks - and there is nothing in Professor McCormack's report to suggest that this is what he had in mind - his report was prepared as the 5<sup>th</sup> anniversary of this accident approached. Once again, this speaks to the plaintiff's period of recovery being very protracted indeed. Professor McCormack also makes clear *inter alia* that the plaintiff suffered a concussion due to this accident (again, consistent with other clinicians).

**90.** The second theme in relation to cross-examination of the plaintiff centred around his participation, in July 2017, in an event arranged by the Kilkenny Triathlon Club. It will be recalled that, whilst the event was a triathlon, the plaintiff gave evidence that he participated in the swim only. During the course of cross-examination, counsel for the second defendant produced a single-page document which appears to be a printout from a website, the top of which page reads "*16 July 2017/Kilkenny, Co Kilkenny, Ireland Sports Timing VGRAPH Kilkenny Triathlon (2017)*". Counsel for the plaintiff made appropriate and understandable objections, in circumstances where this document did not feature in the court below; did not comprise part of discovery; and no witness was proffered by the defendant to prove its contents.

**91.** Matters proceeded on the basis that counsel for the defendant could not "*put to*" the plaintiff what the document was said to disclose (it is not a document which 'proves itself') but, with reference to its contents, the defendant's counsel could put suggestions or propositions to the plaintiff. It is sufficient to say that, despite being cross-examined with reference to this document, the plaintiff gave clear, cogent and consistent evidence that he had participated in the swim event, but *not* the run or the cycle. This is the state of the evidence. There is simply nothing before the court which would support an alternative finding.

### **No adjournment sought**

**92.** During the course of exchanges with counsel, I made clear that, were the second named defendant to take the view that it required an adjournment for the purposes of securing a witness to prove the document in question, I would hear such an application. No such application was made. Thus, it seems to me that the document in question has no probative value whatsoever and, were this court to take its contents into account with respect to any finding of fact, it would breach the hearsay rule and create an injustice.

**93.** It should be added that the contents of the document are not at all self-evident. It seems to me that, to properly understand what it purports to disclose, would require explanation by the author. Thus, even if it had been admitted without formal proof (and it was not) it seems to me that there would be a material risk that incorrect inferences might be drawn from the contents of this document.

**94.** In short, this one-page print-out concerning an event from 6 years ago was deployed for the purpose of challenging the plaintiff's credibility. It needs to be made clear that this Court has made no adverse findings with respect to the plaintiff's credibility on any aspect of his testimony. Nor could it.

**95.** On the contrary, the plaintiff presented as someone who has done everything reasonably possible to try and tackle the adverse effects of this accident. He has sought appropriate medical advice from a range of clinicians (GP, consultant specialists, physiotherapy, osteopathy). He has followed medical advice in relation to trying to maintain his physical health as best he can. He has undergone invasive medical procedures (injections) but to no avail. Whilst he has undoubtedly improved, in the manner he made clear, he has still not fully recovered and must still engage in a (non-invasive) regime of stretches and exercises to manage the adverse effects upon him of this accident.

### **Quantum**

**96.** At my request, both sides made detailed submissions with reference to the "Book of Quantum". I have carefully considered those submissions in the context of what emerges from the evidence before the court.

**97.** In coming to a decision on quantum, this Court has applied the principles set out by the Court of Appeal in *Shannon v. O'Sullivan* [2016] IECA 93 to the effect that an award of general damages must be (i) fair to the plaintiff; (ii) proportionate to social conditions; and (iii) proportionate within the scheme of awards made for other injuries. In particular, this Court has followed the guidance set out at para. 43 in *Shannon* (in respect of assessing the severity of injuries and the appropriate sum to be awarded by way of general damages to date) and para. 44 (in respect of the appropriate approach to general damages for pain and suffering into the future).

**98.** In circumstances where, although improved, the plaintiff continues to experience lower back pain, this is the most significant of his injuries. As the Book of Quantum makes clear (see p. 10) it is not appropriate to simply add values for all the different injuries to determine the appropriate amount of compensation. Rather, the correct approach is to begin with the most significant injury and to make an appropriate adjustment for additional injuries.

**99.** Beginning with the plaintiff's lower back pain and its effects, the evidence allows for a finding that, not only did the plaintiff suffer severe pain in the aftermath, the accident caused an exacerbation of a pre-existing condition such that, even 5 years post-accident, there had not been a full recovery. In the manner examined, Dr. Hennessy is of the view that the plaintiff will never fully recover and that he has plateaued. Even though Prof. McCormack was satisfied, in late 2021, that full recovery could be expected "*over time*" no specific time was identified. Moreover, the evidence of the plaintiff in late 2023 is that he has not achieved full recovery (consistent with Dr. Hennessy's expectation).

**100.** As well as being very protracted in the temporal sense, the impact on many aspects of the plaintiff's life has been, and continues to be, significant. The plaintiff's sworn evidence in relation to the exacerbation of pain caused by standing, bending, twisting or sitting reflects entirely the views expressed in the relevant medical reports to which I have referred. In short, the evidence allows for a finding that the lower back injury caused by the accident is in the *moderately severe* range.

**101.** In addition, the plaintiff suffered a head injury. The evidence allows for a finding that, such was the severity of the impact, the plaintiff was caused to lose consciousness briefly, when his head hit the car window. In addition to the physical injury and the brief loss of consciousness, the plaintiff suffered a concussion (see report by Prof. McCormack). Not only that, Dr. Crowley, consultant neurologist, opined in December 2017 that the plaintiff "*clearly has a post-concussional syndrome*". At that stage, the foregoing injury had not yet resolved. This view by Dr. Crowley, coupled with the plaintiff's evidence with regard to forgetting things and the stress this caused, speaks to not only damage to the plaintiff's physical health, but also to his mental health. Indeed, there is no medical evidence before the court which takes issue with Dr. Crowley's view that "*there may be an element of post-traumatic stress disorder*" aggravating the plaintiff's symptoms of post-concussional syndrome.

