

**THE HIGH COURT**

**[2024] IEHC 672**

**[Record no. 2020/731 P]**

**BETWEEN**

**DENNIS O'MAHONY**

**PLAINTIFF**

**AND**

**KERRY COUNTY COUNCIL**

**DEFENDANT**

**Ex tempore judgment of Mr Justice Barr delivered on the 20<sup>th</sup> day of November 2024.**

**Introduction.**

1. This action arises out of a somewhat unusual accident, in that the two vehicles that were involved in the accident, were both emergency services vehicles, that were responding to an emergency when the collision occurred. Thus, while the collision occurred on the public road, the rules of the road did not apply in the usual way to the circumstances of this accident.
2. The plaintiff was acting in the course of his duties as a member of An Garda Síochána. He was driving a Garda car on the way to a reported head on collision which had occurred on the road leading to Ballheigue, County Kerry. The defendant is the owner of

a fire tender, which was being driven by its employee, Mr Fitzgerald.

3. It is common case that the fire tender had proceeded through the village of Ardfert and was being followed by two Garda cars, the first of which was driven by the plaintiff; following the two Garda cars, there was a paramedic jeep. All four vehicles had their sirens on and had also switched on their blue flashing lights. It is common case that some 2 km from the village of Ardfert, the driver of the fire tender saw a tractor driving slowly on the roadway in front of it. It was approximately 120 m ahead of the fire tender.
4. It is the plaintiff's case that while he was in the course of overtaking the fire tender and having proceeded onto the far carriageway of the road, the fire tender also moved to its right into the right-hand carriageway and struck the side of the Garda vehicle. It is the plaintiff's case that the driver of the fire tender failed to take reasonable care and in particular, drove onto the right-hand carriageway when it was unsafe and dangerous to do, due to the presence of the plaintiff's vehicle in that carriageway.
5. As a result of the collision between the vehicles and in an effort to prevent further impact between them, the plaintiff's vehicle was forced onto the grass bank and hedgerow along the right side of the road. It travelled along the hedgerow for some 58 metres before being able to come back onto the road, where it came to a halt.
6. The case made on behalf of the defendant is that the driver of the fire tender had to overtake the tractor as it was travelling very slowly along the highway. The driver, Mr

Fitzgerald, states that he indicated his intention to turn right, checked in his right-wing mirror and upon seeing that the road was clear, he moved on to the right-hand carriageway. He states that he was looking intently at the roadway in front of him as he had to ensure that he left enough clearance between the left side of his vehicle and the tractor to be able to overtake it safely. He was also aware that there was a junction ahead, made up of a road leading to the right and just beyond that there was an entrance to a wastewater treatment plant on the left. He was keeping a lookout to ensure that no vehicles emerged from the side road or the wastewater treatment plant.

7. It is in these circumstances that both liability and quantum are in issue in this case.

### **Discussion.**

8. It will be helpful to begin by setting out those facts that are largely not in dispute between the parties. It is accepted that on the afternoon of 18 June 2019, the plaintiff and his colleague, Garda Dooley were manning a mobile vehicle checkpoint in the area known as Ballyroe, which is approximately 4 km from the village of Ardfert. Upon seeing two ambulances travelling down the road with their sirens blaring, Garda Dooley contacted his station to see if an emergency had arisen. He was told by the sergeant at the Garda station that there was a report of a head-on collision between two vehicles on the road leading to Ballyheigue, which was some 7/10 km on the other side of the village of Ardfert. Garda Dooley and the plaintiff were directed to attend at the scene of that accident.

9. As the plaintiff and Garda Dooley were about to get into their vehicles and proceed towards the scene of the reported accident, they saw the defendant's fire tender proceed down the road with its lights and siren operational. They proceeded down the road after the fire engine. Having overtaken one or two cars they caught up with the fire engine and were immediately behind it.
  
