

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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LOUIS McNALLY

**Plaintiff:**

v

MALACHY McGOWAN and  
FRANK McGOWAN

**Defendants:**

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**STEPHENS J**

**Introduction**

[1] The plaintiff Louis McNally, then 58 now 61, sustained injuries in a road traffic collision which occurred on 28 February 2014 on the Woodtown Road, Ballymena, Co Antrim ("the collision"). The defendants have admitted liability, there are no special damages, and the issue for determination is the amount of general damages.

[2] It was agreed between the parties that the assessment of general damages would be on the basis of the medical reports without any oral evidence being given by the plaintiff. This was out of consideration for the plaintiff who as will appear has a number of very significant health issues which are unrelated to the collision. The lack of any oral evidence from the plaintiff has a number of potential impacts including where he has given conflicting histories to the medical examiners that he is not in a position to establish on the balance of probabilities that the most favourable history is the correct one and he is vulnerable to an inference that he is deliberately exaggerating or is such a bad historian that he should not be relied upon.

[3] Mr Brian Fee QC and Mr Fitzpatrick appeared on behalf of the plaintiff and Mr Spence appeared on behalf of the defendant.

## **Factual Background**

[4] The plaintiff started work at the age of 15 on a building site, he was initially a labourer and then became a plant machinery operator driving track machines and diggers. He has had problems with his back over many years and had a lumbar discectomy in 2004. He retired from work due to chronic low back pain in 2002. In addition to his low back condition the plaintiff has a number of other pre-existing medical conditions. In 2007 he had a heart attack. He has diabetes and high blood pressure. Prior to the collision he had pain and stiffness in both hips. He has chronic obstructive airways disease. The combination of all of these conditions meant that prior to the collision his physical function was already quite restricted in that he walked with the aid of a stick and his exercise tolerance was walking approximately 50 metres. He was not able to climb stairs because of the pain and stiffness in his hips and this led to him having a bedroom fitted downstairs.

[5] The plaintiff's medical condition has unfortunately deteriorated after the collision in two significant respects.

- a) The first is that two months after the collision he was diagnosed with throat cancer for which he has undergone both chemotherapy and radiotherapy.
- b) The second is that due to a combination of all of his conditions his mobility has deteriorated further so that he now has progressed to the use of a rollator.

[6] The facts of the collision are that the plaintiff was the seat-belted driver of a BMW motor vehicle. At a road junction the defendant's van travelling at some 65 mph drove into the side of the plaintiff's motor vehicle. This was a high impact and high energy collision in which the plaintiff hit the right side of his body off the interior of the car. The door airbags deployed. His car was pushed sideways into a lamp post which broke off and then into a fence breaking multiple fence posts before ending up coming to a stop when it collided with some fir trees. So it can be seen that the plaintiff was in a car which was involved in a number of collisions. Police, ambulance and fire brigade all attended the scene of the accident. It is recounted, and I accept, that there was extensive damage to the plaintiff's motor vehicle. A nurse entered through the side window of the motor vehicle with an oxygen mask. The fire brigade then lifted the plaintiff from the car via the passenger's door. He was assessed by paramedics and was much shaken at the time but stated that he did not want to go to hospital in an ambulance but rather he preferred to go home. Subsequently, he saw his GP on 3 March 2014, 21 March 2014 and 1 May 2014. He was also seen in Antrim Area Hospital.

## **The injuries sustained in the collision,**

### **Neck**

[7] The plaintiff recounted to Mr Andrews FRCS, Consultant Orthopaedic Surgeon, that he suffered more severe neck pain for the first four months. Then some seven months after the collision he recounted that he still suffered from neck pain with associated stiffness on a daily basis and that he found it hard to look over his right shoulder. At seven months and on examination the range of movement of the cervical spine was reduced to around 50% of normal in all directions. There was tenderness on the right side of his neck in the trapezius muscle. Mr Andrews considered that:

“The neck pain should gradually improve and resolve and within around 18 months from the date of the road traffic accident a complete resolution of symptoms would be expected.”

