

# The Increase in High Court Awards for General Damages

# High Court Awards

Year	No of High Court Awards	Avg High Court Award	No of Circuit Court Awards	Avg Circuit Court Award
2010	392	219,303	980	12,662
2011	343	215,730	1213	12,329
2012	375	252,146	1485	11,451
2013	590	227,321	1,109	11,941
2014	509	304,553	1018	13,550
2015	4697	358,435	1012	16,429

# Increase in awards for General Damages

- The average award in the High Court has increased by 63% between 2010 to 2015.
- The annual increase in High Court Awards between 2014 and 2015 is 18%.
- The average award in the Circuit Court has increased by 30% between 2010 and 2015.
- The annual increase in the Circuit Court Awards between 2014 to 2015 is 21%.

## PIAB Awards

Year	No of Awards	Value of Awards	Avg PIAB Awards
2015	11,734	€268.45m	€22,878
2014	12,420	€281.21m	€22,642
2013	10,656	€243.46m	€22,847
2012	10,136	€217.94m	€21,502
2011	9,833	€209.83m	€21,339
2010	8,380	€186.63m	€22,271
2009	8,643	€200.22m	€23,166
2008	8,845	€217.16m	€24,552
2007	8,208	€181.04m	€22,056
2006	5,573	€115.28m	€20,685

# Increase in awards for General Damages

- A study by Verisk Analytics on behalf of the PIAB to update claims guidelines in the Book of Quantum revealed the following:
  1. Ankle injuries average awards have risen by 55% from €35,300.00 to €54,700.00.
  2. Arm and lower leg injuries also saw a significant increase. For example, compensation for arm fracture in the lower range jumped 29.8% to now just in excess of €38,000.00.
  3. The average awards for soft tissue neck injuries rose by 9%. However soft tissue neck injuries in the higher range dropped from €78,400.00 to €77,900.00.

# Suggested causes for increase in awards for damages

- The increase in the jurisdiction of the Circuit Court by virtue of the Courts and Civil Law (Miscellaneous Provisions) Act 2013 to €60,000.00.
- Dorothea Dowling (founding Chair Person of the Injuries Board) warned;
  - *“the Department of Justice was forewarned well in advance. This is what happens when you increase the limits of the lower courts – it sends out the message that €38,000.00 is small money.”*

# Suggested causes for increase in awards for damages

- The delay in updating the Book of Quantum first published in 2004
- In 2014 Mr Justice Barton criticised the fact that the book had not been updated in the Judgment of “McGarry v McGarry where he stated;-
  - “It is unquestionably in the interests of the proper administration of justice that the Book be reviewed and be kept updated to properly reflect High Court personal injury awards”.
- The broad nature of the 2004 publication was such that it was often ignored by the Judiciary thereby emphasising the individual Judges subjectivity and discretion.

# Suggested causes for increase in awards for damages

- The creation of the Court of Appeal in 2014. This was described by the Chief Justice as the “*most important development*” in the structure of the Courts since the foundation of the state.
- However this resulted in the elevation of a significant number of the more senior Judges to this Court with a knock on effect of the appointment of a large number of new Judges who inevitably were less experienced. If not a direct factor it, at the very least, has contributed to uncertainty in the level of High Court Awards.
- A question which will be addressed later in the talk is the potential for this particular Court to act as a safeguard to excessive awards.
- The broad and somewhat open ended nature of the prognosis provided by a wide range of medical experts. In particular Orthopaedic Surgeons.

# The General Principals on which awards are based

- In the case of Woods v Tyrell 2016, Judge Cross summarised the relevant factors which a Judge should consider when assessing the level of general damages to be awarded to a successful Plaintiff namely;-
  - (i) The Award of damages must be proportionate
  - (ii) It must be fair to a Plaintiff and to a Defendant
  - (iii) It should be proportionate to social conditions bearing in mind the common good
  - (iv) It should be proportionate with the legal scheme of awards made for other personal injuries.
- The Book of Quantum-section 22 of the Civil Liability and Court Act 2004 requires the Judiciary to have regard to the Book when assessing quantum.

