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THE HIGH COURT

BETWEEN

STEPHEN BURKE

PLAINTIFF

AND

TREVOR BLANCH

DEFENDANT

Judgment of Mr. Justice Costello delivered the 28th day of  
July 1989.

INTRODUCTION

On 2nd April 1986 the plaintiff, then a young man aged 24, was a passenger in a car which overturned after a tyre burst. He suffered devastating injuries, in that he fractured his thoraco-lumbar spine which resulted in paraplegia. In addition he fractured the radius and ulna of his right arm. He is paralysed from the waist down and will spend the rest of his life in a wheelchair. Negligence is admitted and I must now measure the damages to which he is entitled. I will do so under the following headings (a) special damages (b) damages for loss of earnings, (c) general damages.

Special Damages

The plaintiff's advisers prepared a helpful list (which I append as a Schedule to this judgment) entitled "Special Damages to date and capitalised Cost of Recurring Items". There are 71 different items on this list (which does not include a claim for damages for loss of earnings, a subject I will deal with later in this Judgment). Particulars of loss are given under two separate columns. The first column gives the plaintiff's claim in respect of items of loss to date. The second column is headed "Capitalised Future Cost" and contains figures for (a) items which appeared in the first column and which it is claimed are recurring items of expenditure for which compensation is

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claimed as set out in the column, or (b) items which did not appear in the first column but which are items of expenditure which will re-occur in the future and for which compensation is claimed as set out in the column in both cases actuarially calculated.

There is agreement in this case as to the damages payable under a considerable number of headings claimed in the list. I have underlined the controversial item or items which, by agreement, are to be deleted.

(1) Agreed figures:

The total agreed special damages under column (1) is £85,792.15. The total agreed damages under column (2) is £51,522.00 making the total of £137,314.15.

I now turn to the controversial items and those small items to be deleted:

(2) ITEMS 7 AND 8:

Item 7. This is a claim based on the suggestion that the plaintiff is likely to have to go into hospital in future years. The capital sum claimed is £69,242 it being submitted that the plaintiff is likely to be hospitalised on an average of 21 days per annum for the rest of his life at a daily cost of £150. The daily charge is not queried nor is the multiplier used by the plaintiff's actuary but there was medical evidence to the effect that it is highly unlikely that the average stay in hospital will be that as suggested. No precision in this area is, of course, possible. The most

that the medical evidence on the plaintiff's behalf could put it in that an average figure of 14 days per annum was more likely than 21, whilst there was evidence adduced on the defendant's behalf suggesting that it might only average as little as one to two days per annum until the plaintiff reached the age of 55 and thereafter the risk of longer hospitalisation increased. There was also evidence that if the plaintiff suffered from bed sores that his stay in hospital might be prolonged. In the light of the evidence I propose to allow a figure for damages based on an average of seven days per annum, which will take into account the risk of longer stays as he gets older and compensate him for the risk that if he gets bed sores that his stay in that year would be longer.

There will therefore be allowed in column (2) the sum of £23,080.

Item 8. This is a reasonable estimate and I will allow it (that is, the sum of £5,496.)

The total under these two items in column (2) is therefore £28,576.

(3) ITEM 12:

There is a dispute on the medical evidence in relation to this item. I have come to the conclusion that it is probable that the plaintiff will accept the advice of his own doctor and that it is likely that he will make use of callipers in the future (notwithstanding the problems he has in using crutches occasioned by his arm fractures). The

amount claimed for the cost of callipers to date (£598.62) is admitted and I allow the claim under column (2) in respect of the future use of callipers at £3,656.

(4) ITEM 28:

This claim relates to a special form of wheelchair cushion. The plaintiff's medical evidence satisfies that the claim is a reasonable one and so I allow the sum claimed in column (2) namely £2,169.

(5) ITEM 33:

This item is a claim that the defendant should compensate the plaintiff for the cost of an extra T.V. set for the use in the plaintiff's bedroom. I think it a reasonable one bearing in mind the nature of the plaintiff's disability and his reasonable requirements resulting from it, which, in my opinion, would include this item of expenditure. Accordingly, I allow the sum of £350 under column (1) and £766 under column (2).

(6) ITEM 36:

This is a claim for a microwave oven, I think it is a reasonable one as the plaintiff is entitled to be compensated for the cost of modern aids which he may wish to purchase which help him to overcome the problems of his disability. I allow the sum of £350 under column (1) and £769 under column (2).

