



**UNAPPROVED
THE COURT OF APPEAL**

**Record Number: 2023/15
High Court Record Number: 2022 184P
Neutral Citation Number [2023] IECA 223**

**Noonan J.
Haughton J.
Allen J.**

BETWEEN/

AGNIESZKA ZAGANCZYK

PLAINTIFF/RESPONDENT

-AND-

**JOHN PETTIT WEXFORD UNLIMITED COMPANY AND C&M
DELANEY LIMITED**

DEFENDANTS/APPELLANTS

JUDGMENT of Mr. Justice Noonan delivered on the 20th day of September, 2023

1. This is an appeal against an assessment of damages in a personal injuries action to which the Judicial Council Personal Injuries Guidelines apply. The High Court awarded the plaintiff €90,000 for general damages against which the defendants appeal on the basis that it is excessive and was arrived at erroneously by a misapplication of the Guidelines by the High Court.

Background facts

2. The plaintiff was born on the 7th January, 1976. She worked at the SuperValu store in Wexford, owned by the defendants, as a chef in the delicatessen area. At about 9am on the 12th January, 2020, the plaintiff went to turn on a gas oven when it exploded and, as it is pleaded, engulfed her in flames. As a result, she suffered burn injuries to the left side of her face, neck, ear and left hand/arm. She went on to develop psychiatric injuries. The case proceeded as an assessment of damages before the High Court and the medical reports on both sides were agreed as were the special damages. Consequently, the only witness to give *viva voce* evidence was the plaintiff herself.

The plaintiff's evidence

3. The trial took place on the 8th December, 2022 and the plaintiff gave evidence of her personal circumstances including that she had two children aged 25 and 17, the younger of whom resided with her. Although she appeared to be reasonably proficient in the English language, she also had the assistance of an interpreter. She identified photographs of herself in the aftermath of the accident showing the burns to her face, neck, ear, left hand and forearm. Her lip was burned as a result of which she had difficulty in eating for a period but that recovered completely.

4. With regard to her residual scars, she described having a white mark or area of discoloration on her left forearm which required protection in the sun. She was initially treated in Wexford General Hospital and subsequently by her GP who referred her to the National Burns Unit in St. James' Hospital for further treatment. She did not require in-patient treatment but had to attend initially two or three times a week. She was able to do

nothing at home following the accident and her mother had to come to stay with her to assist. She described being unable to sleep, constantly crying and afraid to leave the house. She was off work for about nine months. She described how, a week or two after the accident, she began to drink alcohol excessively, which she had never done before.

5. She said she did not wish to live and attempted suicide by taking tablets and alcohol. Her excessive drinking continued for about four to six months post-accident. She described suffering from flashbacks, insomnia and nightmares for the first few weeks after the accident. She described herself as still being nervous and anxious, and felt she was no longer joyful and sociable.

6. Under cross-examination, she agreed that she enjoyed being back at work and had been able to return to the kitchen. Whilst she was initially diagnosed with PTSD, she agreed that when she saw Dr. Cryan, consultant psychiatrist, in March 2022, twenty six months post-accident, she was no longer suffering from PTSD. She agreed that she had improved.

7. With regard to her complaints of alcohol abuse, it was put to her that she had not disclosed this to her lawyers as it was never pleaded despite a verifying affidavit being sworn. She agreed that she was satisfied in January 2022 when the proceedings issued that her injuries were accurately described in the personal injuries summons, despite the fact that there was no reference to alcohol abuse in that document.

8. She was asked about the content of a medical report from Mr. Odhran Shelley, consultant plastic surgeon and head of the Burns Unit in St. James' Hospital. In the history taken by Mr. Shelley in relation to the plaintiff's burns, he noted that she had indicated to him that the burns healed up about four weeks following the injury and she agreed in her evidence that she had said this. In response, she said that her physical injuries had cleared up within about four weeks but not the psychological ones.

