PERSONAL INJURIES AWARDS AND THE COMPENSATION CULTURE

High cost motor insurance premiums and high value compensation for personal injuries claims have been the subject of much debate in our media during the past year. Blame has been laid at the door of the legal profession and compensation that is being branded as being "too high". Below is some food for thought when considering the ongoing debate.

There have been comments in relation to some of the values for injuries compensation being considerably higher than other European countries and there have been proposals that values should be benchmarked against international systems. However, it is not within the statutory power of the Injuries Board to benchmark internationally and, even if this were allowed, other countries are not comparators for the Irish system for reasons being, for example, the different social welfare systems and different legal systems. However, our own Court of Appeal have set out a very fair benchmark for assessing general damages in personal injuries cases which appears to have been ignored.

In the case of Payne –v- Nugent [2015] IECA 268, the Court of Appeal outlined a new way of assessing personal injuries cases. This case highlighted that "modest injuries should attract moderate damages" and saw the Court of Appeal reduce a High Court award of general damages by 46% from €65,000.00 to €35,000.00. This judgement highlighted that in assessing the award of compensation, the trial judge should have regard to where the injury falls on the scale or spectrum of damages which ends at €400,000.00 for the catastrophically injured. The judgement also highlighted that the damages must be reasonable and proportionate. The Court of Appeal did highlight that this was not a formula to be adopted but that it was more of a benchmark by which the appropriateness of an award could be evaluated. The approach in this case is essentially start at the top and work your way down having regard to the injury. This is a more fair and proportionate approach than having regard to a label for an injury like in the Book of Quantum. This approach to awarding general damages was followed by the Court of Appeal in the cases of Nolan –v- Wirenski [2016] IECA 56 and Anthony and Rita Shannon –v-

O'Sullivan [2016] IECA 93 where the Court of Appeal significantly reduced the awards of general damages made by the High Court.

A new Injuries Board Book of Quantum was published in 2016. Commentators appear to be very taken up with it's content and not so much with it's compilation and calculation. The data analysed would appear to be primarily based on out of court settlements, which is compensation paid out by the insurance industry themselves. Given that the insurance industry have been criticised for their disinterest in challenging cases and being only concerned with their pricing, this is worrying. What is also worrying is that the data which was analysed to compile the new Book of Quantum is data concerning the awards made by the courts in 2013 and 2014 which is flawed given that the Court of Appeal went on to reduce the general damages awards in 2015 and 2016.

Legal costs can be unnecessarily increased as a result of certain actions or inactions by both the legal representatives for the claimant and legal representatives for the insurance company. In circumstances where items such as an Appearance, Replies to Particulars, a Defence or furnishing discovery documentation is not done in accordance with the court rules, it will be necessary to issue a motion and seek an Order for these items. This is costly. There are many cases where it would appear that liability is not or should not be an issue but a full Defence is filed putting the claimant on full proof of the claim. In these circumstances, a liability expert has to be engaged. This is also costly. In addition, discovery can sometimes be sought as a matter of course and this is also an additional cost. On many occasions, an offer of settlement will not be made until the morning of a court hearing. At this stage, a full legal team has been engaged for both sides, a case has been prepared for a full fight in court and all experts are on standby to give evidence. These are all items which contribute to the legal costs. Legal costs can be reduced if both solicitors for the claimant and the insurance company comply with the court rules, agree as much information as is possible and come to a resolution as early as possible in relation to cases which can be finalised.

There is always a risk with litigation in that there is no such thing as a guaranteed win. The newspapers report on court cases daily. Some cases are won. Other cases are lost. The point is that when a claimant brings a personal injury claim and receives an award of damages, that person is getting compensation which he/she is entitled to by law. That person has been injured because of the negligence of another party and has brought a claim in accordance with the law and has been awarded damages in accordance with the law. If a claimant is not entitled to compensation by law, he/she will not receive it.

***Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**
****In contentious cases, a solicitor may not charge fees or expenses as a portion or percentage of any award of settlement.**