

**THE HIGH COURT**

**[2024] IEHC 326**

**[2023 No. 1940 P]**

**BETWEEN:**

**HAZEL O’SULLIVAN**

**PLAINTIFF**

**-AND-**

**GERALD RYAN**

**DEFENDANT**

**JUDGMENT of Mr. Justice Barry O’Donnell delivered on the 17th day of May, 2024.**

**INTRODUCTION**

1. The plaintiff in this action is a thirty-seven year old married woman who works as a financial advisor for a financial institution. She sustained serious injuries in a road traffic accident that occurred on the 29 January 2021, just over three years and three months ago. The plaintiff was driving in the late afternoon in the vicinity of St John’s Cemetery in Cork. The defendant was driving in the opposite direction on the other side of the road when his vehicle crossed over to the plaintiff’s side of the road and collided head on with her vehicle. The front of the plaintiff’s vehicle was crushed, and the airbags deployed. The plaintiff was trapped in her car for approximately thirty minutes before she was removed by the emergency services. Whether this was because of the airbags or otherwise, the plaintiff had a strong sensation of smoke in the car. The plaintiff was transferred by ambulance to Cork University Hospital, where she remained until the 5 February 2021.

2. These proceedings were commenced by way of a personal injury summons dated the 2 May 2023. A defence was delivered on the 16 August 2023, and liability was not put in issue. This is a case in which the plaintiff sustained multiple physical injuries as a result of the accident, some of which continue to afflict the plaintiff. In addition, following the accident, the plaintiff developed post-traumatic stress disorder (PTSD). The only issue to be determined by the court is the quantum of damages to be awarded to the plaintiff.
3. Past special damages were agreed in the amount of €28,572. Future special damages were calculated by the plaintiff's actuary – in a report that was admitted by the defendant – as between €179,274 and €196,960. The future special damages were referable to the cost of medical care; including attendances with consultants, physiotherapy, counselling and medication. The variation is attributable to the fact that the figures for pain management treatments were presented as alternatives, and this was understood on the basis that it is not yet clear if proposed pain management interventions will be in the form of injections or radiofrequency ablation, or some combination of the two.
4. The main issues before the court related to the factual issue of the extent to which the plaintiff has recovered from her injuries, the precise nature of her ongoing complaints, and what will be required by way of future treatment. Those issues must be considered in the light of the guidance in existing case law on how the court should approach the determination of quantum where the plaintiff presents with multiple injuries.

## LEGAL PRINCIPLES

5. The parties were in agreement that the correct approach to the application of the Personal Injuries Guidelines adopted by the Judicial Council in 2021 to cases involving multiple injuries has been summarised recently by Mr. Justice Coffey in *Keogh v. Byrne* [2024] IEHC 19, and I am grateful to adopt his analysis, which is set out from paragraphs 9 to 13 inclusive of that judgment as follows:

*“9. In a case involving ‘multiple injuries’ such as this, the Guidelines suggest that:*

*“The appropriate approach is for the trial judge, where possible, to identify the injury in the bracket of damages within the Guidelines that best resembles the most significant of the claimant’s injuries. The trial judge should then value that injury and thereafter uplift the value to ensure that the claimant is fairly and justly compensated for all of the additional pain, discomfort and limitations arising from their lesser injury/injuries.”*

*10. The Guidelines go on to state that it is of “the utmost importance” that:*

*“The overall award of damages made in a case involving multiple injuries should be proportionate and just when considered in light of the severity of other injuries which attract an equivalent award under the Guidelines.”*

*11. The Guidelines make it clear that the application of the method of ‘uplift’ is at all times subservient to the overarching duty of the trial judge to ‘fairly and justly’ compensate the plaintiff for ‘all’ of their suffering and to arrive at an overall award that is ‘just and proportionate’. These dual requirements of fairness and proportionality were emphasised by the Court of Appeal in *Zaganczyk v. John Petit Wexford Unlimited Company* [2023] IECA 223, where*