9. On re-examination, the plaintiff confirmed that she had told Mr. Shelley about her alcohol problem and that she was taking anti-depressants prescribed by her GP. When asked why she did not include that claim about alcohol and anti-depressants in her claim initially, the judge interjected to say that she was embarrassed about it. The judge took the opportunity to view the plaintiff's forearm where the area of discoloration was located.

The medical evidence

10. The authorities show that where medical evidence is put before the High Court by way of agreed reports, this Court is on appeal in as good a position as the High Court to assess that evidence. It is therefore appropriate to summarise the reports chronologically:

- Dr. Grainne Pinaqui - 29th April 2020 (three and a half months post-accident)

Dr. Pinaqui was the plaintiff's general practitioner and completed a report in the PIAB template. She describes the plaintiff's injuries as comprising "*substantial burn injury to her left forearm with more minor injuries to the left side of her face, neck and ear and left hand.*" Dr. Pinaqui said the plaintiff had made an excellent recovery without scarring on her face, ear or neck, although she has some altered sensation around the left side of her upper lip. The largest burn was to the forearm where she had some altered sensation and itchiness. She had a likely diagnosis of PTSD and was suffering significant anxiety and low mood with disrupted sleep and intermittent palpitations. There was a 13 x 9 cm area of paler skin on her left forearm with some scarring of the second and third finger of the left hand approximately 1 cm in diameter. Completing a checklist provided in the PIAB form of parameters in various areas ranging from normal to profound, Dr. Pinaqui noted everything as normal with the exception of "*mental health*" which she ticked as "*severe*". She

felt that the plaintiff would need 12 to 18 months to recover fully but may need to see a psychiatrist.

- Dr. Dominick Fannon - 13th January 2021 (One year post-accident)

Dr. Fannon is a consultant psychiatrist who examined the plaintiff on behalf of PIAB. Dr. Fannon said the plaintiff was suffering from ongoing Post Traumatic Stress Disorder. He described her symptoms in some detail which he considered to be characteristic of PTSD. He classified this as “*moderate*”. His view with regard to anticipated future treatment was that the plaintiff was likely to benefit from antidepressants for up to a further 12 months together with psychological therapy such as cognitive behavioural therapy. He noted that the plaintiff reported that her anxiety symptoms and mood disturbance had improved with the treatment since the incident and she continued to experience PTSD. He estimated the time from the accident to substantial recovery at approximately 30 months.

- Mr. Eamonn Beausang - 2nd July 2021 (approximately 18 months post-accident)

Mr. Beausang is a consultant plastic surgeon who saw the plaintiff on behalf of the Personal Injuries Assessment Board, obviously with a view to assessing her physical burn/scar injuries only. The plaintiff advised Mr. Beausang that it took approximately two months for everything to heal. Although she was still suffering from some traumatic effects of the accident, she indicated to Mr. Beausang that she was not particularly conscious of the scars on her forearm but finds the area sensitive, particularly in extremes of temperature. On examination he found a faint patch of scarring along the ulnar border of the left forearm 10 cm by 3 cm. He described the scar as being “*just barely visible at normal conversational distance*”. He felt the sensitivity around the scar might improve over the coming 12 months but was likely to be permanent to some degree.

- Dr. Elizabeth Cryan - 14th March 2022 (26 months post-accident)

Dr. Cryan is a consultant psychiatrist who reviewed the plaintiff on the instructions of her solicitors. Dr. Cryan's report is lengthy and gives considerable detail of the circumstances of the accident, the plaintiff's subsequent medical treatment, and her medical and psychiatric symptoms and history up to that point in time. She also gives the plaintiff's family and personal history prior to the accident together with her pre-morbid personality and current mental state. She considered that the plaintiff had experienced initial PTSD following the accident which had been of moderate severity. With regard to alcohol abuse, Dr. Cryan said:

"... I consider that her alcohol use had reached the threshold for a diagnosis of an Alcohol Use Disorder, which had persisted for approximately nine months."

