

**THE HIGH COURT**

**[2025] IEHC 26  
RECORD NUMBER: 2022/1751P**

**BETWEEN**

**PATRICK KEOGH**

**PLAINTIFF**

**AND**

**JOAN KERINS O’KEEFFE**

**DEFENDANT**

**JUDGMENT OF MR JUSTICE DAVID HOLLAND DELIVERED EX TEMPORE ON 17 JANUARY 2025<sup>1</sup>**

**Contents**

Judgment of Mr Justice David Holland delivered ex tempore on 17 January 2025 ..... 1

    Accident & Introduction ..... 1

    Medical Documents Exhibited By The Plaintiff, Pleadings & his Evidence ..... 3

    Plaintiff’s Evidence as to Present Condition ..... 10

    Mr Poynton’s Evidence ..... 10

    Submissions, Discussion & Decision as to General Damages ..... 11

    Special Damages ..... 14

    Award ..... 14

**ACCIDENT & INTRODUCTION**

1. On 27 September 2018 at about 09:30 am, the Plaintiff was driving his VW Golf (11 D 54070) and slowly exiting Castlemorris Roundabout, Tralee, when rear-ended by a vehicle driven by the Defendant. The Defendant admits liability for the accident. The Gardaí having finished their investigations at the scene, the Plaintiff drove to a nearby garage from where his car was towed to a crash repair garage. There he spent much of the day awaiting his insurer’s instructions and a replacement car. His car was initially seen have a broken passengers’ side rear wheel stub axle. That was later repaired (I infer at the Defendant’s cost), and the car resumed use. But a mechanic later discovered chassis damage and advised that the car should have been written off. While the chassis damage too was repaired, the Plaintiff does not seem to have resumed use of the car. He has since replaced the car. The chassis damage became apparent during the Covid shutdown<sup>2</sup> and he did not claim on his or the Defendant’s insurer in that regard. I have seen no repair records or condition reports as to the car and the car does not feature in the schedules of special damages. The Plaintiff was not cross-examined on these matters and I accept his evidence, such as it was, in these regards. However, beyond accepting that the impact was sufficient to injure, little really turns on the detail of the collision.

<sup>1</sup> Delivered orally on 17 January 2025. Delivered in writing on 22 January 2025.

<sup>2</sup> Which started, roughly in March 2020.

2. The Plaintiff, having disagreed vehemently with two firms of solicitors successively on record, ran his trial as a litigant in person, helpfully assisted by a McKenzie friend. In my view, he believed in the evidence he gave in the witness box, but, when cross-examined as to inconsistencies between his evidence and the documentary records of his injuries, his response was more affronted and indignant than engaging. I do not wish to be too critical of the Plaintiff as I accept that he made no conscious attempt to mislead the court. He was doing his best to be truthful - but that isn't the same thing as saying that he was factually accurate in his evidence. I formed the impression that his understandable subjective emotional response to the accident and the injury it produced, against a background of long-term appreciable ill-health, overshadowed his ability rationally to assess the position in his litigation. That approach did not assist the court or his case.

3. The Plaintiff at trial asserted, essentially, a neck injury which had resulted in radiating neurological symptoms. At points in his evidence he suggested symptoms radiating bilaterally to his upper limbs after the accident but it is clear that now his alleged symptoms are in his right upper limb. He had a cervical decompression and vertebral fusion at C5/6/7 levels in September 2020 done by Mr Ashley Poynton, Orthopaedic Surgeon, who testified and was the only witness for the Plaintiff, other than himself. The Defendant called no evidence.

4. The Plaintiff at trial asserted a neck fracture. He clearly had no fracture. However, I am satisfied that he used the word as a misnomer for the radiological findings which required his surgery. I do not think he intended to mislead or exaggerate in this regard. His was simply an error of nomenclature and no more.

