THE HIGH COURT

[2024] IEHC 281

Record No. 2019/3971 P

BETWEEN:-

DARREN JAMES

PLAINTIFF

-AND-

MICHAEL HALLIDAY

DEFENDANT

JUDGMENT of Mr Justice Barr delivered *ex tempore* on 8th day of May 2024.

Introduction.

1. The accident the subject matter of these proceedings, occurred on the N14 road, which runs between Lifford and Letterkenny. A collision occurred between the plaintiff's car and a tractor driven by one William Wilson. The driver of the tractor died as a result of the RTA. The defendant in this action is sued as a representative of the estate of Mr Wilson. For the purpose of this judgment, where there is reference to "the defendant", it can be taken as referring to the deceased, Mr Wilson.

2. There are many aspects of the accident which are not in dispute between the parties. It is common case that on the morning of 12 January 2018, both the plaintiff and the defendant were travelling on the N14 going in the direction from Lifford towards Letterkenny. The accident occurred at approximately 06:50 hours. While the road surface was wet, it was not actually raining at the time. The surface of the road at the locus of the accident, was in good condition. There was no frost that morning.

3. The court has been provided with a large number of photographs showing both the positions of the vehicles after the accident and showing the general locus, when photographed some time later by the defendant's consulting engineer. While the road is a “national road”, the locus was in a rural area. There was no street lighting. There was no hard shoulder. It was a single carriageway on either side. The width of the road was approximately 6.5 m.

4. At the locus, both vehicles had come around a sweeping right hand bend and were proceeding in a relatively straight portion towards a sweeping left hand bend. Both vehicles were travelling down a slight gradient at the point of impact. The speed limit on the section of road was 100 km/h.

5. It was accepted that prior to the drivers coming upon the locus, both drivers would have been given a number of warning and information signs. The first of these was a sign, warning of dangerous bends ahead for a distance of approximately 2 km. Some 500 m from the locus, there was a road sign indicating an upcoming minor road entering onto the major road from the left. Some 285 m from the locus there was a similar sign, indicating the emergence of a minor road from the right. There were also chevron signs on the side of the road indicating the presence of bends. There was a continuous white line in the middle of the road.

6. The plaintiff was driving his Seat Alhambra model car, which is commonly known as a people carrier. It was a 2003 model vehicle. It had passed its NCT and had been fitted with new tyres, shortly before the accident.

7. The defendant was driving his 1965 model Massey Ferguson tractor. It had a transport box, also known as a "link box", attached to the rear of the tractor. A transport box, is fitted to the rear of the cab where it is mounted on two hydraulic arms. This allows the box to be lowered to ground level, so that goods can be put into the box and transported around the farm. When the goods have been put into the box, the box is raised by the hydraulic arms to allow for the transport of goods. There is also third hydraulic arm, which attaches to the centre of the box. This allows the box to be tilted slightly towards the cab of the tractor, so that the goods do not fall out of the box. The transport box is approximately 1.6 m wide. The floor of the box is approximately 1 m in depth. There are triangular sides to prevent material slipping off the sides of the box during transport.

Liability.

8. The plaintiff's account of the accident was that he had left his house at approximately 06:15 hours, with the intention of travelling to Letterkenny to start his day's work as a fruit and vegetable delivery man. He was due to start work at 07:00 hours.

9. The plaintiff stated that on the morning in question it was dark, but there was no frost on the road. He stated that he was driving along the road, which was his normal route to work. He stated that he was driving within the speed limit. The plaintiff stated that having come around the right hand bend and while proceeding towards the sweeping left hand bend, he struck something. He stated that he did not see any lights in front of him. All he was aware of, was a very loud bang, as his vehicle struck whatever was on the road in front of him.

10. The airbags on the plaintiff's vehicle were activated. His car proceeded down the road and

eventually came to a halt on the left side of the road. This was calculated by the forensic collision investigator from An Garda Síochána, as being 53 m from the point of impact.

11. The plaintiff stated that he was pinned into his seat by the seatbelt. When his vehicle came to a halt, he looked out the window and saw a tractor relatively close by, but on the far side of the road. He stated that his first thought was that somebody had simply abandoned the tractor on the far side of the road.

