Neutral Citation No. [2013] NIQB 72 | *Ref:* **McCL8937**

Judgment: approved by the Court for handing down | *Delivered:* **28/06/13**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S DIVISION

BETWEEN:

VICTORIA McKEE

Plaintiff:

and

LISA ANNETT

Defendant:

McCLOSKEY J

Introduction

[1] The Plaintiff claims damages arising out of a road traffic accident which occurred on 18th January 2010, some 3½ years ago. Negligence is admitted and contributory negligence is not alleged. The Plaintiff was aged 25 years at the material time, having been born in 1984. She is now aged 28. She is an aerobics instructor by occupation.

[2] I remind myself that the burden of proof rests on the Plaintiff, who must establish her case to the standard of the balance of probabilities. Applying this standard, I find, initially, that the impact between vehicles giving rise to the Plaintiff's injuries was a substantial one, evidenced by the damage to the Plaintiff's vehicle (which was written off), the Plaintiff's forehead striking the front windscreen, the windscreen smashing and the Plaintiff suffering a blow to her chest as a result of the airbag inflating.

The claim for general damages:

[3] I find that the Plaintiff was an honest witness, who did not exaggerate anything and who, if anything, indulged in understatement. General damages will be assessed on this basis.

[4] Having regard to the medical evidence (all of which was received under Order 25) and the Plaintiff's evidence, I make the following specific findings:

(a) The Plaintiff sustained an injury to the area of her right forehead and face. This was a bruising, or contusional, injury. Her main upper six teeth had previously been crowned. The immediate consequences of this injury were the loss of an upper central crown and the loosening of two lateral crowns. The head injury was minor. One of its consequences was the onset of headaches. Based on Dr Craig's report, these were of progressively diminishing severity and were compensatible for about one year after the accident. There were also some cuts to and minor swelling of her face and forehead.

(b) The Plaintiff suffered a soft tissue injury to the right trapezius muscle of her neck, giving rise to symptoms which resolved within about two months of the accident.

(c) There was a soft tissue injury to her lower back, resulting in symptoms which diminished to occasional discomfort some nine months after the accident and were fully resolved within one year approximately of the accident. This particular injury caused a specific loss of amenity, entailing no horse riding for about a month post-accident. There was also some interference with the Plaintiff's ability to perform the full range of her employment duties following an initial absence of two weeks duration, enduring for some months.

(d) The Plaintiff suffered the adjustment disorder described in Dr Loughrey's report, giving rise to anxious preoccupation, sleep disturbance, nightmares, marked social anxiety and worry. Her "*travel anxiety*" resolved about one year after the accident.

(e) I have described above the damage to the Plaintiff's dentition. I accept the description of Mr Ramsay-Baggs that her gums were bruised and swollen and her lower teeth had bitten through her lower lip upon impact.

[5] General damages for the Plaintiff's personal injuries are to be assessed in the round. Compensation is awarded for pain and suffering and loss of amenity. The Plaintiff suffered a variety of injuries, none of them serious individually. Some of these were fully resolved within approximately three months, whereas others generated symptoms which, progressively resolving and diminishing, had a

maximum duration of around 12 to 15 months. Arithmetical precision is neither necessary nor possible. It is generally inappropriate to evaluate damages for each particular injury, aggregating the individual sums thereafter and I decline to do so. I measure general damages in the round at £8,500.

Special Damage

[6] The first component of the claim for special damage concerns the hire of a replacement vehicle for a period of 20 days, totalling £1,358.03. This was resisted by the Defendant on the ground that the period was excessive. The legal test is that of reasonable necessity. I find that the Plaintiff reasonably needed a vehicle for routine transport purposes initially and, after two weeks, for the purpose of travelling to and from her place of employment, having regard particularly to where she lived. I further find that she could not pay for her personal replacement vehicle, acquired with her father's assistance, until the cheque for £4,700 representing the written down value of her own vehicle had been received and cleared by the bank. Taking into account where the Plaintiff lives, the claim for delivery and collection of £63 is also recoverable. The final component of the Plaintiff's claim for special damage is the agreed sum of £75 in respect of collision damage waiver.

[7] The Plaintiff has clearly established her entitlement to loss of earnings, having been unfit for work during a period of two weeks post-accident. The twin components of this discrete loss are (effectively agreed) figures of £480 (in respect of her main employment) and £150 (in respect of her part time employment) totalling £630.

