Neutral Citation Number: [2011] IEHC 225

THE HIGH COURT

2007 8367 P

BETWEEN

CHARLOTTE BARRY (A MINOR) SUING BY HER MOTHER AND NEXT FRIEND AISLING CAMPBELL

PLAINTIFF

AND

THE NATIONAL MATERNITY HOSPITAL

AND

PETER LENEHAN

DEFENDANTS

JUDGMENT of O'Neill J. delivered on the 27th day of May, 2011

1. The plaintiff in this case, who was born on 9th September, 2005, sustained a severe hypoxic-ischemic insult during the course of labour and delivery, as a consequence of which she was severely asphyxiated at birth, requiring resuscitation by way of being intubated and ventilated. The plaintiff developed acute hypoxic-ischemic encephalopathy and suffers a severe syndrome of Cerebral Palsy (Spastic Quadriplegia) with marked neurodevelopmental difficulties.

2. The plaintiff claims that the foregoing was the result of the negligence and breach of duty of the defendants and sues for damages. The first named defendant has admitted liability. The action against the second named defendant has been struck out with no order. The damages to be paid by the first named defendant have been agreed, save for one item, namely, compensation for the plaintiff's accommodation needs during her expected lifetime. The other items of damages have been agreed and have been approved by the court.

3. Since her birth, the plaintiff has resided with her parents at 7, O'Connell Gardens, Sandymount in Dublin. Her father, Robert Barry, was born on 4th May, 1973, and his wife, Aisling Campbell, the plaintiff's mother, was born on 25th July, 1974. They have lived at the foregoing address since December 2003. Amelia Barry, the plaintiff's sister, was born on 30th April, 2008. Robert Barry's and Aisling Campbell's families live in the Sandymount area, very close to the current family residence, and the plaintiff attends school in that area, and her social integration has all taken place in the Sandymount area.

4. Although alterations were carried out to the house at 7, O'Connell Gardens, it is commoncase that this house is not suitable to meet the future accommodation needs of the plaintiff, and for that purpose, a suitable property will have to be acquired. Because of the close family connections that the plaintiff's parents have in the Sandymount area, and the multi-faceted supports they get from their respective, extended families, the plaintiff's parents are seeking to acquire a property in that area, which will be suitable for the accommodation needs of the plaintiff for the future.

5. A sum of €875,000 has been agreed between the parties as being the cost of acquiring such a property in that area. A further sum of €283,000 has been agreed as being the cost of adapting the acquired property to meet the needs of the plaintiff. Thus, the total cost of acquiring and adapting such a property is agreed at €1,158, 000. It is further agreed that the expenditure of the said sum of €283,000 to adapt the property would enhance the value of it by the agreed figure of €135,000. The value of 7, O'Connell Gardens, Sandymount, is also agreed in the sum of €550,000.

6. The plaintiff's life expectancy is agreed at thirty-five years, and damages for the plaintiff's loss of earnings are agreed in the sum of €350,000.

7. The plaintiff claims the entire sum of €1.158,000 as compensation, on the basis that if she is awarded anything less than that, there will be a shortfall from the sum necessary to purchase and adapt a house for her future accommodation, and to make up this shortfall, the plaintiff will be forced to resort to damages awarded under other headings e.g. general damages or damages for loss of earnings, to enable her to purchase what is agreed to be necessary accommodation for her. It is submitted, for the plaintiff, that to satisfy the principle of restitution in integrum, it is necessary that the plaintiff be compensated in this way, otherwise, she will be forced, in effect, to compensate herself by using damages awarded under one heading to make good losses caused by the defendant as tortfeasor under separate headings with the result that plaintiff would be forced to indemnify the defendants in respect of part of its wrongdoing.

8. The defendants' approach to this aspect of the damages is entirely different. For the defendants, it was submitted by Mr. McGrath S.C., relying upon the approach taken by the Court of Appeal in the United Kingdom in the case of Roberts v. Johnson [1989] C.A., p. 878, that the plaintiff is only entitled to recover the additional expenses of accommodation above and beyond the expenses she would have incurred, but for her injury, and the measure of such additional expense is either the loss on the investment of capital used to meet that additional expense, or, alternatively, the cost of acquiring capital to meet that expense, using a real rate of return of 3% to calculate same. In addition, the defendants submit that the agreed value of the plaintiff's parents' must be

deducted, as must be the enhanced value resulting from the adaptations to be carried out to the property to be acquired.

