

THE HIGH COURT

[2024] IEHC 339

[Record No. 2019/1519P]

BETWEEN

BEN KEEVEY

PLAINTIFF

AND

RIGGING AND MACHINE MOVERS LIMITED

AND

JOHN SISK AND SON BUILDING CONTRACTOR

DEFENDANTS

JUDGMENT of Ms Justice Reynolds delivered on the 31st day of May, 2024.

Introduction

1. This judgment concerns the plaintiff's claim for damages arising from an accident at work. Essentially the plaintiff fell a considerable height from an unguarded stairwell, resulting in life threatening injuries including multiple skull fractures, orthopaedic and facial injuries.
2. Liability was vigorously contested as between the plaintiff and the defendants (the latter having provided mutual indemnities to one another).

The accident

3. The plaintiff, a rigging foreman, is a fifty-four-year-old family man with five children.
4. The first defendant, Rigging and Machine Movers Limited (“RAMM”) are specialist heavy lifting contractors. The plaintiff commenced his employment with RAMM in or about 2013, having worked in the construction industry for many years.
5. On 20th July 2015, the plaintiff was working as a supervisor on a site in Leixlip, County Kildare. He received a request from his employer, Mr. Stephen O’Hagan (the Managing Director of RAMM) to bring an angle grinder to another site at Liffey Valley where RAMM were providing services to the second defendant, John Sisk and Son Building Contractors (“Sisk”), the main contractors in situ. The angle grinder was required to remove lifting eyes off a stairwell to enable the completion of works on site. RAMM had been retained by Sisk to affect a temporary lift of a concrete stairwell.
6. The plaintiff travelled to the site in the afternoon and was directed by Mr. O’Hagan to assist a fellow employee, Thomas Glynn, in the removal of the lifting eyes albeit that the precise instructions given by Mr. O’Hagan were the subject matter of significant dispute.
7. In any event, the plaintiff commenced the job on the upper landing of the stairwell which was approximately 2.9 metres above ground level. The eyeholes were one foot in from the unguarded edge of the stairwell (and the width of the stairwell slightly in excess of six feet). It is common case that a guardrail which had been present was removed by Sisk employees (to facilitate the RAMM works) and had not been replaced. During the course of carrying out the works the plaintiff fell from the stairwell.

8. The precise mechanism of the incident was another matter of factual controversy. The plaintiff is unable to give an account of how he fell or what caused him to fall in circumstances where he sustained a very serious head injury. He was in a position to give an account of what occurred up to the time of the accident to Mr. Johnson, his engineer, in May 2017 and this was documented in the first of his reports. However, an issue arose as to whether this account had been properly recorded by Mr. Johnson, and his evidence in this regard gave rise to rigorous cross-examination by the defendants' counsel who sought to undermine his credibility as an expert witness in the case.

9. Further, it is common case that the plaintiff was not wearing a safety harness at the time of the accident, his explanation being that he was delivering an angle grinder at his employer's request and hadn't envisaged nor was he advised that he would be required to carry out work on site.

10. Fundamentally the plaintiff's case is that the defendants were negligent and in breach of duty in failing to provide him with a safe place and system of work (in particular whilst working at heights) in consequence of which he has sustained life-altering injuries.

The evidence

11. Evidence was heard from the plaintiff and his consultant engineer, Peter Johnson. The defendants' sole witness was Mr. O'Hagan. Medical reports were agreed on the usual basis with the exception of *viva voce* evidence from Mr. Fintan Doyle, Consultant in Trauma and Orthopaedics.

Ben Keevey, the plaintiff

12. In evidence, Mr. Keevey stated that he received a call from Mr. O'Hagan asking him to bring an angle grinder to the Liffey Valley site. The plaintiff was working in Leixlip but had been to the Liffey Valley site on a previous occasion. He was informed that the angle grinder was required to remove lifting eyes from a stairwell to enable the completion of the works. The plaintiff stated that when he arrived, he was asked by Mr. O'Hagan to help Thomas Glynn to take out the lifting eyes so as to get the job finished up. They proceeded to the lower lifting eye on the stairs and removed it. His evidence was that Mr. O'Hagan then directed Mr. Glynn to go and "*spot*" for the teleporter driver who was transporting lift beams, leaving the plaintiff to finish the job on his own.