12. The plaintiff was adamant that there was no flashing yellow beacon on the roof of the cab of the defendant's tractor. At the hearing of the action, it was conceded on behalf of the defendant that the yellow flashing beacon had not been illuminated at the time of the collision between the vehicles.

13. The plaintiff was unable to get out of his vehicle. He was removed from the vehicle by the emergency services and was taken to Letterkenny General Hospital by ambulance.

14. It is common case that the driver of the tractor was propelled out of the cab rearwards, as a result of the impact between the vehicles. He ultimately came to rest on the roadway under the front of the plaintiff's vehicle. As already noted, he died at the scene of the accident, as a result of the injuries he sustained.

15. The court was greatly assisted by the investigation report and the evidence given by the forensic collision investigator, Sgt Gerard McCauley. The court also had the benefit of the photographs of the scene of the accident, which were taken by Sgt McCauley on the morning of the accident. These showed the position where the vehicles had come to rest after the accident. He also took photographs and measurements of various marks on the roadway and of items of clothing that had been found thereon.

16. The court accepts the evidence of Sgt McCauley as to the point of impact on the road, being some 53 m back from the ultimate rest position of the plaintiff's car and 57 m back from the ultimate rest position of the tractor. Insofar as the plaintiff's expert witness, Dr Jordan, was of the opinion that the point of impact was in fact closer to the rest position of the vehicles, due to the fact that there was no debris found at the position on the road as nominated by Sgt McCauley as being the point of impact; the court prefers the evidence of Sgt McCauley in this regard. The court is satisfied that Sgt McCauley is correct in stating that the transverse line on the left-hand carriageway, as shown in his photograph, accurately represents the point of impact between the vehicles.

17. The court accepts the evidence of the defendant's engineer, Mr Brandon, that as the impact

occurred between two forward moving vehicles, which were travelling in the same direction; then, notwithstanding that there was very substantial damage to both the front of the plaintiff's car and to the link box on the rear of the defendants tractor, that would not necessarily give rise to substantial debris at the point of impact, similar to that which would be found where there is either a head-on impact between oncoming vehicles, or an impact between a vehicle and a stationary vehicle. The court accepts his evidence that in a collision between vehicles going in the same direction, where one vehicle is going considerably faster than the vehicle in front, the front vehicle will be catapulted forward in a bouncing type trajectory, which will give rise to "forward scatter" of debris, rather than significant debris at the initial point of impact.

18. The court is satisfied having regard to the methodology employed by Sgt McCauley in determining the significance of the marks on the road and the items of clothing found thereon, whereby he was able to identify the point of impact by walking backwards from the rest positions of the two vehicles, in the Lifford direction. The court accepts the evidence of Sgt McCauley that the initial transverse mark on the road, as identified in his photographs, and the subsequent gouges in the road, which were initially short and deep and then became longer but shallower, can be explained by the fact that after the initial impact the tractor was catapulted forward in a somewhat bouncing motion, whereby its initial impact with the ground was short and at great force, thereby leaving deep gouges on the road; which was followed by longer and shallower gouges in the road surface, as the tractor slowed down and eventually came to a halt. The line of travel of the vehicles and in particular of the tractor, is also established by the items of clothing that were found on the road by Sgt McCauley. In addition, the white paint that appeared on the road surface, was caused by the spillage of a tin of paint that had been carried in the transport box at the time of the impact.

19. For these reasons, the court finds that the point of impact between the vehicles, was as indicated by Sgt McCauley in his evidence and as recorded in his photograph, being the transverse line on the left-hand carriageway of the road. The court finds as a fact that the plaintiff's vehicle came to rest some 53 m from the point of impact and the defendant’s tractor came to rest having collided with the right hand barrier on the side of the road, some 57 m from the point of impact.

20. It was common case that prior to the accident, the front nearside wheel on the defendant’s tractor had become somewhat deflated. While it had not deflated completely, it was certainly below normal pressure at the time of the accident. There was a statement on the inquest file, from a

witness, who was due to give evidence at the trial, but who did not turn up, to the effect that the defendant was on his way to a garage to get his front nearside wheel pumped up or repaired. While the court cannot act on that statement, the court is satisfied from the evidence of Sgt McCauley and from the expert evidence given at the hearing, that on the balance of probabilities, the defendant was travelling at approximately 5 mph at the time of the collision.

