

Neutral Citation No: [2023] NIKB 114

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*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No: 22/009968

Delivered: 09/11/2023

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION

McGILLIGAN

v

AMERICAN INTERNATIONAL

**Mr Lyttle KC (instructed by JMK Solicitors) for the Plaintiff
Mr Hegarty (instructed by Murphy & O'Rawe Solicitors) for the Defendant**

Ex Tempore

McALINDEN J

Introduction

[1] Mr McGilligan, whose date of birth is 10.4.82, was injured in a significant road traffic accident which occurred on 9 August 2021 when he was 39 years of age. He was driving a business vehicle when he was forced off the road and collided with a tree. The photographs of the vehicle show that it was very significantly damaged as a result of this accident and Mr McGilligan was actually quite lucky that he did not sustain much more serious injuries as a result of this significant accident. The injuries that he suffered were soft tissue injuries to his neck, his thoracic and lumbar spine and his lower limbs. I have been shown photographs of the plaintiff taken after the date of his accident and they show quite significant bruising to his lower limbs and also to his central back region and his face. Again, I think, it is likely that his high level of fitness at the time was protective in that someone less physically fit would have probably suffered more significant injuries especially to the lower legs.

[2] In addition to the physical injuries, which are dealt with in the report prepared by Mr Andrews, Consultant Orthopaedic Surgeon, dated 20 January 2022, the plaintiff suffered some psychiatric/psychological upset which was classified by Dr Paul, Consultant Psychiatrist, who saw him on 16 December 2021 as crossing the

diagnostic threshold to enable a diagnosis of an adjustment reaction to be made in the case, so there is a compensatable psychiatric injury as well as the physical injuries.

[3] The plaintiff was taken immediately to Altnagelvin Hospital, initial x-rays were carried out and then the note from the hospital is that the plaintiff discharged himself contrary to medical advice. He then contacted his general practitioner on 13 August and was advised to immediately return to hospital for further x-rays. He returned to the Causeway Hospital and further x-rays were taken. Thereafter, there is a second general practitioner's telephone attendance on 13 August 2021. I think we have to remember when this accident occurred and what was happening in general practitioners' practices at that time, it was very difficult to actually see a general practitioner and the note in relation to the second attendance on 23 August 2021 does indicate that the plaintiff had been attending some private physiotherapy with a Mrs Mary Johnston and hoped to get some physiotherapy organised through CRASH Services, that indeed, seems to have taken place.

[4] The documentation with which the court has been provided indicates that there were three attendances with a physiotherapist funded by CRASH on 31 August 2021, 9 September 2021 and 23 September 2021. There is a record relating to a failure to attend on 14 October 2021. The plaintiff explained that the non-attendance was due to a family matter or family issue. Thereafter, he appears to have not required any further active intervention from either his GP or from any physiotherapist until the two attendances with a physiotherapist on 20 May 2022 and 2 June 2022. There is another break until 4 September 2022 followed by two other sessions on 12 September 2022 and 26 September 2022 and then we have a recent series of three sessions which he gave evidence about with Mary Johnston, again, on a fortnightly basis, the last one being last week. The physio had been concentrated on continued back symptoms which he notices at work and the treatment consisting of rubs and advice in relation to exercises.

[5] So in terms of the physical injuries suffered by the plaintiff, the bulk of the soft tissue injuries did resolve within the timescale that had been anticipated by Mr Andrews, however, the plaintiff still has some difficulty every now and again when he has to engage in manual work. He works as a sub-contractor for the Northern Ireland Water Service excavating roads. He drives widely around the province to carry out that work and he has a person working for him who presently would use the various hand tools and other road digging tools that have been described and photographed in the trial bundle, while he would normally drive the digger and operate the digger.

