

22nd July 2009

Court says passenger 35% liable for his injuries

In some instances the Plaintiff, while winning his Claim for Compensation suffers a reduction in his Award by reason of the fact that he has contributed to his own injury. This what is known as Contributory Negligence. In most cases the reduction in the award would be in the region of 10% and certainly no more than 25%.

The Irish Times has reported that The Supreme Court has ruled that a young man who travelled in a car driven by another man whom he knew had several alcoholic drinks is 35 per cent liable for serious injuries suffered in a subsequent incident, not 15 per cent as found by another judge.

On that basis, the three-judge court reduced to €890,000 a €1.3million damages award by the High Court to Roy Moran arising from the crash in Co Tipperary 10 years ago.

The court dismissed arguments by the car driver, Sean Fogarty, that the High Court should have dismissed Mr. Moran's entire case against him after it was found as a fact Mr. Moran got into a car with a driver whom he knew had been drinking.

The case arose from an incident on the night of April 23rd-24th, 1999 when Mr. Moran Ashbrook Heights, Nenagh, Co. Tipperary, was travelling as a front seat passenger in a car driven by Mr. Fogarty, Sapwell, Ballingarry, Co. Tipperary.

Both men were drinking earlier in a bar in Nenagh and they had a woman friend. All left the bar at closing time and travelled together in the car driven by Mr. Fogarty.

On their homeward journey, the car hit a wall and Mr. Moran suffered head injuries and other injuries as a result of which, it was claimed, he was physically unable to continue his apprenticeship as a block layer.

It was also claimed that he would have difficulty looking after himself into the future.

Mr. Moran later took High Court proceedings against Mr. Fogarty and was awarded €1.3million damages, reduced to €1.1million as a result of that court's finding of 15 per cent contributory negligence by Mr. Moran in getting into a car with a driver whom he knew had been drinking.

Mr. Fogarty appealed against the award on several grounds, including that Mr. Moran was not entitled to damages as the cause of his injuries was the crash and he would not have suffered those had he refused to travel with a driver whom he knew was intoxicated. In a reserved judgment on the 21st July, Mr. Justice Joseph Finnegan, with whom the Chief Justice, Mr. Justice John Murray and Mrs. Justice Susan Denham agreed ruled the greater blameworthiness in the case must lie with the driver, Mr. Fogarty.

It was Mr. Fogarty's decision to drive to the bar in Nenagh and to drive home, notwithstanding the consumption of alcohol, the judge said.

It was Mr. Fogarty who had control of the car and its driving and it was he who represented a danger, not just to Mr. Moran but to other road users. The crash was entirely attributable to Mr. Fogarty's driving.

The judge also ruled the evening out was in the nature of a joint venture as Mr. Moran and Mr. Fogarty travelled together by car on a 20 minute journey to the bar and the evidence showed they intended to travel together on the return journey, having consumed alcohol.

They had also spent from about 8.30p.m. to at least 1am in the bar together and, in each other's presence, drank between six and nine alcoholic drinks over that time.

Mr. Moran knew, or certainly ought to have known, that Mr. Fogarty's ability to drive was impaired by drink, the judge said. The court would set aside the 15 per cent finding and replace it with one of 35 per cent for Mr. Moran and 65 per cent for Mr. Fogarty