21. One of the central issues in the case, was the speed at which the plaintiff was travelling at the time of the collision. As already noted, the speed limit on this portion of the road was 100 km/h. While the plaintiff could not recall the exact speed at which he was travelling, he was adamant that he had been travelling within the speed limit.

22. It was common case that the speedometer on the plaintiff's car had been stuck at 70 mph (113 km/h) immediately after the accident. This was probably due to the fact that given the severity of the collision between the vehicles, there would have been an almost instantaneous cessation of power at the moment of impact, causing the speedometer to freeze at the last recording taken before the cessation of power.

23. Dr Jordan, the plaintiff's consulting engineer, stated that this could not be taken as a definitive recording of the speed at which the plaintiff's vehicle had been travelling immediately prior to the collision. He stated that it was possible that upon impact with the link box to the rear of the defendant’s tractor, the plaintiff's vehicle may have been raised into the air with the wheels momentarily losing contact with the road surface, thereby causing them to rotate at a faster speed prior to the cessation of power from the engine; thereby giving rise to an inflated recorded speed at the moment of cessation of power. He was of the opinion that having regard to this recorded speed and the level of damage to the respective vehicles, it was likely that the plaintiff was travelling at somewhere between 60/70 mph at the time of the collision.

24. The Garda witnesses accepted that the speed shown on the speedometer immediately post impact, could only be seen as being indicative of the speed that was being travelled by the plaintiff's car at the time of the collision. They accepted that it was not definitive of that question. However, having regard to the speed recorded on the speedometer, coupled with the level of damage to the respective vehicles, as detailed in the PSVI report and in the report provided by Sgt McCauley, and as recorded in his photographs, it was accepted that the plaintiff's vehicle had been travelling at somewhere between 60/70 mph at the time of the collision.

25. The court accepts this evidence and finds as a fact that the plaintiff was travelling at somewhere between 60/70 mph at the time of the collision. This means that at the lower end of that possible window of speed, he could have been travelling just within the speed limit of 100 km/h (62 mph) at the relevant time.

26. Another issue that was the subject of some contention at the hearing of the action, was the level of illumination on the defendant's tractor at the time of the accident. In this regard, the court was greatly assisted by the evidence of Mr Mark Doherty, who had encountered the defendant's tractor some 2.8 km further back on the road on the morning of the accident. Mr Doherty had also provided dashcam footage from his vehicle.

27. The court found Mr Doherty to be a reliable and accurate witness. He told the court that he had been travelling to his work in Letterkenny General Hospital that morning, when he had encountered the defendant's tractor.

28. Mr Doherty stated that he saw the rear red lights on the defendant's tractor. Mr Doherty had been travelling at approximately 50 mph. He slowed his vehicle and followed the tractor around a bend. When it was safe to do so, he overtook the tractor. Having completed this manoeuvre, he stated that he glanced in his rearview mirror and saw that the headlights on the tractor were properly illuminated. Mr Doherty stated that there was no flashing beacon illuminated on the cab of the defendant's tractor.

29. Mr Doherty accepted that his sighting of the tractor had been assisted by the headlights of an oncoming vehicle, which had illuminated the tractor, moments before it had passed Mr Doherty. The witness confirmed that the tractor had been travelling at a very slow speed when he had encountered it that morning.

30. The court also had the benefit of viewing the dashcam footage taken from Mr Doherty's vehicle. The court accepts the evidence of the expert witnesses, which was to the effect that while the rectangular taillights on the defendant's tractor appeared white in the dashcam footage, that was due to the fact that the footage was being taken at night. The court finds as a fact that the taillights on the tractor were showing red at the time that Mr Doherty came upon the tractor and overtook it.

31. The evidence of the Garda witnesses and the expert engineering evidence, was that there was a daylight sightline of 199 m from the scene of the accident, going back in the Lifford direction. This meant that during daylight hours there was no sight impediment for 199 m as one approached the

scene of the accident. It was accepted that during the hours of darkness, a person driving a vehicle would only have a field of forward vision of 100 m, if they were driving on full headlights and of 30 m, if driving on dipped headlights. However, if one was looking at lights in the distance, they could be visible for the full 199 m, as that was the unimpeded sightline from the scene of the accident.