*after construing the Guidelines in the light of the earlier decision of the Court in Meehan v. Shawcross [2022] IECA 208, Noonan J. stressed that whatever initial approach is adopted, the trial judge must make an overall award which fairly compensates the plaintiff for “all the suffering they have endured, be it from one or ten discrete injuries at the same time” and must do so in such a way as to achieve proportionality. In the same judgment Noonan J. approved the practice of valuing each of the plaintiff’s injuries individually, an approach that was initially proposed and adopted in the interests of transparency by Murphy J. in McHugh v. Ferol [2023] IEHC 132.*

*12. It is evident from the foregoing that in a case where a court is required to assess general damages for multiple injuries having regard to the Guidelines, the trial judge should follow a two-stage process in order to ensure that the overall award is fair to all parties and proportionate. First, the court must ensure that the plaintiff is compensated for all their pain and suffering which results from their injuries. This requires the trial judge to consider the relevant guidelines for each injury and to apply the principles of fairness and proportionality in order to assign a value to each injury that is fair to all parties and proportionate. Secondly, and whether it is possible to do so by reference to the plaintiff’s ‘most significant injury’ or not, the court is obliged to ensure that the overall award itself is fair to all parties and proportionate. This requires the trial judge to step back from the individual injuries and their corresponding assigned values in order to holistically evaluate the cumulative effect of all of the injuries on the plaintiff and to adjust the ultimate award in order to avoid over or under compensation. In carrying out this task, the trial judge must have regard to the overlap of injuries and the maximum and equivalent awards*

*available under the Guidelines for suffering of similar gravity to that of the plaintiff's overall injury profile. Where a discount is applicable, the method of adjustment - whether it be by way of deduction from the value assigned to the plaintiff's lesser injuries or from the initial aggregate amount, or whether it is expressed as a percentage or a specified sum - appears to be of little practical consequence provided that the ultimate award of general damages is so measured as to achieve overall fairness and proportionality.*

*13. The severity of overlapping injuries can vary according to their effect. Typically, there will be a temporal overlap of injuries such that a discount would be appropriate to reflect the fact that the injuries arose from the same traumatic event and involved treatment and recovery at the same time. In some cases, however, the cumulative effect of multiple injuries may be worse than the sum of their parts where, for example, and as is reflected in the Guidelines, the plaintiff is caused to lose sight in both eyes and is thereby completely blinded, or because the interaction of the injuries significantly complicates or prolongs the recovery process."*

## **THE INJURIES**

6. With the exception of issues around her lower back injuries, there was no real dispute about the nature of the injuries sustained by the plaintiff as a result of the accident. When she arrived in Cork University Hospital on the 29 January 2021, her main treating consultant was Mr. Mark Dolan, a Consultant Orthopaedic Surgeon. His report was dated the 30 January 2022 and was admitted. The report summarises the main presenting injuries at that point:

- a. The plaintiff sustained a closed displaced fracture of her right femur, which was treated surgically with a locked intramedullary nail. That operation occurred on the 31 January 2021.
  - b. Mr. Dolan also observed bruising over the plaintiff's chest wall, consistent with a seat belt injury.
  
7. Since the accident, the evidence was that the plaintiff suffered from post-traumatic stress disorder, weakness and discomfort in her right leg, lower back pain, and costochondritis. The plaintiff has also had to adjust to a post operative scenario where her right leg is scarred at the sites of the operation to put the nail in her femur. That scarring is clear and visible on the various recent photographs that were handed into court. As noted by the plaintiff's GP, there is a 2.5cm scar at the knee level, a 10cm scar mid-way down the outside of the right thigh, and a 12cm scar in the gluteal to lumbar area. It would be fair to say that while the leg injury was very serious and continues to give rise to difficulties, the plaintiff's lower back pain appears to be causing her the most physical discomfort at present.
  
