LIABILITY & PI: 2024 IN REVIEW

Ireland

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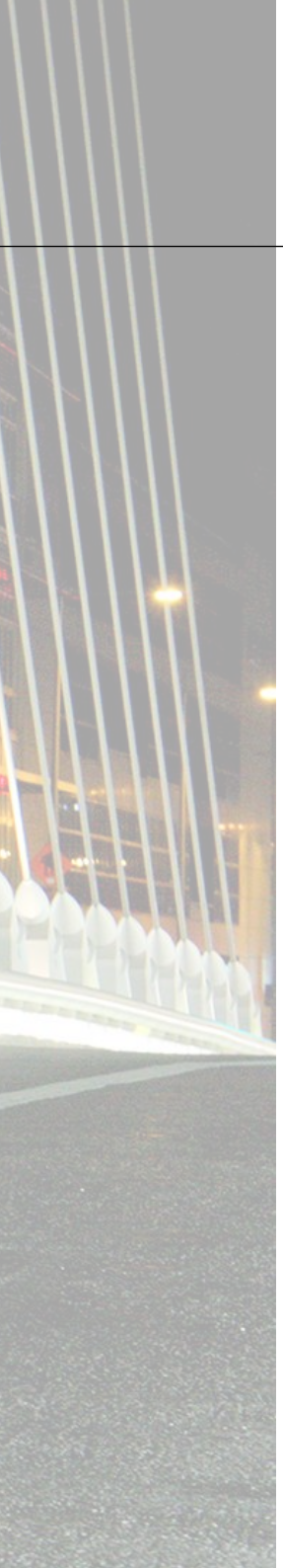

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PERSONAL INJURIES: 2024 IN REVIEW

2024 was yet another busy year in liability and personal injuries litigation. Judgments issued from the High Court and Court of Appeal on an almost weekly basis, covering a broad spectrum of issues from damages to limitation issues to evidential issues and applications to dismiss for delay.

The year brought welcome clarity on the assessment of damages, with the Supreme Court upholding the constitutionality of the Personal Injuries Guidelines and the Court of Appeal elaborating on the approach to assessing damages in multiple injury claims. The year ended with a proposal to increase the value of all awards set out in the PIGs by 16.7%, a proposal we expect will be approved in early course.

Plaintiff legal costs, however, remained unpredictable, particularly at Circuit Court level, a trend that does not appear to have gone unnoticed by the courts.

In this briefing we provide a snapshot of what we consider were the most significant court decisions and other developments in 2024.

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1. Personal injuries guidelines

In a landmark ruling, the Supreme Court confirmed that the Personal Injuries Guidelines (PIGs) are legally binding. The PIGs should only be departed from where there is no reasonable proportion between the award indicated and the award that the court considers it appropriate to make. (Delaney v PIAB)

However, a majority of the Court found that a section of the Judicial Council Act 2019 (directing judges to adopt the PIGs) was unconstitutional. Legislation has since been enacted to remedy this. Now, any proposed changes to the PIGs must be approved by both the Judicial Council and both Houses of the Oireachtas (parliament).

The PIGs are subject to review every three years. At the end of 2024, as part of the first such review, the Board of the Judicial Council proposed that the value of all awards set out in the PIGs be increased by 16.7% to reflect inflation. This proposal will be voted on by the Judicial Council at a meeting on 31 January 2025. If approved, the proposal will be passed to the Minister for Justice to put before the Houses of the Oireachtas.

2. Multiple injury claims

2024 brought clarification from the courts on the approach to adopt in cases where the plaintiff is claiming damages for multiple injuries. The proposed amendments to the PIGs, published at the end of 2024, include a revised section on 'multiple injuries' to reflect the approach of the courts.

A helpful review of the principles is set out in the Court of Appeal decision in Collins v Parm:

- The court must first identify the dominant/most significant injury and value that injury (there can only be one such injury).
- The court should value each additional injury according to the bracket that it would fall into were it the main injury.
- It is not a case of simply adding up the values for each injury. Such an approach carries a risk of over-compensation because it overlooks the temporal and sometimes physical overlap between injuries.