5. Before considering the Plaintiff's injuries, some background is required. The Plaintiff was born on 11 July 1959, was aged 59 at the time of the accident and is now 65. He is right-handed. Having been a member of the Defence Forces, he was, in early 2003, an airport policeman, when he suffered a stroke. He describes it as a type of stroke which is almost invariably fatal. But, having spent a year as an in-patient in the National Rehabilitation Hospital and another as a day-patient there, he made a very good – by his own account, remarkable - recovery. Indeed, he recovered to the extent that, while he could not return to work, he completed an honours degree in industrial design in the National College of Art and Design in 2010 and he was able to drive. His residual symptoms entitled him to an invalidity pension and he has not worked since his stroke – nor was it suggested that he should have. There is no claim for loss of earnings.

6. Pre-accident, the Plaintiff's residual symptoms from his stroke were primarily,

- First, a neurological symptom which felt like scalding in his face, torso, thighs and right upper limb.
- Second, a loss of upper limb strength by about 20% on the right and about 80% on the left. However, I formed the impression from what he said at trial that from even this level of disability he had significantly recovered pre-accident such that his residual loss of left upper limb strength was about 20% and he refers to having been able to lift weights such as gas bottles.

As his GP records, he was managing well and lived independently. As far as I am aware, he still lives, and has always lived, independently.

7. The Plaintiff had a heart attack in 2023, which I mention only for completeness. It is not relevant to the claim. He has had other medical history which I need not record.

8. The Plaintiff also asserted that he had suffered an abdominal hernia due to a seat-belt injury which was not treated due to his difficulty accessing the recommended specialist care. But his evidence in this regard was quite inadequate. The injury featured in no medical reports, nor had he pleaded it. In fairness to him, he did not make a great deal of it or assert ongoing symptoms. I will, therefore, ignore it, if only as not proven.

9. While the only medical witness called was Mr Poynton, the Plaintiff, in transferring these proceedings from the Circuit Court, exhibited four medico-legal reports: of Dr Kenny GP of 16 October 2018; of Dr Coetzer, Emergency Medicine consultant of 13 June 2019; of Mr Kingston Orthopaedic Surgeon of 8 October 2020; and of Mr Poynton dated 26 October 2021. Also exhibited was an A&E Discharge letter of 29 September 2018 and a radiology report by Dr Thornton on MRIs of 27 October 2018. Those medico-legal reports are in essence recited in his pleaded particulars of injuries and formed the evidential basis of his application to transfer these proceedings from the Circuit Court to the High Court on the footing that the injuries and sequelae they recorded rendered the Circuit Courts’ jurisdiction in quantum of damages insufficient to adequately compensate him. The Plaintiff’s grounding affidavit in that application establishes that it was primarily informed by the cervical surgery to which I have referred. The Plaintiff was cross-examined on those reports and accepted that he had exhibited them to his affidavit in the transfer application. It makes sense therefore to consider the injuries pleaded through the prism of those reports.

10. It is important to state that, as to matters of dispute between the parties, I must decide them on the basis that the onus of proof rests on the Plaintiff to prove the matters essential to his recovery of damages to my satisfaction on the evidence before me on the balance of probabilities.

#### **MEDICAL DOCUMENTS EXHIBITED BY THE PLAINTIFF, PLEADINGS & HIS EVIDENCE**

11. A month after the accident, on 27 October 2018, the Plaintiff had cervical and thoracic MRIs. Dr Thornton reported that the latter showed only minor disc degenerative disease. The cervical MRI showed moderately severe disc degenerative disease at vertebrae levels C3 to C7 with disc bulging and osteophyte formation. There was resulting indentation of the thecal sac and mild to moderate canal stenosis but no spinal cord compression. There was quite marked foraminal stenosis - bilateral at C5/6 and on the right at C3/4 and C6/7. There was mild to moderate foraminal stenosis at the remaining levels. As I understand and broadly speaking, whereas spinal cord compression and canal stenosis would affect the neurological status of the spinal cord, foraminal stenosis tends to affect the nerve roots which travel from the spinal cord through those foramina out into the body and may result in symptoms in the parts of the body served by the nerves in question. Mr Poynton later<sup>3</sup> described this MRI similarly – though he added a finding of some significance -

---

<sup>3</sup> Report 26 October 2021.

right-sided foraminal compression of the exiting C6 and C7 nerve roots. Mr Kingston in his report observed that the degree of disc wear was fairly age-typical.