8. The court heard oral evidence from the plaintiff; from her GP; from Mr. Andrew Purcell, Consultant in Anaesthesiology and Pain Medicine; and from her physiotherapist, Ms. Tricia Murphy. The court also heard evidence called by the defendant from Mr. David Mulcahy, Consultant Orthopaedic Surgeon. The defendant admitted reports that had been prepared by two psychologists; Mr. Mark Phelan, Consultant Rheumatologist; and Mr. Mark Dolan, Consultant Orthopaedic Surgeon.

9. The plaintiff gave evidence of the overall circumstances of the accident and its immediate aftermath. I fully accept that the accident was traumatic and distressing. It required an emergency hospital admission and swift surgical intervention. The plaintiff remained in hospital from the date of the accident until the 5 February 2021. The injuries sustained by the plaintiff affected her almost from head to toe. In addition to the femoral fracture, there were injuries to her neck, chest, abdomen, arms and legs. She was initially prescribed heavy pain-relieving medication, including Oxycontin and Oxynorm.
10. When the plaintiff was discharged from hospital, she returned to the home she shared with her husband. The house had to be adapted to allow her to live downstairs. Effectively, the plaintiff spent three months in a wheelchair and then progressed to using a stroller, two crutches, followed by one crutch and then was able to resume walking unaided. Her bed was moved to the living room and arrangements had to be made to allow her to use a commode and eventually the bathroom downstairs for a period. She was not able to use the shower for some time after her return home. I accept the plaintiff's evidence that in addition to her physical pain she was not capable of living independently for some time and required levels of assistance with her activities of daily living. I accept that this added to her stress, embarrassment and sense of helplessness. Thankfully, the plaintiff appears to have had considerable support from her husband and her parents who assisted in providing care and support to her during this period. Nevertheless, it is clear that the accident interfered with her family relationships for a period.

11. The plaintiff suffered from nightmares and flashbacks to the accident. She remains an anxious and hypervigilant driver and passenger. The plaintiff returned to her work on a part-time basis in September 2021 and then returned on a full-time basis in October 2021, and was thus unable to work full time for a period of circa 8 months. When she returned to work she struggled, and to some extent continues to struggle, with some aspects of her job, such as navigating flights of stairs or twisting in her chair. She experiences a sense of weakness in her right leg and finds walking uphill or on uneven surfaces difficult.
  
12. Prior to the accident the plaintiff enjoyed engaging in DIY projects at home and going for long walks. She has not been able to resume those activities and finds walking for more than half an hour difficult.
  
13. A striking feature of the oral evidence heard by the court from the plaintiff's GP, her physiotherapist and her Pain Management Consultant was that she was genuine and working hard on her recovery. That evidence fortified my own observations of the plaintiff when she gave evidence. She impressed me as a very genuine and truthful witness who was working hard to recover from her difficulties. Her approach was illustrated by the fact that despite her discomfort the plaintiff managed to return to work relatively quickly and has continued in employment with the same employer. She used her holiday entitlements to access medical appointments. The plaintiff has been consistent in attending physiotherapy and engages in a fairly rigorous daily regime of exercises and walks to progress her recovery.



14. I was satisfied that the plaintiff was an honest and reliable witness, who did not exaggerate the extent of her injuries or the effect of those injuries on her quality of life. The plaintiff explained that her approach to recovery was informed by an attempt to avoid some medication. She was and remains very engaged in physiotherapy and exercising at home. It is true that the plaintiff's doctors had recommended that she receive injections to relieve the pain in her lower back. However, the plaintiff explained that presenting at hospital triggered anxiety and a PTSD reaction; and this was not disputed.

15. Adopting the approach to general damages where there are multiple injuries that had been explained by Mr. Justice Coffey in *Keogh v. Byrne* [2024] IEHC 19, the parties submitted that the injuries should be approached by reference to four main areas of injury: the injuries to the plaintiff's right leg; the back injuries; the chest injuries; and the PTSD. It was agreed that the injuries to the plaintiff's leg should be treated as the dominant injury. The disputes related to the level of compensation that the injuries should attract.