10. The first point of disagreement between the parties arises on the road leading towards the village of Ardfert. Mr Fitzgerald, the driver of the fire tender, states that he was aware that the Garda cars were behind him. Thinking that they would probably wish to overtake the fire tender, as they could travel considerably faster in their cars, he states that he slowed down from the speed at which he had been travelling at approximately 65 km/h to approximately 15/20 km/h and pulled in towards the left side of the road at the entrance to a garden centre, known as Liscahane Nurseries, which was some 2 km from the village of Ardfert.
  
11. Mr Fitzgerald stated that the Garda cars also slowed down but remained behind the fire tender. They did not take the opportunity to overtake it. Having formed the opinion that they did not want to overtake his vehicle, he continued along the road, with the Garda cars travelling behind him.
  
12. This version of events is contradicted by the evidence of the plaintiff and the driver of the other Garda vehicle, Garda Dooley. They both stated that at no stage did the fire tender slow down or pull in to the left, so as to enable the Garda vehicles to overtake it. The

plaintiff stated in evidence that he had pulled his vehicle out slightly to the right on occasions to see if it was safe for him to overtake the fire tender, but it had not been possible for him to do so, either due to bends in the road, or the presence of oncoming vehicles.

13. While there is dispute between the parties as to whether the plaintiff and the other Garda vehicle were afforded the opportunity to overtake the fire tender at or about the garden centre, but did not take that opportunity; it is common case that the line of emergency vehicles travelled through the village of Ardfert with their sirens and lights operational. At some stage a fourth vehicle, being a paramedic jeep, also joined the line of vehicles. Mr Fitzgerald stated that upon leaving the village of Ardfert, a number of vehicles pulled into the left to allow the passage of the emergency vehicles along the road.
14. It is common case that apart from one slight bend just outside the village of Ardfert, the road was level and straight for a very considerable distance. The speed limit on the road was 80 km/h. According to the plaintiff's engineer, which evidence was agreed by the defendant's engineer as being accurate, the width of the road was 3.3 m on the left carriageway and 3.5 m on the right carriageway, giving a total width of 6.8 m.
15. It was also agreed that the fire tender was in effect a Volvo truck, that had been customised for use as a fire tender. The fire tender was approximately 7.5 m long and 2.5 m wide. It weighed approximately 20 tonnes, as it was carrying a crane type apparatus on the back.

16. It is common case between the parties that the accident involving the two vehicles, occurred some 2 km on the far side of the village of Ardfert, going in the direction of Ballyheigue. Both parties agreed that there was a tractor on the left-hand carriageway, which was travelling slowly in front of the line of emergency vehicles. It is accepted that the tractor was some 120 m in front of the fire tender when it first became visible. It was also agreed between the parties that the fire tender was travelling at approximately 70/75 km/h, prior to reducing its speed due to the presence of the tractor on the highway.
17. The plaintiff's case is that, having regard to the fact that the fire tender was travelling relatively slowly, having regard to the speed limit applicable on the road and having regard to the presence of the tractor further up the road and the fact that the road was straight and he was afforded a very good view for any oncoming traffic, he decided that it was safe to overtake the fire tender and the tractor in one go.
18. To that end, he states that he indicated to turn right into the right-hand carriageway and proceeded to do so. The plaintiff states that when he had travelled approximately alongside the rear side of the fire tender, the fire tender moved to its right into the right-hand carriageway, thereby striking the plaintiff's vehicle. The plaintiff stated that in an effort to prevent a further collision between the two vehicles, he was obliged to steer his car into the bank and hedgerow to the right of the road. He stated while he travelled down the hedgerow, the fire tender had proceeded into the right-hand carriageway. While in the hedgerow, he struck a pallet that was embedded in the hedgerow, which caused

him to bounce back out onto the road, at which time he struck the fire tender for a second time and then went back into the hedgerow.

19. It is the plaintiff's case that eventually, having travelled some 58 m down the hedgerow, he was able to bring his vehicle back out onto the road, where it came to a halt on the right-hand side of the road at, or proximate to, the entrance to the wastewater treatment plant.