- A fair approach is to discount the total award for additional injuries to allow for any overlap of injuries and then add this to the full value of the dominant/most significant injury.
- Whatever mathematical approach is adopted, the overall award must be fair to all parties and proportionate.
- The court should "reality check" the award, i.e. it should consider how the overall award compares with other individual categories in the PIGs. If there is an obvious mismatch, this might suggest that the proposed award is not proportionate.

From our analysis of multiple injury cases since the introduction of the PIGs, it appears the discount rate applied by the High Court and Court of Appeal has ranged from 15% to 54.5%.

There may be cases where all the injuries are equally serious and it is not possible to identify a dominant/most significant injury. While the courts have not decided such a case yet, in Parm the Court of Appeal suggested that the percentage discount should be lower in these cases. If the same percentage discount was applied to cases with a dominant/most significant injury as to cases without such an injury, a plaintiff with a serious injury would receive a lower award for that injury simply because they had a second equally serious injury. For example, in Parm, the dominant injury was valued at €35k and the additional injuries were valued at €30k. The Court applied a 33.3% discount to the value of the additional injuries, which equated to a deduction of €10k. Total general damages amounted to €55k. If all the injuries were treated as equally serious, and valued cumulatively at €65k, a 33.3% discount would have left the plaintiff with a lower award of €43.4k.

Assessing damages in multiple injury cases in practice

Example 1: O'Sullivan v Ryan (High Court)

- Dominant injury: leg injury - €70k
- Additional injuries: back - €30k; chest - €20k; PTSD - €20k

The High Court applied a 30% discount to the chest injuries and PTSD on the basis that they involved treatment and recovery over the same period ((€20k + €20k) x 30%). The value of these injuries after a 30% discount was €28k.

But it applied a lesser discount of 15% to the back injury. This injury manifested while the leg injury was improving and the evidence was that it would continue to cause pain and discomfort for the foreseeable future. The value of this injury after applying the discount was €25.5k.

Total general damages awarded = €123.5k (€70k + €25.5k + €28k)

Example 2: Keogh v Byrne (High Court)

The High Court assessed damages for the plaintiff's injuries at €100k, comprising €55k for an injury to her forearm and €45k for other lesser injuries.

To ensure the ultimate award was fair and proportionate, the Court reduced the additional injuries by €15k, bringing the total general damages to €85k. The reduction equated to 33.3%, though the judge did not describe the discount in terms of percentages or fractions.

3. General damages

A €95k general damages award to a plaintiff who sustained injuries in a car accident was reduced by 42% by the Court of Appeal (Collins v Parm).

An award of €95k was, the court considered, disproportionate and

"bore no relationship to the far more serious injuries that attracted an award at that level under the [PIGs]."

In another case, a €90k general damages award was reduced by 38% where the High Court judge had accepted at face value the opinion of the plaintiff's medical expert without any regard to the many inconsistencies in the evidence. The Court reiterated that a judge is not obliged to accept the evidence of an expert, even where it is uncontradicted or where the expert's report is agreed. The trial judge should carefully scrutinise any subjective complaints that are not borne out by the medical evidence, bearing in mind that the onus of proof rests on the plaintiff. (Coughlan v GCR Construction)

At High Court level, we saw damages at both ends of the spectrum. In one case, the High Court awarded a 37-year-old woman with a "most unusual injury profile" €335k for injuries sustained in a moderate car accident.

The plaintiff, who worked part-time as a cleaner, had an underlying but previously asymptomatic congenital Chiari malformation. The Court accepted that the accident caused this to become symptomatic, with the plaintiff developing chronic, excruciating and debilitating pressure headaches. It also accepted that the plaintiff suffered an adjustment disorder in response to the pain. The Court awarded €110k for pain and suffering and special damages of €225k, covering past and future loss of earnings and the cost of a spinal cord stimulator for life. (Keenan v O'Callaghan)

