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Damage Limitation - Court of Appeal Continues to Reduce Personal Injuries Awards

The recent Court of Appeal decision in *Leidig v O'Neill [2020] IECA 296* is the latest in a series of decisions in which general damages for personal injuries have been revised downward on appeal.

High Court

The facts of the case are that the plaintiff suffered a fractured wrist which required an operation with internal fixation and bone grafting. The plaintiff argued that the resulting scarring and restriction of movement, including a degree of ongoing pain, precluded him from pursuing his career of choice and from engaging in certain hobbies, although he had secured alternative employment.

On the basis that it believed that the injury was “a severe and permanent condition”, the High Court (Eager J) awarded damages at the top of the scale provided by the Book of Quantum: €70,000 for the wrist injury; €40,000 for loss of career; €15,000 for loss of hobbies; and €30,000 for future pain and suffering. In total, a general damages award of €155,000.

Court of Appeal

The defendant appealed to the Court of Appeal which, referencing its previous judgment in *McKeown v Crosby & Anor [2020] IECA 242*, emphasised that general damages must be fair to both parties and proportionate to the cap on general damages for catastrophic injuries of €500,000 set by the Supreme Court in *Morrissey & Anor v HSE & Ors [2020] IESC 6* and to other court awards for comparable injuries.

In this case, the Court of Appeal found that the trial judge had erred in categorising the plaintiff’s injury as “severe and permanent” as

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opposed to “moderately severe” and further, in determining that the values ascribed in the Book of Quantum related to past pain and suffering only and in awarding damages separately for the plaintiff’s loss of hobbies.

On that basis, the Court of Appeal was satisfied that the High Court award “*was excessive to a degree that rendered it disproportionate and an error of law*”. The amount of general damages was reduced to €90,000, made up of €50,000 for pain and suffering to date; €15,000 for future pain and suffering; and €25,000 for loss of job opportunity - an overall reduction of €65,000.

Commentary

The *McKeown* decision in August 2020 was significant in that it expressly referred to the “*public discourse, debate and dispute*” in relation to the effect of perceived excessive personal injury awards on society in Ireland and the necessity for principles of fairness and proportionality to be applied by Judges in a consistent manner. The Book of Quantum – and its forthcoming successor, the Personal Injuries Guidelines of the Judicial Council (the **Guidelines**) - were cited as essential tools to achieve such consistency.

It is clear from the *Leidig* and *McKeown* judgments that the Book of Quantum and the Guidelines, when they come into force in July 2021, are going to play a much bigger role in personal injuries litigation from now on. This is further underpinned by the publication on 30 September 2020 of the Law Reform Commission Report on Capping Damages in Personal Injuries Actions, which also favours adherence to a proportionality test for awards of general damages with regard to the significant reforms anticipated in the Guidelines. See our previous article for details in relation to that report [here](#).

In the meantime, it appears from the growing number of cases similar to *Leidig* and *McKeown* that the Court of Appeal will continue to reduce awards of general damages that it believes are not proportionate to the injuries suffered.

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