13. The plaintiff stated he was sitting on the third or the fourth step down on the stairs and was looking "*down on the lifting eye so that I could remove it*". He stated it was difficult doing the job on his own as Mr. Glynn had assisted in holding the lifting eyes steady that had already been removed. Thereafter, he recalled lifting the punch with the hammer and stated, "*that's the last I remember*".

14. When asked about guardrails, he stated they had been present on his previous visit to the site but had clearly been removed. Mr. Keevey further stated he had not brought his safety harness to the site as the instruction he had received was simply to deliver an angle grinder, and no more. His evidence was that neither Mr. O'Hagan nor Mr. Glynn were wearing harnesses when he arrived. Further, he stated he was never criticised by Mr. O'Hagan or anyone, either before or after the accident, for not wearing a harness save and except until the issue arose in the context of the defence in the proceedings.

15. He stated that he had no recollection of the presence or otherwise of an inertia reel which would have allowed for the attachment of a harness.

16. He explained how subsequent to the accident, his employer called to visit him at his home whilst he was recovering from his injuries. During that visit he advised that he wrote, at Mr. O'Hagan's request, the following statement:

“Reference: Accident Liffey Valley Shopping Centre. 20 June. I, Ben Keevey, wish to state that I will not be making a claim against Rigging and Machine Movers Limited in regard of this accident. Ben Keevey.”

17. Mr. Keevey outlined how he was told by Mr. O'Hagan that he required the statement for insurance purposes. He explained that he had very real concerns that if he refused to provide it, Mr. O'Hagan would stop his wages. He was worried about paying his mortgage and maintaining his young family. He stated that when he subsequently decided to bring a claim (having obtained legal advice), he worried that his employer might seek to rely on it and regretted having written it.

18. Upon his return to work some six months later (and after the initiation of the within proceedings), he stated that he felt ostracised from his work colleagues and subsequently left in July 2016 to take up alternative employment.

19. There was some dispute over whether the method statement he signed (as disclosed in the discovery documentation) was the correct one for the job he was doing at the time.

20. The plaintiff advised he has continued to work since he left RAMM, and is now back “*rigging*” again, albeit that he continues to have constant pain in his knee. He accepted that he is unlikely to continue in this line of employment due to his ongoing knee symptoms and hopes to upskill to improve his employment prospects in the future.

Peter Johnson, the plaintiff's Consultant Engineer

21. Mr. Johnson stated that he attended a joint inspection with Pat Culleton, Consultant Engineer on behalf of the defendants. He provided three reports, in the first of which he records that the plaintiff had told him that he was sitting/kneeling on the landing, facing down the stairwell and leaning out towards the lifting eye on his left prior to his fall.

22. In evidence, Mr. Johnson explained that at consultation on the morning of the hearing he realised that he had misunderstood and/or misdocumented the plaintiff's account of where he was positioned on the stairs prior to the accident, and he consequently addressed this in his revised report (whilst also responding to updated particulars of negligence served by the defendants). He stated that in respect of his first report: -

“My main interest in trying to investigate what had happened was about the absence of guardrails. The work he was doing was very much secondary.”

He further stated: -

“...whether the precipitating cause of his accident was a slip or stumble or loss of balance is largely immaterial. Mr. Keevey ought to have been safe in his workplace.”

23. His evidence was that there was no facility on site on the day in question to accommodate the attachment of a safety harness as the inertia reel had been removed, as depicted in the photographs.

24. He highlighted the relevant legislative statutory provisions of the Safety, Health and Welfare at Work Act 2005 and Regulations adopted thereunder, in particular the obligations imposed on an employer pursuant to Section 8 of the Act.