At the other end of the spectrum, a cleaner who developed hand irritant contact dermatitis in the course of her employment was awarded €17.5k, an amount within the jurisdiction of the Circuit Court. The plaintiff's condition was of "moderate intensity" and the evidence was that with treatment she should make a full recovery. The low level of the award reflected the judge's dissatisfaction with the plaintiff's evidence as to the impact of the condition on her work opportunities and family life. A vocational assessor gave evidence as to the various 'dry' employments the plaintiff could undertake. Yet, the Court was told that she had given up a job in a shop because, it was suggested, that she was not happy with the work hours. There was also evidence that she had failed to engage with state employment assistance agencies. The Court was also not convinced that the dermatitis interfered with her role as a mother to the extent that the plaintiff had claimed. (Kepa v Noonan Services Group Ltd)

4. Employers' liability

Employer 80% liable for injuries to foreman who fell from height

An employer was ordered to pay €208k general damages to a site foreman who suffered life threatening injuries when working on an unguarded stairwell without a safety harness. The High Court found that the employer had acted in complete disregard of the foreman's safety in directing him to carry out the task knowing the extreme dangers of working at height. The Court did, however, find that the foreman was 20% liable for his injuries because he did not enquire about the absence of a guardrail or the availability of a safety harness. (Keevey v Rigging and Machine Movers Ltd)

Employer 20% liable where employee exposed to increased risk of harm

The High Court awarded €81k to a worker who was injured when a bus ran over his foot while he was operating a stop/go sign at a busy set of roadworks. The Court found that the employer, the company responsible for the management of the temporary roadworks, was 20% liable and Dublin Bus was 80% liable for the injuries caused. The employer had unnecessarily exposed the worker to an increased risk of harm and had failed to take sufficient practical steps to comply with its duties under the Safety, Health and Welfare at Work Act 2005. (O'Donoghue v Total Highway Maintenance Ltd)

Warning not to lift bag not enough for employer to avoid liability

The High Court awarded €30k general damages to a warehouse operative who injured his back when he lifted a 50kg bag off a conveyor belt. The Court dismissed the employer's claim of contributory negligence, because although the bag was labelled with a warning not to lift it without assistance, the employer had not shown the employee how the bag should be properly manoeuvred. General damages were limited to €30k because the Court could not rule out that other factors could also have been responsible for the employee's chronic back pain. He was 63 years old, had lived a "life of labouring" and had suffered a previous injury. (Salek v Grassland Agro Ltd)

Farm labourer awarded damages for repetitive strain

The Circuit Court awarded a farm labourer €37.5k general damages for a shoulder and neck injury caused by repetitive strain from her harvesting and planting job. The Court accepted the plaintiff's evidence that she had to work for long periods, sometimes 13-14 hours a day, with her arms above shoulder height. While the employer claimed to have appropriate systems in place to ensure safe working, there was no evidence that any genuine steps were made to ensure that the farm labourer adhered to the employer's guidelines and there was no evidence of adequate supervision in place. (Rejnin v Keelings)

5. Public liability

Caravan park owner not liable for injuries to visitor who tripped over own cable

The owner of a caravan park was not liable for injuries sustained by a visitor who tripped over the power cable she used to connect her caravan to the park's services outlet. Judge Coffey in the High Court stated that if a visitor sets up their caravan or motorhome by connecting their cable to a services post, they must take care not to trip over their own cable. (Scanlan v McDonnell)

High Court declined to decide scope of non-feasance rule in test case

The High Court declined to determine whether the non-feasance rule applies to trees on a public road. Under the non-feasance rule, local authorities are not liable for failing to repair roads unless they know about a specific danger or defect and do not take reasonable steps to address it. The plaintiff sued South Dublin County Council after she fell on a footpath when walking home late at night. She said that a crack in the footpath, caused by tree root growth underneath the path, had caused her to fall. Her case was that the Council could not avail of the defence of non-feasance unless the Court found that street trees form part of a "road" as defined in the Roads Act 1993. However, the High Court declined to determine this issue given the plaintiff could not prove the crack in the path caused her fall. (Best v SDCC)

Accidents can and will happen

The High Court dismissed a claim for damages for injuries suffered by a child when he fell from monkey bars in a playground (Hickey v Limerick City Council). The Court was satisfied that the defendants had complied with their obligations in the design, manufacture, installation and inspection of the equipment. The judge stated:

"Even in a safe controlled environment such as a playground, accidents can and will happen. However, liability for such accidents will only rest with a defendant where the plaintiff establishes, on the balance of probabilities, that the defendants fell below a reasonable standard of care".