**102.** In short, the evidence supports a finding that the plaintiff also had a *moderate* head injury (see p. 15 of the Book of Quantum) in addition to which the plaintiff was caused to suffer adverse effects on his mental health in the form of anxiety, irritability and stress. Thankfully, the mental health injuries have since resolved and can fairly be characterised as *minor* in nature, as opposed to moderate.

**103.** Added to the foregoing, the plaintiff sustained injury to his neck. In the manner disclosed in the various medical reports, neck pain continued to feature for a period of years, post-accident. The following medical reports note the plaintiff's complaint of neck pain:

- Dr. Hennessy's report dated 13 February 2017 ("*some pain in his neck and L shoulder*");
- Dr. Coleman's report dated 23 October 2017 ("*he complains of occasional neck and shoulder discomfort*");
- Mr. Michael Kelleher's report dated 31 January 2018 ("*Bernard reports increasing neck pain over the last 12 months*");
- Mr. Michael O'Riordan's report dated 30 April 2018 ("*he works as a fitter and this involves a lot of stooping and bending into a lot of awkward spots in some of the vehicles he has to work on. This can cause pain in his neck and back. He gets pain in his left shoulder when lying on it*");
- Dr. Hennessy's report dated 09 December 2020 ("*Bernard experiences bouts of pain in his L shoulder which are worse at night. He also suffers from neck pain at times*").

**104.** Thankfully the position has improved, but it seems to me that the evidence safely supports a finding that the injury to the plaintiff's neck was *moderate* in nature.

### **In summary**

**105.** This judgment has looked in detail at the injuries sustained by the plaintiff in this unfortunate accident, for which he was entirely blameless, and the adverse effect on many aspects of the plaintiff's life (work; family; home; sporting and social). In addition to the foregoing, the evidence allows for a finding that the plaintiff has not yet made a full recovery, despite every reasonable effort on his part to try and secure this outcome.

**106.** The central proposition advanced by the defendant is that there was a 'disconnect' between the plaintiff's evidence to this Court and what is recorded in the medical reports. This is not something the plaintiff accepted under cross-examination and, for the reasons set out in this judgment, this Court cannot accept that proposition. I say this, notwithstanding the great skill with which the defendants' case was conducted by learned counsel and the submissions made, to the effect that the plaintiff sustained only minor injuries and is due only modest damages. Submissions must, however, yield to facts and it is the facts which emerge from a careful consideration of the evidence which underpin this court's view as to the appropriate level of compensation due to the plaintiff.

**107.** The defendants must 'take' the plaintiff as they 'find' him and this is a plaintiff who, as a result of his employment, is required to spend long periods in a car. He also has a job which requires bending, twisting and somewhat awkward movements, which this accident have impacted upon, in the sense that doing what he formerly did may result in pain.

**108.** The evidence also discloses that, for the foreseeable future, the plaintiff is someone who will have to continue working hard to try and maintain, and hopefully improve, his state of health (involving a home-exercise regime of stretches and exercises). He will also need to take painkillers, periodically. The foregoing is true even if he does not suffer any further 'flare up' of the sort he experienced in the relatively recent past.

**109.** In addition to adverse physical aspects and their 'knock on' effect on his enjoyment of life under a range of headings, the plaintiff is someone who, prior to the accident, was an active sportsman who particularly enjoyed participation in triathlon and duathlon events. The accident took this from him and, having regard to the plaintiff's evidence about the benefits to him of participation in triathlon events – physical health; mental health; and integrating into local society – this loss, whilst most acute to date, will continue to affect him to some degree into the future. I say the foregoing, bearing in mind that the plaintiff, like us all, is and will be prone to the vicissitudes of ageing but, in relative terms, is still a young man.

### **To date**

**110.** Carefully considering all relevant facts in the context of applicable legal principles, I am satisfied that the appropriate sum in terms of general damages for pain and suffering to date is €50,000. This comprises of (i) €35,000 in respect of the injury to the plaintiff's lower back; (ii) an upward adjustment of €10,000 in respect of the injury to the plaintiff's head (inclusive of

concussion; post-concussional syndrome; and also inclusive of damage to the plaintiff's mental health); and (iii) a further upward adjustment of €5,000 in respect of the injury to the plaintiff's neck/shoulder.

### **Future**

**111.** In the manner explained in this judgment, the plaintiff will continue to be adversely affected, in a range of areas, into the future, and I am satisfied that the evidence supports an award of compensation for future loss, to include future pain and suffering of €6,000.

**112.** Although this case is not one to which the more recently implemented Personal Injuries Guidelines applies, I am satisfied that this award is also one which is safely within the parameters of said guidelines.

**113.** I note that special damages have been agreed in the sum of €7,000.00.

### **Total**

**114.** Taking the foregoing into account the total award comprises:-

- (i) agreed special damages €7,000;
  - (ii) general damages (to date) €50,000;
  - (iii) general damages (future) €6,000
- Total:- €63,000

**115.** My preliminary view on the question of costs is that no facts or circumstances would merit a departure from the 'normal rule' that 'costs' should 'follow the event', and I would propose to make an award of costs in favour of the plaintiff to include all reserved costs and the costs of the Circuit Court proceedings, to be adjudicated in default of agreement. The parties are invited to liaise, forthwith, on the appropriate form of order reflecting the court's judgment and to submit an agreed draft within 14 days. In the event of any dispute, short written submissions should be furnished by the same deadline.