25. Further, he gave evidence of the breaches of duty on the part of the defendants in terms of lack of safety measures on site, in particular in respect of working at height as set out in the General Application Regulations 2007, the guidelines pursuant to the Health & Safety Authority Part IV “*Work at Height*” and the Construction Regulations 2006. He accepted that he had omitted to balance his report with reference to Section 13 (duties of employees) as required of him in terms of providing the court with an impartial and independent expert opinion.

26. Mr. Johnson was cross examined at considerable length in relation to the provision of his additional reports. Essentially it was put to Mr. Johnson that if the plaintiff was positioned as per the account outlined in his first report (i.e. leaning down the stairs from a height) that this was “*unsafe employee action*”. He accepted this proposition but again reiterated that he had misinterpreted the plaintiff’s account of where he was positioned and stated: -

“Mr. Keevey ought to have been safe in his workplace....”

27. Whilst Mr. Johnson accepted some criticism for the shortcomings in his report and apologised for his oversight in terms of highlighting the duties of employees in the workplace, he strenuously denied that he had in any way sought to mislead the court and/or that his evidence as an expert witness had been compromised.

28. In view of the vigorous cross examination of the plaintiff’s engineers and what essentially amounted to an attack on his credibility, it was notable that the defendants failed to call any expert evidence from their own engineer, Mr Culleton, particularly in circumstances where it was submitted on behalf of the defendants that no weight ought to be attached to any opinion offered by Mr. Johnston (the only expert engineer to give evidence in the case).

Stephen O'Hagan, Managing Director of RAMM

29. At the outset, Mr O'Hagan described how he formed the business (RAMM) in 2013 after many years of experience in the construction industry and how Mr Keevey had been working with him for most of that period. He described the plaintiff as very diligent, stating "*we were very happy with his work*". He stated that he never had any concerns about safety compliance with Mr Keevey previously.

30. He accepted that there was no guardrail present on the stairwell on the day of the accident and that the inertia reel had been removed. However, his evidence was that there was a handrail available for the attachment of a safety harness, if required.

31. He confirmed that he requested the plaintiff to bring over an angle grinder but denied that he gave him any further instruction. He accepted that Mr Glynn was working at the stairwell when the plaintiff arrived on site. He advised that he had phoned Sisk to send scaffolders down to replace the guardrail, although no evidence was called on behalf of Sisk to corroborate this version of events.

32. His confirmed that he called Thomas Glynn away from the stairwell to assist with the transporting of lifting beams. Whilst they were carrying out this work, they heard a commotion. He stated he looked around and saw Mr Keevey on the ground.

33. He acknowledged that as an employer he had a duty to report the accident to the Health and Safety Authority ('HSA'). His evidence was that he made a phone call to the HSA on the day after the accident and left his details but there was no follow up by the HSA. He stated, "*the person on the phone said once there is not a fatality somebody will come back to me*" and advised "*they never came back to me*". Mr. O'Hagan made no attempt thereafter to follow up the matter and I found his evidence in this regard simply implausible.

34. In relation to the statement that he sought from the plaintiff, he stated that he was only two years in business and was worried that he would be unable to get insurance renewal. He was further concerned about an adverse effect on his business.

35. Under cross-examination, he acknowledged that he had not taken any photograph of the accident locus and accepted that he made no effort whatsoever to preserve the scene until such time as an investigation could take place. He conceded that whilst a sketch was referred to in one of the witness statements, he was not aware of any such sketch or drawing, nor had he sought it out in advance of the hearing. When questioned about who the safety representative on the site was, he responded that it “*would have been a safety representative from Sisk*” but again appeared to make no inquiry at the time to establish who it was. It was put to him in simple terms that he did not make and/ or pursue any report to the HSA so as to avoid any potential criminal prosecution in relation to the accident. He strenuously denied the allegation but acknowledged that he had managed to avoid an investigation/prosecution and any potential adverse publicity associated with it.

