

THE HIGH COURT

[2020] IEHC 698

[Record No. 2016/7175P]

BETWEEN

ALAN KELLY

PLAINTIFF

AND

BERNARD MEEGAN

DEFENDANT

JUDGMENT of Mr. Justice Bernard J. Barton delivered on the 2nd day of December, 2020

General

1. The Plaintiff brings these proceedings in negligence for damages as a result of a road traffic accident which occurred shortly after 3.30pm on the 6th May, 2014 at Rassin, Hackballscross, County Louth. Two vehicles were involved, a Peugeot 307 van driven by the Plaintiff, and a Mercedes E320 driven by the Defendant. Weather conditions were good; it was a bright day and the road surface was dry. The Mercedes collided with the Peugeot. Both vehicles ended up close to one another in a field adjoining the carriageway just beyond a junction with a minor road into which the Plaintiff intended to turn. The collision caused extensive and severe damage depicted in post-accident photographs of the cars admitted in evidence.
2. The Plaintiff suffered a multiplicity of soft tissue injuries set out in medical reports commissioned by the parties which were also admitted in evidence. In brief, apart from being shocked and shaken in the immediate aftermath of the accident, the Plaintiff suffered soft tissue injuries affecting the musculature of his neck, shoulders, lower back and knees. He suffered a head injury resulting in dental injuries, which included a fracture of a mandible on the left side together with superficial facial abrasions and lacerations. In the immediate aftermath of the accident the Plaintiff was noted to be bleeding from a right-sided head wound. In addition he suffered superficial lacerations and abrasions over his lower limbs and knees.
3. The Plaintiff was removed by ambulance to Our Lady of Lourdes Hospital, Drogheda, where he was examined and treated. X-rays and a CT scan were taken; fracture injuries were ruled out. The Plaintiff was detained overnight for observation and discharged back to the care of his GP the following day. Difene, an anti-inflammatory; Diazepam, a muscle relaxant; and Tylex, an analgesic, were prescribed for relief of symptoms. Subsequent to discharge, the Plaintiff developed headaches, dizzy spells and visual disturbances. He suffered ongoing bilateral shoulder pain and neck pain with radiation and paraesthesia referred into his left and right hands.
4. The Plaintiff suffered from thoracic and lumbar spinal pain with radiation into the lower limbs accompanied by paraesthesia. The Plaintiff experienced abdominal wall pain with tenderness on the right side, most likely caused by seatbelt restraint. The Plaintiff developed psychological sequelae and was diagnosed with post-traumatic stress and adjustment disorders in addition to a recurrence of a depressive disorder triggered by the

accident and for which the Plaintiff had previously been treated in 2005 and 2012. Special damages were agreed in the amount of €1575.

5. On the 27th September 2016 the Defendant delivered a full defence to the Plaintiff's claim in which the case made by the Defendant at trial is encapsulated, namely that the Plaintiff created an emergency by emerging from a hard shoulder without warning into the path of the Defendant's vehicle that he failed to see and to which he failed to yield right of way. The content of the medical reports having been admitted in evidence the contest between the parties was essentially confined to the issue of liability. A significant conflict of evidence merged in the course of the trial which the Court is tasked with resolving.

The Accident; Plaintiff's Account

6. The Plaintiff was accompanied by a passenger, Geoffrey Lyons. They were going to look at a pickup truck at premises located on a country lane leading off the N53 Dundalk to Castleblaney Road in the vicinity of Rasan. The Plaintiff was unfamiliar with the location. He travelled northwards from Dundalk in the direction of Castleblaney until when reaching Culloville he realised he had passed the laneway. He turned around and travelled back towards Dundalk, but once again passed the junction with the laneway. Realising his mistake almost immediately he travelled on approximately 150 metres until he came upon another junction with a minor road to his right into which he executed a U-turn before proceeding once more in the direction of Castleblaney. His intention was to travel back towards the junction with the lane into which he intended to turn. How he did this was at the centre of the controversy between the parties.
7. Having completed the U-turn, he drove a short distance on the hard shoulder before regaining and travelling up the carriageway. As he approached the junction he engaged his indicator. However, he had to stop in order to allow oncoming traffic to pass before executing his turn. He checked his door mirror before doing so. There are hard shoulders on both carriageways delineated by broken yellow lines. The Plaintiff's evidence was that the front of his car had just reached the yellow demarcation line on the Dundalk/southbound carriageway when his car was struck by the Defendant's vehicle at high speed. He did not see the Defendant's car before impact; "*...it came out of nowhere...*" and was nowhere to be seen when he checked his rear mirror.
8. It appears from a medical report dated May 18th, 2014 prepared by Dr. John Murphy, the Plaintiff's GP, that he was given to understand that the Defendant was overtaking other cars that were travelling behind the Plaintiff, however, in evidence he fairly accepted that he was unaware of the Defendant's car before the collision occurred. As to the point of collision, the Plaintiff insisted that at all material times prior to turning he had travelled on the Castleblaney/ northbound carriageway, save perhaps for a short distance on the hard shoulder having completed the U-turn. The collision occurred in the course of the turning manoeuvre when his van was on the Dundalk/Southbound carriageway.
9. To a large extent the Plaintiff was supported in his account by Mr. Lyons, though he had no recollection of the van stopping before the turn was taken. He made a statement to the Gardaí post-accident in which he describes the accident circumstances in some detail.