9. In deducting the agreed value of the existing home, the defendants say that if this is not done, in effect, an extraordinary role reversal occurs, in the sense that instead of the plaintiff's parents providing accommodation for the plaintiff, as would be their normal parental obligation until she reached adulthood, the plaintiff would become the provider of accommodation for her parents and any other siblings. In arguing for a deduction of the agreed value of the existing home, the defendants acknowledge that the plaintiff's parents will be entitled to have an interest in the property to be acquired, commensurate with their contribution to its acquisition. The defendants further submit that the agreed enhanced value, namely, €135,000, resulting from the adaptation of the new property, must be deducted as being extra to the additional expense of accommodation resulting from the plaintiff's injuries, in effect, a capital bonus. The defendants, thus, calculate their liability under this heading of Damages as follows:

€875,000

- €550,000

€325,000 x 3% (real rate of return) = €9,750.00

This figure is then multiplied by the plaintiff's multiplier, which is 20.3, which produces a capital value of €197,925. To this figure is then added the sum of €283,000, namely, the cost of conversion or adaptation, which then comes to €480,925. This figure is then reduced by €135,000, which produced a final figure of €345,925, which the defendants are agreeable to round up to €350,000 as being their liability in respect of the cost of future accommodation for the plaintiff.

10. For the plaintiff, this approach was rejected by Mr. Denis McCullough S.C. and Mr. Antoniotti S.C. on several grounds. In the first instance, they say the defendants' approach wholly fails to adequately compensate the plaintiff for the cost of accommodation, which, it is accepted, is necessary for her. They submit that deducting the agreed value of the parents' home is forcing the parents to contribute their only asset, in effect, to compensate the plaintiff, thereby relieving the defendants from part of their liability. It is submitted that if the plaintiff's parents were compelled to do this it would be grossly unfair to them, because their only asset would be tied up inextricably for the benefit of the plaintiff for the duration of her lifetime, thereby depriving them of any opportunity to use this asset to benefit Amelia or other children that they intended to have, or, indeed, to benefit themselves later in life. The unfairness of this, it is said, is exacerbated by the fact that they have a mortgage on the existing family home of in excess of €330,000, leaving their equity at only €217,000 (figures agreed with the defendants). They say that the defendants' approach wholly fails to award just compensation to the plaintiff for the wrongdoing of the defendants,

leaving the plaintiff and her parents in the invidious position of either not acquiring suitable accommodation for the plaintiff, or, if that accommodation is to be acquired, the shortfall in its cost would have to be made up by contributions from the plaintiff in the form of dipping into other heads of damage, and from the parents by contributing the gross value of their existing home, thereby, and to that extent, indemnifying the defendants in respect of their wrongdoing. They reject the approach adopted by the courts in the United Kingdom in Roberts v. Johnson as a wholly inadequate means of ascertaining just compensation in these circumstances. Specifically, they say that the preoccupation of the Court of Appeal with avoiding a windfall gain to the estate of a plaintiff, as evidenced by the method of actuarial calculation chosen, is wholly inappropriate in achieving a correct balance of justice, bearing in mind the catastrophic consequences for the plaintiff's parents in every aspect of their lives, personal, domestic and professional, resulting from the wrongdoing of the defendants. They urge this court not to follow the reasoning in Roberts v. Johnson.

11. The search for a solution for the difficult problem thrown up in this issue is not easy. As is apparent from the cases referred to from the United Kingdom and, indeed, the consideration of its Law Reform Commission of the issue, an all-round satisfactory solution appears extremely elusive.