36. Effectively it was put to him that all of his actions demonstrated a “*cover up*” from the time of the accident to the lack of investigation and subsequent extraction from the plaintiff of the statement indicating that he was not pursuing a claim against the company. Again, Mr O’Hagan denied these allegations.

Factual issues to be resolved

37. At the outset I am satisfied that there was very little planning surrounding the works being undertaken at the time of the accident. The evidence discloses that the accident occurred at approximately 4.20pm at a time when there was pressure on to wrap up the job. I am satisfied that when the plaintiff arrived on site, he was directed

on the spur of the moment by Mr O'Hagan to assist in the removal of the lifting eyes, without any prior notice and more importantly without any reference to safety concerns. Undoubtedly had the plaintiff been advised in advance of the works to be undertaken, he would have brought his safety harness to the site given his impeccable safety record prior to this incident. Mr O'Hagan, more so than anybody else, was well aware that the guardrail and inertia reel had been removed. He was the man on the ground, so to speak, directing operations and knew that the plaintiff would carry out his instruction to the letter, in what was clearly a rushed operation to get the job done. Mr O'Hagan's own evidence demonstrated that he had observed the plaintiff and Mr Glynn on the stairwell just prior to the accident taking place. The only logical explanation for them being there was to remove the lifting eyes at his direction. Otherwise, as a prudent employer, he would have immediately directed them to stop. Any suggestion that the plaintiff was acting "*on a frolic*" as suggested by the defendants simply does not stack up.

38. In relation to the guardrail, it is readily apparent that the accident would not have occurred had it been in situ. It is regrettable that this matter was left in issue until the eve of the hearing and thereafter withdrawn. Mr Keevey as a valued and respected employee simply deserved better, both from his employer in terms of first, ensuring that it was in place prior to directing the works to be carried out and thereafter in failing to concede its absence until the proceedings came on for hearing.

39. Matters were compounded further by his behaviour in the aftermath of the accident in exerting pressure over the plaintiff to make a statement indicating that he would not be pursuing a claim for his injuries. In addition, the explanation in relation to the absence of an HSA investigation by Mr O'Hagan is wholly implausible. I am satisfied having regard to his actions in protecting his own interests with his insurance

company that he never pursued any notification to the HSA or indeed if he did, it suited his purposes not to follow up with them by way of investigation of the accident. Mr O'Hagan seemed to naively believe that he could brush the matter under the carpet whilst maintaining his insurance cover and avoiding any health and safety authority prosecution. His dereliction of his duties as an employer is simply baffling, and reprehensible.

40. It is further notable that during the course of his evidence Mr O'Hagan stated that he had called upon Sisk to reinstate the guardrail. No evidence was called from the second defendant or indeed from any of the defendants' employees on site on the day to corroborate any evidence given by Mr O'Hagan. Indeed, Mr O'Hagan was unable to advise who the safety representative was on site that day or if any investigation was ever carried out by such person.

41. As already outlined, the only engineering evidence heard by the court was from the plaintiff's engineer. Undoubtedly there were shortcomings in that evidence and in the reports provided by Mr Johnson, as accepted by him in his evidence. Clearly an expert's primary duty is to the Court, and not to their client who will be paying his or her fees. In the circumstances that arose in this case, I am satisfied that the attack on Mr Johnson's credibility was somewhat unwarranted. He accepted that there was human error on his part in the manner in which he documented the initial history of events as provided by the plaintiff advising that his primary interest was in relation to the absence of guardrails, and that the work that the plaintiff was doing was very much secondary. It is common case that had the guardrail been present the accident simply would not have happened.

42. In all the circumstances and having regard to the totality of the evidence I can only conclude that the primary responsibility for the accident rests with the defendants.