20. The plaintiff was adamant both in his examination in chief, and in cross examination, that the driver of the fire tender had not put on his right-hand indicator, when the plaintiff proceeded to commence his overtaking manoeuvre of the fire tender. This evidence was supported by the evidence given by the other Garda driver, Garda Dooley, who stated that he did not see the indicator flashing on the defendant's fire tender.

21. The account given by Mr Fitzgerald, the driver of the fire tender, was as follows: he stated that as the Garda cars had not taken the opportunity to overtake his fire tender when he had slowed down at the entrance to the garden centre at Liscahane, he assumed that the Garda vehicles were content to follow him as the lead vehicle in the convoy of emergency vehicles.

22. He stated that prior to the scene of their accident, they had overtaken a number of vehicles which had pulled into the left to allow their vehicles to pass. At all times the emergency vehicles had proceeded in the line past the cars that were pulled in, with the

fire tender being the lead vehicle.

23. Mr Fitzgerald stated that upon seeing the tractor on the roadway in front of him, he reduced speed. However, he stated that he was aware that he would have to overtake the tractor when it was safe to do so. He stated that the roadway was long and straight, thereby affording him very good view of the road in front of him. There was no oncoming traffic. He stated that he decided that it was safe to overtake the tractor. To that end, he stated that he put on his right-hand indicator, he checked in his right wing mirror and saw that there were no vehicles attempting to overtake him. He noted that there was no traffic at the junction ahead; however, he had to be vigilant to ensure that the tractor driver was aware of his presence and, in particular, that it was not going to turn right into the minor road that was ahead of them and on the right-hand side. However, he was satisfied that that was not going to happen, because he saw the tractor driver look behind him and therefore he was aware of the presence of the fire tender.

24. Mr Fitzgerald stated that he then proceeded to move out into the right-hand carriageway so as to overtake the tractor. While so doing he was also keeping an eye in his left-wing mirror as he had to ensure that he had left enough clearance on the left to pass the tractor in safety, given the width of both vehicles. He stated that while he was in the right-hand carriageway and passing the tractor, he heard a knocking sound. He thought that that might have been equipment in his vehicle rumbling around the interior. However, when he glanced in his right-wing mirror he saw the Garda car to his right and more or less in line with his rear wheel.



25. Mr Fitzgerald stated that at this stage he had no option but to apply the brakes but continue in a straight line. He stated that he could not swerve his vehicle as it was very heavy and was travelling at speed. It is not possible to make any sudden swerving manoeuvre. Equally, he stated that he could not apply the brakes severely, as to do so would cause the vehicle to go out of control and possibly crash into to the tractor or the Garda car. He stated that all he could do, was to bring the fire tender to a controlled halt.
26. Mr Fitzgerald stated that he applied the brakes and came to a halt some metres beyond the entrance to the wastewater treatment plant. This was beyond where the tractor had stopped, it having stopped in the entrance to the wastewater treatment plant. It was also beyond where the Garda car had come to rest which was on the right-hand side of the road at the entrance to the water treatment plant. He stated that having brought his vehicle to a halt, he reversed backwards and parked his vehicle. He and his co-driver, Mr Duggan, alighted from the fire tender and went over to see if the plaintiff was alright.
27. Mr Duggan was not able to give much relevant evidence in relation to this accident, as he was looking at his phone at the material time, as they were trying to get a precise location on Google Maps for the location of the head-on collision to which they were proceeding. However, he agreed with the evidence given by Mr Fitzgerald in relation to pulling into the entrance to the garden centre at Liscahane. He recalled that Mr Fitzgerald had stated when the Garda cars had not overtaken them, "*They are not passing.*", so they proceeded on up the road with the Garda cars behind them.