There is no mention of the van stopping before the turning manoeuvre commenced. The Plaintiff also made a statement, admitted in evidence, in which he also makes no mention of stopping before executing the turn nor is any mention made of the Defendant's vehicle overtaking other vehicles at the time.

The Accident; Defendant's Account

10. The Defendant was travelling on the Castleblaney/ northbound carriageway. He saw the Plaintiff executing the U-turn on the road up ahead of him. When he saw the U-turn the Defendant estimated his speed at approximately 55 to 60 mph and his distance at 250 metres. Engineers were called by the parties. It is common case from their evidence that the sight distance for both drivers looking South / towards Dundalk from the vicinity of the accident locus is at least 300 metres.

11. The Defendant reacted to the U-turn. He slowed down to approximately 50 mph. Having completed this manoeuvre the van travelled slowly up the hard shoulder rather than coming out onto the carriageway. The Defendant proceeded on his journey but as he approached the right-hand junction into which the Plaintiff intended to turn, the van suddenly pulled out in front of him without warning. It all happened 'in a flash'. He had no time to brake or do anything to avoid a collision. He insisted that there was no indicator or any other indication of intention to pull out from the hard shoulder. As he caught up with the van he did not flash his lights, blow his horn or slow down further. As to the point of impact between the vehicles, his evidence was that the collision occurred on his side of the road, entirely on the Castleblaney /northbound carriageway.

Police evidence

12. Emergency services attended the scene shortly after the accident. Garda Aoife Kelly took charge and spoke to the drivers of both cars, each of whom subsequently made statements, as did Mr. Lyons. These statements and a statement made by Garda Kelly together with a sketch map of the accident locus drawn by her at the scene were admitted in evidence. A fire brigade tender was first to arrive followed by the gardaí. Garda Kelly was informed that an ambulance was on the way. She noticed debris on the road consistent with a significant impact between the two vehicles. She noted these had come to rest almost together in a field adjoining the Dundalk/ southbound carriageway. She noted the position of the two cars in the field as just beyond the junction into which the Plaintiff intended to turn and drew an X on the sketch map to indicate the point of impact between the vehicles on the Castleblaney/northbound carriageway.

13. Garda Kelly established the point of impact by reference to the main concentration of debris on the Castleblaney/ northbound carriageway as well as by reference to what she had gleaned from conversations had with the drivers and Mr Lyons. The conversation with the Plaintiff took place when he was in the ambulance. Although clearly shaken and bleeding from a right sided head wound, he was fully conscious and coherent. Both drivers gave accounts of what had happened to them. Although it had been suggested to the Plaintiff that he and the Defendant had agreed the point of impact with Garda Kelly, it transpired in evidence that neither driver had accompanied her onto the road or pointed

out where they believed the collision had taken place; rather, this was deduced by the officer from her own observations and the accounts which had been given to her.

14. For reasons which will become apparent, it is significant in my view that in their accounts the Plaintiff and Mr Lyons told Garda Kelly that the collision had occurred almost immediately after the indicator of the van had been engaged. The fire brigade cleared the debris off the road. Garda Kelly described the debris as consisting mainly of glass and pieces of what appeared to her to be black material, possibly plastic. Although the debris was spread out over the road and passing vehicles had driven over it, nevertheless, I understood Garda Kelly's evidence to be that the main concentration of debris was found by her to be in the Castleblaney/ northbound lane.