[8] The Plaintiff claims £2,100 in respect of the application of replacement crowns to three previously crowned upper teeth. This issue was probed in some depth at the trial, mainly by reference to the detailed dental records, which had not featured previously in the Order 25 reports to the same extent. This exercise was facilitated by the evidence given to the Court by the Plaintiff's dental surgeon, Dr McEnhill BDS and the Defendant's competing witness, Dr Kennedy BSC. I make the following specific findings:

(a) In December 2009, one month pre-accident, the Plaintiff had decided to embark upon a comprehensive programme of dental treatment involving (*inter alia*) the replacement of all of the extant six upper crowns.

(b) In the same month, the initial steps in this programme were completed by her dental surgeon.

(c) As a direct result of the accident, the Plaintiff lost one upper central crown and two others were damaged. The lost crown was replaced by a temporary substitute, while the other two affected crowns were maintained.

(d) Within days of the accident, the Plaintiff changed her mind about the comprehensive treatment, considering it too expensive (per the record of 15th January 2010).

(e) Within the immediately following week, the Plaintiff had a further change of mind, reverting to her December 2010 decision, giving rise to the entry "*crown lengthening can continue*".

All of the dental treatment was carried out privately, at the Plaintiff's own cost. Ultimately, it had a cost of several thousand pounds. The individual cost for replacement of the three aforementioned crowns has been measured, without challenge, at £2,100. Having regard to the above findings, based mainly on the dental records and the evidence of Dr McEnhill, I find that the Plaintiff would have incurred this cost in any event. There is no warrant for treating the cost of replacing any of these crowns differently from the other two. Accordingly, this expense is not attributable to the accident. However, the evidence established that an expense of approximately £70 was incurred in respect of re-cementing the two loosened crowns. I find that this is recoverable.

[9] Accordingly, the Plaintiff's special damage totals £1,995.03. To this must be added interest at the rate of 6% from the date of the accident to the date of judgment (today), being £408.98.

Conclusion

[10] The Plaintiff's award, therefore, comprises the following:

(a) General damages of £8,500.

(b) Interest on (a) at the rate of 2% from the date of the Writ (28th September 2011) to date, being £297.15.

(c) Special damage totalling £ 1,995.03.

(d) Interest on (c) totalling £ 297.15.

[11] The Plaintiff will, therefore, have judgment against the Defendant for £11,201.16. This raises an issue of costs. I take into account that by Order dated 19 November 2012, the Master refused the Defendant's application to remit this action to the County Court. I further take into account the additional medical/dental evidence generated following the Master's Order, both before and at the trial. I have considered the recent judgment of Gillen J in **Quinn – v – Keenan** [2013] NIQB 55. I refer particularly to paragraphs [36] – [49]. I have also taken into account another decision belonging to this sphere, **King – v – Sunday Newspapers** [2012] NICA 24. The statutory provision in play is section 59(2) of the Judicature (NI) Act 1978, which provides:

> "*Save as where otherwise provided by any statutory provision passed after this Act or by rules of court, if damages or other relief awarded could have been obtained and proceedings commenced in the County Court, the Plaintiff shall not,* ***except for special cause shown*** *and mentioned in the judgment making the award, recover more costs than would have been recoverable had the same relief been awarded by the County Court.*"
>
> [My emphasis.]

In **King**, the Appellant, having secured an award of £1,000, successfully appealed against the Court's decision to award County Court costs, based on "*the complexity and novelty of the issues raised in the litigation*": per Girvan LJ, paragraph [17].

[12] In my view, the Plaintiff could not realistically have expected to recover general damages in excess of £8,500 from any properly self-directed Judge and her claim for special damage was, at its zenith, just over £4,000. The relevant evidence, which was available all along, demonstrated ultimately that the Plaintiff had **no prospect** of succeeding in the main component of her special damage claim, namely £2,500 in respect of three of the upper replacement crowns. This was a routine personal injuries action involving no element of complexity or novelty. I consider, therefore, that the correct exercise of the Court's discretion under section 59 of the Judicature (NI) Act 1978 points clearly to awarding costs to the Plaintiff on the County Court scale. As regards outlays, I am satisfied that the attendance of both parties' dental surgeons was, in the particular circumstances, proper and reasonable: in their reports exchanged under Order 25 they expressed conflicting opinions concerning the Plaintiff's claim for £2,500 for three replacement crowns (*supra*) and their evidence to the Court greatly illuminated this issue, exposing and explaining the detail and significance of a series of opaque dental records.