

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

BETWEEN:

RONALD HAMILTON

Plaintiff;

-and-

SCARLES ANTON ANDERSON

Defendant.

SHEIL J

The plaintiff in this action is now approaching his twenty eighth birthday, having been born on 12 August 1974. On 22 December 1996 he was a rear seat passenger in a van being driven by the defendant which skidded and crashed, overturning three times before coming to rest. The plaintiff was thrown partly through the canvas roof of the van where he remained until his rescue.

Although the defence was delivered in the form of a denial of liability, that is no longer an issue in this action and the only matter before the court for determination is the amount of damages to which the plaintiff is entitled

in respect of the personal injuries, loss and damage sustained by him as a result of the accident.

At the time of the accident the plaintiff, who was studying computers, was on a placement year at the Lagan Valley Hospital. As a result of the accident, he was unable to complete that placement although he did subsequently manage to obtain a BSc with honours in computers. The plaintiff stated that insofar as employment is concerned, such a degree without “placement” experience is not as good as a degree which has “placement” experience. The plaintiff did manage subsequently to obtain employment with Kingston Technology in Dublin, where he held quite a senior post with three people working under him. The plaintiff accepted in cross-examination by Mr Elliott QC, who appeared with Mr Hunter for the defendant, that his actual experience with Kingston Technology in Dublin has made up for the loss of his “placement” experience insofar as gaining employment is concerned. Unfortunately he was declared redundant by that firm in February 2002 due to the worldwide cut backs in that industry. Since then he has been looking for similar work in the industry but at present the prospects do not look good as recovery in the industry has not yet occurred. In seeking alternative employment the plaintiff is at a slight handicap on the labour market because he is unable due to his injuries to carry or move heavy IT equipment. I award the plaintiff the sum of £5,000 in respect of that handicap on the labour market in accordance with the decision in Smith -v- Manchester Corporation (1974) 17 KIR 1.

It is agreed that the plaintiff has to repay the sum of £868.77 which was paid to him while unable to complete his “placement” at the Lagan Valley Hospital, and accordingly the court awards him that sum of £868.77 which he will hold on trust.

The court had the benefit of a number of agreed medical reports, including two reports from Dr Knox, consultant psychiatrist. In addition to the agreed medical reports furnished by Mr Hamilton FRCS, the court also had the benefit of oral testimony from Mr Hamilton FRCS, who is not related to the plaintiff.

Dr Knox, consultant psychiatrist who first examined the plaintiff on 27 August 1997 records the history of the accident as given by him to the plaintiff as follows.

“The plaintiff went on to describe the circumstances of the accident which happened at about 3.00 am on 22 December last. I understand that he was travelling as a back seat passenger in a camper van when it went out of control and overturned, coming to rest on its side. There had been four others in the back of the vehicle and when he regained a degree of composure he found that they were ‘nowhere to be seen’. He told me that by this time he had also appreciated that ‘I seemed to be hanging through the canopy – I could feel my legs on the ground but my body was inside the van’. He is familiar with that particular stretch of road and he was aware that at one side there is a significant drop. But as he could not see which side of the road he was at he was fearful that the vehicle could topple over the edge with him still trapped in it. He was aware of blood running down his face and ‘I could hear a lot of shouting – some of them were shouting to get me out – others said that they should leave me – but I was scared that it would go on fire or that it would move – I told them to get me out – I was really starting to panic at that stage’. The van then

moved a little and 'I thought I was going over the edge - I screamed a few choice words - and then someone lifted the roof off me and I fell out - it had been holding me in'."

Dr Knox in his first report details the symptoms described to him by the plaintiff which he diagnosed at that time as being a post traumatic stress disorder. The symptoms included initial nervousness in driving, early flashbacks, sleep disturbance, dreams of the incident in which he would waken sweating and shaking, fear that he might end up in a wheelchair as a result of the fractures to his cervical vertebrae and irritability. By the time Dr Knox re-examined the plaintiff on 11 June 2001, he found that the plaintiff, whom he had earlier described as "well motivated towards recovery" had recovered from his post traumatic stress disorder, although the accident continued to influence his psychological state in respect of his sleep pattern and his ability to concentrate.

The plaintiff sustained a seven inch laceration to his scalp which caused extensive bleeding at the time of the injury. This was treated by suturing under general anaesthetic on the following day. The residual scar fortunately lies within the hairline. The plaintiff sustained a severe injury to his cervical spine which was not picked up initially on his admission to hospital. A CT scan carried out on 24 December 1996 revealed that he had suffered severe damage to his sixth and seventh cervical vertebrae which rendered his cervical spine very unstable and he was fortunate that he did not sustain damage to his spinal cord especially during the mobilisation after the injury and while having the anaesthetic for the sutures of his scalp wound.