**Conclusion on Liability.**

28. In cross-examination, much of the focus was on the content of the Emergency Services Driving Standard issued by the Road Safety Authority in February 2015. This was a set of guidelines for the driving of emergency services vehicles to the scenes of accidents and other incidents which had been agreed between the relevant emergency services, being the fire service, the ambulance service and An Garda Síochana, and the Road Safety Authority.

29. A central plank of the defendant's case was that where emergency services vehicles were travelling in convoy to an accident or other such incident, it was agreed that certain procedures would be adopted. These were summarised by the defendant's engineer, Mr Twomey, as requiring the following:

1. Ensure that the various emergency service vehicles used different siren tones.
2. Keep a safe distance from the ESV unit in front.
3. Do not follow other ESVs blindly.
4. Always wait for road users to react to your presence.
5. Where possible ESV drivers should collaborate and plan a response.
6. Consideration should be given to the performance and capabilities of other ESVs in convoy.
7. Drive your own drive. Do not allow yourself to be drawn into situations.

30. In cross-examination, the plaintiff and Garda Dooley accepted that while they had received training in the driving of Garda vehicles, that training had taken place prior to 2015. They had not received any refresher training since then. In particular, they had not been instructed in relation to the content of the ESDS.
31. The defendant's driver, Mr Fitzgerald, laid great stress on the fact that when the Garda cars had not overtaken him at the entrance to the garden centre at Liscahane, he assumed that they were content to proceed on in convoy, with the fire tender being the lead vehicle. That being the case, his evidence was that the following vehicles should proceed in a line behind the lead vehicle, which was his fire tender. It was submitted that in these circumstances, it had been unsafe and dangerous for the plaintiff to have attempted to overtake his fire tender on the road outside the village.
32. While not doubting the honesty of Mr Fitzgerald's evidence in relation to what happened at the entrance to the Garden Centre at Liscahane, I do not find that the two Garda vehicles deliberately gave up an opportunity to pass the fire tender in safety and instead elected to travel behind it. I have reached that conclusion for a number of reasons: first, I accept the evidence given by the plaintiff, which is supported by the evidence of Garda Dooley, that the plaintiff had pulled out on a number of occasions to his right in an effort to see if it was clear to safely overtake the fire tender. That being the case, it is inconceivable that if Mr Fitzgerald gave the plaintiff and the other Garda driver, Garda Dooley, the opportunity to pass in safety at or about the entrance to the garden centre, that they would not have taken that opportunity. Secondly, I accept the evidence that this

was a large and heavy vehicle. It could not travel on a relatively narrow country road at a very high speed. Indeed, the evidence of Mr Fitzgerald supports this contention, because on the roadway beyond Ardfert, the speed limit was 80 km/h, it was accepted that the fire tender had been travelling at approximately 70/75 km/h prior to slowing down due to the presence of the tractor on the highway. Thus, at a relevant part of the road, the fire tender was travelling well under the applicable speed limit, which was in effect much slower than emergency service vehicles will be permitted to travel on that road when attending an emergency further up the road. In other words, emergency service vehicles are permitted to exceed the applicable speed limit if it is safe to do so. In these circumstances, the fire tender was in fact travelling very slowly in its capacity as an emergency service vehicle and was certainly travelling much slower than the Garda car to which it was allowed to proceed to the emergency. In these circumstances, it is inconceivable that the Garda car would have given up the opportunity to safely pass the slower moving fire tender, if that had been presented to it.

33. Whatever may have happened at the entrance to the garden centre at Liscahane, this gave rise to an incorrect assumption on the part of the driver of the fire tender. He assumed that thereafter the Garda cars were content to follow behind him in a convoy. That was incorrect, because the Garda drivers had not in their minds given up the opportunity to overtake the fire tender and they had not made the decision to travel in convoy behind it.

34. While much is made of the fact that the Garda drivers were not aware of the ESDS of February 2015, I do not regard this as being highly relevant. Firstly, it seems to me that

those guidelines apply to a situation where a number of emergency service vehicles are proceeding as part of the designated convoy to the scene of an accident or other incident. It seems to presuppose that they would set off together and perhaps along a predetermined route. Thus, it cannot be said that merely because the Garda cars were behind the fire tender, that they were therefore travelling in convoy.

