**Neutral Citation No. [2014] NIQB 139** | *Ref:* **GIL9411**

*Judgment: approved by the Court for handing down* | *Delivered:* **16/12/2014**

*(subject to editorial corrections)**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

_____

**QUEEN'S BENCH DIVISION**

_____

**Between:**

**MAREK BELKOVIC**

**Plaintiff;**

**and**

**DSG INTERNATIONAL PLC**

**First-Named Defendant;**

**and**

**FIRST CHOICE SELECTION SERVICES**

**Second-Named Defendant.**

_____

**GILLEN LJ**

**Introduction**

[1] In this matter the plaintiff, who is a Slovakian national, seeks damages for personal injuries, loss and damage alleged sustained by him by reason of the negligence and breach of statutory duty of the defendants in the course of the employment of the plaintiff on and before 1 July 2005 when the plaintiff was instructed to carry out a series of manual handling tasks which included repeated lifting of washing machines, cookers, fridges and large televisions on top of other goods. Owing to the excessive weight of these matters, it is alleged the plaintiff sustained serious injuries to his back when engaged in a lift on 1 July 2005. It is common case that the plaintiff was an agency worker at the time the accident occurred and there is no dispute in this action between the defendants, the first defendant having taken over conduct of the action on behalf of both.

**Preliminary Matters**

**McKenzie Friend**

[2] During the course of a large number of reviews that were carried out in this case in 2013, I permitted the plaintiff's brother to act as a McKenzie Friend ("MF") with the accompanying right to represent and present the plaintiff's case albeit the defendants had opposed this step. I concluded that there were very exceptional circumstances in this case pointing to it being in the interests of justice for the MF to represent the plaintiff. Those circumstances included that:

- my perception of the plaintiff's state of health was that it would be difficult for him to conduct the case on his own even with the help of a conventional MF approach,
- the MF, who was a brother of the plaintiff, had largely conducted the case to date,
- solicitors in the past had been found to be unacceptable to the plaintiff,
- the MF had indicated that he would not be giving evidence and thus was not a witness in the case,
- the plaintiff's language difficulties and lack of understanding of court procedures were such that even with the assistance of interpreters I discerned that the case would be subject to excessive delay and procedural difficulty without the invocation of a MF to represent him.

[3] On a number of occasions during the course of these proceedings and this hearing, despite cautionary warnings by me, the MF abused that concession. The court, witnesses (both medical and non-medical) and the counsel/solicitor representing the defendants were on occasions abused verbally with totally unfounded allegations of racism/fascism/fraud/mendacity coupled with vulgar abuse emanating from the MF. Although on some occasions the MF apologised in the aftermath, indicating that he was under stress himself, I recognised that this behaviour was unacceptable.

[4] One of a large number of similar instances will suffice to illustrate the tenor of these outbursts. In an email to Mr Hagan the solicitor for the defendant of the 25 March 2014 the MF recorded:

> "Next time Mr Hagan, watch your dirty mouth what you have been saying in emails. I will teach you respect. You fascist racist person that destroyed my brother health. I will put you to prison where you belong! You criminal. Read documents ttahcing (*sic*) with accusation that you are responsible for my brother worsening health condition and be careful what you are going to say because this time I will put you to prison where you belong. Make sure you will

> reply within 14 days and then I am going proceed with a claim upon you. And make sure you criminal person that all confirmation that you shredded you are going provide. Do you understand fascist.!!!."

[5] Several times during the trial strong submissions were made by Mr Fee QC, who appeared on behalf of the defendants with Ms Simpson, that I should withdraw the concession for this MF to represent his brother and insist the trial proceed without his participation. On each occasion, after rising to give time for measured and dispassionate consideration to the issue and not without considerable hesitation, I refused Mr Fee's submissions but strongly cautioned the MF as to his behaviour in the wake of apologies that he usually gave.

[6] Thus for example in the course of an interlocutory judgment that I gave refusing an appeal by the plaintiff from the decision of Master Bell staying the plaintiff's action pending his attendance at medical examinations on behalf of the defendant (Belkovic v DSG International PLC and First Choice Selection Services Unreported GIL9168), I recorded at paragraph 24:

> "I take this opportunity to remind the McKenzie Friend that whilst I have taken the exceptional step of allowing him to represent the plaintiff notwithstanding that he is not a lawyer because of my perception of the plaintiff's state of health and his language difficulties, I will not hesitate to revoke that concession if the MK exercises that right in a manner that is unreasonable, likely to impede the efficient administration of justice or bring the process into disrepute by virtue of baseless allegations."

[7] In doing so I was conscious of at least three important factors. First the need to ensure fairness to both the defendant and the plaintiff in the hearing. Secondly that the rule of law and the court process must not be challenged by such behaviour. Thirdly that I as a tribunal of fact should not allow myself, even unconsciously, to be adversely influenced against the plaintiff by these outbursts. On the other hand I balanced my awareness of the need for this case to be tried efficiently, without delay and in a cost effective manner. It was already 9 years since the accident triggering these proceedings, there had been a very long history to this case with a highly unusual number of case reviews, and a large number of witnesses, both medical and non-medical often on subpoena from the plaintiff, had been called to give evidence. The cost of these proceedings were starting to spiral. It was a case that cried out for finality. Having again considered the medical reports before me I reminded myself that it might be difficult for this plaintiff to conduct the case on his own at any time and it seemed unlikely that yet another set of solicitors would be found acceptable to him. The trial itself should not have lasted more than a few days if appropriately conducted.

[8] Invoking the spirit of Order 1 Rule 1A of the Rules of the Court of Judicature, I concluded that despite the absence of insight into this behaviour by the MF, the interests of justice including the costs already incurred and time expended, required that I permit this case to continue until its completion with the MF representing the plaintiff given that with robust case management this behaviour could be controlled to a material extent.

[9] Accordingly on occasions in this case, particularly where cross-examinations were becoming an exercise in abuse, I had cause to firmly warn the MF that I would not permit witnesses to be subjected to such unfounded abuse and prohibited him from continuing to cross-examine in such circumstances. I also on occasions imposed a time limit on the length of examinations in chief and cross-examinations which the MF was conducting in circumstances where I determined he was time wasting. I consider these were appropriate steps to take in circumstances where the process was being abused.

[10] I conclude on this preliminary issue by making two observations. First, I remain conscious of the views expressed by Kay J in Tinkler and Another v Elliott [2012] EWCA Civ 1289 where he said at paragraph 32:

> "An opponent of a litigant in person is entitled to assume finality without expecting excessive indulgence to be extended to the litigant in person. It seems to me that, on any view, the view that the litigant in person "did not really understand" or "did not appreciate" the procedural courses open to him … does not entitle him to extra indulgence … the fact that if properly advised, he would or might have made a different application then cannot avail him now. That would be to take sensitivity of the difficulties faced by litigant in person too far."

[11] I was therefore aware of the need to ensure that the indulgence I extended to the MF in this case should not prejudice the defendant. I concluded that the behaviour of the MF in this instance, whilst thoroughly unacceptable at times, did not prevent the defendant having a fair trial. At an appropriate stage I shall consider however whether the conduct of this case by the MF should have cost implications in so far as it may be argued that the trial was unnecessarily prolonged by his behaviour.