12. It is useful to say at this point that Mr Poynton confirmed in oral evidence, inter alia given the presence of osteophytes within a month of the accident but in any event on the general evidence of the MRI of 27 October 2018, that it is clear that the Plaintiff had significant pre-accident cervical disc degenerative disease. Indeed, as will be seen, that pre-accident cervical disc degenerative disease was, radiologically, no worse, by the time Mr Poynton operated, two years post-accident.

13. It is useful to say at this point that Mr Poynton confirmed in oral evidence, inter alia given the presence of osteophytes within a month of the accident, but in any event on the general evidence of the MRI of 27 October 2018, that it is clear that the plaintiff had significant pre-accident cervical disc degenerative disease. Indeed, as will be seen, that pre-accident cervical disc degenerative disease was radiologically no worse by the time Mr Poynton operated.

14. Returning to the accident, the Plaintiff says that immediately after the impact he was initially dazed and in shock. This latter assertion I interpret in its colloquial as opposed to diagnostic, but nonetheless valid, sense. He was unaware of pain, he says, for that reason. In the garage, awaiting his insurer's response, he began to feel stiff and uncomfortable. Ultimately the garageman became concerned about him and brought him to the A&E Department of University Hospital Kerry, Tralee. From the A&E discharge letter of that day, it is clear that a diagnosis of soft tissue injury to the neck ensued and muscle relaxants and anti-inflammatories were prescribed. The discharge letter is not entirely clear (at least to a layperson) in its record of examination or its follow-up advice but the latter in part advises GP follow-up in two weeks if pain persists in the left shoulder. Radiology was considered not yet indicated but might be on follow-up.

15. It is clear that the Plaintiff also suffered radiation of symptoms from his neck. At trial, he insisted that the radiation had always been, and remained, to his right upper limb and not, at least primarily, to his left upper limb. I say at least primarily as his evidence was not entirely consistent. On occasion he said his left upper limb was unaffected by the accident and that he had not complained of left-sided injury. On other occasions said that his symptoms had been bilateral. Whether the injury caused left-sided or bilateral or right-sided upper limb injury is significant as the Plaintiff asserts that his injuries due to the accident resulted in surgery for right-sided symptoms in September 2020.

16. As has been seen, the A&E Discharge letter recorded left shoulder pain. The Plaintiff saw his GP, Dr Kenny, on 16 October 2018, complaining of a new creaking in his neck, pain like "*hot honey travelling from his neck to his left shoulder*", pins and needles in his left arm, which was weaker than usual and since the accident he could no longer lift a bottle of gas due to the worsening of his pre-existing left hand weakness. He emphasised also that the sensations which post-dated the accident were notably different to those which had preceded it, and he distinguished therefore those symptoms from his pre-existing symptoms.

17. By the date of her report of 30 November 2018, Dr Kenny had seen the Plaintiff again. She recorded, *inter alia*,

- Clinical findings of lower cervical and mid-thoracic tenderness and slightly reduced left-sided power.
- Neuropathic pain from his neck to his left shoulder with weakness and pins and needles in the left arm.
- Worsening, due to the injury, of prior residual left-sided weakness since his stroke. He now struggled lifting heavy objects.

Treatment to date consisted of anti-inflammatories, pregabalin,<sup>4</sup> and physiotherapy. She anticipated a further left shoulder MRI and full recovery in six months at most. Notably, Dr Kenny does not record any right upper limb symptoms.

18. The Plaintiff later told Dr Coetzer that improvement had been slow to December 2018 but thereafter was good with physiotherapy and exercises. In evidence he said he had had medications for about two or three weeks post-accident and physiotherapy for about three months. But my impression is that he also had physiotherapy later. Ultimately, I wasn't entirely sure how much physiotherapy he had and when and very limited vouchers of physiotherapy were to hand. But I accept that it wasn't limited to those three months.