# Examples of Awards in the High Court

- Woods v Tyrell 2016 Judge Cross awarded the Plaintiff the sum of €120,000.00 in respect of pain and suffering to date ( €80,000.00) and pain and suffering into the future ( €40,000.00)
- The Plaintiff sustained a “flake fracture” of her wrist together with what were described as “diffuse” injuries to her right elbow, shoulder, jaw (with implications for her bite), neck and chest/sternum area. There was also a degree of psychiatric injury. However, there was no evidence of any degenerative change.

# Examples of Awards in the High Court

- Salmovir Spes v Windcanton Distribution Centre March 2016
- The Plaintiff was a 47 year old Slovakian manual worker who sustained soft tissue injuries to his lower back and trunk when lifting a tray of yogurts onto a trolley. He remained off work from October 2012 until 2014 when he was made redundant.
- Mr Justice Barr awarded the Plaintiff €153,000.00 on the basis that he had suffered a significant injury to his lower back that rendered him “permanently disabled in the work aspects of his life and continued to cause him pain in his day to day activities.” There was no underlying structural damage to the Plaintiff’s spine by way of fracture or prolapsed disc.

# Examples of Awards in the High Court

- Sophie Caillaud v Lough Rynn April 2016
- The Plaintiff was a 42 year old waitress who suffered a deep laceration to her right thumb in December 2007 when a glass jug shattered in her hand in the course of her employment. Surgery was required and she subsequently suffered loss of strength in her hand and developed carpal tunnel syndrome. As a result of her injuries she was unable to return to waitressing and was impaired in her everyday activities.
- Mr Justice Cross awarded the sum of €170,000.00 in respect of general damages.
- The overall award was €500,000.00 to include €135,000.00 for loss of earnings and a significant sum towards the adaption of her home.

# Examples of Awards in the High Court

- Sharon Kelly v Arc Café Bar January 2016
- The Plaintiff was a 44 year old women who suffered dislocation of her right thumb along with ligamentous and muscle injuries to her neck. Her thumb had settled reasonably well although she was left with a diminution in sensation in the tip of her thumb and a reduced pinch grip between the thumb and forefinger.
- It was accepted that the Plaintiff had underlying degenerative change in her neck which were rendered symptomatic. In addition, an acute exacerbation of neck pain 2 years 9 months post-accident was accepted by the Judge as being attributable to the accident.
- Judge Barr awarded €60,000.00 for pain and suffering to date and €30,000.00 for future pain and suffering.

# Examples of Awards in the High Court

- Shauna Burke v Slattery's Caravan Park
- The Plaintiff was a 10 year old minor at the time of the accident who suffered a laceration to her leg above her knee which left a visible scar measuring 6cm.
- Mr Justice Barr approved a settlement of €90,000.00 for past pain and suffering together with cosmetic blemish.

# Response of the Court of Appeal

- Payne v Nugent 2015
- The Plaintiff suffered modest neck and back symptoms from which she had fully recovered. Judge Cross awarded €65,000.00 for general damages made up of €45,000.00 in respect of pain and suffering to date and €20,000.00 for the future.
- The appellate court did set out the principals which guide the court when exercising its jurisdiction referring to the case of Hay v O’Grady 1992. these included;-
  1. The appellate Court does not enjoy the opportunity of hearing and seeing the witnesses unlike the Trial Judge
  2. If the findings of fact made by the Trial Judge are supported by credible evidence this court is bound by those findings regardless of how luminous and apparently weighty testimony against them. In so far as instances of fact are drawn by a Judge at first instance, it is open to an appellate court to substitute its own inferences. However, the court cautioned against such an approach where those inferences were drawn from the Judges assessment of the oral evidence.
- The Court of Appeal considered the spectrum of damages which it described as an “imaginary scale” which ended at €400,000.00 for catastrophically injured Plaintiffs.