The plaintiff explained to Dr. Cryan that through counselling, she had started to reduce her alcohol intake and by the time of assessment, had returned to normal, social drinking.

"In addition to the PTSD and Alcohol Use Disorder, I considered that Ms. Zaganczyk had experienced an episode of Depressive Disorder which had been of at least moderate severity following the accident, her injuries, and the associated restrictions in her life."

Dr. Cryan referred to the plaintiff's psychological symptoms including her attempt to take her life and the treatment she had undergone including psychotherapy over a two year period and anti-depressant medication at a moderate dose prescribed by Dr. Pinaqui. Dr. Cryan's conclusion was as follows:

“At the time of assessment, I considered that Ms. Zaganczyk’s Alcohol Use Disorder was completely resolved. She was no longer suffering from Depressive Disorder and had managed to regain her interest and enjoyment in life.

Ms. Zaganczyk described continuing residual symptoms of PTSD, but, in my opinion, no longer reached full criteria for a diagnosis of the disorder, probably due to her investment in treatment ...

Given Ms. Zaganczyk’s improvement to date, I was hopeful that her psychological symptoms would entirely resolve.”

- Mr. Odhran Shelley - 30th June 2022 (Approximately two and a half years post-accident)

Mr. Shelley recounted the history of the burn injuries as before, noting that the plaintiff healed approximately four weeks following the injury. He noted that she complained of pain and sensitivity with associated itch to the injured area of her left arm. He referred to her psychiatric symptoms including alcohol abuse. On examination, Mr. Shelley stated:

“[The plaintiff’s] areas of injury have healed very well, with little visible effects, though there are some areas of mottling of the skin on her face which I rate as a Vancouver Scar Scale 0-1, where 0 is normal appearance and 13 worst scar possible.”

He felt in the context of future employment, she might experience some difficulty and discomfort in hot environments.

Judgment of the High Court

11. The trial judge delivered his *ex tempore* judgment on the 14th December, 2022. He described the background to the accident and the plaintiff's injuries. He observed that the plaintiff "*remains somewhat traumatised and displayed this during the course of the hearing when she became quite upset and, at times, angry during the course of giving evidence, and I was satisfied that this was a genuine reaction.*"

12. He was of the view that the plaintiff was somewhat despondent which did not reflect her pre-accident personality. Turning to the plaintiff's psychiatric injuries, the judge said:

"She suffered mental injury in the form of diagnosed post-traumatic stress disorder and, in addition to this, she also suffered separately, identified and diagnosed psychological injury in the form of, basically an alcohol abuse disorder and depression."

13. The judge said that he accepted the plaintiff's explanation for the fact that her alcohol issues were not pleaded or disclosed to the medical experts, at least initially. Having summarised the plaintiff's injuries, the judge turned his attention to the Guidelines and said that it was clear in his view that the PTSD was the plaintiff's most significant injury. He accepted that the evidence broadly established that the plaintiff's injuries should clear up within a period of about 30 months which he believed to be the consensus between Dr. Cryan and Dr. Fannin. The judge reached his conclusion in the following terms:

"Given the nature of the evidence, I would regard the post-traumatic stress disorder as being in the lower end of the serious category, and for that I would find a figure of €45,000 to be appropriate to deal with that."

Dr. Cryan does separately diagnose and identify the drink and depression difficulties as separate, and I think [counsel for the plaintiff] is therefore correct in his assertion that I should consider those as separate injuries. The Guidelines do provide for this, and I can see no good reason why I should depart from that. I think perhaps in times past we might have taken a more general view of it and treated them under one heading, at least I certainly would have, but I think the Guidelines are wise and, of course, I am enjoined to follow them unless I see good reason to depart from them.

So fortified by the views of Dr. Cryan, and accepting the submission of [counsel for the plaintiff], I would add a further figure of €20,000 obviously treating it very much at the lower end of moderate.

