

High Court Considers a “Section 26” Application in Personal Injuries Proceedings

October 2024

The High Court has awarded €50,000 in general damages to a plaintiff for injuries sustained in three separate road traffic accidents. Special damages were ultimately fixed at €3,050, despite a claim in this regard for in excess of €750,000.

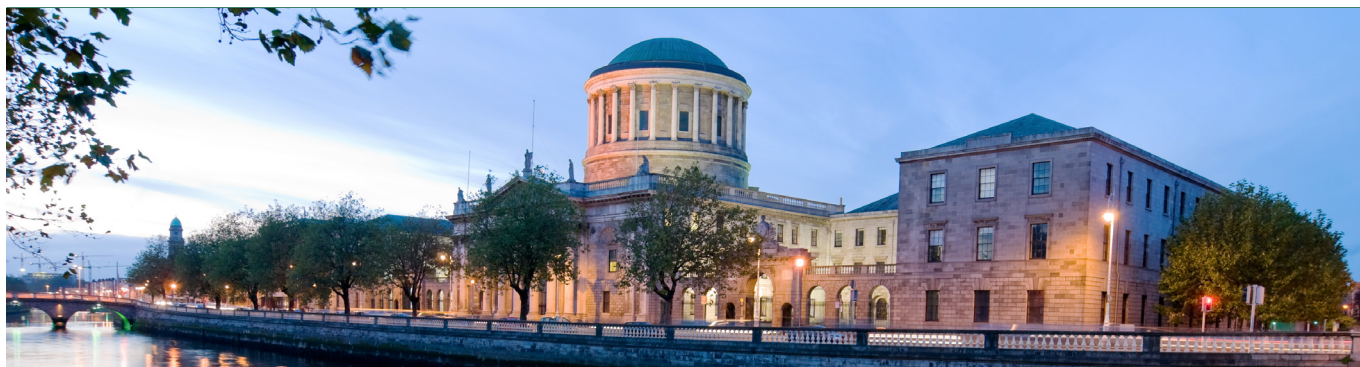
The court, in *Rezmuves v Birney & ors [2024] IEHC 592*, considered an application by the defendants to have the action dismissed pursuant to section 26 of The Civil Liability and Courts Act 2004 (**‘Section 26’**).

Background

The three separate road traffic accidents, which took place in 2014, 2016 and 2017, involved the plaintiff’s car being rear-ended on two occasions, while in a separate incident, a defendant pulled his car out in front of the plaintiff resulting in “low speed” impact. The defendants did not dispute their liability for each of the collisions.

The plaintiff claimed to suffer injuries including restricted movement of his cervical spine and pain on hyperextension of the lumbar spine, while he could not work due to conditions attributable to the collisions.





A schedule of the special damages being claimed, as verified by the plaintiff on affidavit in October 2023, sought €757,190.20, including €184,832 for past loss of earnings, €471,504 for future loss of earnings and €94,804 for the future cost of a spinal cord stimulator.

The plaintiff also swore a verifying affidavit on 24 January 2024 in respect of the report of a consultant actuary, which capitalised net weekly future losses for two, five and ten years at €48,307, €117,719, and €226,527 respectively.

Section 26 Application

Section 26 provides inter alia that a court may dismiss a personal injuries action where a plaintiff knowingly gives false or misleading evidence.

The defendants took issue with the answers of the plaintiff given under cross examination and the verifying affidavits referred to above, noting that the plaintiff had generated zero income from 2009 until September 2014 but continued to claim past loss of earnings from the date of the first collision. It was suggested that experts engaged by the plaintiff were misled about the plaintiff's business and prospects in terms of a business venture he intended to pursue. The plaintiff also maintained a claim for a spinal cord stimulator despite his own consultant neurosurgeon not supporting it (another expert, who had only examined the plaintiff in 2023, had suggested "a trial" of a spinal stimulator "to see does it work").

The plaintiff referenced his previous unpaid work experience and qualifications as a forklift driver, welder and painter, which indicated an ability to undertake work if he overcame his debilitating pain.

Court Findings

The court outlined 4 principles relevant to the Section 26 application before it, namely;

- The test of knowledge on the part of the plaintiff is subjective;
- The onus of proof is to the civil standard but a trial judge should be absolutely satisfied as a matter of high probability that the plaintiff has been guilty of dishonesty;
- The plaintiff must be shown to know that his evidence is false or misleading; and
- Section 26 is there to deter and disallow a fraudulent claim. It should not be seen as an opportunity to prey on the frailty of human recollection or the accidental mishaps that so often occur in the process of litigation.

The court acknowledged that the plaintiff did not have the knowledge and experience of the legal practitioners or the court, and it recognised that dreams, wishful thinking and optimism may affect reason. The court was not satisfied to the requisite degree that the plaintiff acted fraudulently or dishonestly. While it was apparent that the plaintiff had been alert to the financial benefits of attributing all his woes to the collisions, the defendants did not establish that the plaintiff was aware of his own irrationality (viewed objectively) and unreasonable views about his self-employment prospects.

Award

Despite the court rejecting the Section 26 application to dismiss the proceedings, it did find that the plaintiff had become over optimistic as the proceedings progressed and developed unreasonable (viewed objectively) expectations about what the proceedings could achieve for him financially.

The dominant injury was identified as being to his cervical spine and his physical injury gave rise to limitation of movement, recurring pain and discomfort with a contribution to the requirement for surgery in his cervical spine. The court viewed the injuries as falling within the "moderately severe" whiplash soft tissue injury category. Having regard to all the



circumstances including the immediate after-effects from each of the collisions, such as short-lived pain in his thoracic spine and chest with discomfort and sleep disturbance, the court awarded €50,000 in general damages.

Conclusion

While the ultimate award to the plaintiff was significantly less than that claimed, this judgment emphasises the high threshold for defendants to overcome when bringing a Section 26 application.

CONTACT US

Our Offices

Dublin

33 Sir John Rogerson's Quay
Dublin 2
Ireland
Tel: +353 1 667 0022

Cayman Islands

Landmark Square
West Bay Road, PO Box 775
Grand Cayman KY1-9006
Cayman Islands
Tel: +1 345 949 0022

New York

33 Irving Place
New York
NY 10003
United States
Tel: +1 646 770 6080

Tokyo

12th Floor,
Yurakucho Itocia Building
2-7-1 Yurakucho, Chiyoda-ku
Tokyo 100-0006,
Japan
Tel: +813 6860 4885

CONTACT POINTS

For more details on how we can help you, to request copies of most recent newsletters, briefings or articles, or simply to be included on our mailing list going forward, please contact any of the team members below.



Paul Breen

Partner | Dublin

E paul.breen@dilloneustace.ie
T + 353 1 667 0022



Siobhan Lane

Senior Associate | Dublin

E siobhan.lane@dilloneustace.ie
T + 353 1 667 0022

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