### *The Right Leg Injuries*

16. As noted above the plaintiff sustained a transverse fracture to the middle third of her right femur, and this required an operation to insert a locked intramedullary nail by Mr. Dolan. Three months after the accident the plaintiff's GP noted ongoing pain in her right leg, and that she was then unable to bear weight and required assistance with mobilisation. There was scarring and her lower leg and foot were swollen. When the plaintiff was examined by Mr. Dolan approximately one year after the accident the fracture was solidly united and the nail and fixation were stable. At that point in time,

Mr. Dolan expected that within two years of the accident (i.e. by January 2023) the plaintiff would have regained good flexibility of her right hip and knee. There was a small risk of degenerative changes in the hip and knee in the medium to long term and there was no indication that further surgery would be required. In his first examination which also occurred approximately one year post accident Mr. Phelan noted that the plaintiff continued to complain about pain and discomfort in her right leg, and he considered that this could continue to cause discomfort for “a considerable number of months”.

17. In August 2023, the plaintiff’s GP noted ongoing pain and limitation of right leg movement. The GP referred to limb length discrepancy. This was not observed by any other doctors and was ruled out in clear terms by Mr. Mulcahy who gave evidence that he had sought to ascertain if such a discrepancy could be observed. Having considered the evidence, I am not satisfied that the plaintiff proved that she suffered from any leg length discrepancy.

18. The plaintiff gave evidence that she still suffered from some discomfort, that she remained somewhat unsteady on uneven surfaces and going uphill, and that she felt she had a limp. The plaintiff’s GP noted right leg movement limitations and pain in August 2023 and, similarly, Mr. Phelan in March 2024 noted that the plaintiff continued to experience discomfort and felt unsteady on her right leg. I accept that there is a remaining element of discomfort, particularly if the plaintiff rests on her right leg.

19. I am satisfied that the plaintiff sustained a serious leg fracture. She experienced serious pain and discomfort as a result of this injury, which required treatment by surgery,

medication and physiotherapy. There is a small risk of degenerative changes in her right hip and knee. Clearly the injury had a significant impact on the plaintiff's domestic life and her work for approximately nine months after the injury, in that she was unable to mobilise independently for some time, and was very dependent on others for her activities of daily living. The plaintiff has been left with relatively significant scarring which clearly is visible and appears at three points from her knee to her upper thigh/hip area. The scarring affects the plaintiff's confidence, for instance she is very uncomfortable swimming as the scarring would be apparent in that scenario. There is some residual discomfort and unsteadiness, and the plaintiff has not been able to resume her walking hobby, however the prognosis is relatively good.

20. In the premises, I am satisfied that were it not for the scarring the dominant leg injury here would fall within the lower range of moderate leg injury category or the upper range of the next below category. Because of the scarring and the lengthy period of non-weight bearing I am satisfied that the injury should attract an award of €70,000.

#### *The back injury*

21. There was most dispute about this injury. The plaintiff complained of ongoing pain in her right lower back, and this was the injury that caused her the most difficulty at the time of the hearing. There was no evidence that the plaintiff suffered from any lower back pain before the injury. The back symptoms were not noted in the medical reports dating from the year of the accident but did begin to feature in later reports. In March 2023, Mr. Purcell noted a report of near constant pain localised to the right lower back, which was aggravated by walking and bending. I accept that the plaintiff's job requires her to walk up and down stairs and engage in some bending and twisting over the course of her day. Mr. Purcell found that there was a limited range of motion in the plaintiff's

