

## **Damages in Personal Injury Cases – Were the Injuries Catastrophic?\***

This issue arose in the case of Oliver Bennett –v- John Cod and Wallace Taverns Limited 2020 IEHC554.

The facts of this case were that the plaintiff was a visitor to a public house. He was the victim of an unprovoked by a customer in the public house. The Plaintiff claimed that the second defendant, being the owners of the public house, failed to prevent or to protect him from the assault. The liability in this case was not contested. The issue was whether the injuries suffered were catastrophic injuries.

Mr. Justice O’ Hanlon considered the extensive evidence and the medical and therapy reports having regard to the economic climate in the country and to the circumstances concerning both defendants and also to the Book of Quantum. The Court found that the plaintiff had suffered a significant life threatening injury. The Court found that this resulted in him having serious consequences for his life including the amenities and would continue into the future including his capacity to work in the future would be significantly diminished. In this case the Court deemed the award of general damages to be €150,000 for pain and suffering to date and a further €50,000 for pain and suffering into the future. In addition, special damages which are in effect the loss which the Plaintiff would have incurred amounted to €31,663.02 making a total award of €231,663.02. In this case the Court held that while the injuries were extremely serious, the injuries were not catastrophic within the context of the law as it stood even though they have life altering consequences and a huge limitation on his life and capacities as was outlined in the medical reports.

The employee in this case had suffered a life threatening head injury as a result of which he would be left with long term neurological deficits. The Plaintiff as set out in the decision has issues with reading and is limited to travelling within his own locality.

The Court set out that the purposes of an award of damages for personal injuries is to put the injured person in the same position, so far as money can do so, as if the injury involved had not happened. Where injuries are profound then it is very difficult to achieve in practice and an award of money could only be viewed at best as an approximation of what the law is intended to achieve. The decision of McDonagh –v- Sunday Newspapers 2018 2 IR79 was referred to.

It was argued on behalf of the plaintiff that with regard to the award of general damages since the case of Sinnott –v- Quinnsworth the Supreme Court had identified a monetary cap on the quantum of awards for such damages. The case of Morrissey –v- Health Service Executive 2020 IESC6 was referred to where the Supreme Court identified the sum of €500,000 as;

“The limit on general damages for pain and suffering”. On behalf of the Plaintiff it was pointed out that in fixing the limit the Supreme Court had played down a number of general principles which should guide a Court in assessing the value of general damages;

The Court would approve the statement of principles by Chief Justice O Higgins in Sinnott –v- Quinnsworth to the effect that general damages are intended to represent fair and reasonable monetary compensation for the suffering and inconvenience with which a plaintiff is afflicted by reason of their injuries.

Secondly, in doing so the Court also referred with approval to the dictum of Griffin J in Reddy –v- Bates in which Mr. Justice Griffin recognised that where damages are to be assessed under several headings it is necessary to consider whether the total sum awarded is in the circumstances of the case fair compensation for the plaintiff for the injuries suffered or whether it is out of all proportion in such circumstances.

The third issue was that the Courts recognise that where there might at least be something approaching a broad consensus among the public generally as to the relative seriousness or otherwise of certain injuries the precise translation of any particular set of injuries into a sum of compensation is necessarily somewhere subjective.

That there are relatively few reported judgements which address the assessment of general damages in personal injuries action in detail. Fifthly, that the Supreme Court has held that while an award of damages is an imperfect mode of compensating a plaintiff however it is the only method available.

This is an important decision of the Court dealing with the issue of catastrophic injuries.

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