Conclusions on Liability.

32. The issue of liability in this case essentially boils down to a determination on two questions: whether the plaintiff was travelling too fast; and whether he ought to have seen the presence of the defendant's tractor in sufficient time to enable him to have avoided colliding into it.

33. In reaching its conclusions on these issues, the court has had regard to the evidence already outlined in relation to the locus of the accident and in relation to the level of vehicle damage to the respective vehicles and to their ultimate resting positions from the point of impact.

34. The court has already found that the plaintiff was travelling at somewhere between 60/70 mph at the time of the impact. The court cannot find that the plaintiff was travelling above the legal speed limit. However, it is clear that he was travelling very close to it.

35. The court is satisfied that the plaintiff was travelling too fast for the circumstances that pertained on that particular stretch of road and on that particular morning. While the speed limit was 100 km/h, that does not mean that a driver can drive at that speed in all circumstances. The speed limit is merely an indication of the maximum permissible speed, at which a driver can drive his vehicle in ideal driving conditions.

36. On the morning of this accident, the conditions were not ideal for driving at the maximum permitted speed. At the time of this accident, the plaintiff was driving during the hours of darkness; he was driving on a stretch of road on which there were dangerous bends and in respect of which he had been given ample notice by means of warning signs; there were also side roads emerging just prior to the locus both from the left and from the right. Thirdly, while it had not been raining immediately prior to the collision, and while the road surface was in good general condition, it was wet on the morning of the accident. In these circumstances, even allowing for the fact that the plaintiff may have been travelling somewhere in the region of 60 mph; he was negligent in driving at that speed on the morning of the accident.

37. The second central issue, is whether the plaintiff ought to have seen the defendant's tractor and ought to have been able to take the necessary steps by braking to avoid a collision. It is accepted

in this case that there were no brake marks prior to the point of impact. The plaintiff accepts that position, as it is his case that he had no warning of the presence of the defendant's tractor on the highway prior to the collision. His evidence was that the first that he knew that there had been a collision, was when he heard a very loud bang, as his vehicle hit the rear of the tractor. That was followed by the activation of the airbags on his vehicle.

38. The court finds as a fact that the plaintiff did not see the defendant's vehicle in front of him on the highway prior to the collision. The central question is whether he ought to have done so. While Dr Jordan gave evidence that it was possible that the defendant had raised the link box to the very highest level, such as to occlude the taillights on his vehicle; the court does not find on the balance of probabilities that that was likely to have happened in this case.

39. The court accepts the evidence of the Garda witnesses that the taillights on the tractor would only have been occluded if the link box had been raised to its highest position. It was not necessary for the tractor driver to do that, all he needed to do was to raise the link box a relatively small amount, so that it was not dragging along the ground. The Garda witnesses were of the opinion that the link box was probably raised to the normal position which would enable the link box to be transported without striking the ground. At that level, the taillights would not have been occluded.

40. More significantly, it is clear from the evidence of Mr Doherty and from his dashcam footage, that the taillights on the tractor were visible when he overtook the tractor some 2.8 km prior to the scene of the accident. Accordingly, the court finds that on the balance of probabilities, the taillights on the defendant's tractor were not occluded by the link box when the plaintiff approached the rear of the tractor.

41. However, that does not conclude the matter. The court has to have regard to the fact that the defendant was travelling in a 1965 model tractor. Sgt McCauley accepted that the lights on the tractor would not have been of the intensity or brightness, that would be found on a modern tractor. That the taillights on the defendant's tractor may have been relatively weak, is to an extent supported by the dashcam footage, which was viewed by the court. While that evidence was not definitive, it would appear from the dashcam footage, that the taillights on the defendant's tractor only became visible some very short distance prior to Mr Doherty coming upon it. One also has to have regard to the fact that Mr Doherty was aided in sighting the presence of the tractor on the road, by the headlights of an oncoming car, which had illuminated the tractor prior to passing in the opposite direction.