(7) ITEMS 41, 42, 43:

It is agreed that damages should include a sum to cover the future cost of care and assistance which the plaintiff will require whilst living at home and these items in the Scheduled list are the plaintiff's claim under this heading. The different figures are the agreed calculations of loss depending on certain findings I make on the issues which arise. My conclusions on these are as follows:

- (a) The hourly rate on which the claim is based should be that suggested in Mr. Hellyar's report, namely £5.05p per hour, rather than £4 per hour as has been suggested on the defendant's behalf, as I think that this is the more realistic figure being based on actual levels of remuneration currently applicable in the area where the plaintiff lives for the sort of assistance he will require. The weekend rates will be higher and should be allowed as claimed.
- (b) It is agreed that damages should be payable for assistance on a two-hourly basis per day but there is disagreement as to when the level of assistance will require to be increased. I conclude on the medical evidence that on the balance of probabilities the higher level of care will probably not be required until the plaintiff reaches the age of 55.
- (c) The appropriate multiplier and the annual cost of additional care is the next matter which requires consideration. It is agreed that the provisions

of the Finance Act, 1969 here are relevant. These give relief from taxation in respect of expenditure on household care when a taxpayer is "wholly incapacitated", and it is accepted that if the plaintiff is entitled to this relief than a lower multiplier should apply.

I think the Act means that the relief is applicable when the taxpayer is wholly incapacitated from earning so that the correct multiplier depends on my conclusions on the plaintiff's future earning capacity. For reasons given later I conclude that on the balance of probabilities the plaintiff will for all practical purposes be totally incapacitated from earning for the rest of his life and so the lower multiplier should be used.

It follows then that the damages payable under the items now being considered are as follows:

(a)	Item 41. Future care and assistance to age 55	£ 69,834
(b)	Item 42. From age 55 additional care and assistance	£ 25,254
(c)	Item 43 From age 55 extra weekend relief	<u>£ 10,102</u>
	TOTAL	£105,188

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(8) ITEMS 45, 46, 48, 49, 50:

These items relate to the plaintiff's future transport needs. The plaintiff requires a car in order to make him mobile and one with automatic gearbox and hand controls. He has in fact purchased a new Nissan Bluebird (1800 c.c. with automatic hand controls) at a cost of £7,457.23 and it is agreed that the normal retail price of this vehicle would have been in the region of £12,643.50 and that the reduced price he has paid arose from the fact that he was able to avail of the tax reliefs available to disabled drivers. It is said that he will have to replace it next year and that there will be extra costs involved in automatic transmission and hand controls.

I will deal with each of these items seriatim as follows:

Item 45. It is not contested that the plaintiff is entitled to a car of 1800 c.c.'s but it is submitted that there should be an abatement of one third to allow for the fact that the plaintiff would in any event have purchased a second-hand car and the defendant should not be required to pay the full price of a new car. I agree and allow the sum of £5,000 under column (1) at this item.

Item 46. This claim (for £8,059) is the cost of replacing the Nissan car by the purchase of a new one next year. I think that this claim overlaps with the claim for depreciation made under Item 49 and I disallow it.



Item 48. It is agreed that this claim was entered in error and so I disallow it.

Item 49. This is a claim for the capital sum of £26,268, being the actuarially calculated value of an annual depreciation claim of £1,195.25. It is said that the Nissan car would depreciate annually at the rate of £1,804 per annum, but only one half of this annual depreciation is claimed to reflect the fact that the plaintiff will now require new cars instead of the second hand cars which in all probability he would have purchased. The balance of the claim (£296.25) is one quarter of the sum of £1,185 which is the cost which the plaintiff will incur every four years in providing hand controls and automatic transmission. The defendants do not quarrel with the figure of £296.25 or with the multiplier used by the plaintiff's actuary which produces a figure of £4,533, but says that no damages based on the depreciation of the plaintiff's Nissan car should be allowed. It is argued that this figure is based on the ordinary retail value of the car and not the actual price (net of tax) which the plaintiff in fact has to pay for it and that if he sells it every four years he will get the market price based on normal retail prices and will in fact not suffer any loss because of its depreciation. I find this argument persuasive. In the particular circumstances of this case it seems that the plaintiff has not established any loss for depreciation in excess of the loss he would in any event have suffered had there been no accident. I therefore limit the damages under this heading to £4,533 under column (2).