**Use of Skype**

[12] In the instant case I permitted the use of Skype to permit evidence to be given by Dr Levkus, a Neurosurgeon retained on behalf of the plaintiff who was giving evidence from Slovakia. I also permitted it to be used when the plaintiff, recovering from operative treatment and clearly in bed, was giving evidence from Slovakia. In permitting this technological advance to be improvised in this matter, I was mindful

of the cautionary approach adopted by Jackson LJ in Re ML (Use of Skype Technology) [2013] EWHC 2091 Fam wherein he said:

> "The technology can be very effective for informal use, but does not lend itself to the court environment. There are problems in everyone seeing and hearing the picture and in the evidence being recorded. There are also issues about security. I would not be willing to use this method if there was any alternative."

[13] The judge went on to describe how practical arrangements had been made to:

> "Provide a bridge between the witness using Skype and the ISDN system in place at court. … this technology mediates between the systems and provides some protection against hacking. The Skype-user is provided with a download allowing them to connect to the court system. In addition to the programme, the witness requires a PC, an internet connection, a webcam, a microphone and a mobile or landline number with which to contact the company for instructions via a multi-lingual team."

[14] In 2013 the Lord Chief Justice of England and Wales used his first press conference to say that video-call technology such as Skype and Face Time could be used to allow criminal defendants to take part in pre-trial hearings without coming to court.

[15] There undoubtedly is a great scope for this kind of technology to be advanced in order to save time, costs and inconvenience to witnesses. Skype is inevitably not as ideal as having the witness physically present in court and its convenience should not be allowed to dictate its use. Nonetheless in civil trials such as the instant case where both parties consented, it avoided the costly necessity for a distinguished surgeon such as Dr Levkus to extract himself from a busy practice in Slovakia and enabled the plaintiff, who at the time he gave his later evidence was recovering from hospital treatment in Slovakia, to give evidence in an appropriate fashion, I considered it a proper use of technology.

**Liability**

[16] It was the plaintiff's case that on 1 July 2005 he had been working for some weeks as an employee of Dixons, a High Street retailer of domestic electrical appliances. The role of the plaintiff as an agency worker was in a distribution warehouse where his duties were to assist in the movement of stock into storage from delivery vehicles and also to load delivery vehicles with items for local distribution. It is common case that the plaintiff was under the direction of a

supervisor Mr Kenny Jones, who gave evidence before me, and also present was the company health and safety officer Mr Tony Quinn who also gave evidence.

[17] It is beyond plausible dispute that the plaintiff received some measure of training from the supervisor and/or health and safety manager in a talk lasting perhaps 1/1½ hours and thereafter least one video lasting some 30 minutes. Mr Quinn then gave a practical demonstration on the use of sack truck or trolley equipment to move the appliances and how to stack the appliances into the rear of delivery lorries. The nature of the training/instruction and how comprehensible it was to the plaintiff or his brother were matters of dispute.

[18] In any event the evidence of the plaintiff suggested that he worked a 12 hour shift from 7.00 am to 7.00 pm and his duties were to unload goods from lorries and then to collect appliances for loading onto delivery lorries. The delivery lorries reversed up to a delivery door, the tailgate would be lowered to bridge the gap into the warehouse and the plaintiff would then collect items from the store and load them into the lorries. It was the plaintiff's evidence that he would be moving over a 100 appliances of various sizes each day. On 1 July 2005 the plaintiff said he was loading a lorry with various appliances and had cause to lift a washing machine from the bed of the lorry to place on top of another washing machine. He was assisted to lift the machine by his brother and placed it onto the stack. It was during this lift that the plaintiff allegedly sustained a back injury. The plaintiff's case was that the accident occurred at or about 2.00 pm and he then went to his car to take a rest as advised by the supervisor Mr Jones and awaited his brother's completion of his shift.

[19] It was a matter of great dispute between the plaintiff and the defendant's witnesses as to whether or not this injury was reported to the supervisor Mr Jones.

[20] Mr Jones asserted in evidence that no such report was made to him and that an injury of the kind described by the plaintiff – the plaintiff alleged that he collapsed to the ground and was writhing in pain – would have been observed by him or other employees or supervisors in the loading bays where the accident happened. Details of accidents will be recorded in the accident report book. He had no recollection of such an accident and there was no reference in the accident report book. This accident report book does record minor and fairly inconsequential injuries and the defendant asserts that there is no reason why an injury of this type would not have been reported and recorded had it occurred.

[21] I pause to observe at this stage that the defendant's premises had closed some years ago and it was its evidence that many of the documents had been shredded. The accident report book had survived apparently because all accidents had to be lodged on a computer which was then shared nationwide and accordingly when the Northern Ireland factory closed down a record of accidents occurring in the Northern Ireland factories still survived because it was part of the UK-wide generated document.

[22] I accept this explanation of the existence of the accident report book and I reject the unfounded allegations made by the MF in this case and the plaintiff that these documents had all been shredded deliberately somehow to prevent the plaintiff's claim succeeding.

[23] There was further conflict between the plaintiff and Mr Quinn/Mr Jones as to what happened after the accident. The defendant's witnesses claimed they were unaware of the accident, and denied the plaintiff's case that they saw the plaintiff in pain, that his brother was providing him with physical support, or that the plaintiff's brother was ordered back to work whilst the plaintiff had to remain in the car outside pending his onward movement to the A&E Department of the local hospital when the brother's shift finished 7.00 pm.

[24] In this context once again the numerous unfounded allegations of racism and lying emanating from the MF against Mr Quinn, Mr Jones and the company I found to be without evidential foundation and I believed the denial of same by these witnesses.

[25] The hospital record on that day records the plaintiff describing an injury at work during the lifting of heavy machinery. The record at the hospital shows he arrived at 7.15 pm and records:

> "History: C/O low back since pm. Lifted heavy machinery today. Pain since then. No H/O back problems in the past."

[26] The plaintiff also asserted that following the incident he had been unable to attend work and that his brother had had to explain that he was injured to the defendant's employees.

[27] Mr Fee on behalf of the defendants invoked the authority of this court in Thornton v Northern Ireland Housing Executive (2010) NIQB 3 where the court set out the criteria for assessing the credibility of witnesses at [12]-[13]. I have refreshed my memory on those criteria and have carefully considered in particular the demeanour of the witnesses. My conclusions are:

- I am satisfied that an accident did occur to the plaintiff's back and this is well evidenced by the complaint made to the A&E later that evening. I believed this part of his evidence and I do not accept that he has manufactured this accident to the extent that, notwithstanding the evident pain he was in at the A and E department that evening, he would have already had the presence of mind to fabricate and relate to the doctor on duty an imaginary lifting accident. Moreover whilst much of the plaintiff's account bore the hallmarks of exaggeration – particularly his repeated unfounded allegations against virtually every member of the Northern Ireland medical profession who ever

treated him – and called into doubt his credibility as a reliable witness, I watched him carefully giving his evidence about the accident and I did believe this part of his evidence.