lumbar spine and that pain was provoked on flexion and extension. An MRI image that Mr. Purcell reviewed in March 2023 showed disc desiccation at the level of L5/S1; and evidence of the absence of synovial fluid in the right lower lumbar facet joints was suggestive of facet arthropathy. Mr. Purcell was of the view that while some of the degenerative changes possibly were pre-existing, the mechanism of the injury was concordant with the changes becoming symptomatic. There being no cure for chronic degenerative spinal pain it was likely that symptom management would be the focus of treatment. When he saw her in August 2023, the plaintiff's GP appeared to be of the same general view. Mr. Purcell saw the plaintiff again in mid-April 2024. The plaintiff's reported pain was largely unchanged. The difficulty at that point was that it had not proved possible to administer pain relieving injections or radiofrequency ablation because the plaintiff's PTSD (which Mr. Purcell accepted as genuine and significant) had meant that she was unable to remain in the hospital for the scheduled treatment.

22. I note that Mr. Phelan in his March 2024 report referred to the lower back pain as occasional and he expected matters to settle "over the next year or so". Mr. Phelan was not called to give evidence and his report appears to be focused on the plaintiff's chest injuries, so it was difficult to attach much weight to his views.

23. Mr. Mulcahy, who did give evidence, was more forthright. Mr. Mulcahy saw the plaintiff in December 2021 and July 2023. In December 2021 there was no report of the low back pain, although Mr. Mulcahy did note that there was a full range of pain free movement in the plaintiff's right hip. At that point he expected a gradual improvement in the plaintiff's overall symptoms over 6-12 months. In his July 2023 report, Mr. Mulcahy understood that the MRI reports demonstrated some facet joint

arthritis, and noted that the plaintiff reported that her lower back symptoms were her main ongoing complaints. There was tenderness on her lower back at the right side of the base of her lumbar spine and back extension caused her pain. Mr. Mulcahy expected those symptoms to gradually resolve, and noted that the plaintiff was engaging with Pilates as part of her physio program. In evidence, Mr. Mulcahy was of the view that degenerative change in the lower back is a common situation as people age. He accepted in cross examination that the force of the impact which fractured the plaintiff's femur suggested a significant impact on the right side of her body, which could account for her back pain being focused on that side. He agreed that the lower back issue would benefit from ongoing physiotherapy and injections.

24. While Mr. Mulcahy was far more cautious about a causal connection between the accident and the back pain and more sanguine about the prospects for recovery, I preferred the evidence of Mr. Purcell. Although he is not an orthopaedic surgeon, he has expertise as a pain management consultant. Moreover, as a clinician engaged in treating the plaintiff, it seemed to me that he was more knowledgeable of the plaintiff's individual circumstances and more familiar with her particular situation. That rendered him better placed, in my view, to form a view on the likely course of treatment and requirements for pain management.

25. Overall, I am satisfied that the plaintiff experiences ongoing pain in her lower back and that she is suffering from a facet or sacroiliac degenerative joint injury. There was no evidence of any pre-existing lower back complications. Before the injury the plaintiff was an active and mobile woman in her thirties. I am satisfied that the mechanism of the accident caused the plaintiff's symptoms and her progression to current chronic

pain. There was no indication that the plaintiff was exaggerating her injuries, and in fact the evidence showed that the plaintiff was actively involved in attempting to resolve her pain issues through physiotherapy and physiotherapist directed exercise. I accept that because of her PTSD symptoms the plaintiff was not able to avail of pain-relieving injections, however I consider that the evidence established that she ought to be able to avail of that therapy in the near future. In that eventuality, the evidence satisfied me that that form of therapy should substantially alleviate the symptoms, albeit that injections may be required on average once a year for the time being.

26. Significantly, there was no evidence from the defendant elaborating on the question of the interaction between the accident and any preexisting degeneration or prospect of later onset of degenerative difficulties. Hence the court had no evidence on the question of when any symptomology that could have arisen independent of the accident would have been expected to arise, or how that symptomology could have interacted with the effects of the accident. Put another way, there was no evidence to explain how the accident could have had an impact over and above any expected naturally occurring spinal problems.