With regard to the burns and scarring, I don't regard these as being very serious, and I think a figure of €25,000 following the Guidelines would be appropriate.

I then turn to an exercise which I consider to be appropriate in carrying out my function as a judge, and that is to look at the entire figure that I have awarded, to sit back and say, 'does that, in all the circumstances, fairly compensate the plaintiff', so that the damages that I award holistically reflect what is fair and just to the plaintiff and to the defendant and proportionate.

In the circumstances, I think the total award of €90,000 does represent a fair and reasonable and proportionate reward [recte award], and I so make that award in all the circumstances of this case ...”

The Appeal

14. The defendants' grounds of appeal can be shortly summarised. The defendants say that the award was excessive by virtue of the judge's misapplication of the Guidelines, in

particular in two respects. First, they say the judge was wrong to classify the plaintiff's PTSD as falling within the "Serious" category and secondly, he was wrong to separately award two different sums for psychiatric injury which resulted in the plaintiff being overcompensated. With regard to the scars, the defendants also contend that the judge awarded too much under this heading in that, having described them as "not very serious", he failed to identify which bracket of the Guidelines most closely reflected those injuries and secondly what factors he relied on in reaching his assessment.

The Guidelines

15. Part 4 of the Guidelines deals with psychiatric damage. This is divided into two parts, Part A psychiatric damage generally and Part B post-traumatic stress disorder (PTSD). As PTSD is a form of psychiatric injury, it seems appropriate to regard it as a subcategory of psychiatric damage generally, rather than a distinct and separate category. PTSD is described in the following terms:

"Cases within this category are confined to those in which there is a specific diagnosis of a reactive psychiatric disorder following an event which creates psychological trauma in response to either experiencing or witnessing a terrifying event. Symptoms may include distressing memories of the traumatic event, nightmares, flashbacks, sleep disturbance, avoidance, mood disorder, suicidal ideation and hyperarousal. Symptoms of hyperarousal can affect basic functions such as breathing, pulse rate, and bowel and/or bladder control."

16. It can readily be seen that the plaintiff suffered many, indeed most, of the symptoms described. She suffered from distressing memories, nightmares, flashbacks, sleep disturbance, avoidance (refusing to leave the house), mood disorder (which includes depression), suicidal ideation and hyperarousal (palpitations etc.).

17. The Guidelines provide for four categories of PTSD being Severe, Serious, Moderate and Minor. The categories relevant to this case are the Serious and Moderate. Serious is defined as:

“This category is distinct from [Severe] above because of a prognosis projecting some recovery with professional help. However, the effects are still likely to cause significant disability for the foreseeable future - €35,000 to €80,000.”

Moderate PTSD is defined as:

“In these cases, the injured person will have largely recovered, and any continuing effects will not be grossly disabling. - €10,000 to €35,000.”

18. Also relevant in this case are the provisions in the Introduction to the Guidelines which deal with multiple injuries. This suggests an approach to the assessment of damages in such cases as follows:

“In a case of multiple injuries, the appropriate approach for the trial judge is, where possible, to identify the injury and the bracket of damages within the Guidelines that best resembles the most significant of the claimant’s injuries. The trial judge should then value that injury and thereafter uplift the value to ensure that the claimant is fairly and justly compensated for all of the additional pain, discomfort and limitations arising from their lesser injury/injuries. It is of the utmost importance that the overall award of damages made in a case involving multiple injuries should be proportionate and just when considered in light of the severity of other injuries which attract an equivalent award under the Guidelines.”

Applying the Guidelines

19. The Guidelines set out an approach to assessing damages in multiple injuries cases based on identifying the most significant injury and the bracket into which it falls, and thereafter uplifting the award to take account of the lesser injuries. A helpful analysis of this part was carried out by the High Court (Coffey J.) in *Lipinski (a Minor) v Whelan* [2022] IEHC 452 at paras. 10 - 14. Coffey J. pointed out that when having regard to what the Guidelines provide in this respect, the court must of course adhere to the legal principles which apply to the assessment of general damages as these have been developed over the years in judgments of the Superior Courts. The facts in that case, to which I will return, provide a useful analogue to those arising in this appeal. Coffey J.'s analysis was adopted in another recent judgment of the High Court (Murphy J.) *McHugh v Ferol* [2023] IEHC 132.