Engineering evidence

15. Engineering evidence was given on behalf of the Plaintiff by Mr. Pascal Corrigan, and on the behalf of the Defendant by Mr. Cathal Maguire. Both engineers prepared reports and took photographs of the accident locus; these were admitted in evidence for the assistance of the Court. A motor assessor's report dealing with the damage to the Peugeot van and photographs of the damage to the Mercedes Benz were also admitted. The concentration of damage to the vehicles is particularly material to the outcome of the question as to how and where on the road the collision occurred. The main area of damage to the Mercedes was to the nearside front of the car, i.e. the passenger side. The damage sustained was severe. The main area of damage to the Peugeot was to the driver's door and offside front wing, which appears to have been sheared off in the collision. The damage to both vehicles is consistent with a high-speed impact and raises a question about the speed of the vehicles.
16. The evidence establishes that at the time of impact the Plaintiff's van was moving comparatively slowly. It follows that by far and away the most significant source of the energy forces involved is accounted for by the speed of the Mercedes. In order to take the right-hand turn the van would have had to have been travelling slowly, albeit that the movement of the van in pulling across the Defendant's path of travel was described by the Defendant as sudden. The engineers agreed that the damage to the vehicles seen in the photographs was consistent with the van pulling out into the path of the Mercedes. As to where on the road this manoeuvre was probably carried out, Mr. Corrigan very fairly accepted that the damage was consistent with the van pulling out from the hard shoulder as alleged by the Defendant, or if both vehicles had been occupying the northbound lane.
17. Mr. Maguire's evidence was that the point of impact identified by Garda Kelly on her sketch map was consistent with the Plaintiff's van pulling out from the hard shoulder; accordingly, in his opinion the collision had to have occurred wholly in the Castleblaney/ northbound lane. Furthermore, the vehicle damage was not consistent with a collision in the Dundalk /southbound lane, since on his own evidence the Plaintiff had put the front of his van at or about the broken yellow line demarking that carriageway from the hard shoulder. If the van had been in this position, as contended by the Plaintiff, the entire offside of the van would have been at right angles to the Mercedes in which event the damage to the Mercedes would have been across its full front instead of being

concentrated around the nearside front/ passenger's wing; the front of the car otherwise sustained comparatively little damage.

18. Mr. Maguire also gave evidence that the damage to the vehicles was consistent with an impact when the van was at an angle of approximately 40 to 45 degrees to the front of the Mercedes, which, given the topography at the locus meant both cars would have been pointing in the direction of the field adjoining the carriageway where they ended up. Although Mr. Corrigan agreed that the van was at an angle to the Mercedes at impact he found it difficult to understand how the cars ended up where they did. In his opinion this was possibly explained by secondary impacts between the vehicles after the initial collision.

Decision

19. The onus of proof rests with the Plaintiff. The burden of proof placed upon him by the law is to establish on a balance of probabilities the case he brings to Court. I am not satisfied that he has discharged the burden cast upon him in respect of his account of the accident, namely that he had already turned from the northbound into the southbound carriageway and had just reached the demarcation line for the hard shoulder when the collision occurred. The main concentration of debris seen on the road by Garda Kelly, whose evidence I accept, the location and nature of the damage to the cars and the location of the vehicles in the field where they came to rest post impact is inconsistent with the Plaintiff's account of the accident.
20. I accept Mr. Maguire's evidence that if the collision had occurred in the location suggested by the Plaintiff the van would have been almost broadside to the front of the Mercedes and that this would have resulted in the entire front of the Mercedes being damaged whereas the concentration of damage was to the front near side, damage consistent with the van being struck when at an angle of 40 to 45 degrees to the Mercedes and also consistent with the damage to the van.
21. The width of the Castleblaney/ northbound carriageway could just about accommodate the van and the Mercedes; however, if the point of impact was roughly in the middle of the carriageway where the main concentration of debris was found by Garda Kelly it follows that in order to be consistent with the damage sustained by the vehicles and where they came to rest after the collision the van had to have come, as a matter of probability, from the hard shoulder. As mentioned previously, Garda Kelly's evidence was that the accounts given to her by the drivers at the scene were consistent with the main concentration of debris which she had seen on the road, information which she used to establish the point of impact as shown on her sketch map. I accept her evidence.
22. The Plaintiff's account of his movements immediately after completing the U-turn begs the question as to whether he travelled up the hard shoulder before attempting to cross over the road into the laneway. It is not insignificant that having described the U-turn the Plaintiff volunteered evidence that he had driven a short distance up the hard shoulder before regaining the carriageway and travelling up to the junction. The evidence that he had driven for some distance in the hard shoulder is consistent with the

Defendant's evidence that he saw the van complete the U-turn and travel slowly back along the hard shoulder in the direction from which it had come.