27. In those premises, I consider that the plaintiff was presenting with a lower back injury caused by the accident which manifested itself shortly after she regained her mobility and recovered from the immediate impact of the injuries to her right leg. Those symptoms affect the plaintiff on a daily basis but will become less problematic in the near future when she is able to avail of injections or radiofrequency ablation. I consider that the back injury falls within the middle range of damages attracted by the category

“moderate back injuries” in the Guidelines. As such, they would attract an award of damages of €30,000.

### *Chest injuries*

28. The plaintiff sustained injuries to her costochondral joints consistent with the mechanism of the accident. When she was seen by Mr. Phelan in December 2021, he noted tenderness over the left upper anterior chest wall which extended laterally towards and including the mid auxiliary line. At that point Mr. Phelan was of the view that there was a soft tissue injury to the left chest wall and injury to the left costochondral joints resulting in clinical costochondritis. He guardedly expected that the injuries would gradually resolve in perhaps eighteen to twenty months, with intermittent flare ups. Two left intercostal nerve block injections had not brought about any significant improvement. When he saw the plaintiff again in March 2024, Mr. Phelan noted recurrent pain in the left chest wall that flared up every few weeks, and which lasted a few days on each occasion. This reflected the evidence given by the plaintiff to the court. The nerve block treatments offered transient relief but symptoms recurred about three months later. Tenderness was noted in the upper left anterior chest wall area. Mr. Phelan again was guarded about a resolution but expected there to be a gradual resolution over the next year or so, with intermittent flare ups.

29. The plaintiff suffered sprain and strain to her left chest wall area. She has experienced intermittent pain in this area since the accident over three years ago and can expect those flare ups – which last for a few days – to continue for the next year or thereabouts. The Guidelines’ treatment of chest injuries range from damage to internal organs and traumatic injuries. Here, there is a soft tissue injury that has taken some time to resolve

and remains symptomatic, despite the administration of nerve blocks. There has been long term intermittent pain, but when that pain manifests itself I accept that it is relatively debilitating. The evidence shows that these residual symptoms should resolve in the next one to two years. In the premises, I consider that it would attract an award of €20,000.

### *PTSD symptoms*

30. It is accepted that the plaintiff suffered PTSD as a result of the accident. This manifests itself in nightmares and flashbacks, and the plaintiff has found it very difficult to attend hospital since her admission. In addition, the plaintiff remains an anxious and hypervigilant passenger and driver in cars and can be affected by sirens and the sounds that she associates with her accident. While there have been improvements the plaintiff continues to be symptomatic. The plaintiff has attended counselling and has tried to avoid medication. Her treating psychologist in an accepted report suggested that the likely treatment program was long term but did not provide a more accurate time estimate. I was not satisfied that the evidence proved that this injury would present as a lifelong condition, and I consider it reasonable to expect that the PTSD will resolve gradually over the coming two to three years.

31. In the premises, I am satisfied that the plaintiff's PTSD symptoms fall within the middle range of the moderate PTSD category, that is where there is no significant disability or the effects are not grossly disabling but where recovery is not complete and where treatment remains necessary. As such I consider that on its own the PTSD symptoms would attract an award of €20,000.



32. As noted above the overall award for general damages must be just and proportionate.

Here, I am satisfied that the plaintiff has substantially recovered from the dominant leg injury, albeit that she still experiences some discomfort and will be faced with scarring that will be long lasting. She is in the course of recovering from the chest injuries and PTSD and the indications are that these should be capable of resolving over the next two years or thereabouts. She has not substantially recovered from the lower back injury, which affects her daily life and will likely require treatment for the foreseeable future. There is a general temporal overlap between the injuries albeit that the back injury seems to have manifested itself when the leg injuries were improving. Here I do not consider that the chest injuries and PTSD could be said to have rendered the cumulative effect of the injuries particularly worse, although I accept that to date the PTSD has impacted adversely on the ability of the plaintiff to receive injections or radiofrequency ablation for her lower back pain.