6. Motor

The Supreme Court held that the liability of a recycling company to an employee who suffered life-changing injuries while loading a wheelie bin onto a recycling truck was a liability that was required to be covered by the company's compulsory motor insurance policy rather than its employer's liability policy (Urban and Rural Recycling Ltd & RSA v Zurich). The case raised issues about the scope of the mandatory motor insurance obligation, the proper interpretation of a 2009 EU Motor Insurance Directive and Ireland's compliance with EU law in this area. Judge Murray commented:

"a complete and coherent legislative overhaul of the compulsory motor insurance obligation is long overdue."

7. Retail defamation

The long-awaited Defamation (Amendment) Bill, published in August 2024, lapsed following the dissolution at the end of 2024 of the Dáil (the lower house of parliament). The Bill proposed reforms to address the concerns of retailers about an increase in allegations of defamation by people asked to produce a receipt for goods. The new Minister for Justice has, however, said that he is committed to the full implementation of the Bill. We will watch this space with interest.

8. Claims arising from data breaches

The Supreme Court is set to determine whether claims for damages for distress, upset and anxiety arising from a data breach require prior authorisation from the Injuries Resolution Board. The Supreme Court appeal is due to be heard on 29 and 30 January 2025. A decision from the Supreme Court should bring clarity to this vexed area. Read our full briefing here.

The Supreme Court appeal is from a decision of the High Court to strike out a claim for "distress, upset and anxiety" arising from an accidental data breach on the basis that the plaintiff had not obtained authorisation from the Injuries Resolution Board, a prerequisite to bringing proceedings seeking damages for personal injuries. The plaintiff had argued that he was not required to seek an authorisation because the claim was a data protection action under section 117 of the Data Protection Act 2018. (Dillon v Irish Life Assurance)

In a previous decision delivered shortly before the decision in Dillon, but not brought under the Data Protection Act 2018, the Hight Court found that "a claim that arising from a tort or breach of contract, a person has suffered stress or anxiety… is a claim that constitutes a civil action that requires authorisation from [the Injuries Resolution Board] under the terms of the [Personal Injuries Assessment Board Act 2003]." (Keane v Central Statistics Office)

In one of its first decisions of 2024, the Commercial Court measured damages for a data breach where the six individuals concerned did not suffer any adverse consequences at €500 each. As this was not a case where the data had found its way onto the dark web or into the hands of criminals, the Court saw no reason to award more extensive damages. The decision was appealed on a number of grounds, but there was no appeal against the level of damages for the data breach. (Nolan v Dildar)

As of January 2024, the District Court can hear data protection actions under the Data Protection Act 2018. This was a welcome development as the value of these claims typically comes within the District Court's monetary jurisdiction (up to €15k) and it should reduce the costs of defending these claims.

9. Solicitor referrals to medical consultants

"Inappropriate" is how one High Court judge described the practice of plaintiff solicitors referring their clients directly to medical consultants for a medical report to support their claim. Judge Twomey's view is that direct referrals by solicitors adversely impacts the credibility of a plaintiff's claim. Judge Twomey expressed a similar view in previous judgments. However, other High Court judges have said that this practice is not inappropriate per se.

In the case before Judge Twomey, the plaintiff sustained minor soft tissue injuries to her back when she was involved in a collision with a car. She attended a psychiatrist and an orthopaedic surgeon, on a referral by her solicitor, two years after the accident. Yet, under cross-examination, she admitted that she had fully recovered from her injuries within 6 months. Judge Twomey dismissed the plaintiff's claim but noted that the solicitor referral was not the determinative factor; there were other reasons to approach the plaintiff's evidence with caution. (Jautusenkiene v Fynes Phone Watch Ltd)

10. Expert reports and witnesses

The High Court confirmed that there is no rule that a plaintiff or defendant is bound irrevocably by the opinion of the first expert they consult. In the case before the Court, the defendant's orthopaedic surgeon and its pain management expert reached different views on the issue of whether the plaintiff had developed chronic regional pain syndrome and, if so, whether this had been caused by the accident in question. The defendant wanted to get the opinion of a second orthopaedic expert, but the plaintiff was resistant.