20. While both these cases arose under the Guidelines, this Court has also recently considered the issue of multiple injuries in *Meehan v Shawcove Limited* [2022] IECA 208, albeit that was a pre-Guidelines case. Speaking for the Court, I commented on the importance of the issue of proportionality saying (at para. 35):

“... All the authorities are at one in considering that a key aspect of the court’s approach is proportionality. Proportionality in this context means that the award of damages must be proportionate to the maximum that may be awarded in the most serious cases, €500,000, [now €550,000 under the Guidelines], and must also be proportionate in the context of other awards of damages for greater, lesser or similar injuries. If an injury that is directly comparable to the one in issue has been the subject of a previous award, then it is legitimate and appropriate for the court to have regard to such award.”

21. In the course of that judgment, I considered a number of approaches to the assessment of damages in multiple injury cases including those advocated in the Book of Quantum, the Guidelines, and the jurisprudence of the Courts of England and Wales. Having quoted the passage already cited from the Guidelines, I said (at para. 57):

“57. This approach is, like that in the Book of Quantum, premised to a degree on the trial judge being able to identify one particular injury of the plaintiff’s multiple injuries which ought properly be regarded as the most significant. Where that exercise is possible, the Guidelines suggest that this should form the starting point upon which to build in order to properly compensate the plaintiff for all the other lesser injuries suffered. The concern identified by the Guidelines is that if one were to separately take each injury and value it individually, there would be a risk of overcompensation ... one can readily imagine cases where the effect of the addition of categories, if there were a sufficient number, would be to actually exceed the limit [of €500,000]. Of course, that would entirely offend the doctrine of proportionality.”

22. Having analysed some of the English cases, I noted that the approach there is significantly different to that obtaining in this jurisdiction. There, the practice appears to be that the court should add together the relevant categories provided in the Judicial College Guidelines – the equivalent of our Guidelines – but discount them back to take account of the overlap. In one of the leading cases, *Sadler v Filipiak* [2011] EWCA Civ. 1728, the discount applied was of the order of 15%. Clearly the approach in this jurisdiction is different, not just in terms of the Guidelines, but of our jurisprudence where proportionality features strongly in the context of both the maximum award available and also awards for other greater, lesser or similar injuries. The Guidelines themselves suggest that the award

should be proportionate in the light of other injuries attracting an equivalent award under the Guidelines.

23. However one might approach it, the English authorities are similar to ours in advocating that the court should stand back and take an overview of all the injuries together and their impact on the particular plaintiff. In that regard, I said (at para. 64):

“64. Placed within an Irish context, 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 and awards made to other plaintiffs.”

24. The approach to the uplift provided for in the Guidelines was considered in some detail in *McHugh* where the High Court (Murphy J.) recorded the parties’ competing contentions, with the defendant submitting that the uplift could not exceed the value of the dominant injury whereas the plaintiff suggested that there was no reason why this should be so. Murphy J. agreed with the latter proposition, albeit on an *obiter* basis in that she was not required to decide the point in circumstances where the uplift awarded was substantially less than the award for the dominant injury. I would refrain from expressing any view on this issue until it arises for consideration directly in the future. Murphy J. suggested that the approach to the uplift should be as follows (at para. 24):

“24. It appears to me that a fair and transparent means of assessing what the uplift should be in any given case is to categorise each of the additional injuries according to the bracket that it would fall into were that the main injury and then discount the

award to allow for the temporal overlap of the injuries. In this way, both parties can see precisely how the court arrived at its decision and the level of discount allowed for overlapping injuries. Any other method leaves the plaintiff and the defendant guessing as to how the court arrived at its decision.”