19. The Plaintiff saw Mr Kingston on 14 January 2019 at Dr Kenny’s request. He told Mr Kingston of neck pain radiating down the back of his left shoulder and into his left little and ring fingers since the accident. His arm was weak. His symptoms had improved significantly with physiotherapy. On examination, Mr Kingston found neck pain and left arm pain emanating from the nerve roots in the neck. He interpreted the cervical MRI of 27 October 2018 as showing several disc bulges, particularly on the left at C5/6. He referred the Plaintiff for a left shoulder MRI. It is unclear that any other treatment ensued at that point – though the Plaintiff’s Form A says Dr Kingston gave him a steroid injection to the neck. Notably, Mr Kingston does not record any right upper limb symptoms on 14 January 2019.

20. On 17 January 2019, the Plaintiff himself signed and (I infer) his then solicitor submitted the usual “Form A” claim form to PIAB. In it he declared that the information set out was “*to the best of my knowledge, true and accurate in every respect*”. The “*Brief details of the Injury*” in that form read as follows:

*“Soft tissue injury to neck.  
Shoulder injury.  
Injury to left arm and hand.”*

A reference in the Form A to Mr Kingston having sent the Plaintiff for a shoulder MRI in effect identifies this as the left shoulder given Mr Kingston’s report. Surprisingly, given the history of stroke and the allegation of exacerbation of prior symptoms, the Form A answers “*no*” to the question relating to prior medical conditions. Notably again, the Form A records left-sided but no right-sided symptoms.

---

<sup>4</sup> Used to treat neuropathic pain.

21. In cross-examination, the Plaintiff, though he accepted that the copy Form A presented to him included a copy of his genuine signature,<sup>5</sup> denied he had ever alleged injury to his left arm. He said of his injury “*It was all down the right side*”. In that regard he made unspecified allegations of fraud against a former solicitor on record for him and said he had asked her, but she had failed, to correct the Form A and that she was trying to “*railroad*” him as to other proceedings in which she acted for him. He said he was signing a lot of documents for the solicitor’s firm at the time for purposes of those other matters.

22. It bears observing that the Plaintiff’s denial that he had ever complained of symptoms in his left upper limb necessarily implies error in recording his injuries – indeed his complaints of his injuries - by all, independently, of the A&E doctor, Dr Kenny, Mr Kingston and as will be seen, Dr Coetzer. All recorded his complaint of symptoms in his left upper limb. It also implies error by the Plaintiff himself in signing the Form A, which records “*Injury to left arm and hand.*” Overall, such a confluence of errors is inherently unlikely. I accept that, as his own doctors and the PIAB Form A he signed recorded, his initial complaints were of left-sided, not right sided, symptoms.

23. Dr Coetzer saw the Plaintiff on 24 April 2019 – seven months post-accident. He recorded as follows:

- The injuries in the accident were “*strain and sprain, cervical spine and left shoulder*”.
- The Plaintiff had seen his GP four times, had had four physiotherapy sessions and had been prescribed home exercises.
- A left shoulder MRI had been done on 29 January 2019 – but Dr Coetzer does not describe the findings.
- Progress since accident reads: “*Initial progress slow until December 2018. Good improvement with physiotherapy and ongoing exercises.*”
- Present complaints were of “*left neck and shoulder stiffening up when driving long distances. Uncomfortable*”.
- Current condition was stated as “*Ongoing stiffness to left neck and shoulder*”.
- As to “*Aggravation of pre-existing condition*”, the entry reads “*Left arm shoulder not as strong as before.*” But it is also stated that his pre-existing condition was not symptomatic before the accident. I don't think anything turns on that latter observation either way.
- Findings on examination were: “*Tenderness with muscle spasm over left cervical spine and right shoulder over trapezius and supraspinatus muscle.*”
- Functional assessment was normal save for mild effect on reaching, lifting and carrying.
- Anticipated treatment was physiotherapy.
- Prognosis was that occasional muscle stiffness would improve with physiotherapy and exercises over about a year to recovery. No permanent symptoms or complications were anticipated.

Dr Coetzer’s is the first record of any right-sided findings – though it is not reflected in the rest of the report which relates entirely to the left side. In particular, it is not reflected in Mr Keogh’s complaints to Dr Coetzer, which relate entirely to the left side. Dr Coetzer’s is also the last record of any left-sided findings. It is also notable, given the view I ultimately take of the injury, that that Dr Coetzer’s finding of normal functional assessment, save for mild effect on reaching, lifting and carrying, was made seven months post-accident and that his prognosis was for recovery over the ensuing year.