The Court stayed the proceedings until the plaintiff agreed to an examination by a different orthopaedic expert, noting that it was not an unfair request particularly as her claim for future care costs had increased from €5k to €276k. The judge noted that she would likely have had to submit to a pre-trial orthopaedic examination by the first expert in any event and remarked "as well one orthopaedic surgeon as another". (O'Donovan v Cork County Council)

In another case, a plaintiff's claim for damages for a shoulder injury following a road traffic accident, for which the defendant had admitted liability, failed because she could not prove that the accident caused the injury. (Daly v Ryans

Investments Ltd T/A Hertz) The plaintiff's GP's medical notes proved crucial here.

The Court also had regard to the fact that the plaintiff chose not to call either her treating GP or the GP to whom she had been referred by her solicitor for the purposes of preparing a report for the Injuries Resolution Board. The Court noted that both of these doctors were in an ideal position to give evidence in relation to the onset of the plaintiff's symptoms in her shoulder and to furnish an opinion on whether those symptoms were related to the accident.

"The court is entitled to draw the inference that in deciding not to call these doctors, who appear to have been available to the plaintiff, she made a conscious decision not to rely on their evidence. Their omission at the trial strengthens the evidence given by the defendant's expert… It also weakens the plaintiff's contention that she had complained to her treating GPs about her right shoulder, but for some reason they had failed to record this in their notes."

11. Limitations period and date of knowledge

The High Court confirmed that, in personal injuries proceedings, mere suspicion on the part of a party, or their legal advisers, that a person or entity may be responsible for an accident is not sufficient to fix them with knowledge for the purposes of the Statute of Limitations. The High Court refused to dismiss proceedings arising from a fall on tram tracks in 2018 as against a defendant (D3) which had been joined to the proceedings in 2022. D3 argued that any claim against it was statute barred because over 2 years had passed since the date of the accident. However, the High Court found that the limitation period ran from the plaintiff's date of knowledge, i.e. the date the plaintiff knew (or should reasonably have known) that D3 may be liable for the injuries she suffered. The Court found that the plaintiff's date of knowledge was the date her solicitor received court papers from one of the defendants seeking to join D3 as a third party to the proceedings. These court papers referred to a contract the defendant in question had with D3 for the maintenance of the pedestrian crossings on the tram tracks.

Before issuing proceedings, the plaintiff's solicitor sent a 'letter before action' to 7 entities, including D3. But this letter made it clear that the plaintiff did not know which of the 7 entities were the appropriate defendants for the purpose of the proceedings. The Court accepted that as the plaintiff did not receive any reply to the letter, she had little option but to proceed against the entities that were most likely responsible for the maintenance of the tracks at the time of the accident. The Court also rejected the argument that the plaintiff's solicitor was under a duty to make further enquiries as to D3's involvement at the pre-litigation stage.(Anglade v Transdev Dublin Light Rail Ltd)

12. Renewal of summonses

The High Court renewed a summons that was not served on time due to an administrative error in the plaintiff's solicitor's office (O'Brien v Wicklow County Council). The plaintiff issued proceedings following the death of her husband in a workplace accident. The plaintiff was concerned that litigation might cause her family further trauma and waited nine months before instructing her solicitor to serve the summons. Due to an administrative error in the solicitor's office, the summons was not served on time. The Court accepted there were special circumstances that justified it in renewing the summons. However, Judge Barrett commented that:

"[Plaintiff solicitors] cannot assume that in the event of delay a court will necessarily rank a client's grief and a solicitor's related empathy higher than the interest of the defendant in proceedings being brought on-time and at a suitable pace."

13. Applications to dismiss for delay

The Supreme Court was asked to consider whether the test to be applied in applications to dismiss where the plaintiff has delayed in progressing the proceedings (known as the Primor Stokes test) should be revised or reconsidered. The Supreme Court's decision in this case, which we expect will be delivered in early 2025, could impact all civil litigation before the courts.