- Equally so, I am satisfied that Mr Quinn and Mr Jones were doing their best to tell the truth and recollect an incident that happened over nine years ago. My overall impression was that the passage of time had damaged the recollections of all parties to some extent. In my view the probabilities are that the plaintiff did not realise the nature of the injury he had sustained, had initially thought that it was not of a serious nature and that any reference by him or his brother to Mr Jones or Mr Quinn was no more than a cursory reference which did not alert them to the serious nature of the injury or that any substantive accident had occurred. Whether this was due to problems with language or a belief on the part of the plaintiff and his brother that the injury was not sufficiently serious to merit convincing mention of a kind which alerted his employers to the fact that an injury had occurred, is a moot point. Suffice to say that I am satisfied that no attempt was made to cover up the fact that an injury had occurred and the probabilities are that no one, including the plaintiff, realised that this lift had caused a sufficient injury to merit invoking all the necessary reporting obligations which would usually follow on from an accident at work. Back injuries can be notoriously unpredictable and are often shaken off by workers who are unaware that they may have later consequences. I strongly believe that is what happened in this instance and whilst the accident did occur, the plaintiff has greatly exaggerated the aftermath and the strength of his report to his employers. These conclusions however do not shake my conviction that an accident and an injury to the plaintiff's back did occur.

**Breach of statutory duty**

The Manual Handling Operations Regulations (Northern Ireland) 1992 ("the 1992 Regulations")

[28] These Regulations were introduced pursuant to the Framework Directive, the Manual Handling Directive (90/269/EC) which adopts a broad definition of manual handling and states that the employer shall take appropriate measures "in order to avoid the use for manual handling of loads by workers". Under art 3(1) and, to the extent these cannot be avoided, an employer should take appropriate measures to reduce the risk (art 3(2)). The employers require to have regard to numerous factors, including the type of load, the effort required, the characteristics of the work environment and the kind of activity.

[29] These Regulations clearly apply to the instant case in terms of the plaintiff being a manual handling operator and the defendants being his employers.

[30] The Regulations set no specific weight above which the Regulations first come into play and do not define "load" as having any minimum weight. The Guidance clarifies that any system based upon the weight of the load is too simple a view of the problem and an ergonomic approach requires consideration of a range of factors to determine the risk of injury and the steps for remedial action. When specific weights are mentioned in the guidance to the Regulations, the expressed intention is to set out an approximate boundary below which the load is unlikely to create a risk of injury sufficient to warrant a detailed assessment. However it was accepted by the defendants in evidence that at least some of the washing machines which were stocked weighed in excess of 70 kgs, a weight, even if conducted by two persons, which would be in excess of the Guidelines appearing in the 1992 Regulations. Mr Collier, the engineer on behalf of the plaintiff and whose evidence on this matter I accept, estimated that the load being lifted by the plaintiff exceeded the recommended guideline figures set out in the 1992 Regulations by at least a factor of two and that such a load presented a risk that the two operatives could sustain serious injury. I pause to observe that I find that, even with two people working together lifting an object of this weight, it exceeds the guideline figures for manual handling as set out in the Health and Safety Executive document L23 entitled "Guidance and Regulations" in relation to the Manual Handling Operations Regulations 1992.

[31] Regulation 4 states that the duty to avoid manual handling operations arises only in respect of those operations which involve a risk of injury. In Anderson v Lothian Health Board (1996) SCLR 1068, Lord MacFadyen considered that a risk of injury was a foreseeable possibility which is something less than a likelihood of injury or a probability.

[32] In Koonjul v Thameslink Health Care Services (2000) PIQR p. 123 Hale LJ said at 126:

> "There must be a real risk, a foreseeable possibility of injury: certainly nothing approaching a probability. I am also prepared to accept that, in making an assessment of whether there is such a risk of injury, the employer is not entitled to assume that all his employees will on all occasions behave with full and proper concern for their own safety. I accept that the purpose of regulations such as these is indeed to place upon employers obligations to look after their employees' safety which they might not otherwise have. However in making such assessments there has to be an element of realism … it also seems to me clear that what does involve a risk of injury must be context-based. One is therefore looking at this particular operation in the context of this particular

> place of employment and also the particular employees involved."

[33] I have no doubt that the materials being lifted in the instant case are such in terms of size and weight that they did involve a risk of injury.

[34] Having established that the task giving rise to the damage in this case involved a risk of injury I have considered the burden of proof which rests on the defendant in respect of various duties imposed by Regulation 4. As Munkman on Employer's Liability 16th Edition at 25.49 states:

> "It is submitted that the overwhelming weight of authorities supports a proposition that the burden of pleading and proving that all reasonable practicable steps have been taken is upon the defendant both in the context of the regulations and in respect of other statutory duties containing the same words. Thus the Workplace Health Safety and Welfare Regulations (Northern Ireland) 1993, the provision and use of Work Regulations (Northern Ireland) 1999 and the Health and Safety Work Regulations (Northern Ireland) 1999 together with the Management of Health and Safety Works Regulations (Northern Ireland) 2000 all fall within this category."

[35] At the top of the hierarchy of measures which the employer must take is to avoid the need for its employees to undertake manual handling operations at work so far as this is reasonably practicable. The burden on the employer in Regulation 4(1)(a) may be discharged by the employer demonstrating, by evidence, that there was no other way for the operation to be undertaken.

[36] I am not satisfied in this case that there were not alternatives provided to much of the lifting that the plaintiff was obliged to carry out and to that extent I consider the defendants have been in breach of Regulation 4(1)(a) in much of the work that the plaintiff was doing. I find it difficult to understand why a mechanical means of lifting these heavy objects was not produced in a more comprehensive fashion to reduce the risk of injury. The defendant had in place a health and safety handbook setting out information about manual handling and references to risk assessment that specifically refer to manual handling operations. The risk assessments indicated that clamp trucks were available to mechanically handle products and in particular to mechanically stack and lift products down from high stacks. Training and video assistance was given. It is this kind of equipment that ought to have been employed to lift these heavy domestic appliances instead of requiring two men to carry out this work irrespective of the fact the that training was provided. I consider that there is a great deal of force in Mr Collier's evidence that devices such as the common form of wheeled sack truck, while suitable for

moving most appliances at ground level by one person working alone, are of no assistance in lifting appliances even less that than the estimated weight of the washing machines. The lifting of items to stack them on top of another should not be carried out manually under any circumstances. That should have been carried out by some mechanical means and is the express instruction that ought to have been given and, more importantly even if given, the system of work that ought to have been deployed, supervised and *inflexibly enforced* in my opinion.

[37] I therefore agree entirely with Mr Collier's view that narrow forklift trucks should have been improvised here to lift all palletted goods of this type and to place them inside typical delivery lorries. That is the appropriate system of work that ought to have been deployed, supervised and enforced and which was not done in this case. Inadequate instructions were therefore also given as to how these goods should have been lifted on to and off the stacks. This system of work was far too lax and too much left to the discretion of the workers. I believe the plaintiff that he was regularly lifting items such as this washing machine manually with assistance of his brother and this ought to have been observed and stopped. The evidence that a site supervisor was apparently available to supervise work during the day is only helpful if, which I do not accept, that leads to active supervision and the enforcement of rules of safety. This employer failed to embrace Baroness Hale's admonition that all employees will not behave with full and proper concern for their own safety especially when as in this instance these are unskilled agency workers performing lengthy shifts and who may not speak English that well.