Contributory negligence

43. The defendants have submitted that the plaintiff engaged in a work practice that he knew to be unsafe and contrary to the employer risk assessment and site induction. Essentially it was argued that he was in breach of duty in failing to have adequate regard for his own safety and welfare.

44. However, as already outlined above, I am satisfied on the evidence that this was not a pre-planned work practice, and that the plaintiff (who had just arrived at the site) was instructed by Mr. O'Hagan to assist Mr. Glynn in removing the bolts in circumstances where his employer knew or ought to have been aware of the inherent risks involved. Those risks were heightened when Mr. O'Hagan called Mr. Glynn away. The plaintiff's evidence was that the task had been easier when he had the assistance of Mr. Glynn to hold the bolts steady and I accept his evidence in that regard.

45. There also remains the issue of compliance or otherwise with one's employer's instructions and the potential ramifications of failing to do so. In this case it is clear that the plaintiff was at all times willing to comply with Mr. O'Hagan's requests, particularly in circumstances where he provided a statement waiving his right to seek compensation. His evidence in that regard was that that he was concerned his employer would otherwise stop his certified sick pay.

46. I am however mindful of the plaintiff's considerable experience in the construction industry and his safety training. In evidence he accepted that in hindsight

he should have made some enquiry about the guardrail and the availability or otherwise of a safety harness.

47. This evidence has to be viewed in the context of the particular circumstances of this case. This was an employer mandated work practice with Mr. O'Hagan supervising the work on site. He acted in complete disregard for the safety of the plaintiff and his colleague in directing them to carry out the task at hand, knowing the extreme dangers of working at heights.

48. Therefore, whilst I accept there must be some culpability on the part of the plaintiff, in my view a finding of 20% is appropriate in all the circumstances.

Medical evidence

49. Agreed medical reports and vocational reports were submitted for the Court's consideration, supplemented by *viva voce* evidence given by the plaintiff's treating orthopaedic consultant, Mr Doyle, Clinical Director of Orthopaedics at Blackrock Clinic. The reports submitted on behalf of the plaintiff included reports from Mr Aidan Gleeson, A&E Consultant, Mr Ronan Walsh, Consultant Neurologist, Dr Denise Curtin, Ophthalmologist, Professor Leo Stassen, Maxillofacial Surgeon, Mr Peter Keogh, Orthopaedic Surgeon, Mr Tony McAleer, Orthoptist and Mr Michael O'Rourke, Ophthalmologist. The defendants relied on reports from Mr Frank Brady, Maxillofacial Surgeon, Mr Patrick O'Sullivan of O'Sullivan & Devine Rehabilitation Consultants and Ms Nicola Ryall, Professor in Rehabilitation Medicine.

50. The plaintiff sustained multiple and significant injuries, which I propose to deal with as follows:

Head injury

51. The Plaintiff was admitted to Connolly hospital and ventilated for a period in the Intensive Care Unit. CT scans revealed “*a major traumatic brain injury*” with frontal lobe haemorrhages and contusion. The plaintiff’s injury was treated conservatively. It was noted that he had suffered retrograde and anterograde amnesia of events from just prior to his fall and waking up in hospital a couple of days later. Mr Keevey was detained in hospital for a period of two weeks. Subsequent to discharge, he complained of memory difficulties and reported that he had become irritable and short tempered and suffered from post-traumatic headaches. Dr Ronan Walsh, Consultant Neurologist, opined that his symptoms and personality change were common after frontal lobe injury. He further noted that the plaintiff was at a slightly increased risk of developing seizures as a result of such a traumatic brain injury. Despite achieving what was considered a good recovery, he opined that the plaintiff continued to suffer mild cognitive deficits. Dr Walsh in his 2nd report dated 24 Sept 2019 opined that the Plaintiff’s overall prognosis was good.

Skull and facial fractures.