[6] That is the physical side of it. In terms of the psychological side of it, again, there were a number of symptoms, sleep disturbance, erectile dysfunction for a short period of time, headaches, irritability, again for a relatively short period of time, but the one issue that has persisted and is still giving the plaintiff some trouble, is the issue of travel anxiety. Again, he has to drive quite significantly during the course of

his work, and he has to drive on the road where the accident happened. In terms of his time off work, he was off work for seven weeks, he was able to return to most of the tasks involved in his work after about three months. There has been some, I think, legitimate questioning of the plaintiff in relation to the vehicle which was hired to the plaintiff following his accident. It would appear that a similarly specified Peugeot work vehicle was hired to the plaintiff for the period between 16 August 2021 and 11 October 2021. The plaintiff has alleged that he was off work for seven weeks in total and then returned to work thereafter. It is clear that the hire of that vehicle took place during the period of time that he states he was off work. His evidence in relation to that issue is that he may have been driving around a bit, but he certainly would not have been engaging in any form of road repair or road maintenance operations for Northern Ireland Water. I accept his evidence in relation to that issue.

[7] In terms of specific loss of amenity the plaintiff played football at senior level for Ballerin from August 2000 up until the time of his accident. So, he was a senior panellist for Ballerin for a period of 21 years. A long time on the senior panel. Ballerin have a bit of a history in terms of success in club football, they won the Ulster Club Championships in 1976, that year they also won the Derry Club Championships, but they have not really matched that performance since that time. At the time the incident happened they were playing in Division 2 football, and they are now playing in Division 3. However, it is quite clear that the plaintiff was a keen GAA footballer playing for a team that has a recognised, let's say, pedigree history in Derry football and the loss of the ability to compete and play football at senior club level is something that the court has to take into account and provide adequate compensation for on the basis of a loss of amenity claim.

[8] Bearing in mind the assistance that can be gained from the Green Book which is soon to be replaced by a new online edition, the court has to ensure that the plaintiff is compensated to the tune of 100% in respect of his injuries but certainly no more than that. The court has particular regard to page 29 sub-para (f)(i) which is in relation to the back and page 27 sub-para (g)(i) in relation to the neck. Those are just guideline figures but what we have here is a direct trauma to the back giving rise to bruising, direct trauma to the lower legs giving rise to significant bruising, direct trauma to the face giving rise to some bruising, but soft tissue injuries in the form of hyperflexion/sudden deceleration injuries to the neck and the back. Doing the best that I can and having regard to the fact that the plaintiff still has some persisting difficulties in terms of his back, he still has some problems on an intermittent basis, the physical injuries in this case without regard, to any additional claim for loss of amenity as a result of an inability to participate at a high level in competitive sport, in my view, would attract damages in the sum of £32,000.

[9] In terms of the psychological injuries in this case, I carefully considered the plaintiff's evidence and the report from Dr Paul and note the duration of symptomology that the plaintiff did suffer following this incident and, indeed, following Dr Paul's examination and, in particular, I note the persistence of travel

anxiety, which is compensatable. The court considers that the appropriate award for the psychological/psychiatric aspect of the case is £12,500.

[10] In addition to these elements of the claim, the court then has to consider the claim for loss of amenity. In this particular instance, although the plaintiff was a man of few words, his dedication to his sport is clearly evidenced by the duration of his engagement in that sport at a senior level. I think that it is fair to conclude that only those possessed of a high level of interest and dedication continue to play senior football with a reputable club for such a period of time, in this case, a lengthy period of service of 21 years. The plaintiff was 39 at the time of the accident and so he could well have continued playing football even up to the present time. The court considers that there is a genuine and compensatable claim for loss of amenity in this case. The court recognises that this is an amateur sport. The court also recognises that for those who retire from lengthy and active participation in a senior panel, the likelihood is that they will continue to engage with the club either in a training capacity and/or in a social context and, therefore, it is not a complete divorce from engagement with the club or with the sport that the plaintiff has had considerable interest in for a lengthy period of time.

[11] Bearing in mind all these factors, the court considers that the appropriate figure for loss of amenity in this case is a separate and additional figure of £5,000.

[12] Therefore, the claim in terms of general damages for pain, suffering and loss of amenity in this case arising out of this road traffic accident totals the sum of £49,500. That sum will attract interest at the appropriate rate from the date of the service of the civil bill up to the present date. In terms of the special damage claim, the special damage claim in this case was agreed in the sum of £13,000 and that sum will attract interest at the appropriate rate from the date of the accident up to the present date. The plaintiff is entitled to High Court costs, such costs to include two counsel and I make an order for taxation of the plaintiff's costs in default of agreement.