

Neutral Citation no. [2007] NIQB 43

Ref: **STEC5847**

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

Delivered: **25/05/07**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND  
QUEEN'S BENCH DIVISION**

**BETWEEN:**

**KYLE DUNCAN HUNTER**

**Plaintiff;**

**- and -**

**MINISTRY OF DEFENCE**

**Defendant.**

**STEPHENS J**

[1] Kyle Duncan Hunter was born on 7 May 1971. He is now 36 years of age. On 10 January 2001 some six and a quarter years ago he sustained severe injuries in an accident which occurred on an adventure training course in Wales. The plaintiff was a Corporal in the Royal Irish Regiment and he fell approximately 150 to 250 feet down a long steep slope. As one would anticipate he sustained numerous injuries the worst of which was an injury to his right knee. His right leg was lying at 90 degrees to the alignment of his thigh and had to be relocated into position by rescuing staff. Most of the ligaments in his right knee were ruptured. He underwent three major operations to reconstruct his right knee. He also suffered from post traumatic stress disorder and depression. A combination of his physical injuries and his mental condition have resulted in him being medically discharged from the army in December 2005 and not to date gaining alternative employment. There was no issue at the trial of this action in relation to the amount of the plaintiff's past loss of earnings nor as to his entitlement to that amount.

[2] I have not been asked to adjudicate upon the issue of liability. The hearing before me proceeded purely in relation to the question as to what was the appropriate amount of compensation for the plaintiff.

[3] In relation to general damages Mr McNulty QC, counsel on behalf of the plaintiff, contended that the amount of general damages should be £65,000 to include interest. No contrary submission was made by Mr Simpson QC who appeared on behalf of the defendant. I have read and carefully considered the medical reports and I award £65,000 in relation to general damages.

[4] The plaintiff put forward various items of special damage and in relation to some of them there were no contrary submissions by the defendant. I propose now to list out those items in relation to which there were no contrary submissions. They were as follows:

- (a) past lost of earnings with the Royal Irish Regiment - £44,500;
- (b) loss of tax free ex gratia payment and redundancy payment. It is agreed that if the plaintiff had not been medically discharged from the Army that he would have been entitled to this sum on disbandment of the Royal Irish Regiment which is soon to take place - £68,000
- (c) loss of services - £15,000
- (d) interest on past losses - £ 8,000

[5] There having been no dispute in relation to any of these figures I make an award in relation to each of them. The addition of those figures together with the amount of £65,000 in relation to general damages is £200,500.

[6] One item of special damage was contested at the trial. That item was in respect of future loss of earnings. Here there was some measure of agreement between the parties. It was accepted that the plaintiff's future wage earning capacity if the accident had not occurred amounted to a total figure of £268,290. The dispute centred on the plaintiff's residual wage earning ability which should be deducted from that figure of £268,290. The plaintiff, by his counsel, accepted that he had a residual wage earning ability which should be deducted. Accordingly it was common case that a deduction should be made.

[7] The dispute in relation to the appropriate deduction was in part informed by the sixth edition dated 2007 of the Actuarial Tables for Use in Personal Injury and Fatal Accident Cases ("the Ogden Tables"). These tables are designed to help in the calculation of future pecuniary losses. As the introduction to the Ogden Tables states at page 5, paragraph 9, research has shown that people without disabilities tend nowadays to spend more time out of employment than earlier research had suggested. In short, and as a general

proposition, fewer people can now expect full continuous employment to the age of 65 even if they have not been injured. Furthermore that the chances of individuals having full continuous employment to age 65 is, as a general proposition, affected by their level of educational attainment. Accordingly when considering the plaintiff's future residual wage earning ability it would be wrong to take the full multiplier to the age of 65. A discount has to be applied to that multiplier to take account of the fact that the general population cannot now expect to be in full continuous employment to the age of 65 and also taking into account the fact that the plaintiff left school at the age of 16 and falls into educational attainment category O that is he achieved academically "below GCSE grade C or CSE grade 1 or equivalent or no qualifications", see page 15, paragraph 35 of the Ogden Tables. To reflect these factors a discount of 20% should be applied to the multiplier.

[8] The plaintiff is presently 36 years of age and a full multiplier to age 65 at 2.5% would according to Table 9, page 42 of the Ogden Tables be 20.05. Applying a discount of 20% to that multiplier would give a multiplier of 16.04.

[9] The tables all work from general propositions. It may be that the personal circumstances of an individual plaintiff will result in adjustments to these discounts. In the case before me it was accepted by the defendant that in assessing the plaintiff's future residual wage earning ability I should at least apply the 20% discount to reflect the fact that employment patterns have changed and the plaintiff's low educational attainment.

[10] The Ogden Tables then assist in relation to what should be the appropriate discount to the multiplier when one adds in the further component of disability. In this case disability due to the injuries sustained in this accident. Again the tables can only approach this generally because the range and levels of disability are infinite. Table B at page 17 suggests two discounts for 36 year olds in educational attainment group O. The first is if the individual is in employment. In that case the discount to the multiplier should be 61%. The second is if the individual is not in employment. There the discount should be 80%. Those discounts would reduce the full multiplier of 20.05 to 7.8195 and 4.01 respectively.