Item 50. This is a claim for the extra costs of running a car which will arise from the fact that the plaintiff is a paraplegic. I think that the claim is reasonable. It is based on the suggestion that the plaintiff is likely to use his car for 10,000 more miles than he would have used a car had he had no accident, and a cost per mile (based on A.A. figures for the cost of an 1800 c.c. car) of 16.642 pence per mile. The cost per mile has not been challenged but it is claimed that the extra mileage claimed is excessive. I do not think so, particularly bearing in mind where the plaintiff now lives and the fact that he is likely to use his car a great deal more than if he was an able-bodied person working normal hours in a factory premises. The annual extra cost is £1,664.20, which capitalises at a sum of £36,582, which I allow under column (2).

The result is that the following sub-totals will be added:

To Column (1) £5,660

To Column (2) £41,115.

(9) ITEM 55:

This is a claim for extra heating costs based on a claim that disabled persons are likely to be at home for longer periods than the abled bodied and on the fact that disabled persons feel the cold more than the able-bodied. The extra heating claimed is £10 per week. I think this claim is reasonable and I allow it, namely the sum of £11,430, which is to be added to column (2).

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(10) ITEM 56:

This is a claim based on the fact that the plaintiff will not be able to do the sort of work which an able-bodied man would normally do around the house and will have to employ a handyman to do it. I think the annual total suggested is on the high side and I think it would be reasonable to allow half the sum claimed, namely £9,144. which should be added to column (2).

(11) ITEM 60:

This is a small claim which has been abandoned.

(12) ITEM 69:

This is the last item in dispute. It relates to a claim based on the proposition, which has not been contested, that holidays for disabled persons are more expensive than those for able-bodied persons. I agree with the defendant's submission that the extra cost of £800 per annum is on the high side and I think that half this sum is a more realistic average estimate bearing in mind the plaintiff's pre-accident standard of living. The sum of £8,793 should be allowed under this heading in column (2).

(13) The total claims in the Schedule is, on the conclusions I have just announced as follows:

	Schedule	
	1st Column	2nd Column
Subtotals from paragraph (1) above	£85,792.52	£ 51,523
.. .. . (2) ..		£ 28,576
.. .. . (3) ..		£ 3,656
.. .. . (4) ..		£ 2,169
.. .. . (5) ..	£ 350	£ 766
.. .. . (6) ..	£ 350	£ 769
.. .. . (7) ..		£105,188
.. .. . (8) ..	£ 5,000	£ 41,115
.. .. . (9) ..		£ 11,430
.. .. . (10) ..		£ 9,144
.. .. . (12) ..		£ 8,793
	£91,492.52	£263,129
TOTAL	£354,621.52.	

CLAIM FOR LOSS OF EARNINGS:

My conclusions on the issues arising on the plaintiff's claim for past and future loss of earnings can be summarised as follows:

(1) The plaintiff had been in good health prior to the accident. He had been educated up to Group Certificate level in the Technical School, Clonmel and he finished his schooling at the age of 16. He found employment as a signmaker in a company in Clonmel in which he was trained in certain skills as a welder. He learnt these skills on the

job and did not undergo any period of apprenticeship or special training. He was employed with the firm for a continuous period of seven years. Due to difficulties the firm encountered he was made redundant on 18th November 1985. He remained unemployed for sometime having unsuccessfully looked for work in the Clonmel area. But in June 1986 he was called back for temporary work with the firm and let go again on 26th July, just prior to his accident. He can properly be regarded as a semi-skilled operative. His gross pay at the time of the accident was, excluding overtime in the region of £146 per week, and his net take-home pay was in the region of £102 per week.

(2) Wages have increased from the time of the accident and I estimate that his net take-home pay at the present time (which is the basis on which the actuarial calculation is made) would be in the region of £120 as a semi-skilled operative.

(3) Although his life expectancy is now 35 years, I will calculate damages for loss of earnings in the future calculated on the basis that he would have earned up to the age of 65 and the multiplier is £1,092 for every £ per week lost. I will abate the figure because it is not expected he will reach that age.

(4) It has been suggested that I should calculate his future loss on the basis he would have followed his brothers to England and obtained wages at £15,000 per annum gross, or about £10,000 per annum net. But I am not satisfied that on the balance of probabilities this is what would have happened but for the accident. The plaintiff was a semi-skilled welder and I think it is more probable that he would have

remained in Ireland and sought and obtained work here. I therefore propose to award damages for loss of earnings to date on that basis, and damages for future loss on the figure of £120 per week.

(5) Whilst his temporary work had come to an end just prior to the accident I think that it is probable that he would have found work for most of the past three years but for his accident and that he has lost for the past three years, allowing some discount for some period of unemployment, a sum in the region of £12,000. From this has to be deducted (by virtue of section 306A of the Social Welfare Act, 1981) disability benefit, the pay-related benefit and the invalidity pension he received. These amounted to £7,599.83 approximately (according to the departmental letters 26th April and 3rd May, 1989), so that the net sum for loss of earnings to date is £5,400 approximately.

