



THE HIGH COURT

[2025] IEHC 95

[Record No. 2023/2759P]

BETWEEN

JAMES (OTHERWISE JIMMY) LEESON

PLAINTIFF

AND

BANQUETING FOOD SYSTEMS LIMITED

AND

THE OFFICE OF PUBLIC WORKS

DEFENDANTS

JUDGMENT of Ms Justice Reynolds delivered on the 5th day of February 2025.

Introduction

1. This is a personal injuries action involving an accident at work where the sole issue to be resolved by the court is the assessment of damages.

Background

2. The plaintiff was born on the 23rd of March 1962 and is now almost sixty-three years of age. He was at all material times employed by the first defendant as a corporate conference manager.

3. On the 24th of October 2019, the plaintiff attended the Printworks Event and Exhibition Centre at Dublin Castle to prepare catering services for an early breakfast meeting. As he tried to gain access to the building, he was caused to fall on poorly illuminated steps and suffered personal injuries, primarily to his low back.

4. Proceedings were issued on his behalf against the first defendant, as his employer, and the second defendant as the owner and occupier of the said premises. Liability was conceded by the defendants and the case proceeded as an assessment of damages only.

5. The plaintiff's medical reports were agreed and the only witnesses to give *viva voce* evidence were the plaintiff and Mr Nigel Tenant, Actuary of Messrs Seagrave Daly & Lynch Limited (in respect of a loss of earnings claim). The defendants called no evidence.

The plaintiff's evidence

6. The plaintiff gave evidence of his long association and good working relationship with the first defendant having been employed by it for over 17 years. He stated that the nature of his work required "*long hours on his feet.*"

7. After his accident he suffered immediate pain and discomfort to his right shoulder and lower back. He attended Smithfield Rapid Access Clinic later that day and was prescribed painkilling medication.

8. Thereafter he came under the care of his GP, Dr Liam Lynch. He was referred for physiotherapy treatment and advised to remain on light duties at work. He stated that he had

made an initial return to work two weeks post-accident but had further periods where he missed days due to his ongoing symptoms.

9. Arising from the Covid pandemic he was unable to access any further physiotherapy and was precluded from returning to his employment. He stated that he continued to suffer from pain and spasms in his lower back radiating into his left leg and developed a numbness in his foot. His GP subsequently referred him to Mr O'Donnell, Consultant Orthopaedic Surgeon, who recommended that he undergo MRI scanning with a view to commencing treatment by injection therapy.

10. He stated he was also referred to Mr Jabir Nagaria, Consultant Neurosurgeon. He underwent a number of rhizotomies by way of pain management as advised by Mr Nagaria. Whilst he got some pain relief post treatment, he stated that, unfortunately, the results were short lived. To date he has had three injections and anticipates attending for further treatment.

11. In terms of employment, he stated that post pandemic he felt unable to return to full time employment due to his ongoing symptoms and took voluntary redundancy in early 2021.

12. His evidence was that he then obtained part time employment with Gather & Gather (a catering business) in a similar role for approximately 18 months. However, he stated his symptoms persisted and he later left that role in March 2024.

13. Thereafter, he stated he got "*a few little nixers*" but has had no work since May 2024. However, he accepted that he is currently getting some relief from the pain management programme he is undergoing and is hopeful of a return to work, albeit on a part time basis at some stage in the future. In relation to his shoulder injury, he stated he had made a full recovery and that all of his ongoing symptoms are related to his lower back.

The medical evidence

14. The agreed medical reports before the court can be summarised chronologically as follows:

- Dr Liam Lynch – reports dated 04.06.20, 28.08.21 and 12.07.22.

The plaintiff's general practitioner reported that post accident the plaintiff had difficulty with right shoulder pain and pain in his lower back radiating down his left leg together with some discomfort over his right ribs. He referred the plaintiff for physiotherapy and recommended that he continue with light duties at work.

At further review, it was noted that the plaintiff remained symptomatic and continued to experience restrictions in his normal activities. He continued to require analgesia and muscle relaxants and was advised to attend for further physiotherapy when it became available post pandemic.

On review on 12.07.22, Dr Lynch opined that the plaintiff had sustained significant musculoskeletal and soft tissue injuries following his fall. He noted that the plaintiff had not regained his pre-accident level of function and was unlikely to do so.

- Mr Turlough O'Donnell – report dated 16.03.23 (40 months post injury).

The plaintiff was referred to Mr O'Donnell, Consultant Orthopaedic Surgeon, and complained of significant and daily low back pain radiating primarily to the left side together with left foot associated paraesthesia. He stated that his shoulder was essentially symptom free at that time, albeit that he experienced occasional clicking on the left side of his neck. Mr O'Donnell noted that the plaintiff had no preceding history of problems with back pain and had subsequently developed very significant and constant problems with his low back post-accident, together with associated sciatica in the left leg. He referred the plaintiff for an MRI of the spine, with a view to determining whether he was a suitable candidate for injection therapy.