12. The starting point in the necessary analysis of the relevant factors which should lead to the appropriate resolution, are the ordinary principles which govern the ascertainment of compensatory damages. The compensation to be paid by the defendants must, insofar as money can do it, put the plaintiff in the same position as she would be in, if the wrongdoing had not occurred. That involves a consideration of the actual effects of the wrongdoing on the plaintiff, and also a consideration of where the plaintiff would be, and how her life would progress, if she had not suffered the injury in question. There is no doubt and it is commoncase that the plaintiff has suffered catastrophic injuries and requires a very high level of dependent care for the rest of her life, including suitable accommodation. In this respect, it is agreed that her life expectancy is thirty-five years. If the plaintiff had not suffered these injuries, the probability is that her life would take the normal course, in the sense that she would have attended school, probably progressed into employment, and in due course, acquired her own accommodation, either with or without the aid of a husband or partner. Thus, factors to be taken into account are that the plaintiff would have acquired accommodation in the future by expending her own income for that purpose. Therefore, what she has to be compensated for is the additional cost of accommodation beyond that which she would, in the ordinary course, herself have incurred in the course of her life, had her capacity to provide for her own accommodation not been destroyed by the injuries suffered.

13. In my view, that is the core decisive principle which must govern the ascertainment of the amount of compensation to be paid to the plaintiff in respect of her future accommodation needs. Insofar as the plaintiff's claim to the entire cost of the acquisition of the new property and its adaptation fails to take into account at all the actual cost of accommodation as distinct from the capital value of the property in which it is provided, and the value of any accommodation provided to the plaintiff by her parents, it fundamentally departs from the ordinary principles for the

ascertainment of compensatory damages, and, in my opinion, such a fundamental change to ancient and time-honoured legal principles would require legislative intervention.

14. In any event, I am precluded from such a departure by the dicta of the Supreme Court in the case of Doherty v. Bowaters Irish Wall Board Mills Limited [1968] I.R. 277, at p. 286, where Walsh J. says:

"Another item of considerable substance is the question of the provision of a suitable house for the plaintiff. Evidence was given that the cost of providing a house suitable for himself and the necessary attendants would be approximately £9,000. Now this is not an item which must be regarded as a wasting expenditure and, allowing for the fact that some considerable part of the total cost may be in respect of the special measurements which are necessary to accommodate the plaintiff and which would not have any appreciable market value for any other purchaser, I think it would be not unfair to allow that the house would retain a value of approximately £5,000 as a capital asset. On that basis the loss to the plaintiff would be approximately £4,000. . . "

Further on, he says the following at page 288, apropos windfall gain:

"Similarly I think it is fallacious to approach the question on the basis of examining what income the damages could produce if invested. So far as the damages are made up of money based on the actuarial calculations, the underlying assumptions, on which the ultimate calculations were made by the jury, contained an assumption of expenditure at a rate which, if continued, would have meant that at the end of the period calculated there would be no residual capital sum. If a person chooses to live on less than that which he is entitled to spend and if he thereby acquires a capital sum which is in existence at the time of his death, that is not a factor to be taken into account in measuring the damages. A person might well find himself spending a good deal more than the sum assumed in the initial calculation, in which event the damages would not even endure for the period originally calculated. In such a case, what he chooses to do with his damages after he gets them is not a relevant consideration in the assessment of the damages or in the consideration of these damages upon an appeal . . . "

15. The first of the foregoing dicta of Walsh J. makes it clear that where a house is to be purchased for the purposes of providing for the accommodation needs of a disabled plaintiff, the value of the capital asset which will accrue to the plaintiff must be discounted, and only the additional cost of providing the necessary accommodation, but which does not result in an enduring or appreciating asset, can be the subject matter of compensation to be paid by the tortfeasor. Thus, the principle seems to be that the defendant is only obliged to compensate for that part of the additional cost of providing accommodation, which is a "wasting expenditure" or, in other words, an expenditure on assets which will be consumed over the expected lifetime of the plaintiff.