42. The court must also have regard to the fact that there was no street lighting at the locus of the accident; there was no evidence of any oncoming vehicle immediately prior to the accident. While there was some debate at the hearing of the action, as to whether there would have been any additional illumination from houses which were on the right-hand side of the road; the court is satisfied that the presence of any additional illumination can be discounted, due to the fact that the houses were a considerable distance beyond the point of impact. The court is satisfied that it is unlikely that any porch lights or gable lights on those houses, would have given additional illumination at the scene of the accident.

43. The provisions of the Road Traffic (Lighting of Vehicles) (Amendment) Regulations 2014 (SI 249/2014), made it mandatory for drivers of agricultural vehicles to have an illuminated yellow beacon on their agricultural vehicle, when driving on the public road. The reason for this is that such vehicles normally travel at a speed that is considerably slower than the normal vehicular speed on public roads. It is for that reason that it is mandatory to use the yellow flashing beacon, to warn other vehicles, and in particular vehicles travelling behind the agricultural vehicle, that it is travelling at a slow speed. It is accepted in this case, that the defendant had not illuminated his yellow beacon while driving at an extremely slow speed on the N14 road on the morning of the accident. The court must find that the defendant was negligent in failing to illuminate the yellow beacon while on the public road that morning.

44. In determining the apportionment of liability between the parties, the court is satisfied that while the plaintiff was travelling too fast for the road conditions at the locus, the vast preponderance of liability must rest with the defendant.

45. To drive a large vehicle, such as a tractor, on the highway in the hours of darkness without illuminating the yellow beacon, was highly negligent. This was exacerbated by the fact that the defendant was driving a 1965 model tractor. The court finds that on the balance of probabilities, the taillights on the tractor were quite weak. This meant that although there was an unimpeded sightline of 199 m to the scene of the accident, the court is satisfied that in the absence of any street lighting and in the absence of any oncoming vehicle casting illumination on the tractor, its presence on the highway was all but obscured from the plaintiff's vision.

46. The court has had regard to the fact that both vehicles were driving down a slight decline and that there was no appreciable light spillage from the houses that were some considerable distance

further up the road on the right. In these circumstances, the outline of the tractor would not have been readily illuminated for a vehicle travelling behind the tractor. It cannot be said that the plaintiff was failing to keep a proper lookout, due to the fact that he was not aware of the presence of the tractor on the highway prior to the impact. The court is satisfied that that lack of awareness was probably due to the fact that, on the balance of probabilities, the taillights on the defendant's tractor were quite weak.

47. In all the circumstances, the court finds that the defendant was 75% responsible for the accident and the plaintiff was guilty of 25% contributory negligence.

Quantum.

48. The plaintiff is currently 36 years of age, having been born on 9 March 1988. He is a married man with four children. He was 29 years of age at the date of the accident.

49. As a result of the accident, the plaintiff suffered the following injuries: a comminuted fracture to his sternum, with a residual haematoma over the fracture; a comminuted fracture to the third metacarpal bone on his left hand; compression fractures to the 2nd & 3rd lumbar vertebrae and a compression fracture of the 10th thoracic vertebra.

50. The fracture to the sternum was described by the defendant's consultant orthopaedic surgeon, Mr Lynch, as "a potentially life-threatening injury". The spinal fractures required the plaintiff to be immobilised in a brace for approximately three months post-accident. His hand was immobilised in a cast for six weeks. He had been detained in hospital for four days immediately after the accident.

51. The court heard evidence from the plaintiff's GP, who examined him in the months following the accident. The court also heard from Mr Macey, consultant orthopaedic surgeon. The court also had the benefit of the reports from Mr Lynch, which were admitted in evidence. He had seen the plaintiff on a number of occasions, most recently on 7 September 2022. Examination on that date revealed that movement of the neck and shoulders were reasonably good. There was evidence of lumbar lordosis between the 10th thoracic and third lumbar vertebrae. Spinal flexion was reduced by 30%, as was extension. Lateral rotation was reduced by 30% bilaterally. Examination of the hand revealed a mild degree of shortening of the third metacarpal bone. There was callus formation over the neck of the third metacarpal bone. There was a degree of restriction of flexion of the middle finger, particularly at the metacarpal phalangeal joint.