[38] If it is not reasonably practicable to avoid the need for manual handling operations, the employers are obliged to demonstrate compliance with three separate duties under Regulation 4(1)(b).

[39] Regulation 4(1)(b)(i) imposed a duty to undertake a suitable and sufficient assessment of the risks to employees which should be updated if it is believed to be no longer valid or if the nature of the operation changes. Guidance on the factors to be taken into account is provided in Schedule 1 to the Regulations and more detail within the Guidance.

[40] In calculating what risks need to be assessed, employers are entitled to take a realistic assessment of risk and need not examine every conceivable risk no matter how small. Further the assessment of risks should be context based looking at the particular operation in the context of the particular place of employment and the particular employees involved. The intention of the Regulations is not to create a "no risk" or "risk elimination" regime but simply to avoid or minimise risks so far as is reasonably practicable (A and Others v East Sussex County Council and Another (2003) All ER (D) 233 at 48).

[41] The most important of the three subordinate duties is Regulation 4(1)(b)(ii), namely the obligation to reduce the risk of injury to the lowest level reasonably practicable. The burden of proving that all reasonably practicable steps have been

taken is upon the employer. This regulation is separate and additional to the requirement to carry out a risk assessment, although a risk assessment will show the employer what steps it ought to have taken in order to reduce the risk of injury to the lowest level reasonably practical.

[42] Having heard the evidence of Mr Quinn and Mr Jones, I was not satisfied that the assessment carried out in this instance had been sufficiently informed as to the methods of avoiding or reducing the nature of the manual handling to be carried out. It was in my view all too casual an approach without effective consideration of appropriate supervision or training. I also consider that there was a failure to take the necessary steps to reduce the risk of injury to the lowest level reasonably practicable by considering proper training, instruction and the use of equipment to alleviate the lifting process with a plaintiff whose English was clearly poor and who may not have been used to this kind of work.

[43] In particular Regulation 4(1)(b)(ii) includes a need to provide training and information. The burden of proof rests on the defendant to prove that adequate steps were taken to train the plaintiff and reduce the risk of injury to the lowest practicable level. I consider that the employer in this case fell down on the fundamental requirement to ensure that the plaintiff could understand the training and instruction that he was given because of his poor English. Insufficient steps were taken to ensure that he understood either in his own language or through the assistance of an interpreter exactly what the task involved, what the risks were and what steps he should take. I appreciate that Mr Tony Quinn confirmed in evidence that he provided practical training, how to lift heavy washing machines with two people, the employer gave lectures as part of induction training and also played a manual handling video illustrating such heavy lifting. I note his evidence that he interrupted the video from time to time to confirm that employees understood it.

[44] However this is only effective provided steps are taken to establish that the plaintiff was able to understand it and I am not satisfied that this occurred. The Management of Health and Safety Work Regulations (Northern Ireland) 2000 specifically states that an employer shall provide employees with "*comprehensible* and relevant information on all risks to their health and safety". I consider that the defendant was in breach of such regulations. Even if, which the plaintiff denies, he was provided with a copy of the master care document utilised by the defendant, I am not satisfied that it was sufficiently comprehensible to him given his limited command of English. Sufficient steps were not taken to ensure that it was fully translated for him in a manner that he could understand. Mr Quinn stated that he had a recollection of the plaintiff and his brother and asserted that he demonstrated the manual handling techniques and the explanatory video. However he had a very weak recall of the detail or length of the instructions provided because of the years that had since passed. Mr Quinn also gave evidence that he had asked the plaintiff, through his brother, if they each understood what was being demonstrated. His evidence was that the plaintiff's brother has acted as an interpreter and had assured Mr Quinn that the plaintiff knew what had been shown.

[45] I watched Mr Quinn carefully during this part of his evidence and I found him uncertain and less than convincing in his assertions as to how thoroughly he had ascertained whether or not the plaintiff fully understood what had been said and that it had been correctly interpreted to him by his brother. Whilst Mr Fee has submitted that the language skills of the plaintiff are better than he has admitted e.g. he has applied for and obtained jobs such as at a call centre, these activities are too risk prone to leave such instructions to chance in circumstances where working men may not fully appreciate the full nature of the risk to which they are being exposed and where the onus is on the employer to make certain that training and instructions are comprehensible. Absent the steps to which I have referred, I do not consider that appropriate steps have been taken to reduce the risk of injury to the lowest level reasonably practicable.

[46] Regulation 4(1)(b)(iii) requires the employer, where it is not reasonably practicable to avoid a manual handling operation, to provide the employee at risk with information as to the weight of the load and the heaviest side of any load. I am not satisfied that Mr Quinn or Mr Jones took that step in this instance, again with the problem fuelled by the language difficulties.

**Expert evidence**

[47] The plaintiff relied upon a report and evidence from Mr Philip Collier, engineer. It is relevant that I at this stage draw attention to the views of the authors of Munkman on Employer's Liability 16th Edition at 25.79 where the author states as follows:

> "Legal advisors should be cautious about the instruction of experts in cases involving manual handling injuries. The Court of Appeal has expressed its displeasure at evidence from experts who seek to give an opinion as to whether or not a task involved a risk of injury or as to whether the defendants were in breach of duty."

(See in particular Aldous LJ in Hawkes; Alsop v Sheffield City Council (2002) EWCA Civ. 429).

[48] The court will however require evidence of the weight of relevant objects and, subject to relevance, evidence of distances and changing centres of gravity. Expert evidence as to forces may well be required in cases involving the pushing or pulling of loads or the effectiveness of various forms of equipment in avoiding or reducing risk of injury. It is anticipated that most of the evidence of this kind is capable of presentation in a written report which the parties should take steps to agree if possible without the necessity for the presence of the expert giving oral evidence.

These are comments which I take the opportunity to cite with approval. I do not consider that Mr Collier's evidence in this instance fell foul of these admonitions

**Common law negligence**

[49] For the reasons that will be obvious from the facts touching upon the breaches of statutory duty that I have mentioned above, I also conclude that the defendants were guilty of breach of common law negligence in that they failed:

- To provide a proper system of work.
- To provide proper instruction, supervision and training.
- To provide proper equipment.
- To provide proper assistance.
- To provide proper comprehensive and comprehendible warnings and instructions about the risks involved for ***this particular plaintiff given his language difficulties***
- To provide proper translations of the training manuals/video so as to ensure that the plaintiff fully understood them.

[50] I am satisfied therefore that the defendant was guilty of breaches of statutory duty and of common law negligence and that these breaches have been causative of an injury to the plaintiff's back.

**Contributory negligence**

[51] By virtue of Regulation 5 of the Manual Handling Operations Regulations an employee is obliged properly to use any system of work provided by his employer for him.