35. Even if I am wrong in that, the guidelines do not prohibit one vehicle in the convoy which can travel faster than vehicles that are ahead of it, from overtaking those vehicles. Indeed, Mr Fitzgerald in his evidence, conceded that it was permissible for a faster moving vehicle to overtake another vehicle in a convoy, subject only to the caveat, that all vehicles in the convoy must be aware of the overtaking manoeuvre taking place.

36. When one looks at the situation that pertained as the emergency service vehicles left the village of Ardfert, the situation was as follows: having come around the slight bend, there was then a very long and straight stretch of road. The fire tender was travelling quite slowly for an emergency situation, in that it was travelling some 5/10 km below the normal speed limit. While that may have been the safe maximum speed for a heavy vehicle such as the fire tender on a road of that size, it was not the safe speed for a Garda car travelling to an emergency situation. In these circumstances it was reasonable for the plaintiff to decide to overtake the fire tender.

37. While it is not normally permissible for a vehicle to attempt to overtake two slow-moving vehicles in one go, I am satisfied that in an emergency situation, the decision to do that

could be justified, as they were all on a straight stretch of road, with no oncoming traffic.

38. Coming to the circumstances of the accident itself, it is clear from the photographs submitted by the engineers that the road was a long straight road with a good line of vision for drivers coming in each direction.

39. I accept the evidence given by the plaintiff and by Garda Dooley that the plaintiff had tried on a number of occasions to pass the fire tender, but had not been able to do so, either due to bends in the road or the presence of oncoming vehicles.

40. When the plaintiff was presented with the opportunity to pass both the fire tender and the tractor, it was not unreasonable for him to attempt to do so, given that he was responding to an emergency which involved a head-on collision between two vehicles. In those circumstances it was essential for the emergency services, including the plaintiff and Garda Dooley, to attend at the scene of the accident as soon as possible; so that they could afford whatever assistance they could to the occupants of the two vehicles and, perhaps more importantly, to assess the position of the vehicles on the roadway and to assess whether they posed a risk of further accidents due to other cars coming on the scene and crashing into the stationary vehicles. Thus, it was very important for the gardai to get to the scene of that accident, so that if necessary, they could station themselves 50 or 100 metres either side of the crash site, so as to ensure that other vehicles did not inadvertently crash into the vehicles that were already stationary on the road.

41. Notwithstanding the evidence given by Mr Fitzgerald, I find that on the balance of

probabilities he had not put on his right-hand indicator at the time when the plaintiff commenced his overtaking manoeuvre. I have reached this conclusion for a number of reasons: first, the evidence of the plaintiff, which was supported by the evidence of Garda Dooley, was that the fire tender had not shown its right indicator flashing at the time when the plaintiff moved out into the right-hand lane for the purposes of overtaking it. I am satisfied that if the right-hand indicator on the fire tender had been flashing, the plaintiff would have seen it and would not have commenced the overtaking manoeuvre, because it would have been very dangerous for him to attempt to overtake the fire tender, if the fire tender was already indicating its intention to move into the right hand carriageway for the purpose of overtaking the tractor. Given the width of the road there would not have been room for the plaintiff to have completed that manoeuvre. In short, it would have been suicidal for him to attempt the overtaking manoeuvre, if the fire tender had indicated by means of its flashing indicator lights that it was proposing to move into the right-hand carriageway.

42. Secondly, notwithstanding the evidence given by the driver of the fire tender, both in his evidence in chief and in cross examination, that the right-hand indicator on the fire tender had been illuminated; when it was put to him in cross examination that there was no mention in his statement to the gardai of having put on his indicator, he accepted that that was correct. He stated that he could not explain that omission from his Garda statement. I am satisfied that that omission tends to support the evidence of the plaintiff that the right-hand indicator was not flashing when he commenced the overtaking manoeuvre.