(6) The evidence in this case, particularly that of the vocational officer of the National Rehabilitation Board for the Kerry area, satisfies me that it is probable that the plaintiff's future earnings will be negligible. Persons suffering from paraplegia are of course capable of earning good wages in a variety of different occupations. But each case has to be decided on its own facts and in this case I am dealing with a young man whose education finished at the age of 16, who was a semi-skilled factory worker before his accident, whose home is now six miles from the town of Listowel where the opportunities for employment for disabled persons like the plaintiff are virtually nil. I think his chances of being retrained so that he may obtain gainful employment are also remote. He may well try to start a

business using his welding skills from his home in Kerry but there is no evidence which would justify me in holding that on the balance of probabilities he would be able to earn any significant profit from it. I propose therefore to assess damages for his loss of earnings on the basis that his incapacity will disable him from earning for the rest of his life.

(7) Based on a multiplier of £1092 and weekly net wages of £120 the actuarially calculated loss of earnings comes to £130,040. But this must be abated (a) because the plaintiff's life expectancy is two years short of sixty-five and (b) because of the contingencies referred to in the Supreme Court in Reddy .v. Bates (1984) ILRM 197. In this case the likelihood that the plaintiff would have suffered unemployment during his working life is a very real one, and I conclude that the actuarial calculation in this case should be abated to £100,000 to take this and the matter referred to at (a) into account. This sum (together with the sum of £5,400 for loss of wages to date), will then be added to the special damages I have already awarded, making the award of damage before consideration is given to general damages, the sum of £506,021.52

General Damages:

The plaintiff suffered considerable physical pain in the accident, together with the knowledge that he was paralysed. He was taken to Cork Regional Hospital and then by helicopter to Dr. Steevens Hospital where his spine was fused (using what are called Harrington rods) and the fractures in his arm reduced. He was transferred to Our Lady

of Lourdes Hospital in Dun Laoghaire. He was in bed for eight weeks and discharged the following March, first to his parents home in Clonmel and later to the house outside Listowel vacated by his sister and her family. He has complete loss of all modalities of sensation from just below the lower border of T12 downwards. He has no control over his bowel functions (which he has to manually evacuate) and his bladder is drained by self-catherization. He has lost all sexual function. He continues to suffer pain in his legs (notwithstanding his paraplegia) and will have to have an operation to remove the Harrington rods from his spine.

It requires little imagination to fill in the details of the pain and suffering (physical and mental) which this outline of this young man's injuries shows he must have suffered and will suffer in the future and it is not difficult to comprehend how his life has been shattered by what has happened to him. The court can compensate him for the pecuniary loss which has followed as a result of the accident (and that I have endeavoured to do) but no award of money can remotely compensate him for his physical and mental suffering past and future. There are clear legal guidelines laid down by the Supreme Court as to how the assessment of general damages in a case of this sort should be approached (see Reddy .v. Bates (1984) ILRM 197, Cooke .v. Walsh (1984) ILRM 208, Sinnott .v. Quinnsworth (1984) ILRM 523, Griffith .v. Van Raj (1985) ILRM 582) and applying these and in particular bearing in mind that the plaintiff, apart from general damages, will be receiving half a million pounds approximately. I think a fair and reasonable sum for general damages is an additional sum of £100,000.



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Conclusion:

There will, accordingly, be judgment for the sum of £606,021.52.

ADDENDUM

A mathematical error occurred in sub-paragraph (7) of the portion of the judgment headed "Claim for loss of earnings". The correct figure in that paragraph should be £460,021 (and not £506,021.52). Furthermore there was an agreement that a sum of £3,400.17 should be deducted in respect of future social welfare payments from the claim for future loss of earnings. I expressed the opinion that these deductions did not affect the figure I had assessed for general damages. The total award therefore is £556,621.35.