[52] I consider that there is no contributory negligence in this case. This would only arise if it was shown that the plaintiff had failed to follow some prescribed procedure when using the equipment or when carrying out this task. The procedures in this case were far too lax given that he was an unskilled agency worker and I believe the plaintiff was allowed to work as he deemed fit without proper correction or instruction. In my view a proper system of work with appropriate instructions and training in language that this particular employee could definitely understand did not feature sufficiently in this workplace. It is not enough to set up a system of work unless that system is comprehensible to each workman and is properly enforced and supervised by the employer. I do not believe that there has been any breach of Regulation 5 of the Manual Handling Operations Regulations by the plaintiff. There has been no contributory negligence.

**Quantum**

[53] The medical evidence in this case was rife with controversy and dispute. The solicitors originally acting on behalf of the plaintiff (subsequently dismissed by the plaintiff) had retained orthopaedic reports from Mr Wallace FRCS (provided to the defendants under Order 25 of the Rules of the Court of Judicature ("the Rules")), Mr Eames FRCS (similarly provided under Order 25), Mr Brown FRCS (similarly provided under Order 25), and neurosurgeon reports from Mr Byrne FRCS and from Dr Levkus a consultant neurosurgeon from Slovakia, again all supplied under Order 25 to the defendants' solicitors. In addition the plaintiff had retained a psychiatric report from Dr Bunn consultant psychiatrist, again supplied to the defendants' solicitors under Order 25.

[54] Accompanied by scathing criticism of all of these consultants save for Dr Levkus, the plaintiff purported to withdraw any reliance on or reference to the reports of Mr Eames (save for the history of presentation, attendance and complaint of the plaintiff), Mr Brown, Mr Wallace, Mr Byrnes and Dr Bunn.

[55] During the course of the trial submissions were made by Mr Fee challenging the right of the plaintiff now to withdraw those reports which had been submitted under the terms of Order 25. Eventually, clearly recognising the need to process this case in timely fashion, he agreed that Mr Eames' report should be confined to the areas that were agreed and did not seek to press further the admissibility of the reports of Mr Byrne, Dr Bunn, Mr Brown and recognised that although Mr Wallace's report was in evidence and was relied on by the plaintiff for background the plaintiff took issue with a large number of matters contained therein. I have relied only on those reports to which I have made reference later in this judgment.

[56] The defendant had retained Mr Yeates FRCS consultant orthopaedic surgeon, Mr Cooke FRCS consultant neurosurgeon and Dr Fleming consultant psychiatrist. I had the benefit of reports from them and they gave evidence before me.

[57] The plaintiff, having chosen to abandon his own psychiatrist Dr Bunn, then called in evidence the defendants' consultant psychiatrist Dr Fleming albeit, again to save time, Mr Fee permitted him to be cross-examined by the MF.

[58] A number of radiologists on each side had produced reports namely Dr McNally, Dr Hyland and Dr Taylor. All of these reports were put in before me by agreement.

[59] In addition I read reports from or heard evidence from the plaintiff's GP Dr Allen from the Kelly practice in Dunluce Health Centre and physiotherapists Dr Hanratty and Suzanne Kennedy.

[60] In the course of cross-examination and in written closing submissions which were in excess of 300 pages, the MF roundly criticised most of these witnesses from Northern Ireland. Amongst the allegations which came thick and fast, were the following:

- The medical experts in Northern Ireland treating the plaintiff did nothing to address the plaintiff's medical problems giving only "excuses and stupid comments". Northern Ireland medical people "had good fun about the serious health condition" of the plaintiff. "Northern Ireland medical people on purpose undermine the plaintiff's true medical health back problem telling lies to him with disrespectful attitude", excusing their "negligence and unprofessional manner" and "maybe they are just trying to excuse their racial motive they have had as Northern Ireland medical people obviously refusing to provide any medical treatment to a person who has been in a critical health condition". In addition they were trying to "attack the plaintiff and undermine his very bad health conditions". In short the MF submitted the plaintiff feels that these medical people from Northern Ireland had discriminated against him on grounds of race and disability.
- His jeremiad against the medical profession in Northern Ireland in general has surfaced throughout this case not only in various medical records which were before me, and which do not merit recitation in this judgment, relating to unwarranted aggression towards and verbal abuse of those who were treating the plaintiff and their staff (e.g. the secretary to Mr Eames has noted an extremely abusive and foul mouthed telephone conversation with the MF on 9 2 06), but also in the verbal attacks made on the various witnesses giving evidence in this trial.
- A GP from Sandy Row, an orthopaedic doctor from the ICATS Clinic, a doctor from the Pain Clinic and another surgeon systematically gave false medical statements to avoid giving any medical care to him. Dr Gillespie from the Pain Clinic had acted in a racist manner towards him. Mr Hamilton, Orthopaedic consultant at Musgrave Park Hospital had not treated him "as a human" and was "looking only at the colour of my skin".
- Dr McNally the radiologist was fraudulent.
- Dr Bunn was abusive and disrespectful to the plaintiff.
- Mr Wallace was hateful and disrespectful to the plaintiff.
- The plaintiff's general practitioner in the Kelly practice had been negligent in treating him.
- The physiotherapists, (including Suzanne Kennedy and Dr Hanratty) had been fraudulent. In particular Ms Hanratty had falsified physiotherapy notes. Suzanne Kennedy had allegedly never treated the plaintiff and yet had falsely written a poor report on him.
- Mr Yeates and Mr Cooke had relied on fraudulent reports and ignored the plaintiff's medical records. Mr Yeates had failed to treat him properly causing him to be painful after an examination. Mr Yeates, Mr Eames and Mr Cooke had difficulties "distinguishing what is true and what is false" and "they think they can give any untrue evidence to the court in the hope that it

will be dealt with as credible evidence because they are Northern Ireland people". Mr Cooke had deliberately made statements solely to protect Mr Eames who had acted negligently. Mr Eames had negligently postponed surgery for his brother.

- Mr Browne, Consultant Orthopaedic surgeon, had treated him unfairly in preparing reports on his behalf.

[61] I pause to observe that without exception those witnesses from the above list who gave evidence before me bore these allegations with fortitude and dignity. Having watched these witnesses and having read the relevant reports I found not a scintilla of evidence to support any of these allegations. Suffice to say I totally reject them. I emphasise however that, other than to reflect on the credibility of the plaintiff who clearly allied himself with these allegations made by the MF, I have not allowed these allegations to deflect me from my proper consideration of the injury that this plaintiff received.

**General damages**

*The plaintiff's medical history pre and post-accident*

[62] There is a paucity of any evidence relating to any clinical signs or complaints of pain in the plaintiff's back prior to this accident. Thus

- the plaintiff's medical documentation held in Slovakia and commented on by Dr Levkus in his report of 2013 makes it clear that based on an examination he underwent in January 2000 at the Central Military Hospital Prague he had no health complaints at that time,
- his health condition was good enough for him to work under hazardous conditions,
- a follow up examination in 2001 betrayed no evidence of back pain,
- none of the medical documentation held by his general practitioner in Slovakia and the medical records pertaining to the period between 25 February 2002 and the date of the injury make reference to any previous back problem.