23. Although the Plaintiff maintains that the action of pulling out from the hard shoulder into the carriageway occurred shortly after executing the U-turn, the action is consistent with pulling out from the hard shoulder further up the lane proximate to the concentration of debris on the road and thus the point of impact as established. On my view of the evidence the Plaintiff is mistaken in his belief that he pulled out into the carriageway shortly after executing the U-turn rather than when he was closer to the junction and into which he wanted to turn. Garda Kelly noted no evidence of brake marks or skidding on the road surface – which was dry – evidence which is also consistent with the Defendant's account that the change in direction by the van was sudden and at such proximity to him that he had no time to react.
24. Although the Plaintiff and Mr. Lyons gave evidence that the Plaintiff had engaged an indicator in good time before making the turn, Garda Kelly's evidence that she was told by them at the scene that the engagement of the indicator and the moment of collision was almost instantaneous is more consistent with the Defendant's evidence that there was no warning of intention to alter course and pull out into the northbound carriageway. I accept the evidence of the Defendant in this regard and find as a matter of probability that the van pulled out from the hard shoulder across his path without any or any timely warning.

Conclusion; the Accident; the Law; Liability

25. For all these reasons the Court finds as a matter of probability that the collision occurred on the Castleblaney/ northbound carriageway when the van crossed from the hard shoulder into the Defendant's path of travel shortly before reaching the junction thereby creating an emergency for the Defendant. The common law duty of care owed to other road users is to take reasonable care to avoid acts or omissions which one can reasonably foresee would be likely to injure them. The duty of the driver varies according to the particular circumstances of the case. In general it may be said that the greater the risk of serious injury or loss the greater the duty of care or --put another way--the duty of care is commensurate with the reasonably foreseeable likelihood of the risk of injury occurring through the want of care on the part of the person by whom the duty is owed.
26. Applied to the circumstances found herein the Plaintiff was obliged to keep a proper look out and to yield right of way to any traffic such as the Defendant's car viable to him travelling in the Castleblaney/ northbound carriageway before driving out from the hard shoulder. He freely admits not to have seen the Mercedes before the collision despite the fact that at all material times from the moment when he executed the U-turn the Mercedes was in sight and was travelling at speed. The failure to give a timely warning of intention to exit the hard shoulder, the failure to see the Mercedes, the failure to yield right of way and driving into the path of the Defendant at a time and in a manner which caused an emergency for him constitutes a breach of the Plaintiff's common law duty of care which constitutes causative negligence for which he is responsible and also

constitutes contributory negligence, the breach of the duty of care which he owed to himself.

27. This conclusion begs the question as to whether there was causative negligence on the part of the Defendant. Unlike the Plaintiff, he was familiar with the road. As he approached the scene, some 270 metres from the accident locus, he passed a yellow road sign showing a staggered junction ahead. Very shortly after that sign he saw the Plaintiff executing the U-turn. At this point he put the distance between himself and the van at approximately 250 metres. He saw the van complete the manoeuvre into the mouth of a junction leading off from the left of the Castleblaney/ northbound carriageway, which is approximately 150 metres before the point of impact as seen on Garda Kelly's sketch map. The Defendant estimated his speed at 55 to 60 mph. He reduced his speed to approximately 50 mph on seeing the U-turn.
28. Although he had seen this and had noticed the van afterwards travelling slowly in the direction from which it had come in the hard shoulder he did not sound a horn or flash his lights or slow down further as he drew closer. It did not occur to him that the van might attempt to regain the carriageway never mind pulling out to make a turn at the junction the presence of which about he ought to have been aware and about which he had been warned. Instead, he proceeded on with his journey regardless. In circumstances outlined it was reasonably foreseeable, in my judgment, that the van was likely to attempt to regain the carriageway which, unfortunately for both parties, is exactly what happened.
29. It seems to me to be reasonable to infer in these circumstances that the Defendant assumed that the Plaintiff had seen his approach and would remain in the hard shoulder, a finding consistent with the fair acceptance by the Defendant that he neither blew a horn, flashed his lights nor reduced his speed to take account of the eventuality that occurred. In determining whether there was any want of care on the part of the Defendant and, if so, whether this affected his ability to deal with the emergency which had been created for him, he ought, on my view of the evidence, to have taken at least one or other of the precautions outlined and in my judgment his failure to do so contributed causally to the accident and was thus negligent. In the event the Defendant's speed was far in excess of what would enabled him to have had a reasonable prospect of dealing with the emergency.