- Mr Jabir Nagaria – report dated 04.11.23 (48 months post injury).

The plaintiff was referred on to Mr Nagaria who reviewed him on 01.09.23. Mr Nagaria reviewed the MRI of his lumbar spine (07/06/23) and noted that there were

established degenerative changes which predated the accident, but which had become a source of pain as a direct consequence of said accident. In addition, the plaintiff had developed left sided symptoms in his leg which were of nerve origin coming from the L4/L5 levels.

In terms of prognosis he stated that such injuries can take up to 3-5 years to improve and recommended that the plaintiff undergo pain management treatment in the form of rhizotomies. He stated with the advent of proper pain management the plaintiff's pain syndrome would improve by approximately 50%-60% over the next 14-18 months and thereafter over the following 3-4 years his pain syndrome would fall further to reasonably manageable levels.

- Mr Marcus Timlin – report dated 08.03.24 (almost four and a half years post-accident).

When examined by Mr Timlin, Consultant Orthopaedic Surgeon, the plaintiff continued to complain of low back pain on the lefthand side aggravated by standing and walking and of significant pain in the back and left leg when sitting down. Post examination and review of the MRI scans, Mr Timlin opined that the plaintiff had a degenerative problem in his lumbar spine which was asymptomatic prior to his injury and on the balance of probabilities was rendered symptomatic thereafter. Mr Timlin stated that the plaintiff was not a candidate for surgical intervention but would greatly benefit from some interventional pain procedures, by way of rhizotomy combined with an epidural steroid injection.

In addition to the foregoing reports the court was provided with a medical report from Dr Kamran Butt dated 30.04.2021 (on behalf of PIAB). Dr Butt's examination of the plaintiff was carried out some 18 months post-accident. At that time, the plaintiff reported that his shoulder injury had settled but continued to complain of pain in his lower back. Examination

revealed an area of paraspinal and right sacroiliac joint tenderness. Whilst it was noted that his symptoms had substantially improved in the first year following injury, it was anticipated that this was helped by physiotherapy treatment and that with further rehabilitation the plaintiff would achieve a full recovery.

15. Unfortunately, with the advent of Covid, the plaintiff's rehabilitation was significantly impaired as outlined above such that he continues to require treatment and is undergoing a pain management plan as recommended by his medical advisors.

Actuarial evidence

16. The court had the benefit of two actuarial reports dated 11.10.22 and 07.08.24 together with the evidence *viva voce* of Nigel Tenant of Seagrave-Daly & Lynch Ltd, Consulting Actuaries in relation to the claim for loss of earnings (past and future).

17. In respect of the calculation initially provided for past losses of €85,253.00, Mr Tenant accepted in evidence that a number of deductions were required, in light of the plaintiff's evidence, as follows:

Redundancy payment (due to Covid) - €20,676.00

Actual earnings (from nixers) - €2,690.00

RBA certificate € - €981.00.

In summary, the total deductions amounted to the sum of €24,347.00, giving a total figure for past loss of earnings of €60,906.00.

18. In relation to the claim for future loss of earnings, Mr Tenant provided two calculations for loss of earnings ranging from €61,000.00 to €123,708.00. His evidence was based on the assumption that the plaintiff, given his injuries, is restricted to part-time employment now until his retirement. The figures represented the differential between part-time employment and full time, with the lower figure referable to retirement at pension age 66 and the higher one to pension age 70. Further he acknowledged that any award by the

court would be subject to a *Reddy v Bates* reduction which he assessed as “*between 10% and 20%*”.

Personal Injuries Guidelines

19. It is well established that awards of damages must be fair and reasonable to both plaintiff and defendant. Further, they must be proportionate to the injuries sustained and proportionate when viewed in the context of awards of damages commonly made in cases involving injuries of a greater or lesser magnitude. In dealing with multiple injuries, the court must be mindful of any temporal overlap in the injury sustained such that if each injury was to be valued separately the plaintiff would be overcompensated.

20. In adopting the approach as outlined by the Court of Appeal in *Collins v Parm & Ors.* [2024] IECA 150, the court is required where possible to identify the “*most significant*” injury. Thereafter the court must embark on a “*step back*” approach and look at the overall award in the round in order to ensure that it is proportionate. Undoubtedly, the most significant injury in this case is the back injury and the shoulder injury the non-dominant one.