---

<sup>5</sup> The original will be in PIAB’s possession.

24. Mr Kingston again saw the Plaintiff on 13 August 2020 - a year and seven months after his first examination. He does not describe symptoms, complaints, or his examination on that occasion but he referred the Plaintiff to Mr Poynton, who had booked him for surgery by the time of Mr Kingston's report two months later. Mr Kingston in that report recorded that the Plaintiff had regained full strength after his stroke before developing progressive right-hand weakness due to his right-sided disc prolapse. The degree of disc wear was fairly age-typical but, Mr Kingston said, "*may have been exacerbated by the collision.*" He deferred to Mr Poynton as a neck expert – in particular as to the prognosis from surgery.

25. Surprisingly, Mr Kingston's report of 8 October 2020 does not comment on the fact that, whereas on his first seeing the Plaintiff on 14 January 2019 his recorded symptoms were entirely left-sided, on 13 August 2020 his complaints were, insofar as his report reveals absent a description of symptoms or examination, entirely right-sided. Nor does Dr Coetzer's report comment on the left-sided/right-sided issue.

26. The foregoing reports are essentially recited in the particulars of injury in the Circuit Court personal injury summons issued on 19 November 2020. As has been seen, they record left-sided symptoms due to the accident. The summons does not plead right-sided injury or symptoms due to the accident. It does plead eight physiotherapy sessions. In cross-examination, the Plaintiff said he had never before seen the personal injury summons. While that is possible but, one would hope, unlikely while he was represented, it seems highly unlikely to have been the case since he became a litigant in person. In any event, he is responsible for its contents.

27. Mr Poynton first saw the Plaintiff on 14 September 2020, three years post-accident. The Plaintiff complained that right-sided symptoms started after the accident and had progressed. They consisted at that time of neck pain and associated pain and pins and needles in the right arm, hand and fingers with reduced right-sided manual dexterity and fine movement. Pre-accident, he had had some residual symptoms from his stroke but the symptoms which he had just described were new and related to the accident. Mr Poynton found adequate cervical motion but neurologically there was reduced right grip strength and finger extension. He reviewed the October 2018 MRI in terms I have recorded above – including right-sided foraminal compression of the C6 and C7 nerve roots. He recommended a further MRI which was done in September 2020 and showed no significant change.

28. In evidence, the Plaintiff said that by this time his right-sided pain was constant and the constant cold sensation was different to his pre-accident residual stroke symptoms on the right side. He said he had been having physiotherapy up to the surgery done in September 2020 and had been taking Ponstan or Solpadine up to three times daily as well as using a TENS machine he had had since his stroke - all of which I broadly accept.

29. Mr Poynton did an uneventful surgical anterior decompression and fusion at C5/6/7 on 30 September 2020. On 4 January 2021, the Plaintiff told him that his right arm was now symptom-free, his grip strength and dexterity had significantly improved and he was doing very well. On examination, he had good pain-free cervical movement and was neurologically intact. He was given an exercise programme and referred to physiotherapy. Mr Poynton's opinion, as recorded in this report and which I think it important record at this point, was that,

- the Plaintiff had been injured in a road traffic accident "*and developed right arm and hand symptoms which progressed over time necessitating surgical intervention*".
- he had had a good result and on last review was symptom-free. He was expected to do well into the future.

30. The Plaintiff said in evidence that after the surgery he felt immensely better. His pain was gone and his mobility was fine. He returned home to Tralee but was isolated due to the Covid pandemic restrictions. He was unable to see his GP but his pharmacy delivered his medications. And he kept up his home exercises. The improvement lasted about two years - from when he went gradually downhill again with headache, right-sided pins and needles, numbness and weakness and episodic stiffness which stops him moving for a few days. He couldn't keep his head up watching TV or use a computer for too long. He returned to physiotherapy in 2024, every week or fortnight, and he used a gym. He can still throw a ball for his dog.