16. The second passage from the judgment of Walsh J. quoted above, whilst, at first glance, might appear to give support to the proposition that a court, assessing damages in these circumstances, should not be concerned with the accrual of a windfall gain to the estate of a plaintiff, in fact, on closer examination has the very opposite intent, and underlines the time-

honoured principle that the purpose of damages to compensate for additional expenditure is simply to do that, and where a capital sum must be paid to meet a future expenditure, it must be calculated in such a way as to ensure that the capital sum will be fully consumed by the end of the period during which the loss continues. It is because capital sums to compensate in this way are calculated actuarially to exhaust the capital sum over the period in question, that a court need not further concern itself as to how that sum, in the hands of the plaintiff, is, in fact, expended. Thus, as said by Walsh J., if a plaintiff chooses not to spend the capital sum at the periodic rate calculated, but instead, chooses to save it, it is immaterial that some or all of the capital sum is in existence at the end of the period in question. Similarly, if a plaintiff spends the capital sum at an excessive rate and exhausts the capital sum before the end of period over which it was calculated, likewise, the court cannot be concerned, because the defendant will have fully discharged his obligation to compensate. Taking these two dicta together, it seems clear to me that the law in this jurisdiction on the assessment of compensation for the future accommodation needs of a disabled person, excludes an award of compensation which would leave intact at the end of the period for which the compensation is calculated, an enduring or appreciating asset in the hands of a plaintiff, and a capital sum which, under our present system of compensatory damages, is the only way of compensating for a future loss, such as this, must be calculated in such a way, i.e. actuarially, so as to ensure that this capital sum, if spent at the rate envisaged, will be fully exhausted at the end of the period in question.

17. In my opinion, the dicta of Walsh J. in the Doherty v. Bowaters Irish Wall Board Mills Limited case, are applicable to the circumstances in this case, there being no discernible material difference in the type of loss sought to be compensated, and, accordingly, I am bound to follow the judgment of the Supreme Court in that case.

18. The approach adopted by the Court of Appeal in Roberts v. Johnson is essentially consistent with the principles set out by Walsh J. in the Doherty v. Bowaters case. The following passages from the judgment of Stocker L.J. illustrate this. At p. 889, the learned judge said:

“The full difference between the sale price of Hill Cottage and the purchase price of the new bungalow is therefore £68,500 and the plaintiff claimed this sum. The judge awarded the sum of £28,800 including the cost of conversion. The judge’s reasoning appears in his judgment. He cited an extensive passage from the judgment of Orr L.J. in George v. Pinnock [1973] 1 W.L.R. 118, 124-125. It is sufficient, for the purposes of this appeal, to cite only part of the judgment more extensively cited by the judge:

‘For the plaintiff, it has been contended, in the first place, that she should receive as additional damages, either the whole or some part of the capital cost of acquiring the bungalow, since it was acquired to meet the particular needs arising from the accident. But this argument, in my judgment, has no foundation. The plaintiff still has the capital in question in the form of the bungalow. An

alternative argument advanced was, however, that as a result of the particular needs arising from her injuries, the plaintiff has been involved in greater annual expenses of accommodation than she would have incurred if the accident had not happened. In my judgment, this argument is well founded, and I do not think it makes any difference for this purpose whether the matter is considered in terms of a loss of income from the capital expended on the bungalow, or in terms of annual mortgage interest which would have been payable if capital to buy the bungalow had not been available. The plaintiff is, in my judgment, entitled to be compensated to the extent that this loss of income or notional outlay by way of mortgage interest exceeds what the cost of her accommodation would have been, but for the accident. She would also, in my judgment, have been entitled to claim the expense of a move to a new home imposed by her condition, and the expense of any new items of furniture required because of that condition, but there was no evidence before the judge under either of those headings. As to the increased cost of accommodation, if any, it was, as I have said, agreed that we should make the best estimate we could on the available material, and the matter can only be approached on a broad basis'.

The judge accepted that George v. Pinnock was an authority binding upon him, and in form applied its directions where he said:

'It is plain that the capital cost of a new house cannot be awarded as damages, but that the additional cost of providing a new home can . . . I consider that George v. Pinnock remains good law, approved by the Court of Appeal, and binding on me."

The judgment then continues with a consideration of the appropriate rate of interest to apply. At issue was whether or not mortgage interest should apply or whether it should be an interest rate reflecting the loss of income on capital used to purchase the house. In that case, the evidence was that the net mortgage interest would have been 7% at that time, and the annual cost in terms of lost income on investment, on the sum expended on the house, in respect of which, the evidence was that a tax-free yield of 2% in risk-free investment would be appropriate.