# Response of the Court of Appeal

- Judge Irvine stated;-
  - “So one of the questions I ask myself when considering whether the award made in this case was reasonable or proportionate is whether the trial judge could have been within the appropriate range when he awarded in the Plaintiff a sum that placed her injuries in terms of value approximately one sixth of the way along an imaginary scale of damages for personal injuries which ends at €400,000.00.....In these proceedings are to receive damages of the nature awarded by the trial judge in this case. If modest injuries of this type are to attract damages of €65,000.00 the effect of such an approach must be to drive up the awards payable to those who suffer more significant or what I would describe as middle ranking personal injuries such that a concertina type effect is created at the upper end of the compensation scale. So for example the award of general damages to the person who loses a limb becomes only modestly different to the award made to the quadriplegic of the individual who suffers significant brain damage and in my view that simply cannot be just of fair”.
- The Court concluded that “moderate injuries should attract moderate awards” and reduced the award to €35,000.00.

# Response of the Court of Appeal

- Nolan v Wirenski February 2016
- The Plaintiff suffered a shoulder injury for which she underwent approximately 60 sessions of physiotherapy, manipulation under general anaesthetic, steroid injections and a subacromial decompression and rotator cuff repair. Whilst she was likely to have reduced rotation this was not expected to interfere with her day to day activities.
- Judge Barr awarded €90,000.00 for pain and suffering to date and €30,000.00 for pain and suffering in the future.
- Judge Irvine referred to 3 principals relating to the award of damages;-
  - (i) fair to the Plaintiff and the Defendant,
  - (ii) Objectively reasonable in light of the common good and social conditions in the State; and
  - (iii) proportionate within the scheme of awards for personal injuries generally.

# Response of the Court of Appeal

- This particular case involved credibility issues in circumstances where a €350,000.00 care claim was withdrawn on the morning. Furthermore video evidence undermined the Plaintiff's claim that she could not raise her arm beyond a certain point. Notwithstanding this the Judge accepted the Plaintiff to be credible.
- The Court of Appeal accepted the Trial Judge's assessment as to the Plaintiff's general credibility but Judge Irvine did comment;
  - I confess that I am uneasy not only about the video evidence but also because of the withdrawal on the morning of the hearing of a very large capital claim for past and future care. However, in deference to the Judge's superior position as to the Plaintiff's evidence, I would merely engage in a correction exercise as to the particular findings that the Judge made.
- The Court of Appeal concluded the award was wholly disproportionate;
  - For my part I am satisfied that the award was disproportionate and excessive to the point that it should be set aside....To conclude, this is a case concerning injuries which can at best be described as relatively modest when considered in the context of the entire spectrum of personal injury claims.

# Response of the Court of Appeal

- Cronin v Stevenson 22<sup>nd</sup> June 2016
- The Plaintiff suffered severe soft tissue injuries to her spine, left shoulder and lower back. Judge Cross awarded a total of €200,000.00 comprising of €100,000.00 for pain and suffering to date and €80,000.00 for pain and suffering into the future.
- The appeal was based on an argument that the award was excessive and disproportionate.
- Judge Edwards accepted the Trial Judge's assessment of credibility and that the Plaintiff had suffered significantly. The appeal Judge adopted the approach in the case of "Nolan & Shannon v O'Sullivan" and considered the overall range of damages as between minor and very severe noting that severe or catastrophic injuries were likely to be valued in the region of €450,000.00.
- Judge Edwards concluded that the damages awarded were disproportionate and excessive when considered against the spectrum of damages awarded by the Courts. The award was reduced to €125,000.00 being made up as €75,000.00 for pain and suffering to date and €30,00.00 for pain and suffering into the future.
- Despite the book of quantum being out of date at that time, Judge Edwards did accept that during the course of the appeal the Defendants were correct in referring to it. He commented that even if the book was updated by a crude 50% the Trial Judges award was difficult to justify.

# The New Book of Quantum

- The new Book of Quantum was published at the beginning of October this year.
- The position remains that, pursuant to section 22 of the Civil Liability and Courts Act 2004 the judiciary are required only to have regard to the book when assessing quantum.
- In our experience the previous Book of Quantum was largely ignored although it has to be accepted that it was unspecific and included extremely wide categories of damages. There is no doubt the new book is a significant improvement.