31. Updated particulars of injury delivered on 2 October 2023 essentially repeat the content of Mr Poynton's report of 26 October 2021 as set out above. They also plead that

- Mr Poynton saw the Plaintiff on 27 February 2023 for an updated report in which he said that the Plaintiff said that
  - prior to the accident he did not have neck or arm pain, but after it had persistent pain requiring surgical intervention, from which he had significant benefit,
  - he still had residual right-sided pain and pins and needles down the right arm into the right hand and, more recently, some increase in neck pain, and
  - activities such as driving and long duration of computer operation (he seems to have been involved in voluntary research work for the HSE) increased his pain.
- An MRI of the 12th of January 2023 showed adequate surgical decompression at C5/7 but a central disc protrusion at C3/4 had deteriorated since the last scan, causing moderate stenosis and bilateral foraminal stenosis.
- On examination, cervical spinal movement was globally reduced, but neurological examination was normal.
- Of the C3/4 deterioration, Mr Poynton said that the Plaintiff has now developed a new issue above the fusion, which is unfortunately an inevitability in the context of a two-level fusion. Adjacent segment breakdown does occur and whilst the situation is currently stable, the plaintiff may require further surgery at C4/5 level in due course. He later clarified that the further surgery would be required sooner rather than later.

It is clear that these particulars are based on reports from Mr Poynton of March and May 2023.





### **PLAINTIFF’S EVIDENCE AS TO PRESENT CONDITION**

32. The Plaintiff’s evidence as to his present condition was that he goes to the gym two or three times per week and needs Solpadeine painkillers about once a week after a gym session. The Plaintiff must lie down due to symptoms about every four to five days. He tends to wear polo-necks for the cold sensation – even in summer. A TENS machine, physiotherapy and acupuncture help. He takes no other medications. Broadly, the Plaintiff says his condition is stable. His complaints are of right-sided, not left-sided symptoms.

### **MR POYNTON’S EVIDENCE**

33. Mr Poynton was called by the Plaintiff. By agreement, his reports of October 2021, March 2023 and May 2023 were admitted as evidence-in-chief.

34. It is unavoidable to acknowledge that Mr Poynton’s oral evidence changed completely the landscape of the case. It became apparent in Mr Poynton’s oral evidence that,

- Until trial, the history which had been available to Mr Poynton was limited to that set out in his report of October 2021 and derived primarily from a referral letter from Mr Kingston.
- That referral letter from Mr Kingston had cited right-sided symptoms only and the view that they derived from the accident.
- The Plaintiff had complained to Mr Poynton of right-sided symptoms only and did not complain of left-sided symptoms.
- Mr Poynton’s view that the Plaintiff’s right-sided symptoms had been caused by the accident derived from that referral letter from Mr Kingston and from the history given him orally by the Plaintiff.
- Mr Poynton had until trial been unaware of the content of other medical reports or of their record of left-sided complaints and symptoms and not right-sided complaints and symptoms.
- More generally, he had been unaware that for a significant period post-accident, the Plaintiff’s complaints were of left-sided and not right sided symptoms.
- The MRI done at his request in September 2023 disclosed degenerative disc disease which was significant but no worse than that seen in the MRI done a month after the accident. In other words, he said that the radiological indication on which he proceeded to surgery predated the accident.

35. Mr Poynton’s oral evidence was that the degree of degenerative disc disease disclosed in the MRIs might be symptomatic or asymptomatic and that, if it was asymptomatic, symptoms might commence either spontaneously and independently of accident or injury or by being provoked by accident or injury. He considered that a conclusion of causation of symptoms by accident or injury, to be valid, would have to be supported by temporal coincidence with the accident – symptom onset “relatively close” to the accident – and more or less continuous symptoms thereafter. As to what temporal coincidence required, he broadly indicated symptom onset within about three months of the accident or injury. Though I have no doubt that criterion may vary somewhat with circumstance and I understand him to speak of a degree of required temporal coincidence applicable to this case.