25. It seems to me that this approach has much to commend it and accords in significant measure with the method of calculation adopted in England and Wales, with the important caveat that in that jurisdiction, it would appear that all of the injuries are discounted to factor in the overlap whereas here, the plaintiff will obtain full value for the dominant injury with the discount being applied, if it is to be applied, to the lesser injuries.

26. In *McHugh*, the court assessed the value of the dominant injury at €60,000. The judge went on to individually value each of the additional and lesser injuries as totalling €65,000 but taking into account the “*roll up factor and the overlap of injuries*”, the court considered that an uplift of €32,500 represented fair and just compensation for all the additional pain, discomfort and limitations arising from the plaintiff’s lesser injuries. The court thus applied a 50% discount to those lesser injuries.

27. Whatever mathematical approach is adopted, it is important not to lose sight of the global impact of all the injuries on the particular plaintiff concerned. The plaintiff is entitled to be compensated for all the suffering they have endured, be it from one or ten discrete injuries suffered at the same time. As the Guidelines suggest, some assistance may be derived from a consideration of how the overall award compares with other individual categories in the Guidelines. If an obvious mismatch emerges, this may suggest that the requisite proportionality has not been achieved. That is, in my view a useful exercise in the present case as appears further below and can provide a helpful “*reality check*”.

Lipinski

28. Comparable cases should attract comparable awards and this has repeatedly been said to be an important aspect of proportionality, consistency and predictability. As was said in *Meehan* (at para. 50):

“...I think any party who receives an award of damages for personal injuries should be able to look at other awards and readily understand why they were higher or lower or the same as the award that that particular plaintiff receives.”

It is therefore useful to look in a little detail at the facts in *Lipinski*.

29. The plaintiff was a 14 year old schoolgirl who was injured in an accident on the 10th December, 2019. The case was heard about two and a half years later and judgment was delivered on the 1st July, 2022. The plaintiff suffered physical and psychological injuries. The physical injuries were largely soft tissue in nature and, like the present case, the psychological injury took the form of PTSD. This was agreed by the parties to be the plaintiff’s dominant injury. The court noted that it was not in dispute that the plaintiff’s PTSD was such that it affected her acutely for a period of many months during which she suffered persistent nightmares, flashbacks, panic attacks, sleeplessness, irritability, low mood, withdrawal from her family, poor concentration, demotivation at school with a corresponding decline in academic achievement, fear of cars, fear of going out in the dark and recurring thoughts of self-harm which culminated in an act of self-cutting.

30. Although the plaintiff had received counselling, it was anticipated that she would require further counselling in the future. Although at the time of the trial, she still exhibited signs and symptoms of PTSD, these were, by then, mild and improving. At para. 18, Coffey J. said:

“18. I find as a fact that the PTSD from which she continues to suffer significantly upended almost every aspect of the plaintiff’s life for a period of many months at a crucial and vulnerable time in her development. I further find as a fact that during this relatively short but important time the plaintiff’s PTSD was severely disabling until it began to settle with counselling and family support. I further accept that while the plaintiff is no longer significantly disabled by it, the past effects of the PTSD continue to be potentially serious for the plaintiff into the future insofar as they have caused her to become demotivated at school where because of loss of study habits, she has gone from being an A/B student to being a D student as she heads into the final and most critical phase of her secondary school education.”

31. It is evident from the foregoing that there are significant points of distinction between the PTSD suffered by the plaintiff in *Lipinski* and those arising here. In particular, unlike in the present case, the plaintiff was continuing to suffer from PTSD by the time the case came on for hearing, albeit significantly improved. However, as the judge pointed out, this had quite serious ramifications for the plaintiff from an academic perspective and she was still undergoing counselling which was expected to continue for an indefinite period. The parties in *Lipinski* agreed that in terms of the Guidelines, neither the Severe nor Minor categories of PTSD were appropriate and therefore the injury was in either the Serious or Moderate category. The judge’s conclusion was that the plaintiff’s PTSD fell at the very top of the Moderate damages bracket and he therefore accorded it a value of €35,00, being the maximum available.