43. Thirdly, while evidence was not given to this effect, it seems to me that where emergency vehicles are travelling at speed down a road, they will inevitably pass vehicles that pull in to the verge on either side of the road to allow them safe passage. Even if they have to overtake a vehicle that is in the middle of the carriageway, I think it is more likely that the emergency service vehicle would do so without indicating, because if it were to put on its flashing indicator, that would indicate to oncoming vehicles, or other vehicles on the road, that the emergency services vehicle intended to turn to the left or the right, as the case may be, rather than proceed straight down the road.
44. In the present case, there was a right turn some distance ahead. There was also an entrance into the wastewater treatment plant some short distance further on the left. If the fire tender had put on its right indicator for the purpose of passing the tractor, the tractor driver, or any other road users may have come to the conclusion that the fire tender was going to turn right at the junction with the minor road and was going to proceed down that road. As the fire tender intended to proceed straight along the road without turning either left or right, it seems to me that it was more likely that it would have proceeded to overtake the tractor without putting on its indicator light.
45. Given the finding that I have made that the right-hand indicator had not been put on prior to the time when the plaintiff commenced his overtaking manoeuvre, one is left then with a position where the fire tender moved to its right into the right-hand carriageway when it was unsafe and dangerous so to do, due to the presence of the Garda vehicle in that carriageway and alongside the rear portion of the fire tender.



46. I am satisfied from the uncontradicted evidence in relation to the existence of damage to the fire tender in the area immediately in front of the rear offside wheel, that the Garda car had proceeded up along the side of the fire tender some appreciable distance, possibly one third the way up the length of the fire tender. That being the case, the Garda car was there to be seen if the driver of the fire tender had checked his wing mirror immediately prior to commencing his ingress onto the right-hand carriageway.

47. It is clear that the driver of the fire tender did not see the Garda car, because if he had done so, he would not have proceeded into the right-hand carriageway. This conclusion is supported by the evidence given by Mr Fitzgerald, to the effect that he proceeded into the right-hand carriageway and first became aware of something happening, when he heard a “*knocking sound*”, which he thought may have been caused by equipment within his vehicle moving about.

48. I am satisfied that that knocking sound was the first impact between the fire tender and the Garda vehicle, which caused the plaintiff to take the evasive manoeuvre of turning into the verge and hedgerow on the right side of the road.

49. In these circumstances, the court has to conclude that the driver of the fire tender was negligent in either (a) failing to check in his wing mirror immediately prior to moving into the right-hand carriageway, or (b) by moving into the right-hand carriageway when it was unsafe and dangerous so to do, due to the presence of the plaintiff’s Garda vehicle

therein.

50. This state of affairs may have been due to the fact that the driver of the fire tender was paying particular attention to the road in front of him for three reasons: first, to ensure that the tractor driver was not going to turn right into the minor road which they were approaching; secondly, he had to watch that junction to ensure that no car emerged out of it; and thirdly, he had to watch carefully on his left hand side to ensure that he left sufficient clearance to pass the tractor safely. Indeed he stated in evidence that he had been looking to his left to ensure adequate clearance when he heard the knocking sound. It may well be that due to giving his attention to these matters, he did not check in his right-wing mirror at the critical time, which was immediately prior to proceeding into the right-hand carriageway. Had he done so, he would have seen the plaintiff's vehicle therein.

51. For these reasons I find that liability for this accident must rest with the driver of the fire tender. Given that the Garda car was attempting to react to a serious emergency further down that road, I do not find that there was any contributory negligence on the part of the plaintiff in attempting the overtaking manoeuvre that he did at the time of the accident.

### **Conclusions on Quantum.**

52. As the medical evidence in this case was agreed, it is not necessary to go through all of the medical reports in great detail; a brief summary of the salient facts will suffice. The plaintiff is a 49-year-old married man with two children. As a result of the accident on 18

June 2019, he suffered soft tissue injuries to his neck, right shoulder, right wrist and right hand and also a lesser injury to his left elbow. He also exhibited symptoms consistent with a diagnosis of post-traumatic stress disorder (PTSD).