Apportionment of Liability

30. Having found that both drivers were negligent S.34(1), the Civil Liability Act, 1961 requires that, subject to certain provisos set out therein, damages recoverable in respect of the wrong are to be reduced by such amount as the Court thinks just and equitable having regard to the degrees of fault of the Plaintiff and the Defendant. The principles to be applied by the Court in carrying out this exercise are well settled. See *O'Sullivan v. Dwyer* [1971] IR 275 at p. 286 (SC); *Snell v. Haughton* [1971] IR 305 at p. 309; *Carroll v. Clare County Council* [1975] IR 221 at pp. 226-227 (SC); *Hackett v. Calla Associates Ltd* [2004] IEHC 336; *Lewis v. Bus Eireann/ Irish Bus* [2006] IEHC 429 and *Bowell v. Dunnes Stores* [2015] IEHC 613 para. 77.

31. An analysis of these decisions is not necessary for present purposes; suffice to say that in apportioning the degrees of fault the Court is not concerned with the relative causative potency of the respective causative contributions by the parties found guilty of negligence and/or in breach of statutory duty to the damage but rather with the blameworthiness of the respective causative contributions measured objectively. Blameworthiness is to be measured against the standard of conduct required of the ordinary reasonable person in the class or category to which the party whose fault is to be measured belongs. Put another way, it is the blameworthiness of the contributions of the Plaintiff and the Defendant to the happening of the accident measured against what a reasonable man or woman would have done in the circumstances which is to be the basis of the apportionment.
32. Approaching this task on that basis, as I must, and applying the principles to the findings made, a far greater degree of fault must, in my judgment attach to the Plaintiff as the creator of the emergency, accordingly, the Court considers a just and equitable apportionment of the degrees of fault to be 75% against the Plaintiff and 25% against the Defendant.

Quantum

33. As stated earlier, the medical reports which contain a description of the Plaintiff's injuries, the sequelae thereof, the treatment afforded, and prognosis therefore were admitted in evidence and constitute what is essentially the uncontested medical evidence in the case. Reference to the injuries in general terms has been made earlier, however, it is necessary at this juncture to return to the subject of the injuries in some greater detail. It is clear from the reports that the Plaintiff sustained particularly significant psychological sequelae. He has a past relevant history which has to be taken into account in determining the extent to which any psychological sequelae were caused and/or aggravated as a result of the accident for which the Defendant is responsible and distinguished from any condition or sequelae which is not causally related.
34. In this one area in particular there is what on the face of it amounts to a conflict of evidence amongst the psychiatrists in relation to the psychological injuries caused as a result of the accident. There is no dispute that the Plaintiff did have a past history of depression for which he was treated with antidepressants, particularly in 2005 and 2012. In her report dated the 2nd October 2015, Dr Ann Leader, Consultant Psychiatrist, diagnosed the Plaintiff as having suffered from a post-traumatic stress disorder as well as an adjustment reaction with depression. The Plaintiff was reviewed by Dr Michael O'Cuill, Psychiatrist, in April 2018. He was in possession of a medical report prepared by the Plaintiff's GP, Dr John Ferguson dated 23rd August 2017 and a copy of Dr. Leader's report.
35. He dealt comprehensively with the Plaintiff's relevant pre-accident psychological medical history which he describes as a recurrent depressive disorder. In his opinion the accident resulted in what he describes as a moderately severe relapse of that condition which was entirely due to the accident and which was manifested in low mood, preoccupation with negative thoughts, social withdrawal, loss of interest in significant activities, reduced

enjoyment of life, reduced vitality, sleep disturbance with initial and middle insomnia, frequent worrying and feeling on edge, negative thoughts about the future and feeling that he would be better off dead.

