

Neutral Citation: [2016] NIQB 84

Ref: **STE10087**

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

Delivered: **5-10-16**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

Between

MARK OWEN PATRICK LAVERY

Plaintiff:

-v-

KRISTAN McDERMOTT

Defendant:

STEPHENS J

[1] The plaintiff Mark Lavery then 18, now 29, sustained injuries in a road traffic collision which occurred on 17 December 2005. The defendant has admitted liability and the only issue is the assessment of damages. The plaintiff lives in Australia and he has applied to adjourn the hearing of this action which is listed today on a number of grounds including lack of legal representation, an inability to travel to Northern Ireland given the lack of a visa to ensure his return to Australia and a lack of medical evidence. The plaintiff has applied to adjourn by various e-mails to the court office and at an earlier stage I had refused all of those applications, but had permitted the plaintiff to attend the hearing by video link on various conditions. The plaintiff was unable to arrange a video link on those conditions and has renewed his application to adjourn. The plaintiff's father Mr John Lavery has attended today and purely for the purposes of this adjournment application only, not otherwise, I granted Mr John Lavery the right to make representations on behalf of the plaintiff.

[2] I have decided to permit an adjournment but it will be on a number of conditions which I will presently set out. Before doing that I will outline the issues between the parties. In doing that I make it absolutely clear that I have formed no view whatsoever in relation to the outcome of the issues but rather I wish to make a record for the assistance of the parties to see what needs to be done and to concentrate the parties on those issues.

[3] After the road traffic collision on 17 December 2005 the plaintiff was seen at Erne Hospital on 24 December 2005. Complaints of "sore neck between shoulder blades" were made by the plaintiff. On examination he had a decreased range of

movement in his neck with marked soft tissue tenderness. He was reassured and prescribed Voltarol and Diazepam. On 30 January 2006 he attended his general practitioner with frontal sinusitis and a three day history of pain over right frontal area and behind eye. His blood pressure was 100 over 70, pupils normal, ears, throat no abnormality detected, he was tender on palpation over sinus. There was no nuchal rigidity and he was prescribed an antibiotic Doxycycline.

[4] The plaintiff's case is that he has continued to suffer from headaches which have interfered with his working capacity and he asserts that these were caused by the road traffic collision. I set out some of the evidence in relation to that and again I emphasise that in doing so I have not formed any concluded view. Dr Patterson a consultant neurologist has reported and his conclusion is that the headaches are tension headaches. Dr Morrow has also formed a view and it is as follows:

"I would be in agreement with Dr Patterson's opinion that therefore these are largely tension type headaches and Dr Patterson's contention that headache alone should never be bad enough to keep people off work therefore it is somewhat surprising that Mr Lavery has not been able to return to work being otherwise healthy and able to do so. This may contribute to any ongoing anxiety. Overall therefore I feel this young man's headaches are multifactorial in origin. It is difficult to definitively link them to the index accident. They did not commence until some six weeks following the index accident from Mr Lavery's own history and from the GP notes and records. That the headaches came on after the neck pain and stiffness had settled or was settling and that they had persisted in the longer term suggesting that there are other etiological factors outwith the index accident."

[5] I also have a report from Dr Paul McMonagle and he concludes his report by saying:

"I no longer believe the evidence supports a link between the accident and Mr Lavery's headaches."

[6] There is also a report from Mr Fannan and he states:

"The headaches which he describes are not due to the accident but are in fact tension type headaches by his own admission they are slowly improving and I feel that with the appropriate support his headaches will ultimately settle completely."

[7] These reports are all based upon various histories given by the plaintiff and for instance one of the histories is set out by Mr Peyton in his report dated 5 June 2006 in which the plaintiff is recorded as having informed Mr Peyton that he suddenly developed severe pain above the right eye around the end of January.

[8] So that is some of the medical evidence which has been brought to my attention. I form no view in relation to it. The plaintiff has produced an MRI scan which was carried out in Australia on 27 July 2016 and there is also a report from a Dr Cannan dated 22 September 2016. That report does not address the issue of headaches but it states that the scan results support the proposition that the patient has been having radiation of pain to the right upper limb and has been having tingling and numbness. The patient's symptoms in Dr Cannan's opinion could be due to trauma that he sustained from the last motor vehicle accident in 2005.

[9] The plaintiff's father has stated that the plaintiff will be ready for trial in three months from today. I fix the adjourn date for the trial as 16 January 2017. The plaintiff should anticipate that there will be no further adjournments and that if he does not attend that his claim will be dismissed with costs being awarded against him in favour of the defendant.

[10] The plaintiff should be clear that either he will be a litigant in person, that is presenting his own case or that he will have a solicitor and barrister representing him in court. I granted his father today a right of audience but he, the plaintiff, should be quite clear that either he attends or a solicitor or barrister attends and that at the hearing of this action his father will not have an ability to represent the plaintiff. The plaintiff if he wishes to obtain legal representation will have to make immediate arrangements to obtain legal representation. He should anticipate that there will be no adjournment of this action on the basis of an inability to obtain legal representation.

[11] The plaintiff if he wishes to submit further medical evidence will have to do so on or before noon on 9 January 2017. If he does not do so by that date and time then no further medical evidence will be allowed at the trial of this action on his behalf.

[12] I turn to the question of a video link. If the plaintiff is representing himself then I make it clear to him that it is not going to be possible for him to appear by videolink from Australia. Giving evidence by video link and presenting an entire case by video link are totally different matters. I have been told by his father today that he is able to get a visa, that he is able travel and therefore he should be present in court if he is going to represent himself. The position may be different if he obtains legal representation. So if he obtains legal representation then the legal representatives may apply to the court for him to give evidence by video link but that presupposes that he gets legal representation and the legal representatives makes an application and proper arrangements are put in place for that videolink.

[13] I also make it clear to the plaintiff that if he is alleging that he has a loss of income or that he has an ongoing serious disability caused by this road traffic collision then he will have to make proper discovery of his medical notes and records which are in Australia. Furthermore he will have to make proper discovery of his earnings in Australia or his benefits payments in Australia and he will have to make proper discovery of his visa application forms for his entry into Australia. All those are relevant documents. Absent such documents then he can anticipate that some of his claim may be struck out on the basis of a failure to give proper discovery or on the basis of a failure to comply with an earlier order of the Master.

[14] I award the cost of today's hearing to be paid by the plaintiff to the defendant in any event.

[15] Finally the defendants have indicated that this case may fall within the jurisdiction of the County Court. If they are minded to bring an application to remit the action then they are to do so on or before noon on 19 October 2016. I will ask the Master to give priority to any such application. However given the long history of this case in the High Court it may just be better to get on with it in the High Court.