32. Dealing with the remainder of the plaintiff’s injuries, the judge said that the most significant of her physical injuries was a superficial linear abrasion high on the back of her left thigh. This left a scar some 12.5 x 2 cm which was white and pale without any contour

defect. Having viewed it the judge felt it was in the nature of a relatively minor cosmetic deficit. Nonetheless he felt he must bear in mind that subjectively for the plaintiff the scar was significant and she was self-conscious of it. She also suffered multiple minor soft tissue injuries to her neck, back, left wrist and left ankle associated with some bruising and tenderness and a minor abrasion of her left shin which left an area of discoloration which was “barely noticeable”.

33. Taking all these injuries, the judge applied an uplift of €25,000 to the sum assessed for PTSD resulting in a net decree of general damages of €60,000.

The Assessment in this Appeal

34. In my judgment, a number of errors are evident from the approach of the trial judge here to the assessment of damages for the plaintiff’s psychiatric injury. First, it is questionable in principle if there was any objective justification for ascribing separate figures to first, the plaintiff’s PTSD, and second her alcohol abuse disorder and depression. The Guidelines define PTSD as including mood disorder and undoubtedly, depression is a mood disorder. The genesis of this differentiation by the judge comes from Dr. Cryan’s report in that she suggests that the plaintiff fulfilled the criteria for a diagnosis of alcohol use disorder persisting for approximately nine months. Indeed, on one view of matters, Dr. Cryan classified PTSD, alcohol use disorder and depression as three different psychiatric conditions, although the judge appears to have treated the latter two as one.

35. One of the disadvantages of agreed medical evidence based on reports – as in this case – is that there is no opportunity for the parties or the court to tease out any of these issues with the witness. Had Dr. Cryan given *viva voce* evidence, she could, for example, have been asked whether PTSD might be regarded as potentially embracing alcohol use disorder

and depression and whether there was in fact any objective basis for treating them as different things.

36. Further, in my view the trial judge fell into error in treating the plaintiff's PTSD as falling into the "*Serious*" category for two reasons. First, the parties both agreed in submissions to the trial judge that the plaintiff fell into the "*Moderate*" category and counsel for the plaintiff very fairly accepted this at the hearing of the appeal and conceded that the judge had erred in placing the PTSD in the Serious category. Second, and quite apart from that, to qualify for the Serious category, the court would have to be satisfied that the effects of the PTSD are still likely to cause significant disability for the foreseeable future. There was absolutely no evidence to sustain such a finding and indeed the evidence was to the opposite effect, in particular that the plaintiff no longer satisfied the criteria for PTSD at all by the time her case came to trial. There is accordingly no basis upon which the High Court could properly have concluded that this psychiatric injury fell into the Serious category. The Moderate category is clearly applicable in this case where the plaintiff has largely recovered and the continuing effects are not grossly disabling. The maximum amount available under this heading is €35,000, being the sum awarded in *Lipinski* for what was arguably a more serious case of PTSD for the reasons to which I have already adverted.

37. Further, I am satisfied that there was no basis established in the evidence for the award of a further sum on top of the €45,000 incorrectly assessed for the PTSD. A cumulative award for psychiatric injury in this case of €65,000 clearly offends the doctrine of proportionality. It is not only out of kilter with the award in *Lipinski*, but also with other awards available under the Guidelines themselves. Thus, an award of €65,000 is appropriate in a case of serious psychiatric damage or serious PTSD, neither of which properly arise here. To qualify for an award at that level, the plaintiff would have to be suffering from

significant disability for the foreseeable future and as already pointed out, that is simply not the case here.