52. In addition, the plaintiff sustained multiple skull and facial fractures including a fracture of the central skull base, cheekbone and eye socket which were treated conservatively. He subsequently came under the care of Professor Stassen at the National Maxillofacial Unit in St James’s Hospital and complained of altered sensation with some pins and needles in his right temple. Mr. Stassen has opined that the area of altered sensation is likely due to the injury sustained and will not recover.

53. The plaintiff also sustained a number of fractures to his nasal bone and is left with a mild deformity with decreased air entry through the right side. Whilst Mr.

Keevey was advised that surgical intervention by way of septoplasty/rhinoplasty was available, the plaintiff indicated that he was not keen on any further surgery.

54. In addition to the foregoing, the plaintiff sustained multiple soft injuries to his head and face, including a laceration to his forehead which required suturing. Mr Keevey has now been left with a significant prominent scar involving the left side of his forehead which Professor Stassen has described as *“unsightly and blue related probably to a dirty wound at the time of the injury”*. Fortunately, at present this remains hidden by the plaintiff’s hairline. The plaintiff was advised the appearance of it could be improved by surgery but again the plaintiff was not keen on any medical intervention. Professor Stassen also noted a slight difference between the level of the right eye and the left eye with some evidence of hypo Globus arising from the nature of the fractures sustained.

Sensory impairment

55. Since the accident the plaintiff has complained of a total loss of sense of smell (anosmia) and loss of sense of taste. Mr. Frank Brady, Maxillofacial Consultant opined that this *“is likely to have occurred as a result of a combination of his head injury and the fractures of this ethmoid and cribriform plate of ethmoid bones which would have damaged his olfactory first cranial nerve. There is no specific treatment for this problem.”*

56. In evidence the plaintiff recounted the profound consequences of his permanent and total loss of taste and smell and stated that everything taste wise is just bland now and that he no longer enjoys food. Similarly, he described how he is no longer able to enjoy the taste of beverages as they also are bland. He detailed his disappointment associated with the fact that there is no treatment available to him and the fact that he will never be able to taste or smell anything for the rest of his life.

57. The plaintiff has further suffered from with difficulties with double vision and came under the care of Ms Bríd Morris, Consultant Ophthalmologist and more recently Dr Denise Curtin, Consultant Ophthalmologist.

58. Clinical findings revealed “*double vision looking to the right with nystagmus because of restriction of his eye movements. This is probably caused by the orbital floor fracture*”. The prognosis is that the double vision he suffers on looking to the right will not recover. The plaintiff gave evidence that this abnormality is constantly present and describes it as annoying. Again, this condition is permanent with no treatment available.

Right knee

59. The plaintiff sustained a displaced transverse fracture of the patella in his right knee which required invasive surgery by way of open reduction and internal fixation in July 2015. Post operatively, he was in a brace for six weeks and on crutches. Due to his wrist injuries (documented below), he was primarily reliant on a wheelchair for that period. Thereafter, the plaintiff attended for intensive physiotherapy treatment. When viewed by Mr Peter Keogh in November 2016, he noted that the fracture had healed. He opined that the plaintiff was likely to have some permanent symptoms in the knee with the probability in the long term of developing arthritis in the patella-femoral aspect of the knee joint.

60. The plaintiff continued to suffer some symptoms in the left knee and was treated by way of conservative management by way of medication and the administration of an injection to the right knee. Upon review by Mr. Gleeson on 18/12/20 the plaintiff advised that after the Cortisone injection he was symptom free for approximately three months. Mr. Gleeson opined that his knee pain was due to

secondary osteoarthritic change in the back of his patella and was likely to be permanent.

61. The plaintiff subsequently came under the care of Mr Fintan Doyle, Orthopaedic Consultant, who stated that the plaintiff's symptoms of pain every day were getting progressively worse particularly while standing, sitting, squatting or kneeling. He opined that this would be standard for the type of injury sustained by him and the fact that the plaintiff had gone on to develop secondary degenerative changes in the knee. He noted that whilst Mr Keevey had received some short term relief from injections, it was likely that the more injections he receives, the shorter the relief would be.