52. Mr Lynch noted that the plaintiff continued to have residual mild stiffness of the spine. He

complained of residual tenderness in the mid-lumbar area. He did not have any extension of pain outside the mid-lumbar spine. He noted that there was a small risk of arthritis in the area of the third lumbar vertebrae of the spine, which may cause the plaintiff intermittent discomfort in the future.

53. The doctor noted that the plaintiff had residual mild degree of shortening of the third metacarpal bone on the left hand and had a mild degree of restriction of flexion of the middle finger. There is new bone formation at the fracture site, which was preventing the plaintiff from fully flexing his finger. Mr Lynch was of opinion that with remodelling, an improvement in his ability to flex the finger should occur.

54. In his evidence in relation to his physical injuries, the plaintiff stated that he continued to experience some pain and discomfort in his back, particularly on bending, twisting and lifting movements. His left hand remained sore on occasion. He was not able to grip things tightly. However, he accepted that he was right hand dominant and the injury was to his left hand. He did not feel that he would be capable of his pre-accident employment, which involved lifting heavy containers of fruit and vegetables into and out of his van. He stated that he had not tried to return to work since the accident. However, he had recently been accepted onto a return to work scheme. His intention is to set up work as a self-employed spray painter. To that end, he had obtained permission to use his house for the purpose of this business enterprise. He confirmed that he would be able to obtain some earnings as a spray painter and would not lose all his social welfare benefits until his earnings reached a certain level.

55. A further significant aspect of the plaintiff's injuries, was the fact that he has suffered significant psychological sequelae as a result of the accident. The court had the benefit of hearing evidence from Mr Colin O'Donnell, a psychiatrist in the Donegal Mental Health Services. The court also had the benefit of the medical reports prepared by Dr Mary McInerney, the defendant's psychiatrist, which were admitted in evidence without formal proof.

56. It is apparent from the plaintiff's evidence, which was supported by the evidence of his GP, that he experienced PTSD after the accident. He was commenced on antidepressant medication. He has remained on this medication to the present time. He is currently on the maximum daily dose of mirtazapine and sertraline.

57. The plaintiff has required extensive counselling in respect of his psychiatric symptoms. He stated that on many occasions he felt that it was not worth getting up in the morning. On one

occasion, following a family event in Derry, he left the event and got over the parapet of the bridge over the River Foyle, with the intention of jumping in and committing suicide. However, he was grabbed by four men and was dragged back over the parapet. The police were called, and he was returned to the custody of his wife. Following that episode, he had extensive counselling in Pieta House, which he found helpful. In relation to his current psychiatric diagnosis, Dr O'Donnell stated that there had been a decrease in the intensity and frequency of the plaintiff's symptoms of PTSD. At present, the plaintiff probably did not meet the full criteria necessary for a diagnosis of PTSD, but he had some ongoing symptoms of it. He confirmed that the dosage of medication which the plaintiff was taking, was the maximum daily dosage allowable. That has been prescribed on an ongoing basis by his GP.

58. In relation to the vocational implications of the plaintiff's injuries, the court had the benefit of the evidence of Ms Patricia Coughlan, the plaintiff's vocational assessor. It also had the benefit of the report furnished by Ms Siobhan Kelly, the defendant's vocational assessor. It is common case that the plaintiff has a modest level of educational achievement. He completed schooling up to the level of the Leaving Certificate (applied), which is a more practical form of the leaving certificate examination. On leaving school in 2005, he worked as a retail assistant/petrol pump attendant in Letterkenny. He then obtained work in a garage, where he worked on trucks and cars.

59. The plaintiff was unemployed from 2009 until 2017. In July 2017 he obtained employment with the fruit and vegetable delivery firm, with whom he was working as a van driver at the time of the accident. The plaintiff has not worked since the accident. As noted, he has recently commenced on a return to work scheme and hopes to commence work as a self-employed spray painter in the near future.

60. The vocational assessors were of opinion that without further physical improvement, he was unlikely to be able to manage work which involved heavy lifting or heavy manual work. Given his level of educational qualifications and his experience to date, he would only be fit for light work, such as van driving which did not involve heavy lifting, or bus driving. However, given his protracted absence from the labour market both up to 2017 and since the time of the accident, it would be questionable whether he would be successful in obtaining employment in the open market. The fact that he has decided to undertake a return to work scheme and commence work on a self-employed basis as the spray painter, was regarded as beneficial.