36. Dr Kenneth Sinanan prepared a report dated the 6th March, 2017 following a consultation with the Plaintiff the previous month on the 23rd February. He sought access to the Plaintiff's pre-accident medical notes made by his GP. It is not clear whether this request was ever proceeded with. No further medical report was submitted. On the basis of his preliminary report Dr. Sinanan accepted that whilst the Plaintiff had symptoms of post-traumatic stress disorder, these were not sufficient to warrant criteria for such a diagnosis. In circumstances where the evidence in respect of that diagnosis is uncontested it is not possible nor appropriate for the Court to attempt to resolve the conflict. Suffice it to say that at the very least the Plaintiff certainly experienced symptoms which were accepted on all sides as indicative of having sustained a post-traumatic stress disorder, albeit insufficient, in Dr Sinanan's opinion for such a diagnosis.
37. Nevertheless, there is a considerable degree of unanimity amongst the psychiatrists that the accident triggered a previously diagnosed and successfully treated recurrent depressive disorder. The Defendant bears no responsibility for the condition itself, however, he is responsible for triggering the recurrence of the disorder for which the Plaintiff has had to be and continues to be treated with medication. In addition to the sequelae already mentioned, the Plaintiff suffered from flashbacks, irritability and an inability to motivate himself, even to get out of bed. His reaction to the accident was a combination of an adjustment disorder and a long-lasting depressive episode. Prognosis for the future is that the recurrent episodic depression associated with the disorder is increased by virtue of the Plaintiff having been involved in the accident.
38. Insofar as the Plaintiff's physical injuries are concerned, and to which some reference has already been made earlier, he suffered a head injury with superficial lacerations and cuts and bruises together with a jaw derangement and a fracture of the lower left mandible for which he required treatment from his dentist, Dr Conor Irwin. He also developed traumatic chondromalacia, especially in the right knee. In evidence he described himself as being initially sore all over. He had soft tissue injuries involving his neck, back and stomach. A medical report from his GP, Dr. Murphy dated the 18th May, 2014 referred to significant paraesthesia not only in one limb but in all limbs upper and lower, with the symptoms emanating from the plaintiff's neck, shoulders and back. However, there was no neurological injury and it appears no true sciatica or trapped nerve in any of the vertebrae was diagnosed.
39. The Plaintiff was examined and reported upon on behalf of the defence by Mr. Martin Walsh, Consultant Orthopaedic Surgeon, who had prepared a report dated the 30th September, 2015 with a number of addendums and reports dated the 1st September, 2016, 14th November, 2017 and 18th June, 2020. The Plaintiff was also neurologically assessed on behalf of the defence by Mr. Daniel Rawluk, Consultant Neurosurgeon, whose opinion is contained in a report dated the 1st March, 2017. Mr. Walsh reported on the CT

scan when the X-rays of the Plaintiff's neck and back. In his opinion the Plaintiff had pre-existing moderately severe degenerative changes in the cervical spine which were asymptomatic but became symptomatic as a result of the accident. The radiological findings were in keeping with the restriction of right and left lateral reflection of the Plaintiff's neck.