62. He opined that it is very likely that the plaintiff will request a knee replacement as it is the only way the plaintiff can obtain long term relief from his symptoms and further, the only way the plaintiff will be able to continue working in his current employment. In his opinion, it was reasonable for the plaintiff to go down the route of a knee replacement given his ongoing difficulties.

63. He further advised that it is likely the plaintiff will outlive his knee replacement and will require a second one during his lifetime.

64. The parties have agreed quantum in respect of the cost of knee replacement surgery on the basis that each surgery (if required) will cost €25,000 (*i.e.*, €50,000 in total).

Left and right wrist.

65. The plaintiff sustained an undisplaced fracture of his distal radius that was treated conservatively in a cast for six weeks. This created difficulty using crutches in respect of his knee injury as outlined above. The fracture healed fully, and the plaintiff confirmed in evidence that he has no major symptoms in relation to it.

66. In addition, the plaintiff suffered a soft tissue sprain to his left wrist. Unfortunately, the plaintiff had previously sustained a fracture of the scaphoid resulting in degenerative changes in the wrist. After the accident the plaintiff developed intermittent symptoms in the wrist. Mr Aidan Gleeson, A&E Consultant, has opined that the plaintiff most probably aggravated the pre-existing ununited fracture of the scaphoid with degenerative changes already present in the wrist.

Vocational impact of the injuries

67. In evidence, the plaintiff described the nature of his current work and the difficulties he has with his knee when climbing ladders, kneeling, bending, stooping *etc.* Pre-accident he was fit and active but unfortunately now walks with a limp. It is clear that the treatment (by way of injections) that has enabled him to continue working will not provide a long-term solution as outlined by Mr Doyle and given his impressive work ethic, and the medical evidence in the case, it is likely that he will require knee replacement surgery. In addition, the medical evidence is that the knee replacement surgery is not designed to give the same mobility and will have an impact on his work. Further, it is apparent that any surgery will require a post operative recovery period of approximately twelve months. The evidence thereafter is that on the balance of probabilities the plaintiff will require a second knee replacement during the course of his lifetime. Despite the plaintiff's best efforts to rehabilitate himself, which are uncontroverted, he continues to suffer adverse effects from his injuries.

68. It is submitted that the Court should access a significant sum for general damages under the separate and distinct heading of loss of opportunity and/or enhanced general damages for vocational impact.

69. I am not satisfied that such a claim can be sustained where the undisputed evidence is that the plaintiff is motivated to work and has demonstrated a strong application to work throughout his life, to his credit. There is no claim for past loss of earnings in circumstances where he was paid by his employer while he was out on certified sick leave. Thereafter, he has remained in the work force and has upskilled.

70. I am, however, satisfied that he will require a knee replacement in the very near future to enable him to continue working. Despite his reticence for surgical interventions, as demonstrated in the medical reports, I am satisfied that he has exhausted all other treatment modalities and that it will be necessary to enable him to remain in employment.

71. The plaintiff is now approaching his mid-fifties and I think it unlikely that he will chose to undergo a second knee replacement during his lifetime. The evidence is that he is interested in retraining in order to move from physical work in the construction sector to an oversight or site management role for his future entailing work of a more sedentary nature.

Quantum

72. This is a Book of Quantum case (in circumstances where the proceedings issued prior to the enactment of the Judicial Council Act 2019), which provide an indication of the potential range of compensation for a particular injury, whilst every claim continues to be dealt with on its merits.

73. Of particular relevance is the guidance provided in the book (at p.10):

“4. Consider the effect of multiple injuries.

If in addition to the most significant injury as outlined above there are other injuries, it is not appropriate to simply add up values for all the different

injuries to determine the amount of compensation. Where additional injuries arise, there is likely to be an adjustment within the value range.”

74. Ultimately what is expected of the Court in approaching the assessment of damages where there are multiple injuries is proportionality having regard to the maximum amount of damages that may be awarded for the most serious and catastrophic injuries (currently €550,000).

