



Personal Injury Litigation in Ireland: Are Times Finally Changing?



Introduction

October 28, 2020 is a date that many businesses, insurers, and litigation solicitors will have marked in their diary. This is of course the date that the Personal Injury Guidelines Committee ("PIGC") are due to provide draft guidelines to the Judicial Council on the appropriate level of general damages that should be awarded in personal injury cases. Currently when assessing general damages in a personal injury action the Judge must have regard to the Book of Quantum. However if approved the guidelines will replace the Book of Quantum.

For the moment, it is unknown whether the guidelines that will be provided by the PIGC will serve as a panacea for the seemingly excessive award of general damages in Ireland. However, there have been a number of signs of encouragement since the establishment of the PIGC in April 2020.

"Modest injuries should attract moderate damages"

Since Justice Mary Irvine's appointment to the Court of Appeal in October 2014 there has been significant scrutiny on the level of damages awarded in the High Court. Justice Irvine (now President of the High Court) has delivered a number of judgements whereby damages awarded in the High Court were significantly reduced by the Court of Appeal. Indeed, the rhetoric used in her judgements has also been quite candid, for example, in *Nolan v Wirenski* [2016] IECA 56, Justice Irvine stated that *"modest injuries should attract moderate damages"*.

Notably Justice Irvine was appointed President of the PIGC when it was established in April 2020. This is a positive to many as Justice Irvine has often been characterised as being pragmatic and using a common-sense approach to litigation. This approach was seen most recently where Justice Irvine (in her capacity as President of the High Court) urged parties who have suffered delay in personal injuries actions arising from COVID-19 to continue to negotiate as if the matter was listed for hearing. Justice Irvine cited figures that show approximately 97% of all personal injury claims are settled and that of those litigated only 11% proceed to hearing with the remaining 89% settling *"on the steps of the Court"*.

McKeown v Crosby & Vocella [2020] IECA 24

Briefly the facts of this case were as follows: Ms McKeown was involved in a road traffic accident and suffered soft tissue injuries. The High Court awarded Ms McKeown €76,000 in damages and this was subsequently reduced in August this year to €31,000 by the Court of Appeal.

While the facts of this case are unremarkable and typical of what you may see in a personal injury action the decrease in the award of damages and judgement delivered by Justice Seamus Noonan of the Court of Appeal are significant. The proximity of the judgement to October 28, 2020 and the fact that Justice Noonan is himself a member of the PIGC should be seen as a progressive development. Interestingly, Justice Noonan was quite forthright in his judgement by stating that personal injury litigation *"should not be a lottery"* and that societal factors must be considered when assessing damages which would include *"the cost of liability insurance be it motor, public or employer's liability."*

Law Reform Commission Report on capping damages

The Law Reform Commission published their report on 30 September 2020 on whether introducing a cap on general damages awarded in personal injury claims would be permissible under constitutional law. The report reviewed four possible models in relation to capping general damages and concluded that two of the four models are constitutionally permissible. This will come as welcome analysis to those that are seeking the award of general damages to be reduced as one of the two models is akin to the proposed guidelines which are due to be published on 28 October 2020.

Conclusion

All of the above would point towards a more consistent and proportionate approach to the award of general damages in Ireland. However, this approach has been mainly been adopted by the Court of Appeal. The recent statistics published in the Court Service Annual Report for 2019 showed that the average award of damages in 2019 increased by 55% in the High Court and 9.8% in the Circuit Court in comparison to 2018.

All eyes will inevitably move to October 28, 2020 where many will be hopeful that the guidelines published by the PIGC will ensure that the Courts adopt a more reasonable and reasoned approach to the award of general damages. Who knows, it may even result in an increase in cases being brought by Plaintiffs in the District Court.

Further Information

Given the generality of the note it should not be treated as specific advice in relation to a particular matter as other considerations may apply.

Therefore, no liability is accepted for reliance on this note. If specific advice is required, please contact one of the Partners at Caytons who will be happy to help.



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