Conclusions on Quantum.

61. The court is satisfied that the plaintiff has suffered significant physical injuries as outlined in the evidence of Mr Macy and in the medical reports from Mr Lynch. The court accepts as truthful, the plaintiff's account of his ongoing disablement from a physical point of view. The court also accepts his evidence that he continues to suffer significant psychological sequelae, which require him to take a significant level of medication.

62. In these circumstances, the court finds that the plaintiff will not be fit for heavy manual work in the future. He will continue to experience some pain and discomfort in his back and left hand into the future. The court accepts his evidence that the physical injuries he suffered caused him to experience severe pain and discomfort for many months after the accident and have gone on to give the ongoing sequelae as outlined above. The court accepts his evidence that he has suffered protracted mental health difficulties, which on one occasion gave rise to both suicidal ideation and what may be termed an attempted suicide, although he went to a particular locus, but did not carry through any attempt to actually kill himself. Nevertheless, the court accepts his evidence that his distress and psychological injury at that time, was acute. That was in or about September 2019, some 18 months post-accident. The court accepts that the plaintiff has done his best both to rehabilitate himself in relation to his physical injuries, by undertaking physiotherapy treatment and doing Pilates and has attempted to improve his psychological position, by undertaking counselling both with the Donegal Mental Health Services and with Pieta House.

63. The court finds that the fact that the plaintiff has not worked since the time of the accident is referable to the injuries, both physical and psychological, that he experienced in the accident. The court is satisfied that the plaintiff is not a man who has sat back and malingered. There is no evidence that he was engaged in any other activities that were inconsistent with his account of his injuries and level of disablement.

64. Taking all the medical evidence into account, coupled with the plaintiff's evidence as to his current level of symptoms, the court assesses the appropriate level of general damages at full value for pain and suffering and disablement to date, to be €90,000. The court further holds that the appropriate level of general damages into the future at full value, is €40,000.

65. The court is satisfied that it is appropriate to make some allowance for loss of earnings into the future. This is not done on the basis of a strict financial loss, but rather under the heading of loss

of opportunity. This takes account of the fact that, if the plaintiff's proposed self-employment as a spray painter is beyond his capacity, it is likely that he will suffer a significant detriment on the open market when seeking alternative employment, due to the fact that he was unemployed for six years after the accident and due to the fact that he has suffered significant injuries, both physical and psychological therein. I accept the evidence of the vocational assessors that it is highly questionable whether in light of these factors, he would be successful in passing a pre-employment medical examination. Accordingly, the court would assess damages for loss of opportunity in the sum of €30,000 at full value.

66. The court is not able to arrive at the appropriate figure to allow for loss of earnings to date. The court accepts that the plaintiff has been unfit for his pre-accident employment as a van driver with a fruit and vegetable company since the time of the accident. The court accepts that due to his continuing physical symptoms and due to his ongoing psychological symptoms, he was unfit for any work from the date of the accident to date. However, it is not possible for the court at this stage, to assess what the appropriate amount is for loss of earnings to date. The plaintiff's actuarial report, which was admitted in evidence, states that his potential loss of earnings from the date of the accident to 27 July 2023, being the date of that report, was €121,600. However, that report stated that that figure would have to be reduced by any net earnings which the plaintiff had since the date of the accident and by deductible social welfare benefits. It went on to state that the Statement of Recoverable Benefits from the Department of Social Protection should be obtained to indicate the deductible social welfare benefits. That information was not put before the court. Accordingly, the court will hold over its final assessment of what figure should be allowed for loss of earnings to date, until it has had the opportunity to hear the parties on that matter.

67. The court would also allow the other items of special damages claimed by the plaintiff of €362 for pharmacy expenses; €1,920 for GP expenses; and €300 for travel expenses.

Determination.

68. On liability, the court holds the defendant 75% responsible for the accident, with the plaintiff being found 25% contributory negligent.

69. The court will await further submissions as to the appropriate amount that should be allowed at full value for loss of earnings to date.

70. The court will finalise the terms of the judgment to which the plaintiff is entitled when it has

heard further submissions on the loss of earnings claim. The court will then grant judgment for the appropriate amount, having taken account of the apportionment of liability.