The cervical spine was stabilised by inserting a metal plate and by a bone graft, the graft being taken from the plaintiff's right hip. The plaintiff has been left with a 2½ inch vertical surgical scar on his right neck and a surgical donor scar on his right hip. Mr Dane FRCS in his report dated 27 May 1997 states that the plaintiff "was extremely fortunate that the severe injury to his neck did not result in damage to his spinal cord and paralysis".

The plaintiff also sustained a fracture of his left scapula which Mr Dane FRCS in his report dated 27 May 1997 states was a very painful injury and would have caused the plaintiff significant pain, tenderness, stiffness and temporary disability for several months following the accident. The plaintiff has now no complaints with regard to the fracture of his left scapula.

The plaintiff also sustained a serious laceration to the palm of his left hand and damage to the flexor tendons of his left middle finger; the plaintiff is right-handed. He has been left with a fine longitudinal scar in the mid palm of his left hand. At the time of Mr Calderwood's examination on 19 July 2001 he found that the plaintiff still had a loss of 20 degrees extension of the middle finger of his left hand although the flexion was full and the grip was strong thereby resulting in no significant disability affecting the left hand.

For a short time following the accident the plaintiff experienced pain, swelling and stiffness in his right wrist but this eventually resolved.

The plaintiff also sustained injuries to the second and third thoracic vertebral bodies, as appears from the report from Dr Crone, consultant radiologist, dated 17 April 2002. Dr Lawson, consultant radiologist, in his

report dated 19 November 2001 stated that in his opinion there is loss of height of T3 and the impression of some loss of height at T2. There is the suggestion of slight narrowing of the T3/4 disc space but no obvious accelerated degenerative change is seen on comparison with previous radiographs, although he considers that the plaintiff remains at risk of developing premature degenerative change in his lower neck and upper back.

Mr Calderwood FRCS in his report dated 19 July 2001 noted that the plaintiff stood with his neck slightly flexed and can only just extend to beyond the neutral position, which causes pain in the neck. All other movements of the neck are half the normal range and all give pain at extremes of movement. Mr Calderwood states that in his opinion the plaintiff will continue to have symptoms affecting his neck and his movements will remain restricted and he may in the long-term develop arthritic changes at the upper and lower levels of the fused area in the cervical spine. Mr Hamilton FRCS in the course of his oral evidence to the court stated that if degenerative changes do occur they will be slow in progression and may develop when the plaintiff is in his mid-thirties.

The plaintiff has complained for a considerable time of pain in his right shoulder. He stated in evidence that he has pain in his right shoulder and stiffness in his neck which is more severe if he has to stand in one place, spend any length of time at a computer or when he is driving. The plaintiff experiences pins and needles down his right leg and right arm if he seated for any length of time. Mr Calderwood in the course of his examination on

19 July 2001 noted that the plaintiff had moderate limitation of right shoulder movement with pain at extremes of movement indicating a capsulitis of the right shoulder which “obviously results from the accident” although there was no fracture of the right shoulder; in his opinion this may continue indefinitely to cause stiffness and pain in the right shoulder.

The plaintiff’s father is a farmer, rearing cattle and sheep on his 110 acre farm. Prior to the accident the plaintiff used to help his father out on the farm but this is now severely restricted by the plaintiff’s difficulty in lifting.

Since the accident the plaintiff stated that he is now a much more careful driver. He finds that he is nervous if he is a passenger, as distinct from the driver, in a car or bus. He further stated that he gets stiff after driving for any considerable time.

Prior to the accident the plaintiff was quite active at sports, including karate, soccer and badminton which he has had to give up because of the condition of his right shoulder. The plaintiff had hoped to take up golf which was the main sports activity in the Dublin firm for which he worked, Kingston Technology, but he found that he was unable to swing a club without occasioning pain in his right shoulder. The plaintiff has tried swimming on the recommendation of a number of his medical advisors but again has problems with this activity due to the condition of his right shoulder. The plaintiff accepted in cross-examination that once he ceased to be a student he would have had less time in any event for these sporting activities.

In view of his relatively young age and the years which still lie ahead of him, I award him £47,500 for general damages for pain and suffering and loss of amenities to which there has to be added the sum of £5,000 Smith v Manchester Corporation and the sum of £868.77 which the plaintiff has to repay to the Trust.

I award interest on the sum of £47,500 general damages for pain and suffering and loss of amenities at the rate of 2% per annum from the date of service of the writ of summons up to the date of this judgment.

Total award:	£47,500.00
	5,000.00
	868.77
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	£53,368.77