[63] The one discordant note to this clean bill of health on his back pre injury was the evidence of Dr Hanratty a chartered physiotherapist. I pause to observe that this was an extremely well qualified physiotherapist with a Master's degree from 2009 and a PhD qualification in November 2013 who has been practising since 2002. When she saw the plaintiff on 9 November 2005 with a two month history of right posterolateral leg pain radiating from the proximal thigh to the lateral border of the right foot, she recorded, inter alia:

> "1999 - 5 years - worked in construction – heavy lifting – had h/o LBP - never felt like this was a major problem – took brufen that settled."
> In her written report she said "In the past, Mark has had intermittent low back pain since working in construction in 1999. There was no history of leg pain."

[64] This witness was cross-examined by the MF on the basis that she had fraudulently made up this reference and that the plaintiff had never said this to her. In evidence the plaintiff denied ever having said this and asserted that he had never had any back problem prior to this injury.

[65] I watched Dr Hanratty carefully during the course of her evidence and she struck me as a consummate professional who would have conscientiously and honestly recorded what she was told. I recognise of course that language difficulties can contribute to misunderstanding and misinterpretation with the danger of patient and physiotherapist speaking at cross purposes in the course of an answer and question session. Notwithstanding this, I believe her account and I reject entirely the allegations that she deliberately manufactured this.

[66] However despite the length of time that the MF spent on this issue both in court and in his written submissions, I consider it essentially a peripheral matter. As Mr Yeates indicated, if such pain was short lived, it is of no significance. It would only be of significance if it was prolonged being in excess of 4-6 months. Reflecting on the previous medical records of the plaintiff from Slovakia, and the absence of any reference to back pain, I do not consider that this record of low back pain in 1999 is of any real significance in the context of this case even though I believe that he did suffer it as recorded by Dr Hanratty.

[67] Similarly the MF spent a lengthy period cross examining on the basis that Suzanne Kennedy, physiotherapist had fabricated a complete examination of 28 November 2005 (the report was not typed up until 5 1 06). Once again I reject this allegation as completely unfounded. The report of this witness was very impressive and I had no difficulty accepting the contention that she may have delayed her report pending the receipt of an MRI scan.

[68] Post-accident, some of the more salient references in the plaintiff's evidence and his medical records reveal the following:

(i) On the evening of the accident 1 July 2005, Dr Kurup at the Belfast City Accident and Emergency Department recorded:

> "History c/o low back pain since pm. Lifted heavy machinery today. Pain since then. No back problems in the past."

He was given painkillers.

(ii) 4 July 2005 his GP records severe left-sided pain with no radiation to the left leg.

(iii) The plaintiff's evidence before me was that he attended his GP the following day and took a week off work during which he spent seven days in bed with painkillers. He returned to work as he needed an income but there was still substantial pain. He recalled being three weeks in work at that stage but most of the time he was sitting down and only carrying small objects. He tried to lift but could not. He said his employers knew that he had an injury as everyone was pointing at his right side and asking how he was.

(iv) On 8 October 2005 he attended the Belfast City Hospital because of pain in his legs. He wanted a doctor to give him stronger tablets explaining that he had injured himself in July. The doctor advised him to seek specialist advice.

(v) The GP records of 10 October 2005 note him attending Dr Jones with a right sided buttock pain.

(vi) Records reveal that on 17 October 2005 he saw the GP Dr Alison. In evidence the plaintiff complained that he had been visiting his GP regularly and complained of pain and that the records were inadequate. Finally she agreed to arrange an x-ray on this date. Dr Alison subsequently told him there would be nothing on x-ray and there was no need for treatment as it was only muscle problem. The plaintiff's evidence was that between July 2005 and October 2005 he telephoned his GP many times and received cocodomol and voltarol but there is no record of this in the GP notes and records.

(viii) An initial referral to the orthopaedic clinic on 17 October 2005 indicates a 12 week history of both back pain and right sided leg complaints suggesting that he did have right sided sciatica established at an early stage after the accident. X-rays at this stage revealed nothing of note.

(ix) An MRI scan of the lumbar spine on 13 December 2005 at the Ulster Hospital was reported as showing a large right sided paricentral disc prolapse at L4/5 level. At the L5/S1 level there was a central and right paricentral disc protrusion with an annular fissure and the disc was in contact with the right S1 nerve root.

(x) He was subsequently seen at Mr Eames' orthopaedic clinic on 23 January 2006. The clinic letter records that he complained of low

back pain radiating into his right leg and that this started intermittently four weeks previously. The treatment options were discussed with him and he was put on the waiting list for lumbar disc surgery at Musgrave Park Hospital. I pause to observe that I saw in this referral to a waiting list nothing out of the ordinary experience of many patients throughout the UK and certainly by itself it betrayed no evidence of negligence or lack of care on the part of his medical carers.

(xi) The plaintiff was clearly unhappy with this delay and it further fuelled a raft of allegations about mistreatment by Northern Ireland doctors. He returned to Slovakia in June 2006 and the records from there indicate that on 15 June 2006 he underwent a right sided L4/5 hemi-laminectomy and discectomy.

(xii) Since that time, and having returned to Northern Ireland, he appears to have experienced significant on-going problems with low back pain and neuropathic pain in both legs. There are a number of medical attendances e.g. 7 July 2006, 20 September 2006 (which records an abusive exchange with the GP), 28 August 2007 (where he describes persisting pain which he thought was getting worse) and 17 October 2007 with the senior psychotherapist Ms O'Hagan.

(xiii) An MRI scan of 14 June 2010 was reported showing a loss of the normal lumbar lordosis. Disc dehydration was noted in the lower lumbar spine with some disc space narrowing at L4/L5 and L5/S1. At L3/4 level a disc bulge was noted into the left foraminal region. At the L4/5 level a broad based posterior soft tissue was seen causing significant defacement of the thecal sac along with narrowing of the lateral recesses, more marked on the right side. At L5/S1 level a broad-based posterior soft tissue was seen causing effacement of the anterior thecal sac.

(xiv) A further MRI scan was performed on 5 November 2013. This report indicates at L3/4 level a mild diffuse disc bulge, asymmetric to the left with a left lateral annular fissure. At L4/5 a moderate right posterolateral disc protrusion was noted with mild facet hypertrophy and previous surgical approach. The conclusion was of two level disc degeneration with herniations at L4/5 and L5/S1.

(xv) The reports from 29 January 2014 onwards are from Slovakia. The plaintiff was admitted to the neurosurgical unit on 9 June 2014. He underwent a CT scan of the lumbar spine which confirmed a disc herniation on the right side at L4/5. Revision L4/5 disc surgery was performed on 10 June 2014.

(xvi) Neurological review in Slovakia on 31 July 2014 indicates that he has no pain in his leg but still has pain in the lower back area. There is no report of limb weakness. The undated rehabilitation report indicates he has no leg pain but persisting lower back pain and reduced range of movement.