# Reaction to the New Book of Quantum

- Insurance chief executive Kevin Thompson broadly welcomed the book but was critical that it did not incorporate some measure/standardisation against awards of other countries. He stated;-
  - “Bringing consistency to personal injury awards is the first step in tackling the high costs of claims in Ireland...If this new book is strictly adhered to by the Injuries Board and the judiciary then we can begin to tackle claims inflation.”
- The requirement for standardisation is a bug bear for insurers. For a crude example; Whip lash- the average whip lash claim in Ireland is €15,000.00 whereas it is £5,000.00 in the UK.
- Dorothea Dowling criticises the fact that the Book of Quantum is largely based on data from 51,000 claims settled by insurers between 2013 and 2014. She criticises the fact that the proportionate approach adopted by the Court of Appeal has not be incorporated into the basis for the valuations set out in the book.

# Reaction to the New Book of Quantum

- What of the judiciary? President of the High Court, Justice Peter Kelly welcomed the publication, stating it will provide;-
  - “ Important data to all of those making awards or agreeing settlements in personal injury cases. The fact that the publication has been updated, covers more injuries and has greater detail, is very positive. While all cases are considered individually, Judges will find the revised book very useful in informing decision making in relation to the value of damages.”

# The JSB Guidelines in Northern Ireland

- These were first published in 1996 following a consultation period of some 2 years. It was in response to the publication of the English guidelines and it was needed to reflect the fact damages were historically higher in Northern Ireland than England.
- The guidelines were most recently updated in 2014 and it is interesting to consider Lord Justice Girvan's comments in the foreward;-
  - “as in previous reviews we have made adjustments in the figures by reference to the retail price index”.
- Since their introduction the judiciary in Northern Ireland routinely request submissions from Senior Counsel on the value of general damages with specific reference to the JSB Guidelines.

# General Observations on the Changes on the Book of Quantum

- **Neck / Whiplash injuries** the new book provides:
- - a 9% increase in the award for the new “minor - substantially recovered” category compared to the previous “substantially recovered within 12 months” category;
- - a 11% increase in the award for the new “minor – a full recovery expected” category compared to the previous “substantially recovered within 24 months” category;
- - In the new “moderate” and “moderately severe” categories there is a 28% increase on the minimum award and 19% decrease on the maximum award compared to the previous “significant ongoing” category;
- - In the new “severe and permanent” category there is a 24% decrease on the minimum award and a 1% decrease on the maximum award compared to the previous “serious and permanent conditions” category.

## General Observations on the Changes on the Book of Quantum

- **Back injuries:** the new book provides:
- - a 9% decrease in the award for the new “minor - substantially recovered” category compared to the previous “substantially recovered within 12 months” category;
- - a 6% decrease in the award for the new “minor – a full recovery expected” category compared to the previous “substantially recovered within 24 months” category;
- - In the new “moderate” and “moderately severe” categories there is a 17% increase on the minimum award and 20% decrease on the maximum award compared to the previous “significant ongoing” category;
- - In the new “severe and permanent” category there is a 17% decrease on the minimum award and an 8% increase on the maximum award compared to the previous “serious and permanent conditions” category.

## General Observations on the Changes on the Book of Quantum

- **Hip / Pelvis Soft Tissue injuries:** the new book provides:
- - a 27% increase in the award in the new “minor” category compared to the previous “substantially recovered” category;
- - In the new “moderate” category there is a 17% decrease on the minimum award and a 28% increase on the maximum award compared to the previous “significant ongoing” category;
- - In the new “severe and permanent conditions” category there is a 54% increase on the minimum award and a 1% increase on the maximum award compared to the previous “serious and permanent conditions” category.

## General Observations on the Changes on the Book of Quantum

- **Knee Soft Tissue injuries:** the new book provides:
- - a 48% decrease in the award in the new “minor” category compared to the previous “substantially recovered” category;
- - In the new “moderate” and “moderately severe” categories there is an 8% increase on the minimum award and a 30% increase on the maximum award compared to the previous “significant ongoing” category;
- - In the new “severe and permanent conditions” category there is a 56% increase on the minimum award and a 4% increase on the maximum award compared to the previous “serious and permanent conditions” category.

# Conclusions

- The importance of the Court of Appeal in curbing excessive High Court awards.
- Will the principal of proportionality by reference to the “imaginary scale” gain traction with the High Court Bench.
- The impact of the New Book of Quantum.