38. To recap briefly, Dr. Cryan's evidence was that at 26 months post-accident, the plaintiff's alcohol use disorder was completely resolved, having persisted for nine months. Nor was she suffering from a depressive disorder any longer. Furthermore, the plaintiff did not at 26 months post-accident fulfil the criteria for PTSD any longer. The prognosis given by Dr. Cryan was that all her psychological symptoms would entirely resolve. Dr. Fannon's view at a year post-accident was that the plaintiff would require treatment for a further 12 months or so and that appears to have proved reasonably accurate. He put the time from accident to substantial recovery at 30 months and Dr. Cryan did not suggest otherwise. The plaintiff had evidently resumed all her normal activities and her employment by the time she was seen by Dr. Cryan.

39. To all intents and purposes therefore, by a little over two years post-accident, the plaintiff, who certainly endured a difficult initial 12 months or more, had largely recovered from all her psychiatric/psychological symptoms with fairly minor residual issues.

40. The same was largely true of her physical injuries which comprised solely burns. These appear to have healed up fully within a matter of weeks post-accident and any remaining cosmetic defect was confined to her left forearm which the judge described, having viewed it, as being not "*very serious*".

41. The preponderance of all of the evidence therefore was that insofar as the plaintiff's physical injuries were concerned, these resolved within a matter of weeks and she was left with relatively minor scarring on her arm which was not a particular concern for her. In terms of her psychiatric injuries, the evidence suggests that all of these ought to be largely if not entirely resolved within three years of the accident.

42. The aggregate award in this case was €90,000 for general damages. I cannot accept that this is an appropriate sum to award a plaintiff who has recovered within three years. To provide a “*reality check*” of the kind already mentioned, one might usefully look at some injuries that, under the Guidelines, attract an award at this level. Thus, severe and serious neck injuries causing fractures that may require spinal fusion leading to chronic conditions and significant permanent disability attract damages in the range of €70,000 to €100,000. Loss of one eye is valued at €80,000 - €120,000, total loss of hearing in one ear at €55,000 - €80,000. Total loss of smell and taste ranges from €60,000 - €80,000 and serious arm fractures where there is significant permanent residual disability whether functional or cosmetic fall into the €50,000 to €100,000 range.

43. I simply cite these examples to illustrate how this level of injury could not on any view be equated with the injuries suffered by the plaintiff in the present case. Nor can it be equated with the award in *Lipinski*. For those reasons, I am satisfied that the award in this case is disproportionate to a degree that renders it an error of law.

44. Although in my view the PTSD in *Lipinski* was of a more serious order than in the present case, nonetheless when one factors in the depression and alcohol abuse, even assuming they were to be regarded as separate, I think, as in *Lipinski*, an award of damages at the top end of the moderate category is justified at €35,000.

45. With regard to the plaintiff’s scars, while the judge did indicate that he was applying the Guidelines in valuing them, he did not identify what the relevant guideline was that led him to a figure of €25,000. It has to be said however that Part 10 of the Guidelines dealing with scarring at paragraph A(b) gives a very wide range for what is described as a single noticeable scar, or several superficial scars of legs or arms or hands with some minor cosmetic deficit, the range being extremely broad at €1,000 to €40,000.

46. However, having regard to the fact that the amount awarded at least falls within this range and the judge had the benefit of viewing the plaintiff's scar, I do not consider that the defendant has established an error on the part of the judge in arriving at a figure of €25,000. Again, I accept it is unsatisfactory that there is nothing to indicate how the judge applied the "*uplift*" principles to the assessment of this figure but that, without more, is not sufficient in my view to displace it.

Conclusion

47. In the circumstances, I would propose to substitute an award of €60,000 for general damages together with the agreed figure for special damages of €3,181.90, giving a net decree of €63,181.90 for the order of the High Court.

48. With regard to the question of costs, the parties will be afforded a period of 21 days to deliver a written submission not exceeding 1,000 words on this issue.

49. As this judgment is delivered electronically, Haughton and Allen JJ. have authorised me to record their agreement with it.