[11] The plaintiff is not in employment and he has a degree of disability. Accordingly when calculating the plaintiff's residual wage earning ability the Ogden Tables suggests a discount of 80% to the multiplier of 20.05 bringing it down to 4.01.

[12] The evidence was that the plaintiff's wage earning ability, if he was in employment, was equivalent to skill level two. A typical example of a job in that skill level is a van driver. The earnings for that skill level are £15,311 net per annum. Applying a multiplier of 4.01 to the multiplicand of £15,311

would lead to a residual wage earning ability of £61,397.11. Taking that from the agreed future losses, if the plaintiff had not been injured, of £268,290 would lead to an award for future loss of £206,892.89. If the plaintiff was not disabled then the multiplier would be 16.04 and taking the multiplicand of £15,311 would result in a residual wage earning ability of £245,588.44. Deducting that from future losses of £268,290 would lead to an award in this area of £22,701.56. The range of award is therefore £22,701.56 to £206,892.89. Where within that range the plaintiff falls depends on the assessment of the level of his disability and I take disability here to be not only physical and mental disability but also disadvantage in the labour market as a consequence of having or having had those disabilities.

[13] It was accepted by the defendant that the plaintiff had a degree of disability and accordingly the multiplier of 16.04 should not be applied in this case. However, in arriving at the appropriate reduction to the multiplier, the court is required to consider the degree of the plaintiff's disability and where the plaintiff falls in the range of potential reductions to the multiplier.

[14] Mr Swain FRCS, Consultant Orthopaedic Surgeon, gave evidence on behalf of the plaintiff. No medical witness was called on behalf of the defendant. Mr Swain was of the opinion, and I accept, that the plaintiff's right knee is at present deteriorating. That the plaintiff's present symptoms will progress over a 5 to 15 year period. The plaintiff will then be between 41 to 51 years of age. That the deterioration will lead to an increase in the present level of symptoms suffered by the plaintiff. At present the plaintiff wears a brace to improve the stability of his knee. Even with the brace his knee still gives way. The plaintiff presently has degenerative changes on x-ray. The plaintiff presently has a constant aching discomfort in his right knee. The pain is worse with activity. His knee gets increasingly uncomfortable when he sits driving for any length of time. Mr Swain gave evidence, and I accept that the plaintiff is not fit for heavy manual work, or for work requiring long periods of standing nor for work at heights. Physically the plaintiff is fit for a job as a van driver involving light delivery work. Long distance driving would not be suitable due to pain in his knee nor would a job involving heavy loading or unloading. He would be fit for a sedentary job provided he could get up and move around at intervals. The plaintiff now some six years after this accident, continues to have muscle wasting.

[15] The psychiatric evidence was to the effect that the plaintiff continues to have depression. This is described by Dr Curran, for the defendant, as "low grade persisting depression" and by Dr Harrison for the plaintiff as "mild to moderate depression." The fact is that the plaintiff is still on anti-depressants. Those anti-depressants cause lethargy. He awaits referral to a consultant psychiatrist on the National Health Service and is presently being certified as incapable of work by his general practitioner due to a combination

of his knee condition and his psychiatric condition. The psychiatric condition has led to a loss of confidence; the plaintiff has flashbacks to this accident.

[16] Dr Harbinson, Consultant Psychiatrist, retained on behalf of the plaintiff, in terms concluded that the plaintiff was fit to return to work from the psychiatric point of view. Mr Swain gave evidence that the plaintiff could work from a physical point of view. The plaintiff in his evidence stated that he was not prepared to seek employment until his general practitioner advised him to do so. I did not have a report from the plaintiff's general practitioner nor did the general practitioner give evidence. I do not accept the plaintiff's explanation as to why he has not sought employment. I consider that in part he is motivated in not returning to work by a degree of anger directed to the defendants in relation to this accident. I conclude on the basis of the medical evidence that at present there is no reason why the plaintiff should not be seeking employment and indeed that there would have been a substantial chance that he could have obtained employment. I propose to approach the case at the very least on the basis that he should now be in employment. I accordingly reject the discount of 80% which is applicable to a person aged 36 with low educational attainment and disability who is not in employment. I also reject the discount of 61% which is applicable to a person aged 36 with low educational attainment and disability who is in employment. I do not consider that the plaintiff's degree of disability is sufficient to warrant such a discount to the multiplier. I accept that the plaintiff has a present disability and also a disadvantage on the labour market. The plaintiff will come to a potential employer with a long gap in his employment history, physically with a knee brace, recounting that he has suffered from post traumatic stress disorder and suffers from depression, that he is still being treated for depression and awaits further treatment. I also conclude that the plaintiff's present degree of disability will get worse in the future with increasing symptoms.

[17] The defendant's have accepted that the multiplier should in any event be discounted by 20% for the changes in employment patterns and the plaintiff's low educational attainment. I discount it by a further 20%. That is a total discount of 40%. The full multiplier is 20.05. A 40% discount brings the multiplier down to 12.03. I adjust the multiplicand to £15,000 per annum to allow for a degree of imprecision in all these calculations. The plaintiff's residual wage earning ability is therefore £180,450. This falls to be deducted from the agreed figure of £268,290 to give a future loss of £ 87,840. I award that figure.

[18] A cross check of that calculation is that the amount of future loss of earnings is £65,138.44 more than the amount of £22,701.56 to which the plaintiff would have been entitled in any event.

[18] The total award is therefore £288,340.