19. At p. 892, 893, the following was said:

". . . it seems to us, however, that where the capital asset in which the cost is incurred consists of house property, inflation and risk element are secured by the rising value of such property, particularly in desirable, residential areas, and thus the rate of 2% would appear to be more appropriate than that of 7% or 9.1%, which represents the actual cost of a mortgage loan for such property.

We are reinforced in this view by the fact that in reality, in this case, the purchase was financed by a capital sum, paid on account on behalf of the defendants by way of interim payments, and thus, it may be appropriate to consider annual cost in terms of lost income in investment, since the sum expended on the house would not be available to produce income. A tax-free yield of 2% in risk-free investment would not be a wholly unacceptable one. Mr. McGregor, for the plaintiff, objects that if a

rate of 2% is adopted, then the multiplier of sixteen would be far too low and a substantially higher multiplier should be adopted, resulting in much the same anomaly. For our part, we would reject this argument, since the object of the calculation is to avoid leaving in the hands of the plaintiff's estate capital asset not eroded by the passage of time; damages in such cases are notionally intended to be such as will exhaust the fund contemporaneously with the termination of the plaintiff's life expectancy. . ."

In the Roberts v. Johnson case, the purchase price of a new property was £86,500 and the proceeds of sale of the previous residence, Hill Cottage, was £18,000. It is not clear, at all in the judgment, whether the £18,000 was the full value of Hill Cottage, the previous residence, or the net value after deduction of any mortgage and costs of sale. In that case, the plaintiff conceded or invited the court to take into account the value of the property sold. Nowhere in the judgment is there a discussion of the respective interests in the new property, of the plaintiff and the Woodward's, the carers and, ultimately, adoptive parents of the plaintiff, nor is there any consideration of the separate cost of accommodation of the plaintiff on reaching adult status.

Having decided on the appropriate rate of interest, the learned judge goes on to assess the damages as follows:

". . . we therefore calculate that, applying a rate of 2% to the full difference of £68,500, a figure of £1,370 is calculated which, applying the multiplier of sixteen, equals £21,920. This calculation, however, does not take into account the conversion costs. The net conversion costs after allowance for that part of the cost which adds to the recoverable value of the house on resale, put at £10,000, reduces the conversion costs from £38,284 to £28,284. In our view, this sum should be added to the £21,920 (the cost of the difference between the buildings, calculated at 2%) and, accordingly, we will assess the value of the new accommodation, regarded as damages for the plaintiff, in the sum £50,204 . . ."

20. If the plaintiff is an adult, there would be little or no difficulty in applying the principle that the defendant was obliged to compensate for the additional costs of accommodation incurred as a consequence of the injuries suffered. Where the plaintiff, as in this case, is an infant now aged five years, the question arises as to how the value of the existing dwelling is to be treated in the computation of a plaintiff's damages, where the plaintiff is not the owner of that property. In this case, the property is owned, jointly, by the plaintiff's parents, and in the Roberts v. Johnson case, although it is not expressly stated, it seems implicit it was owned by the adopting parents. In the Roberts v. Johnson case, this issue was not considered, as it seems to have been conceded that the value of the adopting parents' house was to be taken into account and deducted from the cost of the property to be acquired. As said earlier, it is not at all clear from the judgment in that case whether, what was taken into account, was the full value of the former property, or merely the net value after deduction of any mortgage and/or costs of sale. If the value of the plaintiff's parents' house is to be taken into account, a secondary issue arises as to whether it is only the net equity of the parents in that property, or whether the full value of the property is to be deducted from the

agreed value of the new property. Thus, no guidance is to be had from Roberts v. Johnson on this difficult issue.

21. The Doherty v. Bowaters concerned an adult plaintiff, so the problem did not arise there, and, hence, there is no guidance from that source either.

22. As said earlier, Mr. McGrath S.C., for the first named defendant, submits that the entire value of the parents' home should be deducted from the cost of the new property, whereas, Mr. McCullough S.C., for the plaintiff, submits there should be no deduction, but if the court were to find that there should be a deduction, it should only be the net equity of the parents' house i.e. €217,000, leaving out of account the amount of the mortgage still outstanding on that property.