53. To deal with the psychiatric element first, the plaintiff exhibited symptoms consistent with PTSD, in the form of nightmares, flashbacks to the accident, hypervigilance and anxiety when driving, together with secondary mood changes of irritability and low mood. He did not require any medication for this complaint. On the advice of a Garda colleague, he attended for six sessions of counselling, which he found of great benefit. The counselling sessions had concluded by June 2020.

54. The court has been furnished with a number of reports and letters from Dr Peter Kirwan, consultant psychiatrist. Following on his first examination of the plaintiff on 17 June 2020, he noted the symptoms as outlined above; he noted that the plaintiff had attended for six sessions of counselling. He concluded that the plaintiff had been involved in what he perceived to have been a life-threatening accident. The plaintiff had developed some symptoms consistent with a diagnosis of PTSD. Dr Kirwan stated that at that time he was making a very satisfactory recovery. He did not anticipate any long-term sequelae.

55. The plaintiff was reviewed by Dr Kirwan on 1 September 2021, at which time he complained of ongoing pain in his right knee and right wrist; however his neck pain had resolved. His sleep was normal. He was driving without difficulty, but was a little more apprehensive when doing so. He had occasional morbid thoughts about death and dying

since the accident. Dr Kirwan noted that he was still out of work due to his physical symptoms. In terms of his anxiety symptoms, they had more or less almost completely resolved. He did not anticipate any significant long-term sequelae in this regard.

56. Finally, the plaintiff was reviewed again by Dr Kirwan on 14 September 2022, at which time his mood was back to normal. Dr Kirwan noted that he had no significant physical symptoms. He noted that the plaintiff was “more or less back to himself” at that time. He did not anticipate any significant long-term psychological sequelae. The plaintiff was also examined by Dr Mary McInerney, consultant psychiatrist, on behalf of the defendant. She saw him on 7 September 2020. Her findings and conclusions were very similar to those of Dr Kirwan. She felt that when she saw him, the plaintiff was in functional recovery, with no evidence of any anxiety or depressive symptomology. She believed the prognosis for the future was good.

57. It is the plaintiff’s soft tissue injuries which have given him most trouble. The court has been furnished with a number of medical reports detailing these injuries. Suffice it to say that the neck symptoms seemed to settle within a reasonably short period, as did the left elbow injury. The plaintiff’s main difficulties have arisen in relation to his right shoulder, right wrist and right hand. He is right hand dominant. An MRI scan taken of the right hand, showed no abnormality. Nerve conduction studies which were carried out at the request of the defendant’s doctor, Mr Kingston, ruled out the existence of any carpal tunnel syndrome in the right wrist or hand. An MRI scan of the right shoulder showed a small sub acromial spur, with possible minor partial tearing of the infraspinatus part of

the rotator cuff and minor narrowing of the acromioclavicular joint.

58. The plaintiff had approximately 14 sessions of physiotherapy treatment on his right shoulder and hand. He also had injection treatment from Mr Rice for his shoulder and hand. His last physiotherapy session had been in September 2020. Since then, the plaintiff complains of ongoing pain in his shoulder, particularly when doing overhead work. He also complains of ongoing pain in his right hand on activities, such as gripping the steering wheel of the car for more than 20 minutes; using a power washer; when holding a mobile phone for more than 15 minutes and doing prolonged painting. The hand is also sore when the plaintiff is running in cold weather.

59. The plaintiff was rendered unfit for his pre-accident employment as a Garda from the date of the accident until 19 July 2023, during which time he was certified by his GP on a monthly basis as being unfit for work. In July 2023, he was passed by the Chief Medical Officer as being fit for light duties in the form of office work. He was allowed to return to that form of work on a gradual basis. However, due to his ongoing physical disabilities, he has not yet been permitted to return to full operational duties, which would involve extensive interaction with members of the public.