21. In considering the appropriate category within which the back injury falls, the court is mindful of the considerations affecting the level of the award for all back injuries as set out in the guidelines as follows: -

- “(i) *Age;*
- (ii) *Nature, severity and duration of injury and consequential symptoms such as pain;*
- (iii) *Extent of required medical intervention and/or treatment;*
- (iv) *Presence or risk of degenerate changes;*
- (v) *Impact upon work;*
- (vi) *Interference with quality of life and leisure activities;*
- (vii) *Effect on personal relationships;*

(viii) *Psychological sequela including depression;*

(ix) *Prognosis.*”

22. Bearing in mind the evidence in this case I am satisfied that the injury falls to be considered under category “(c) *Moderate back injuries*”, subcategory (ii). In particular, my assessment is informed by evidence from Mr Nagaria, the neurosurgeon for the plaintiff, who stated that the plaintiff suffered “*a soft tissue type injury*” with symptoms referable to the left leg “*which would be nerve origin.*” He noted that there were established degenerative changes in the lumbar spine which predated the accident but have “*become a pain source as a direct consequence of the accident.*” In the circumstances, I am satisfied that the injury must fall to be considered within this category, with a range of €20,000 to €35,000.

23. Having regard to the considerations affecting the level of the award as set out above and in particular the plaintiff’s age, the duration of the injury and medical intervention required together with the impact upon his work and quality of life, I am satisfied that the injury falls to be considered in the upper end of the range at €30,000.

24. In relation to the shoulder injury, there is little dispute but that the shoulder injury falls within the ambit of “(d) *Minor shoulder injuries*” at subcategory (i) where a substantial recovery was achieved within two years, with a range of €6,000-€12,000. The plaintiff accepted in evidence that he was making a good recovery within a period of 18months post-accident albeit with some “*ongoing clicking in his neck.*” I am satisfied that this injury comes within the mid-range and in adopting thereafter the approach as outlined in *Parm*, which in my view is appropriate in all the circumstances, I will award the sum of €6,000.

25. Therefore, the total award for general damages is €36,000.00.

Loss of Earnings Claim

26. The main issue in contention in this case is the extent to which the plaintiff is entitled to recover a loss of earnings claim. From the outset it was readily apparent from the evidence

that the plaintiff was a well-respected and valued employee. He was polite and courteous in the witness box and presented with all the qualities one would associate with a successful corporate manager occupying a 'front of house' role in the catering industry. It was evident that he thoroughly enjoyed his job and the camaraderie of his fellow employees.

27. There is no suggestion from the medical reports before the court that the plaintiff is in any way exaggerating his symptoms. Further it is clear that all medical advisors accept that he has made every effort to achieve a full recovery and will require further medical treatment as outlined above. Undoubtably his recovery was adversely impacted by his lack of access to physiotherapy and other treatment modalities during Covid.

28. In relation to the claim for past loss of earnings, I am satisfied that the plaintiff has suffered some loss in this regard. He made several attempts to return to full time employment post pandemic but was unable for the long hours and the consequent adverse effect on his symptoms. Whilst he has received some benefit from treatment, the prognosis is that he will require to undergo further injection therapy to alleviate his pain syndrome.

29. I am mindful that in the immediate aftermath of the pandemic and for a considerable time thereafter the hospitality sector was slow to recover and that this would have negatively affected his earning capacity. It is notable however that subsequent to his redundancy his former employer offered him further work which speaks volumes for the high regard in which he was held.

30. Taking all the evidence into account, I'm satisfied that an appropriate award for loss of earnings to date is a sum of €35,000.00.

31. In respect of the claim for future losses, I am conscious that the plaintiff is now almost 63 years of age, and the question arises as to whether he was likely to remain in full time employment to age 66 or indeed 70. Certainly, his work history is commendable and it is clear that he had no relevant pre-accident medical history which would have affected his

ability to work. The current position is that he requires further treatment and is unlikely to return to full time employment in the future, having regard to his age and his ongoing symptoms. However, the medical evidence was that he had pre-existing degenerative changes in his lower back, and it is likely they would have been rendered symptomatic at some stage as his age progressed. In evidence he fairly accepted that he was always likely to reduce his working hours as his health deteriorated.

32. I am satisfied on balance that the plaintiff would have remained in full time employment up to age 66 but for the accident and thereafter was likely to work on a part-time basis only.

33. Further, I am satisfied that as his treatment continues and his symptoms continue to settle, he is likely to take on more hours over and above part-time employment. In the circumstances I propose to reduce the claim from €61,000.00 to €40,000.00 having regard to some likely additional earning capacity. Thereafter I have to apply a *Reddy v Bates* deduction, and, in this regard, I am satisfied from the evidence that 15% (ie. €6,000.00) is appropriate in all the circumstances. The total award therefore for future loss of earnings is €34,000.00.

Medical expenses/Miscellaneous expenses

34. A further figure for medical and other out of pocket expenses was agreed in the sum of €5,721.00.

Conclusion

The total award therefore is €110,721.00.

Addendum

35. At a subsequent for mention hearing, counsel for the defendants indicated that the decree should be entered as against the second named defendant only together with an order for adjudication of the plaintiff's costs (to include all reserve and discovery costs) in default

of agreement and an order striking out the proceedings as against the first defendant with no further order.

36. In addition, I directed that the recoverable benefits (para. 17) are to be dealt with in accordance with the legislation.