*My conclusions on the plaintiff's condition*

*A. Physical injury*

[69] I am satisfied that there is overwhelming evidence that this plaintiff had established degenerative changes in the lower back both preceding and at the time of the alleged injury. These pre-existing degenerative changes will not have developed in the course of his employment with the defendant. Lifting the excessive weight may have caused some further damage to the disc accelerating the development of the protrusion that eventually led to his surgery. In short he has evidence of multi-level disc degenerative disease and it is not likely that the abnormalities which have occurred at three levels have followed the lifting procedure. That situation was probably going to occur by natural means with the due process of time. My reasons for so concluding are as follows:

(i) Dr Levkus, the plaintiff's own neurosurgeon, has recorded that where traumatic process is already proven, it is debateable whether any single accident can cause damage to a healthy unaffected verteberal disc. No traumatic process can lead to the herniation of undamaged disc. This is well proven by clinical and experimental evidence. He went on to note that the spine may be damaged due to a degenerative process that may not necessarily demonstrate any clinical symptoms. Referring to the MRI scan of 2005 and its findings, he said that the process of the genre of changes contained therein started at an estimate of approximately six months/one year prior to this. An excessive load may lead to acceleration of the degenerative changes. He made the point that the MRI scan performed in 2010, when compared to that carried out in 2013, produces evidence that a relapsing damage to the L4/L5 intervertebral disc is present and progression is also seen in the damage to the L5/S1 intervertebral disc with damage to the L3/L4 intervertebral disc commencing.

(ii) Dr Levkus's conclusion was that the probability must remain that the plaintiff's advancing degenerative disease would have given him symptoms in the ensuing years as is now evidenced by the degenerative change at L3/L4. In the absence of the lifting episode there remains the probability that prolapse at L4/L5 could have been avoided for some years.

(iii) Mr Yeates was of the opinion that it takes years for changes on scans to be evident. Lifting a weight will not have led to the degenerative changes although may cause the degenerative changes to accelerate. The situation that has now occurred was probably going to occur by natural means with the due process of time. That period could have been upward of 12-18 months or up to two years. Unfortunately there is no scientific evidence available stating when such a disc prolapse would inevitably prolapse leading to symptoms. It is however well recognised by orthopaedic and spinal surgeons that everyone who has had disc prolapse has a degenerative disc in situ and one single isolated lifting incident will not cause a normal disc to prolapse. The presence of sequestration in the plaintiff illustrates the process of degeneration. Disc disease is largely a constitutional problem.

(iv) Mr Yeates was of the same view of Dr Levkus that the absence of any signs of degeneration on the *x-ray* of October 2005 was of little significance. X-rays will show conditions of the spine such as tumours or other medical problems including spondylothesis but in persons between 25-50 these are seldom of any use because for x-rays to show degenerative change such a degeneration would have to be present for some years before there would be any narrowing or reactive bone change visible. They will not show a prolapse disc. It is the MRI scan that will pick up intervertebral disc damage.

[70] Mr Cooke similarly said that it is not possible for pre-existing degenerative changes to have developed in the course of a two month employment. Lifting excessive weights may have caused some further damage to the disc accelerating the process of degeneration. The follow up MRI scans suggested that the degenerative change was due to the natural history of lumbar spinal degeneration and cannot be linked to the alleged lifting injury. Given that he developed a prolapse at L5, it is possible that the accident may have caused a minor degree of injury but for most part the subsequent development of prolapse relates more to the fact that it was a site of significant lumbar degeneration. In his view the degenerative disc was bound to prolapse and it likely would have developed within 12-18 months even without the accident. The follow up scans of 14 June 2010 and 5 November 2013 indicate continuing progressive degenerative change at L4/L5, L5/S1 and now at L3/L4. This reflects the normal degenerative process in this man's back due to an undefined constitutional reason.

[71] Despite the assertions of the MK challenging at length these assertions with, inter alia, pre-existing photographs of the plaintiff, the plaintiff's previous medical records and copious extracts from various articles which were either not put to the medical witnesses or where they were rejected by them, the fact of the matter is that there is no credible evidence to challenge these assertions of the doctors who gave evidence before me. In the course of his lengthy written submissions, and during cross-examination of Mr Cooke and Mr Yeates, the MF raised a number of articles

which he had discovered on the web. The plaintiff had supplied me with a document entitled "Literature Review" which included 36 pages of extracts from an array of texts, extracts from the web etc which allegedly set out the causes of lumbar degenerative disc disease and symptoms arising therefrom. In his closing submissions he made a series of references to the literature. As Mr Yeates pointed out on a common sense basis, internet "snatches" of articles are usually articles which are a conglomeration of other findings but they need great analysis of their source and an assessment of the standing of the authors. The MF failed to recognise that such articles need proper review and approval by medical witnesses rather than a lay person extracting what appears to be favourable extract from a web search. I therefore place my emphasis on the evidence that was presented to me by these experts rather than the array of information that the MF sought to assemble, much of which had never been put to the witnesses in the case.

[72] I listened carefully to the evidence that the plaintiff gave concerning the pain and suffering that he has endured since the accident. There is no need for me to rehearse in detail what he described since it is well covered in the history that he has given to the various doctors. In essence his evidence included the following points:

- He has continued to have pain in his back and legs with accompanying psychiatric symptoms and in his view the medical experts in Northern Ireland failed to deal in timely fashion or at all with it. He considered that his mental state was damaged as a result of the pain.

- He cannot live his life as before, he cannot sleep and is "up all night". He has to take many medications which he does not think are good for his health. He had been an active person and a sporty man whereas now he cannot do anything. The most difficult thing, he asserted, was that he cannot cope mentally. He suffers nightmares and he is fighting with the pain mentally and physically. He eventually had to seek help from doctors in Slovakia because the doctors here were not assisting him. When he talked about his pain to doctors, they laughed in his face. His GP told him that he was making it up despite the fact that he was complaining to everyone. It was only in Slovakia that he got proper treatment. He had attempted to commit suicide in 2006.

[73] Mr Fee submitted that inter alia the absence of any objective evidence that he was on lighter duties in the aftermath of his accident, the absence of any note in work recording his injury his obtaining fresh employment in a call centre and being trained to do this without apparent mishap and the absence of any note of his attendance with his GP in his GP records between July 2005 and October 2005, all pointed towards counsel's contention that the deterioration of his back condition was not connected to his injury. I do not accept this. I believed the plaintiff when he told me that after his accident on 5.7.05 and his subsequent visits to the A and E/GP he continued to suffer pain in his back. Why would he have left his job with the defendant otherwise? Is it just a coincidence that his accident leads to a period when

he gave up his job? It is not unusual for patients to self-treat with painkillers for back conditions even if it is not true as he asserts that he did get prescriptions from his GP between July and October 2005. For my own part I believe he may have received such prescriptions which may have not been recorded although not as often as he relates. These points, coupled with my assessment of the plaintiff when he was giving this evidence, convinced me that there was a causal connection between his pain/premature deterioration and this accident.

[74] I am satisfied therefore that this accident has contributed to an acceleration of a pre-existing degenerative condition which would have continued to deteriorate even without the accident. The accident has probably accelerated that process by something in the range of two years. This is no small matter as in my view the pain and suffering he has endured as a young man for around two years earlier than would otherwise have been the case —including the earlier operative treatment and its sequelae -- has been substantial and this is reflected in the award I have made. For this reason the award is somewhat more generous than would normally be the case for 2 year acceleration simpliciter of an inevitable process.

[75] In his closing submissions in writing the MF introduced a series of headings which had not been pleaded and which had not been the subject of anything but the merest reference in any of the medical evidence called by him or before me. These included:

(i) Injury to the function and control of the plaintiff's bowels. Insofar as this has any basis medically or that it has been a consequence of the accelerated back problems, it is not of any great moment. I consider that any remote bowel problem connected with his back pain is included within the general damages I have awarded.