*Approved*  
*JL*  
*7-10-57*

SCHEDULE

REVISED STATEMENT OF SPECIAL DAMAGES TO  
DATE AND CAPITALISED COST OF RECURRING ITEMS

<u>Item</u>	<u>Cost</u>	<u>Capitalised future</u> <u>cost</u>
1. Our Lady of Lourdes Hospital	£19,360.00	
2. Dr. Steeven's Hospital	2,048.00	
3. X-Rays at Mater Hospital	18.00	
4. Dr. Patrick C. Murray	400.00	
5. Fees to E. Fogarty for operation to remove rods	400.00	
6. Hospital, Laboratory and X-Ray fees for same, estimated at £150 per day for 10 days	1,500.00	
7. Future hospital Maintenance Charges, 21 days per year @ £150 per day		<u>£57,712.00</u>
8. Consultants' fees @ £300 p.a.		<u>5,496.00</u>
9. General Practitioners fees @ £200 p.a.		3,664.00
10. Prescribed drugs @ £250 p.a.		4,580.00
11. Old style wheelchair	313.25	
12. Crutches/Callipers	598.62	<u>3,656.00</u>

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13. Inflatable toilet seat	52.14	956.00
14. Sorbo cushion for wheelchair	11.00	202.00
15. New bed	150.00	
16. Lightweight wheelchair	1,074.00	4,919.00
17. Maintenance & parts		1,832.00
18. Exercise Bench	95.00	
19. Standing frame	350.00	
20. Replacement Orthopaedic bed	610.00	1,118.00
21. Vaperm Mattress	173.00	1,631.00
22. Shower cum Commode	250.00	458.00
23. Thermostatic shower	239.00	438.00
24. Shallow washbasin	70.00	128.00
25. Toilet safety rail	42.50	78.00
26. Bathroom safety rails	43.00	79.00
27. Bath Hoist/Lifting aid	968.00	
28. Roho wheelchair cushion	393.00	<u>1,800.00</u>
29. Compact cushion	70.41	322.00
30. "Helping Hand" aid	7.50	27.00
31. Entryphone control system	150.00	275.00
32. Cordless telephone	200.00	628.00
33. Bedroom TV	<u>350.00</u>	769.00
34. Washing machine & Tumble Dryer	650.00	2,679.00
35. Fan Heater	50.00	110.00
36. Microwave oven	<u>350.00</u>	769.00
37. Bed Sheepskin	34.84	766.00
38. Wheelchair sheepskin	19.55	358.00
39. Adjustable table	120.00	377.00

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40.	Extensions/Adaptations to plaintiff's parents' home	9,250.00	
41.	Future care and assistance (a) to age 50 @ £4,385.00 p.a.		<u>63,111 or 71,094</u>
	(b) to age 55		<u>69,834 or 80,254</u>
42.	(a) from age 50 permanent companion @ £10,542.00 p.a.		<u>41,416 or 60,811</u>
	(b) from age 55		<u>25,254 or 38,790</u>
43.	(a) Weekend relief @ £4,217.00 p.a. from age 50		<u>16,567 or 24,326</u>
	(b) from age 55		<u>10,102 or 15,517</u>
44.	Physiotherapy @ £261 p.a.		4,782.00
45.	Nissan Bluebird (1977)	<u>7,457.23</u>	
46.	Replacement of same	<u>8,059.00</u>	
47.	Hand controls and automatic transmission	1,185.00	
48.	Replacement of car @ <u>£2,014.75</u> p.a.		
49.	Depreciation and allowance for extras @ £1,195.25 p.a.		<u>26,268.00</u>
50.	Mileage and running costs @ £1664.20 p.a.		<u>36,582.00</u>
51.	A.A. membership	37.50	824.00
52.	Travelling expenses incurred by plaintiff's parents	1,320.00	
53.	Travelling expenses incurred by plaintiff	3,328.40	

54.	Driving lessons	355.00	
55.	Extra heating costs @ £520 p.a.		<u>11,430.00</u>
56.	Repairs and maintenance @ £832 p.a.		<u>18,289.00</u>
57.	Washing powders and conditioner @ £78 p.a.	234.00	1,715.00
58.	Tissues and toilet rolls @ £52 p.a.	156.00	1,143.00
59.	Extra clothing @ £150 p.a.	450.00	3,297.00
60.	Wheelchair leg muffs	<u>25.00</u>	
61.	Thermolatyl underwear	24.00	528.00
62.	Hardwearing gloves	15.00	330.00
63.	Bedding @ £211.50 p.a.	634.50	4,649.00
64.	Subscriptions to disabled organisations	20.00	440.00
65.	Jacques catheters @ £175 p.a.		3,206.00
66.	K.Y. Jelly		660.00
67.	Disposable gloves		660.00
68.	Sundry medications @ £200 p.a.		3,664.00
69.	Additional cost of holidays @ £800 p.a.		<u>17,585.00</u>
70.	Bank interest to 27/6/89	6,797.31	
71.	Alterations and additions to Bungalow at Leitrim Middle, Moyvane, Listowel	31,520.00	