Under the Primor Stokes test, a defendant must show that (1) the plaintiff's delay was inordinate; (2) the delay was inexcusable; and (3) the balance of justice lies in favour of dismissing the proceedings. It is this third limb of the test that generated the most controversy before the courts in 2024.

To show that the balance of justice favours dismissing the proceedings, a defendant needs to show that they have been prejudiced in their ability to defend the proceedings because of the plaintiff's delay. The courts refused to dismiss proceedings in a number of cases where the defendants relied on "vague averments" of prejudice, without sufficient evidence to back up their claims. For example, the High Court refused to dismiss 2008 proceedings where the defendants said that the plaintiff's delay had made it difficult to track down witnesses, but gave no detail as to what efforts they had made to find these witnesses. (Duncan v Butler)

In another case, the Court of Appeal overturned the High Court's decision to dismiss proceedings where the defendants argued that because of the delay they had been deprived of the opportunity to benefit from indemnities provided by a co-defendant who had since entered into a Personal Insolvency Arrangement (PIA). The Court of Appeal considered it "remarkable" that in bringing the application to dismiss, the defendants did not disclose how or when they had learned of the PIA and did not exhibit a copy of it to their application. The Court of Appeal found that the defendants' evidence in

relation to the PIA amounted to “no more than mere assertion”. They offered no evidence of the co-defendant’s ability (or inability) to contribute to any award of damages and no evidence of any connection between her ability to pay and the plaintiff’s delay in progressing the proceedings. In fact, the evidence suggested that the co-defendant was insolvent before the commencement of the delay. The Court reasoned that if the co-defendant had not been a mark prior to the delay, the defendant’s prospects of collecting on foot of the indemnities could not have been affected by the delay. (Coughlan v Stokes)

Both the High Court and the Court of Appeal were critical of a defendant for what was termed a “belated attempt to shore up the… proofs for the motion [to dismiss].” The Court of Appeal upheld the High Court’s decision to refuse to dismiss proceedings where the defendants claimed they would be prejudiced by the non-availability of garda witnesses. The Court did not accept that these issues were caused by the plaintiff's delay. The Court noted that it was incumbent on the defendants once they received a letter of claim, though probably even before this time, to begin assembling the evidence that would be needed to defend the claim. Yet, the defendants waited 19 years to contact the garda witness, and only then after issuing the motion to dismiss. (Padden v McDarby)

Because of the high burden defendants have to meet, the High Court cautioned defendants to exercise "great care" before pursuing an application to dismiss for delay. A High Court judge made this comment in a case where the defendants relied on “the vaguest of averments in relation to effect [of the delay] on reputation and insurance”. The judge was critical of the defendants for insisting on running the motion to dismiss and for spurning an opportunity to withdraw the motion on the basis that each side bear their own costs. (First Names Trust Co (Ireland) Ltd v Kirk)

A defendant can also seek to have proceedings dismissed where there is a real risk of an unfair trial or an unjust result. The High Court dismissed personal injuries proceedings issued in 2013 on behalf of a minor who injured herself at a play centre in 2009. The Court found that the prejudice caused to the defendant by the delay in progressing the proceedings meant that a fair trial would be impossible (Graydon (A minor) v Westwood Club Ltd).

The Court had regard, in particular, to the fact that:

- the defendant was not told the correct date of the alleged accident until 3 years after it had allegedly occurred.
- the plaintiff’s description of how the alleged accident had occurred had changed significantly.
- further delay was inevitable because the plaintiff would need to seek to amend the summons.
- renovations carried out to the play centre in 2019 meant it would be impossible to carry out any meaningful inspection of the premises.