(ii) The hernia of the plaintiff has been affected. This did not appear in the pleadings and was not an issue before the court.

(iii) It is now alleged that he suffered a discrete leg injury, toe pain, and ankle injury, none of which appeared in the pleadings and insofar as there was pain in these areas as recorded in the medical evidence during the accelerated period of the back injury, these were all a product of the back injury and are encompassed in the award of general damages for the back injury.

*B.* *Psychiatric Injury*

[76] The MF in his closing submissions contended that the plaintiff had suffered "severe psychiatric damage" which significantly changed his personality and level of confidence because he has been dependent on other people and support since the accident. References were made to the fact that he attempted self-harm in 2006 and that his limited physical functions have a strong impact on his mental condition. It

allegedly has affected his mood and causes him anxiety, despair and a feeling that his life is not worth living. As I have already indicated, the plaintiff chose to abandon the report on him from Dr Brunn dealing with the psychiatric aspect. He relied entirely on the defendant's witness whom he called to give evidence. In the course of his report of 18 February 2014 and his evidence before me Dr Fleming made the following points:

- Whilst he accepted that the plaintiff was having difficulties coping with his back condition, nonetheless if there was to be a diagnosable condition of even mild depression, he would have expected to have found some record of that in the GP's notes with some indication of objective evidence. He could find no such evidence. The plaintiff stated in evidence that he had made such complaints to his GP but they were not recorded. Whilst accepting that he was psychologically well with no particular vulnerability to the development of psychiatric problems prior to his accident, none of the other examiners in the case have documented any significant disturbance of mood or behavioural disturbance that would point towards a clinical significant depressive condition after the accident. The general practitioner notes and records make no mention of any psychological complaint and he was prescribed citalopram at the request of Dr Bunn after he saw Mr Belkovic in October 2011. My view was that if these complaints had been of any moment they would have been so recorded.

- When he discussed the matter with the plaintiff he found no objective evidence of any clinical depression, no depressive empathy and no depressive feelings. He found no evidence of any psychiatric upset or depression.

- He did note the entry in the Slovakian hospital indicating that he had attempted suicide but other than that he found no indication of psychiatric illness. Although there was a history of overdose in 2006 when he had gone back to Slovakia, the translated correspondence from the hospital where he underwent surgery in Slovakia in June 2006 portrays no information on the overdose in February 2006 and no information from the psychologist or psychiatrist whom he attended and who apparently prescribed anti-depressants for him in the months leading up to the surgery. The evidence of the cause of this is not clear in any event. At one stage the plaintiff accused Mr Eames of being the cause.

- The plaintiff's mood is a reaction to the underlying cause of pain and if he was going to suffer from this condition in any event at some stage, then it is likely that the reaction would have been similar to that which occurred in the aftermath of the accident but at a slightly later date.

- When he saw Dr Fleming he was described as bright and reactive with no depressive empathy and "he smiled and even laughed at times during the examination".

[77] I consider that there is no objective evidence that this man suffered from any clinically diagnosable psychiatric syndrome, depression or otherwise attached to this accident and that Dr Fleming has correctly summarised the situation when he describes complaints of frustration and normal understandable lowered mood arising out of chronic pain and loss of functioning. I therefore do not consider it appropriate to make any award for psychiatric disturbance during the two years that I have allowed for accelerated back injury. However, I have reflected the fact that the acceleration did cause early pain and suffering which did contribute to this frustration and understandable lowered mood in the general damages which I have made. To that extent I have awarded a slightly higher figure than I normally would otherwise have done in the general damages.

[78] In summary therefore I consider that this injury at work has probably contributed to acceleration by about two years of his extensive and progressive lumbar disc degenerative disease. The fact that the prognosis for resolution of his symptoms may be small is not connected to the injury other than this two year acceleration. None of his symptoms or treatment, physical or mental, after that period can be connected to the injury which is the subject of this claim. However that acceleration has caused him pain and suffering and loss of amenity for this period of two years and led to an earlier disc protrusion than otherwise would have been the case. Taking into account the pain and suffering he has endured, his inability as a young man to enjoy the amenities and hobbies of his life including work about his home during that period and the accompanying sense of frustration and understandable lowered mood arising out of chronic pain and loss of functioning for that period, I value his general damages and loss of amenity as £30,500.

**Special Damages**

[79] Despite being reminded by me on a number of occasions throughout these proceedings of the necessity to plead his case fully in the Statement of Claim and to give evidence of any point upon which he wished to rely, the MF in the course of his written closing submissions, introduced a series of special damage claims which had not been included in the Statement of Claim or any of his amendments, and which, more importantly, had not been the subject of any detailed evidence, examination in chief or cross examination. These included:

(i) Cost of nursing care on a basis that the plaintiff's brother Radko had taken over a large number of duties for the plaintiff both day and night with a suggested rate of £6.50 per hour. Radko did not give any evidence before me.

(ii) Future accommodation costs on the basis that it would be convenient for the plaintiff to modify his house. No evidence was given on the specifics of this and no costing addressed on this issue.

(iii) Future special equipment for the plaintiff including special bed/chair. Once again no evidence about this was given nor any costing proffered.

(iv) Costs of travel to Slovakia for surgery in 2006 and 2014. I am satisfied this treatment could have been carried out in Northern Ireland. No figures were offered for challenge in evidence in this regard and were not pleaded in the various amended statements of claim. No specific evidence was adduced to the accountants or to the court indicating whether or not the additional travel costs which the plaintiff incurred might not have been incurred in any event in the normal course of events when he might have been returning to Slovakia. Due to the lack of evidence I therefore disallow any figure for this amount.

(v) General inability to carry out work around the house for two years would be a factor I have taken into account in the general damages, but in any event, no detailed evidence was given about the nature of the DIY tasks which the plaintiff is unable to carry out or relevant costings. For the two years that his condition was accelerated, I have allowed £500 in his general damages for this aspect.

(vi) Translation documents are issues to be determined on the question of costs at the end of the case. This also applies to the appropriate fees charged by the experts.

(vii) The travel expenses were never costed either in the pleadings or in evidence before this court.

(viii) Similarly, stationery expenses were never pleaded or raised in this court.

(ix) Credit interest was again neither pleaded nor raised in this court.

[80] Since I consider that the plaintiff's condition was only accelerated by two years, there is no question of future loss of earnings.

[81] This leaves outstanding the question of loss of earnings for the period of two years during which I consider his condition was accelerated.

[82] Accountants on behalf of the plaintiff and on behalf of the defendant had helpfully made calculations on the basis of various scenarios for loss of earnings. Since I have concluded that his condition was accelerated by two years, I have decided to permit loss of earnings for two years. Although there is clearly some measure of uncertainty about the nature of the work that he did after the accident, it seems to me that a figure of £13,900 is an appropriate net figure for loss of earnings during this period.

[83] The total award therefore is £44,400. On the question of interest, in light of the length of time since the accident happened and the proceedings were issued, I shall ask counsel to address me on the relevant period for which interest should awarded on both general and special damages.