36. Mr Poynton was taken in oral testimony through the content of the reports of Dr Kenny, Mr Kingston and Dr Coetzer and the PIAB Form A. As noted earlier, all recorded the Plaintiff's complaint of symptoms in his left upper limb. He specifically noted that the earliest mention of right-sided findings was by Dr Coetzer, seven months post-accident, and that was of findings absent complaint of right-sided symptoms as the complaints to Dr Coetzer were of left-sided symptoms. As a result, Mr Poynton explicitly and clearly altered the view he had expressed in his reports, in which he had causatively linked the right-sided symptoms, which were the clinical indication for the surgery he performed, to the accident. He said that had he had the information contained in those earlier reports he would not have formed the opinion that the Plaintiff's right-sided symptoms had been caused by the accident. His view in oral evidence was that, by reason of the absence of temporal association between the accident and the onset of the Plaintiff's right sided symptoms, they cannot be attributed to the accident, were not caused by the accident and had come on spontaneously. He maintained that position despite re-examination by Mr Keogh.

37. For the advance of doubt, I record that while Mr Poynton mentioned sciatica on one of his reports, he confirmed that this was an incidental matter unrelated to the accident. In fairness, Mr Keogh had never suggested otherwise.

#### **SUBMISSIONS, DISCUSSION & DECISION AS TO GENERAL DAMAGES**

38. The Defendant's case, essentially, is that

- the Plaintiff had suffered a moderate soft tissue injury to his neck, perhaps exacerbating prior degenerative change and in any event involving only left-sided symptoms, which resolved in the year or so post-accident. The Defendant allows a two-year duration of accident-related symptoms to the first examination by Dr Poynton – in which no left-sided symptoms were mentioned.
- the right-sided symptoms and resultant surgery were not due to the accident and therefore no damages are recoverable in respect thereof.

39. Clearly, the significant issue in this case is whether the Plaintiff's right-sided symptoms and the consequent need for surgery in September 2020 were due to the accident. It is also clear that the records and pleadings of his injury due to the accident are initially and exclusively of left-sided symptoms. That is so of the A&E Report on the day of the accident, Dr Kenny's reviews on 16 October 2018 and in November, Mr Kingston's review on 14 January 2019, and the PIAB Form A which the Plaintiff signed as true on January 2019. It is also true of all the Plaintiff's complaints to and findings by Dr Coetzer on 24 April 2019 - save that he does find tenderness with muscle spasm over the right shoulder trapezius and supraspinatus muscles. It is from his visit to Mr Kingston in August 2020 that right-sided complaints are prominent – indeed predominate in that left-sided complaints are no longer mentioned - and surgery ensued accordingly.

40. In evidence, the Plaintiff insisted that his injury had always been right-sided – though he also suggested it had been bilateral. As I have said, in my view he believed in the evidence he gave in the witness

box but, when cross-examined as to the inconsistency of his evidence with the earlier records of left-sided injury, his response was more indignant and affronted than engaging. Despite his indignation, his evidence was relatively modest as to his present symptoms. Whatever his belief about their causation, he didn't seek to exaggerate them.

41. In my view, Mr Poynton’s evidence, adduced for the Plaintiff, is decisive. I cannot find that the Plaintiff has discharged the onus of proof that his right-sided symptoms, and hence the surgery they required, were caused by the accident. Dr Poynton now is of the directly contrary view and I accept that view. Indeed, I cannot see that I could do otherwise.

42. That being so, I must accept the Defendant’s submission that

- the Plaintiff is entitled to compensation for a cervical soft tissue injury with radiation of pain and neurological symptoms to the left upper limb only, which injury recovered over a period of 2 years.
- by reference to the applicable Book of Quantum, the Plaintiff suffered a moderate whiplash injury as to which the guided range of damages is €20,400 to €30,200.

The description of moderate whiplash in the Book of Quantum reads as follows:

*“These injuries would be moderate soft tissue injuries where the period of recovery has been protracted and where there remains an increased vulnerability to further trauma. Also within this bracket would be injuries which may have accelerated or exacerbated a pre-existing condition over a period of time, usually no more than five years.”*

The Defendant submits that the case lies somewhere in the middle of the identified range of damages. The Plaintiff made no submissions by reference to the Book of Quantum.

43. I bear in mind that this is a Book of Quantum case and is not a case to which the later Personal Injuries Guidelines apply. Also, this is not a multiple injuries case – in essence there was one injury – whiplash to the neck with radiation of symptoms to the left upper limb.