75. In a recent decision of the Court of Appeal *Meehan v Shaw Cove Limited & Ors.* [2022] IECA 208, Noonan J in considering the correct approach to the issue of proportionality in an assessment of damages (where multiple injuries are concerned) stated as follows: -

“...I think the important point to be taken from these authorities is that whatever individual categories of injury a plaintiff may have suffered, and whatever the values attributable to those categories may be, the court must strive to take an holistic view of the plaintiff and endeavour to place the plaintiff’s particular constellation of injuries and their cumulative effect on the plaintiff within the spectrum in a way that is proportionate both to the maximum awards made to other plaintiffs.”

76. Given the multiplicity of injuries in this case, I have approached them from the point of view of a significant head injury incorporating skull fractures, sensory deficits, right sided double vision, hypo Globus, nasal injuries and scarring and thereafter considered the orthopaedic injuries, to include the knee and wrist injuries.

77. In respect of the former, I don’t propose to regurgitate the medical evidence as outlined above. Clearly Mr. Keevey has achieved a remarkable recovery in many respects but has remaining cognitive issues, sensory impairment, permanent scarring and disfigurement and some double vision. Understandably, his loss of taste and smell

is a source of considerable regret and upset for him as outlined in the evidence. It is now almost 9 years since the accident, and these are all permanent injuries that will remain with him for the rest of his lifetime.

78. In the circumstances, I am satisfied that the head injury falls to be considered at the very top end of the scale having regard to all of the associated injuries and permanent complications for the plaintiff.

79. In terms of his orthopaedic injuries, the knee injury is clearly the most significant and has already been dealt with in some detail above. In addition to the vocational impact, the plaintiff's evidence was the injury has significantly impaired his recreational pursuits with his children and his sporting interests. Even with a knee replacement, the evidence is that he is likely to have mobility issues with the knee in the future.

80. Fortunately for the plaintiff his wrist injuries have fully resolved without any major complications.

81. The guidance provided in the Book of Quantum suggests that the knee injury falls to be considered in the upper moderate to severe range, in circumstances where it is envisaged that the plaintiff will soon undergo a knee replacement which should help to ameliorate his symptoms albeit that his mobility is likely to remain affected. The court must also consider some degree of uplift for the other orthopaedic injuries which were clearly more minor in nature.

82. Taking of all these issues into account, and in attempting to achieve "*a holistic view of the plaintiff*" I assess general damages to date at €200,000.

83. I am further satisfied that an award for damages for pain and suffering into the future is warranted in circumstances where the plaintiff's knee injury will never fully resolve (even post-surgery), his loss of taste and smell is permanent, as is the scarring,

altered sensation in his right temple and nasal disfigurement. I therefore assess damages for pain and suffering into the future at €60,000, giving a total award for damages of €260,000.

84. In reaching the assessment above, I had due regard to the comparators provided by the parties to assist the Court (for which I am grateful) and whilst the principles outlined in those decisions were most helpful, the nature and multiplicity of the injuries in this case are somewhat complex and unique, and stand to be considered in terms of the cumulative effect that they have had and continue to have on the plaintiff.

Special damages

85. As outlined above, I am satisfied that the plaintiff will undergo knee replacement surgery, the agreed cost of which is €25,000. In addition, there was a claim for miscellaneous travel expenses in the sum of €200 which remained unchallenged, giving a total figure of €25,200.

Claim for aggravated and/or punitive damages

86. In written legal submissions submitted on behalf of the plaintiff, a claim is made for aggravated and/or punitive damages. This was neither pleaded nor canvassed during the course of the proceedings. Further it was strenuously objected to by the defendants in circumstances where they were not afforded any opportunity to meet such a claim, and in my view such claim must therefore fail.

Conclusion

87. The total award therefore, after the appropriate deduction in respect of the finding of contributory negligence, is €228,160.