[8] By the date of the examination of the plaintiff by Mr Thompson FRCS some 11 months after the collision the plaintiff was complaining of increased neck pain and there was an increase in the restriction of movement. Mr Thompson advised an MRI scan to investigate why this deterioration had occurred but the plaintiff having undergone extensive radiography for his other conditions did not wish to undergo such an investigation. I consider that the most likely explanation for the deterioration in his neck movement is that given by Mr McManus, Consultant Thoracic Surgeon, which was that it was related to the radiation effects of the treatment for the plaintiff's throat cancer.

[9] In relation to the neck injury I consider that the plaintiff suffered symptoms as a result of the collision for around 18 months but that after the radiation treatment an increasing part of those symptoms were due to that treatment.

### **Right Shoulder**

[10] I find that the plaintiff sustained a significant impact to the right shoulder which was driven against the underlying chest wall causing injury to a number of muscles which power the shoulder and causing a reduction in the scapulo-thoracic movement as the scapula glides over the underlying ribs. As a consequence the plaintiff had severe pain in his right shoulder and was unable to lie on his right side in bed at night. He experienced sleep disturbance. On examination some seven months after the collision by Mr Andrews there was tenderness but the range of movement was relatively good in all directions. I accept the evidence of Mr Andrews that the residual right shoulder pain would:

“gradually, improve and resolve and within around 18 months from the date of the road traffic accident a complete resolution of symptoms would be expected.”

### **Chest**

[11] As I have indicated the plaintiff’s right shoulder was driven against the underlying chest wall. Seven months after the collision he had pain in the right side of his chest wall which was made worse by coughing. Mr Andrews was of the opinion that the injury would have had the potential for causing some rib fractures acutely and that the pains that he suffered for the first 3-4 months would have been consistent with this. I consider that the plaintiff has not discharged the burden of proving that he sustained any rib fractures but I consider that the pain that he endured was equivalent to the pain from such fractures and was caused by injuries to the joints of his chest wall. On the basis of the medical report of Mr McManus I consider that the chest wall pain settled considerably over six months and that there was minor discomfort for 18 months. I also find that the plaintiff’s inability to cough properly led to a small increase in the number of chest infections over that period.

### **Right Ear**

[12] The plaintiff’s right ear was damaged and this caused considerable pain for a relatively short period of time. The plaintiff’s legal advisers have investigated whether the plaintiff’s hearing loss or his tinnitus was caused or contributed to by the collision. I find that the hearing loss is noise induced and I consider that it is related to his occupation. I find that his tinnitus developed after the diagnosis of throat cancer and is related to his noise induced hearing loss and triggered by the stress of the diagnosis of throat cancer. The plaintiff is entitled to compensation for the physical damage to his ear which was minor and temporary but not for any deafness or tinnitus.

### **Back Injury**

[13] I mention this to discount it. Mr Andrews was of the view that the condition of the plaintiff’s back was unrelated to the collision. I agree.

### **Right Hip**

[14] The plaintiff has as a consequence of this collision a greater trochanteric bursitis in the right hip with pain radiating down the right thigh. On examination seven months after the collision there was exquisite tenderness as a result. The significant pain was for the first four months or so but there was still tenderness and discomfort. Mr Andrews considered that the condition could be quite slow to settle down and could take 2-3 years to fully resolve. I accept that evidence finding that the plaintiff has had pain in his right hip attributable to the collision for a total period of 2 years. That finding is to be seen in the context that prior to the collision

the plaintiff also had pain in both hips. So what is being assessed is the increased pain which was substantial and then a general diminution down to the pre-collision level of pain.

### **Conclusion**

[15] I have attributed a value to each of these injuries and then discounted given that there is overlap between all of them. I consider that the plaintiff has not exaggerated. The total overall award of compensation must also cover the upset of being involved in a life threatening collision. I consider that the values attributable to each injury are as follows:

Neck	£12,000
Right Shoulder	£10,000
Chest	£12,500
Right Hip	£15,000
Right Ear	£ 1,000

[16] As I have indicated it would be incorrect to add all those figures and make an award based upon the addition of those figures. Standing back I consider that the appropriate award is one of £42,500.