23. It should not be forgotten that it is the plaintiff, in this case, who is being compensated for the injuries which she has suffered. As a consequence of those injuries, she has particular accommodation needs, both now and for the rest of her expected lifespan. These accommodation needs give rise to additional cost of accommodation for the entire duration of her expected life. If the plaintiff did not suffer these injuries, upon reaching adult status, it is probable she would acquire her own accommodation using her own resources or, perhaps, combining her own resources with that of a husband or partner.

24. Both parties to this litigation have approached the cost of future accommodation for the plaintiff on the basis that her entire expected lifespan is treated as a continual process of dependence, essentially on parents, with appropriate contracted assistance. This is, of course, entirely understandable, having regard to the plaintiff's disabilities and the undoubted fact that she will, in all probability, be cared for by her parents for the duration of her life expectancy. However, it ignores a distinction which is very important from the point of view of properly compensating the plaintiff in respect of accommodation needs and that is the distinction between the childhood/minority part of the plaintiff's life expectancy and the adult portion. So far as the former is concerned, it is, of course, the case that the plaintiff, had she not suffered these catastrophic injuries, would have been supported and maintained by her parents, including having accommodation provided for her. Insofar as the adult portion of her life is concerned, it is probable, as mentioned earlier, that she would have gone on and would have provided accommodation for herself without or without the aid of a husband or partner.

25. Because of the catastrophic injuries inflicted upon the plaintiff, her capacity to provide accommodation for herself during the adult portion of her life has been destroyed, but in addition, because of her disabilities, she has unusual and additionally expensive accommodation needs. This is reflected in the fact that in order to accommodate these needs, in the same area in which she now lives, a more expensive property is required and this, in turn, will have to have alterations carried out to it, as the agreed figures demonstrate. It is easy to lose sight of the fact that it is the plaintiff

who has to be compensated for the destruction of her capacity to provide accommodation and for her special needs in respect of accommodation. Thus, she has to be compensated in this respect for the entirety of her lifespan, but so far as the adult portion of her lifespan is concerned, she has to be compensated on the basis that she is entitled have this accommodation in her own right and not simply as an additional member of her family with special needs.

26. It would seem to me that it is necessary to approach compensation for the plaintiff in respect of her accommodation needs on the basis that she has to be compensated in respect of those needs for the entire duration of her lifespan, but insofar as the adult portion of that lifespan is concerned, she is entitled to receive compensation which would put her, insofar as money can do it, on a basis independent of her parents, but with accommodation appropriate to her needs as a disabled person. Therefore, she is not to be compensated on the basis of being a dependent member of her family for the entire duration of her lifespan. However insofar as her period of childhood/minority is concerned, she is entitled to benefits from her parents in respect of accommodation for which credit must be given to the defendants.

27. Thus, compensation for the additional cost of accommodation over her entire lifespan is to be approached on the basis that the plaintiff is entitled to the entirety of that for the adult portion of her lifespan, but so far as the childhood/minority part is concerned, credit must go to the defendants for the value of the benefit of accommodation provided by her parents during that period.

28. In the course of the defendants' submissions, the prospect of the plaintiff's parents, and, indeed, siblings, benefiting from the compensation in respect of accommodation needs of the plaintiff was alluded to. Undoubtedly, that could happen during the adult portion of the plaintiff's life, assuming that they continued to care for the plaintiff as they had done during the minority portion of her lifespan. That may not necessarily happen for a variety of reasons, which emphasizes the necessity of compensating the plaintiff on an independent basis for her accommodation needs during the adult portion of her lifespan. Even if it did happen, and the plaintiff's parents did derive a collateral benefit in that regard, that could not be a reason for not compensating the plaintiff on the basis of being an independent adult. Indeed, it could very well be said that having regard to the devastating effects of the plaintiff's injuries on every aspect of the lives of her parents, that any such collateral benefit to them would in no way disturb a correct balance of justice between the plaintiff and the defendants in this case.