60. Gradually, the plaintiff has been allowed to return to some duties outside the Garda station, in the form of limited driving duties, such as serving summonses and doing other similar errands. However, he has not yet been certified as being fit to work beyond 12 midnight.

61. I am satisfied that the plaintiff has done his best to return to work. To that end, he attended with the CMO at various intervals, seeking to be allowed return to active duties. The court holds that the plaintiff was unfit for work for four years post-accident, as this was being certified by his GP on a monthly basis and as he could not return to work until cleared to do so by the CMO. Even at the present time, over five years post – accident, he has not yet been certified as being fit for full operational duties.

62. Having seen and listened to the plaintiff giving evidence and having regard to the content of the medical reports which were submitted to the court, I am satisfied that the plaintiff has not attempted to exaggerate the duration or severity of his ongoing complaints. The court accepts that he has the levels of physical disability as described above. These may not be regarded as being the most severe of disabilities. They are nonetheless significant for the plaintiff because they have prevented him returning to full operational duties as a Garda. As a result, he has suffered ongoing financial losses, in terms of loss of overtime payments and other allowances. These will be dealt with in more detail under the heading of special damages.

63. As the personal injury summons in this case issued prior to 24 April 2021, it appears that the assessment of damages in this case is not governed by the personal injury guidelines. Nevertheless, the guidance given by the Court of Appeal in *Meehan v Shawcove* [2022] IECA 208 at paras 52 – 64, is of assistance when the court is required to place a value on general damages which are designed to cover multiple injuries.

64. I find that the plaintiff has suffered significant soft tissue injuries to his neck, right shoulder, right wrist and right hand as a result of the accident. While subsequent investigations have not revealed any major underlying pathology, I accept the evidence of the plaintiff that he has experienced pain and discomfort in these areas, which continues to cause him some bother when he attempts to carry out certain activities, such as working with his arms overhead, or when doing prolonged work with a power washer or when painting.

65. In addition, I accept that the plaintiff suffered PTSD, although this was at a relatively mild level. It did not require medication. It appears to have been treated satisfactorily by six sessions of counselling. Thereafter, the plaintiff appears to have gone on to make a full recovery from this aspect of his injuries within approximately 18 months of the accident.

66. In terms of a prognosis, the agreed evidence appears to be as set out by Mr Rice in his report dated 14 October 2022, that the plaintiff will have long-term recurring post exertion symptoms in his dominant right hand as a result of the injury sustained in June 2019. In these circumstances, I award the plaintiff general damages of €40,000 for pain and suffering to date, together with the sum of €20,000 for pain and suffering into the future. I have reached the figure for future general damages on the basis that the plaintiff is 49 years of age and therefore will have ongoing symptoms in his right hand in the form of pain post exertion, for upwards of 30 years.

**Special Damages.**

67. I accept the plaintiff's evidence that during the period that he was out sick until 19 July 2023, while he received social welfare payments and these were topped up to his basic salary, he was at a loss of overtime payments and other allowances during this period.

68. I also accept that on his return to work, initially he had to return on reduced hours doing light office work. He would have been at a loss of earnings during this period for the hours that he was not able to work in a full shift. I also accept that when he returned to doing a full shift doing light duties in the form of office work, he was at a loss of overtime payments and various other allowances.

69. Even down to the present time, he remains restricted in the level of operational duties that he can do, and he is not allowed to undertake any shift work beyond midnight. So, I accept that there is a continuing loss of overtime payments and allowances. The evidence before the court is that the total net sum lost by the plaintiff during the period that he was out sick and on light duties, down to the present time, comes to € 26,493.40.

70. To this must be added the agreed figure for other items of special damage of €5,128.50. This gives an overall figure for special damages of €31,621.90.

71. Accordingly, there will be judgment in favour of the plaintiff against the defendant in the sum of €91,621.90.