44. I bear in mind also that the ranges identified in the Book of Quantum were stipulated in 2016 and appreciable general inflation has ensued since. However, it is generally accepted that the later introduction of the Personal Injuries Guidelines reduced rather than increased the ranges identified in the Book of Quantum. In those circumstances, I do not consider that any adjustment of the Book of Quantum range is appropriate. I note that no such adjustment was made in the careful judgment of O’Higgins J in *Massey v Croft* [2023] IEHC 771.

45. However the Book of Quantum ranges are indicative only. By virtue of Section 22 of the Civil Liability and Courts Act 2004 I must have regard to them as a guide which seeks to introduce a measure of predictability as to quantum of general damages, but I am not bound by them. In having regard to them, I

note that the indicated ranges of damages are designed to accommodate points of departure from the norm – such as the particular vulnerability of the Plaintiff to the injury and/or its practical effects (see for example *Hynes v Kilkenny County Council* [2022] IEHC 226 citing *McKeown v Crosby* [2020] IECA 242). More generally, I must award a figure in general damages which is proportionate to the injury and fair to both sides.

46. In my view, the fact that the injury itself recovered in two years as compared to the five-year recovery period contemplated in the Book of Quantum, combined with the fact there is no suggestion that the injury has increased his vulnerability to trauma, suggests, as the Defendant suggests, damages in the middle of the range.

47. However, I must bear in mind that, as Mr Keogh has rightly emphasised, he was a vulnerable person when injured. This injury was superimposed on appreciable pre-existing medical history, even taking account of his substantial recovery from his stroke. It requires little imagination in that light to infer that this injury can only have caused him great distress and worry. It is also clear that, while Mr Keogh continued to live independently throughout, his ability to do so must, for a period, have been compromised in some, though not crucial degree. These seem to me exacerbating factors requiring general damages greater than those which might otherwise be awarded.

48. However the increment for such exacerbation must be proportionate in light of the range indicated for moderate injury (which I accept this is) and that the Book of Quantum range for moderately severe injury starts at €34,400 for injuries:

*“of the more severe type resulting in serious limitation of movement, recurring pain, stiffness and discomfort and the possible need for surgery or increased vulnerability to further trauma. This would also include injuries which may have accelerated and/or exacerbated a pre-existing condition over a prolonged period of time, usually more than five years resulting in ongoing pain and stiffness”*

I agree with the Defendant that Mr Keogh's injuries by reason of the accident do not fall into this class.

49. Generally, as I have said, I must award a figure in general damages which is proportionate to the injury and fair to both sides having regard to the applicable Book of Quantum range which I have outlined and having regard also to the exacerbating factor of the plaintiff's medical history and vulnerability. I will award general damages of €37,500.

### **SPECIAL DAMAGES**

50. The special damages claimed and scheduled on 27 September 2023 were agreed on a “*figures as figures*” basis<sup>6</sup> but the Defendant disputed their causative link to the accident. There was no real dispute as to the minor items, which I total as €1,271.02. The Defendant agreed that these might conveniently be rounded up to €1,300 – which I will allow.

51. Of the remainder, €19,568<sup>7</sup> relates to the surgery in September 2020 and €19,000 is the estimated cost of future surgery. Neither of these are recoverable as I have determined that the right-sided symptoms which prompted the surgery in September 2020 were not caused by the accident.

52. The Plaintiff generally blamed his former solicitors for the absence of vouchers for certain other special damages – especially when the paucity of the physiotherapy receipts (for €120) as compared to his evidence was put to him. It was impossible to make anything probative of his evidence in this regard – though he adamantly said he had paid far more, at €60 per session.

### **AWARD**

53. In all the foregoing circumstances, I will award general damages of €37,500 and special damages of €1,300 in a total of €38,800.

A handwritten signature in black ink, appearing to read 'David Holland', with a stylized flourish underneath.

**David Holland**  
**17 January 2025**

---

<sup>6</sup> i.e. on the basis that the schedule accurately identifies monies spent.

<sup>7</sup> Mater Hospital €14,473 + Mr Poynton €3,316. + Dr Brizell €1,779.