33. In the premises I consider that the chest injuries and PTSD should be discounted by 30% to account for the fact that they emerged from the same accident, and involved treatment and recovery over the same period. I consider that the back injury award should be discounted by 15% to take account of the fact that there is not the same temporal overlap in that it continued to cause pain and distress for quite some time after the other injuries were improving and that it will likely continue to cause pain and discomfort until the plaintiff will be able to receive injections or radiofrequency ablation treatment. In that regard, the evidence suggested that the plaintiff ought to be in a position to receive that treatment later this year. That results in an overall award of general damages of €123,500. As noted above special damages to date were agreed at €28,572 to which there is an addition of Courts Act interest of €926, which brings the running total to €153,998.

34. The defendant admitted a report by the plaintiff's actuary dated the 24 April 2024. That report calculated future special damages on the basis that the future costs should be valued on a 1.5% actuarial basis using mortality statistics that show a woman of the plaintiff's age having a normal life expectancy of approximately 52.5 further years.
35. While the report was admitted, the defendant submitted that the applicability of the figures and headings of loss were dependent on the court's findings. The headings treated a number of medical and therapeutic services on an annual cost basis and on the assumption that they would be required for the rest of the plaintiff's life. The plaintiff's evidence was that some form of physiotherapy and/or pain relief intervention (either facet joint injections or radiofrequency ablation) would be required indefinitely.
36. I am satisfied that the plaintiff has demonstrated on the balance of probabilities that she will require therapy/counselling for a further period. However, I am not satisfied that she has demonstrated that this will be required for the rest of her life. Likewise, I am satisfied that the plaintiff will require medical treatment for her back injuries for a lengthy period. The evidence was that there was a likelihood that most people would begin to experience degenerative spine difficulties as they aged, and Mr. Purcell was not willing to rule out that there was some degeneration prior to the accident, although there was no evidence of any pre-existing condition. This would suggest at the level of principle that an argument could be made that the plaintiff could not have had a reasonable expectation that she would not experience lower back difficulties independent of any accident as she aged.
37. However, the court must decide the case on the available evidence. Here, the defendant's evidence (a) did not rebut the evidence that the accident caused the

facet/sacroiliac joint problems (whether by exacerbating or accelerating a preexisting disposition or otherwise), (b) did not rebut Mr. Purcell's opinion that the injuries would require pain management treatment and management indefinitely (a view reiterated by the plaintiff's physiotherapist), and (c) did not seek to explain or address how or when any naturally occurring degenerative changes in the plaintiff's facet or sacroiliac joints could have been expected to manifest themselves in pain or discomfort, and, in that scenario, whether the impact of the accident likely necessitated treatment over and above any treatment that may have been needed to address naturally occurring pain.

38. In those premises, I consider myself compelled to accept with some minor changes the actuarial evidence. I consider that the provision for counselling/therapy should be reduced to reflect a need for that service for 5 years rather than life, which reduces the figure in that regard from €28,941 to €3,600. I consider that the physiotherapy costs can be reduced to reflect that pain management interventions will reduce the need for the frequency of physiotherapy. In that regard, I consider that a reasonable figure for physiotherapy should be 50% of that provided for in the report, reducing the figure from €57,480 to €28,740. That leads to a cumulative figure for future special damages of €125,193.

39. Hence the plaintiff will recover damages of €279,191, made up of general damages in the amount of €123,500; past special damages (including interest) of €29,498; and future special damages of €125,193.

40. As this judgment will be delivered electronically, I should let the parties know that my provisional view is that the plaintiff should be entitled to recover her costs to include any reserved costs and costs associated with discovery to be adjudicated in default of agreement. I will list the matter before me to address final orders at 10.30 am on

Tuesday 18 June 2024, and in that regard facilities will be made available so that the parties can attend remotely if required.