

THE HIGH COURT

[2022] IEHC 648

[Record No. 2021/5922P]

BETWEEN

AARON FLYNN

PLAINTIFF

AND

SAINT-GOBAIN BUILDING DISTRIBUTION (ROI) LIMITED T/A AS PDM

DEFENDANT

**EX TEMPORE ruling of Ms Justice Reynolds delivered on the 25th day of
November and the 13th day of December 2022**

Introduction

1. This matter came before the court by way of assessment of damages only.

Background

2. The plaintiff, Mr Flynn, was engaged as a general operative by the defendant since in or about 2015. On the 26th January, 2018, he sustained injuries at work when a wire rope from a machine snapped, striking him in the face.

3. He was out of work for approximately two weeks post-accident as a result of facial injuries. He has since left his employment with the defendant for reasons unrelated to this incident.

4. Proceedings were issued on his behalf seeking compensation in respect of said injuries. Special damages were agreed in the sum of €1,395.00 and the only issue to be determined is the assessment of general damages.

The injuries

5. The plaintiff, who was born on the 29th of December, 1995, sustained numerous facial lacerations primarily to his forehead but also to the nose and chin area. He was treated at the emergency department of Naas General Hospital, initially by way of a tetanus booster injection and antibiotics. Thereafter, the lacerations were cleaned and sutures were applied to the scalp and forehead.
6. Mr Flynn was reviewed in the emergency department one-week post-accident. The sutures were removed and polyfax ointment was applied.
7. In addition, the plaintiff sustained some very minor soft tissue injuries to his neck and back arising from the incident which he very fairly accepted resolved without any medical intervention within a matter of weeks.
8. Unfortunately, the plaintiff has been left with two permanent scars on his forehead. The first lies on his right forehead, is rectangular in shape and measures 1x0.5cm. The second is on the left side of his forehead and is shaped like an upside down L. It measures 2x1cm and is quite noticeable with dark pigmentation in it, apparently arising from dirt ingrained at the time of the accident. Finally, there is a third scar which is currently camouflaged by the plaintiff's hairline.
9. Dr Patricia Eadie, Consultant Plastic Surgeon, has advised the plaintiff of treatment options available to improve the appearance of the scars by way of surgical revision or laser treatment.
10. It was clear from the evidence that the plaintiff is very conscious of the scars and wears his hair over his forehead to disguise them on a day-to-day basis. However,

in his work as a dance teacher and his involvement in competitive dancing, his appearance is of particular significance to him. At competition level, he is obliged to constantly re-apply makeup to disguise what appears as dirt/bruising to the forehead area.

11. Having viewed the scars, it is readily apparent that they are visible at conversational distance. In addition, the dark pigmentation is particularly distinguishable.

12. The medical evidence is that without further treatment and surgery, the appearance of the scarring is unlikely to improve. In all the circumstances, it is reasonable to understand why the plaintiff is anxious to undergo treatment to improve its appearance. To date, he simply has not had the financial wherewithal to proceed with such treatment.

13. The plaintiff's intention is to undergo revision surgery under local anaesthetic in order to excise the scars with a view to removing the dark pigmentation. Thereafter, suturing will be required and whilst the plaintiff will again be left with scarring, it is anticipated that with a positive outcome these scars will have a less stretched appearance over the passage of time.

14. However, in the intervening period both scars will have a raised reddish appearance for approximately three months and will require a period of eighteen months to two years to mature fully.

Assessment of damages

15. In determining the appropriate level of damages, I am obliged to have regard the Personal Injuries Guidelines implemented in 2021, and in particular chapter 9 thereof dealing with facial injuries. It is acknowledged therein that it is an extremely difficult task to assess the appropriate level of damages in cases involving cosmetic

defects or other types of disfigurement and guidance is provided in terms of the considerations to be taken into account in determining the level of the award as follows: -

- “(i) *Age;*
- (ii) *Nature of the underlying injury which has resulted in facial disfigurement;*
- (iii) *Nature, extent and duration of treatment;*
- (iv) *Nature and extent of residual scarring or disfigurement;*
- (v) *Impact on work;*
- (vi) *Interference with quality of life and social and leisure activities;*
- (vii) *Impact on relationships;*
- (viii) *Consequential psychological damage including depression.”*

16. In determining the appropriate level of damages, I am mindful of the impact of the injuries upon the plaintiff to date and into the future. The plaintiff was 23 years of age at the time of the accident and had been pursuing his interest in dancing with a dance academy for some 4 years at that stage. Subsequent to the accident he was in a position to resume dancing within a matter of weeks but was very conscious of his facial injuries. Fortunately the swelling resolved relatively quickly but subsequent to the suture removal, the area on his forehead was raw and irritable. These symptoms dissipated over time but the appearance of the scarring and dark pigmentation did not resolve. The plaintiff gave evidence that he was particularly anxious about his appearance when dancing competitively and was obliged to constantly re-apply makeup to camouflage the scarring. Undoubtedly, in pursuing his interest in dance and having taken up a career as a dance teacher since this incident, the plaintiff is very conscious of his appearance and understandably so. He remains committed to

pursuing his interest in dancing, both as a teacher and competitor on the amateur dance circuit.

17. The future treatment regime as outlined above will further impact upon his confidence in engaging at a competitive level whereby he will yet again be required to camouflage the scarring, particularly for the initial period of two years post-surgery while the scars heal.

18. Whilst it is probable that the worst effects of the scarring will be improved by surgery, the plaintiff will be left with a permanent cosmetic disability on his forehead. In all likelihood, the scarring will remain visible at conversational distance, albeit with a less pronounced prominence with the advancement of time.

19. Counsel for the plaintiff has urged upon the court that the injuries ought to attract general damages in the severe scarring range of €60,000 to €80,000 in the guidelines having regard to the serious and permanent consequences of the injuries for the plaintiff.

20. Counsel for the defendant has submitted that the serious scarring range of €30,000 to €60,000 is more appropriate having regard to the fact that there is no evidence before the court of any significant psychological reaction.

Conclusion

21. Taking all relevant considerations into account together with counsels' submissions regarding the Guidelines, I am satisfied that the facial injuries fall to be considered within the upper range for serious scarring. I have had regard in particular to the relatively young age of the plaintiff; the nature and extent of what will undoubtedly be permanent scarring; the impact of the injuries on his quality of life and pursuit of his dancing career.

22. I therefore award the sum of €50,000 for general damages to which the agreed figure of €1,395.00 is to be added, giving a total award of €51,395.00.

23. Having heard further from the parties on the costs issue, and having regard to the level of damages awarded together with the provisions of section 17 of the Courts Act 1981 (as amended by section 14 of the Courts Act 1991 and further amended by section 19 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013), costs are to be awarded on the circuit court scale with a certificate for senior counsel.