29. I am satisfied that the first named defendant is entitled to a credit commensurate with the value of the benefit to the plaintiff of having accommodation provided for her during her childhood or minority. The extent of that credit must be limited to or measured as best can be done to reflect the value of that benefit and no more. The extent of that benefit is that the plaintiff currently is one of a family of four who live in a house worth €550,000, provided by her parents, who, of course,

have both legal and moral obligations to so provide, but she may find herself sharing this accommodation with more children before too long; indeed, that is a probability. Having regard to the nature of the occupation of a family home by any individual child and having regard to the number of adult and child occupants of this house during the plaintiff's minority, I would be of the view that the plaintiff's benefit in this regard could not be considered to exceed one-sixth of the value of the house. In this regard, it would appear to me to be immaterial that there is a mortgage on the house because that is an essential ingredient in the discharge by the plaintiff's parents of their legal and moral obligation to provide accommodation for their family. What matters is that there is a house there worth €550,000, which the family as a whole and individual members of it enjoy to a certain extent. In my view, it would be wholly unjust to the plaintiff to ascribe to her the entire value of this property as if this was her exclusive benefit. Clearly, it is not, and I am quite satisfied that a just apportionment of the value of the property to reflect the plaintiff's occupation of it during her minority is, as indicated, a one-sixth share, for which credit must be given to the defendants.

30. As indicated earlier, the plaintiff's parents' obligation to provide accommodation to the plaintiff would end, in all probability, with the expiration of the plaintiff's minority or soon thereafter. This corresponds approximately to about one-half of the plaintiff's life expectancy. Thus, in my opinion, it necessarily follows that insofar as the first named defendant seeks to have the entire value of the current family home taken into account as representing the value of, or a part of the value of the plaintiff's future accommodation for the duration of her life expectancy, there must be an apportionment of that value to reflect the fact that, upon reaching adult status, the plaintiff would, but for her injuries, no longer have that accommodation available to her as of right, nor, indeed, as a matter of probability, would she continue to avail of it, having assumed normal adult status, and from then on availing of the normal opportunities of life, including obtaining her own accommodation. Thus, in my view, to reflect the fact that the family home would, but for her injuries, only be available to the plaintiff for approximately half of her current expected lifespan, the benefit to the plaintiff of her share in that accommodation must be reduced by a half to reflect this. Thus, I have to come to the conclusion that her benefit in this regard is equivalent to one-twelfth of the value of the house.

31. This brings me to the question of the enhancement of value of the property to be acquired by virtue of the adaptations to it.

32. Like the Law Commission in the United Kingdom, I prefer the approach adopted in the case of Willett v. North Bedfordshire Health Authority [1993] PIQR, Q 166, to the approach taken in the Roberts v. Johnson case to the treatment of the cost of alterations. In my view, this approach is much more consistent with the core reasoning applicable to the acquisition of assets with an enduring capital value, as set out in the Doherty v. Bowaters case and in Roberts v. Johnson. Using this approach, one identifies that portion of the cost of the alterations which does not produce any enhancement of value and that is treated then as a wasted or wasting asset, which, of course, is

what it is. The balance of the cost of alterations which, in fact, produces an enduring capital value, is then treated in exactly the same way as the purchase cost of a new house for the purposes of calculating compensation to be paid by a tortfeasor. In order not to put in the hands of a plaintiff the full enduring capital cost, the compensation is calculated actuarially based on the assumption of a 3% return on capital multiplied by the appropriate multiplier, in this case, 20.3. The agreed alterations are €283,000 and the enhanced value resulting is €135,000. This means that of the €283,000, €148,000 is a wasted or wasting asset. The remaining €135,000 then must be considered as an enduring capital asset and treated accordingly, as discussed above. This results in the following calculation in respect of the cost of the alternations:

€ €283,000 - €135,000 = €148,000

- €135,000 x 3% = €4,050 x 20.3 = €82,250 + €148,000 = €230,215

33. The figures, therefore, in relation to the cost of accommodation work out as follows:

		€ 875, 000	
	-	€ 45,833	(1/12th of €550,000)
		€ 829,167	
x 3%	=	€ 24,875.01	
x 20.3	=	€ 504,962.70	
	+	€ 230,215.00	
	=	€ 735,177.70	

34. Accordingly, I will award the sum of €735,177.70 as compensation in respect of the plaintiff's future accommodation needs.