40. With regard to prognosis, he initially thought it unlikely that the Plaintiff would become totally asymptomatic in respect of his neck injury. The symptoms in his lower back were primarily of a muscular and ligamentous nature; however, with treatment the Plaintiff has made a better than expected recovery over the ensuing years as confirmed in Mr. Walshe's latest report and indeed by the Plaintiff himself when giving evidence. In this regard his symptoms appear to have been quite quiescent when seen by Mr. Sharif, Consultant Orthopaedic Surgeon, in 2017 and 2018, though the Plaintiff was still symptomatic in his right knee and in his lower back. The Plaintiff's back and neck movements have improved with time and treatment though he continues to have intermittent painful symptoms in relation to his lower back.
41. I consider it appropriate at this juncture to make reference to the Plaintiff's demeanour as he gave his evidence. I am quite satisfied that if anything he minimises the effect the injuries have had on him, at least physically, and that he did not in any way seek to exaggerate the injuries he sustained. On the contrary, as far as he was concerned he had almost entirely recovered from his neck injury albeit that he experienced symptoms in cold weather. He is otherwise minimally symptomatic insofar as his neck concerned. With relation to the back injury it is clear that this is more symptomatic. Various treatments and exercises have also been prescribed by the physicians to help with the chondromalacia of his right knee. The Plaintiff has had a lot of physiotherapy on medical advice. It is clear from the reports that there is an interaction between the physical injuries and the psychological sequelae with the latter impacting to some extent on the Plaintiff's perception of his physical injuries.
42. Insofar as progress in respect of the psychological sequelae is concerned since the accident, the Plaintiff's condition has improved from being one of moderately severely depressed to being relatively mild. The Plaintiff remains on medication for his psychological sequelae which helps to control the symptoms of depression. At seven years post-accident it is clear having regard to the pre-accident medical history that the progress of the depressive symptoms is by far and away the most serious manifestation of the recurrent depressive disorder, which all are agreed was triggered by the accident.
43. The Plaintiff is going to require ongoing medication for several years, and perhaps longer, however, the Court is required to assess compensation on the basis of what is probable rather than what is possible. As to the former the prognosis is for a continuation of anti-depressant medication for several years to come. In that regard, the Court is mindful of the medical opinion that having regard to the nature of the Plaintiff's persisting recurrent depressive disorder and the prolonged period of symptomology experienced and likely to be experienced in the future which was triggered as a result of the accident there is a

higher risk of recurrence than if the Plaintiff had never been involved in this accident, a consequence for which the Defendant is responsible.

44. The Plaintiff continues to be symptomatic in respect of the chondromalacia in his right knee. The symptoms are not disabling but they are present as are the intermittent back symptoms albeit that these are greatly improved. Nevertheless, as the Plaintiff has not made a full recovery there is an element of future pain and suffering in addition to past pain and suffering for which he is entitled to be compensated.

Assessment of damages

45. In accordance with the decision of this Court in *Murphy v. The Minister for Public Expenditure and Reform* [2015] IEHC 868, the parties were invited to make submissions to the Court on the appropriate ranges of damages prescribed by the updated Book of Quantum to which the Court is required to refer by virtue of s.22 of the Civil Liability and Courts Act, 2004. The parties decided not to make submissions, a decision I entirely respect. The Book of Quantum is essentially concerned with the consequences of physical rather than psychiatric injury. Where there is a multiplicity of physical injuries the correct approach to be taken by the Court to the assessment of general damages is to treat the Plaintiff holistically.
46. The overall level of the award is not arrived at by taking a figure which appears to be appropriate to the circumstances of the case in the range of damages for the most serious injury and where less serious injuries are involved, to make in respect of these an appropriate upwards adjustment. Rather, the proper approach is to apply the well settled principles of tort law to the assessment of general damages in relation to the injuries as a whole, the purpose of which is to restore the Plaintiff to the position in which he was in at the time when the wrong was committed insofar as that is possible by an award of money.
47. Where the Plaintiff is fully recovered the Court is required to assess damages for pain and suffering to date. Where a full recovery has not been achieved, provision must be made for pain and suffering which, as a matter of probability, will or is likely to occur in the future. 'Pain and suffering' in this context is not limited to the experience of neurological pain or psychological suffering but extends to cover the impact which the accident has had on the amenities of life enjoyed or as might likely be enjoyed by the Plaintiff. The compensation to be awarded must be just between the parties. To be just, compensation must be fair and reasonable, an objective achieved by the award of an amount or amounts proportionate to and commensurate with the injuries and loss sustained or as may likely be suffered in the future. See *B.D. v. The Minister for Health and Children* [2019] IEHC 173, paras. 64-75.

Ruling

48. Applying these principles to the findings made and conclusions reached the Court considers that a fair and reasonable award by way of general damages for pain and suffering to date in respect of physical injuries is €40,000, and in respect of the psychological injuries is €25,000, making together the sum of €65,000. The Court

considers that a fair and reasonable sum to compensate the Plaintiff for future pain and suffering, which is principally attributable to the psychological sequelae triggered by the accident requiring ongoing treatment, is €35,000, making in aggregate an award for general damages of €100,000. Special damages claimed have been agreed in the sum of €1,575. These awards fall to be reduced in accordance with the apportionments of fault already made herein. I will discuss with counsel the form of the final orders to be made having regard to the terms of the judgment.