14. Third party proceedings

The High Court set aside third-party proceedings against Irish Water on the basis of delay. The main proceedings were issued by homeowners against Dublin City Council (DCC) in 2019 following a water leak at their property. DCC delivered its defence 5 months later. In June 2023, 4 months after the homeowners had served a notice of trial, DCC sought and was granted permission to issue and serve a third-party notice on Irish Water. However, the High Court subsequently set aside the third-party proceedings because of DCC's unreasonable and unexplained delay in seeking to join Irish Water to the proceedings. (Grehan v DCC)

15. Default judgments

The High Court set aside a judgment obtained in default of appearance where the defendant had mistakenly believed that its insurers were dealing with the matter on its behalf (Reidy v Ryan & Sable Cross Ltd). The defendant had notified its insurance brokers of all communications received from the plaintiff's solicitors, as it was required to do under its insurance policy. The defendant believed its insurers would nominate solicitors to act on its behalf and enter an appearance. However, through inadvertence the insurers did not do this. The Court accepted that there were special circumstances that justified it setting aside the default judgment. But cautioned that:

"this should not be considered a 'get out of jail free card' for insurers or insurance brokers, but rather an opportunity to give a timely warning that proper attention must be given to the necessary requirements of litigation".

16. PI settlement orders

Judge Twomey in the High Court continued to query whether the courts can insert terms in personal injury settlement orders that limit a defendant's exposure to RBA liability. There are conflicting views in the High Court as to whether the court can insert a term in a settlement order that there was no claim for loss of earnings or that the settlement does not reflect any claim for loss of earnings. Judge Twomey is firmly of the view that the court cannot do this, but Judge Coffey, the judge in charge of the High Court personal injuries list, takes the opposite view and will make an order where proper submissions are made to justify the reduction.

In his latest judgment on this issue, Judge Twomey refused an application by Bus Éireann to insert a term to this effect in a settlement order. The judge suggested that because this is an issue of public interest, Bus Éireann, as a state-funded body, might appeal the decision and bring an end to the uncertainty in this area. However, no appeal was brought. (Moloney v Dunne and Bus Éireann)

17. Fraud

A judgment delivered in the latter part of 2024 showed how difficult it is to succeed in what is known as a 'section 26 application', i.e. an application to dismiss proceedings where it is alleged that the plaintiff knowingly gave false or misleading evidence.

The plaintiff suffered injuries in three road traffic collisions and claimed he could not work as a result. During trial, he delivered a schedule of special damages, verified on affidavit, claiming €185k for past loss of earnings and €471k for future loss of earnings. This was notwithstanding that in the five years prior to the first collision, he had no income and was receiving social welfare payments. He also claimed €94k for a spinal cord stimulator even though his own consultant neurosurgeon did not support this claim. He further claimed for loss of opportunity on the basis that he could no longer run the business he established two years prior to the first collision. The defendants claimed that the plaintiff misled his actuarial experts about the business and its prospects.

Yet the judge refused to dismiss the proceedings because the defendants had not established to the requisite degree that the plaintiff had acted fraudulently or dishonestly. The judge accepted that while the plaintiff had "objectively unreasonable expectations" about what the proceedings could achieve for him financially, the defendants had not proven that he was aware of his own irrationality and unreasonable views about his self-employment prospects. The Court awarded €50k general damages for moderately severe whiplash soft tissue injuries but made no award for PTSD. (Rezmuves v Birney)

18. Legal costs

Legal costs continued to be difficult to predict with any degree of certainty in 2024, (particularly in the Circuit Court) with plaintiff bills of cost often exceeding the damages award or the settlement amount.

A High Court judge stated:

"the amount of legal costs recoverable from a defendant cannot, in justice, be out of all proportion to the amount of damages actually obtained."

Judge Barr made this comment when dealing with a judicial review of a County Registrar's decision to cut a plaintiff's solicitor's professional fee from €19k to €2k, and the counsel's fee from €2k to €800. The plaintiff in the underlying proceedings had been awarded €8k by the Circuit Court for injuries sustained in a trip and fall.

The total bill of costs was €33k. Judge Barr said it was "unrealistic" to present a bill of costs for four times the amount of damages recovered when the proceedings should have been brought in the "faster and cheaper" District Court. (Nolan v The County Registrar for the County of Waterford)

The Programme for Government 2025 includes a commitment to "continue to work to develop new guidelines to set clear rates and scales of fees for all forms of civil litigation, promoting transparency, competitiveness and fairness in legal costs."

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If you need further detail on any of these developments or you would like to discuss their broader implications, please contact a member of our team.

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