Client Update

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DEFAMATION

Offer of Amends' procedure can reduce defamation awards by up to 40%

The Court of Appeal has significantly reduced an award of damages in a high profile defamation case involving TV3.

In the case of Christie v TV3 Television Networks Limited [2017] IECA 128 the High Court had awarded Mr Christie €200,000 in damages when the station accidently referred to him as being Thomas Byrne, a different solicitor who had been jailed for fraud.

TV3 subsequently availed of the 'offer of amends' procedure as contained in the Defamation Act 2009, the workings of which is still relatively new in this jurisdiction.

When making an 'offer of amends', the defendant is accepting that they have published defamatory material and wish to engage in negotiations to agree upon suitable compensation and the terms of apology.

If agreement cannot be made through negotiation, then the matter will go to court, where the appropriate amount will be decided upon by judge or jury.

Importantly however, the judge will give credit to the defendant for making an offer of amends and reduce the award by a certain percentage. How much it can be reduced will vary depending on the circumstances.

In this case TV3 appealed the High Court award to the Court of Appeal.

The court held that in any case damages must be measured and proportionate, and the courts had to be wary in defamation cases of the 'chilling effect' high awards can have on the media.

The court considered the original award to be disproportionate and reduced it to €60,000. It also held that the Offer of Amends made by the defendant, coupled with the early apology given to the plaintiff, should reduce the award by 40%.

Overall, by virtue of the offer of amends made and their foresight in appealing, TV3 reduced their liability

MEDICAL NEGLIGENCE

A basic overview of medical negligence law

A patient may suffer from an unexpected injury while undergoing treatment by a medical practitioner or a person may not be fully informed of the potential outcomes of a procedure.

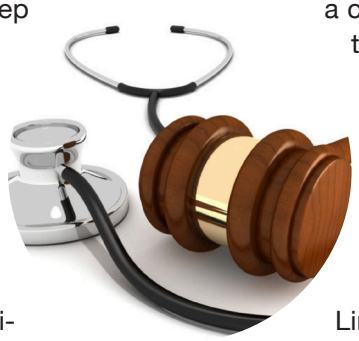
Invariably there will always be an inherent risk attached to medical treatment. In cases when it does not go as hoped generally no one is at fault.

However sometimes a medical practitioner can perform below the standard expected of a professional; when this results in an injury, the patient may have a case in medical negligence.

If one is to succeed in a medical negligence claim, they must prove that their treating doctor acted below the standard expected of a professional.

This can only be decided by evidence from expert witnesses who can testify that the treating doctor's care fell below the accepted professional standard.

Therefore the first step in any case in medical negligence will be the obtaining of a report from another expert doctor to say that the treatment received was negligent.



Examples of common cases of medical negligence that come before the courts include the failure to diagnose a condition, the failure to refer a patient to a specialist, the making of a late diagnosis or the making of a serious mistake in the course of surgery.

A medical professional may also be found liable for failing to obtain what is referred to as 'informed consent' from a patient. A doctor must inform the patient of any possible harmful consequence that may arise from a course of treatment so that the patient can give proper consent to the procedure.

Generally a plaintiff will have two years from the date of the negligent act under the Statute of Limitations to bring an action for medical negligence. However this can be extended if a person only finds out at a future date that something was done incorrectly.

PERSONAL INJURY

Plaintiff has majority of award wiped out for contributory negligence

A man has had his award for damages in a case reduced by over €70,000 as a result of the High Court's finding that he was 80% to blame for the accident occurring.

In the case of Powney v Bovale Constructions Ltd the plaintiff suffered serious injuries to his hand when he tried to enter an apartment complex while carrying an empty glass fish tank.

His friend was holding the door open for him as he entered the complex while holding the tank. However his friend became distracted and let go of the door just as the man entered, at which point it slammed into the fish tank causing it to shatter in the man's hands.

The injuries were serious, impairing the use of his hand and leaving him with a large scar. He was required to get surgery to restore some of its functionality.

The court heard evidence that the door had been broken for some time. The spring mechanism was faulty which resulted in it slamming shut when ajar.

However the plaintiff was quite frank in his evidence that he was aware at the time that the door was faulty, having visited the apartment complex many times.

The court held that the plaintiff had chosen to carry out a dangerous manoeuvre by carrying the glass fish tank through a faulty door in circumstances where he was aware that there was a risk of injury.

As such liability should be apportioned between both parties as they had both contributed towards the accident.

The court held that the management company was 20% to blame for the incident and Mr Powney 80% at fault.

The decision meant that Mr Powney only recouped 20% of the damages he had been awarded, leaving him with a little over €15,000 as compensation for his serious injuries.

Can a person ever claim for sports related injuries?

A common concern for schools, sports clubs and leisure centres is the extent to which they may be legally responsible for any injuries occurring while people are engaging in sports or recreational activities.

Generally injuries that occur while playing sports will not give rise to a claim, as this is part of the inherent risk of the sport that the person undertakes when playing.

However if an injury is caused by factors outside of the sport itself, it may give rise to a claim.

Examples of such potential factors include the provision of unsafe equipment or facilities, negligence in the instructions given, poor supervision or insufficient training being provided by the person responsible.

It is important for schools and sports clubs to have adequate insurance in place, as well as clear information on the terms of use of any sports facilities, and ensure that users are made aware of any potential risks.

False and exaggerated claims risk dismissal in court

A number of cases have gained media attention recently as a result of being dismissed under section 26 of the Civil Liability and Courts Act 2004.

This piece of legislation requires a

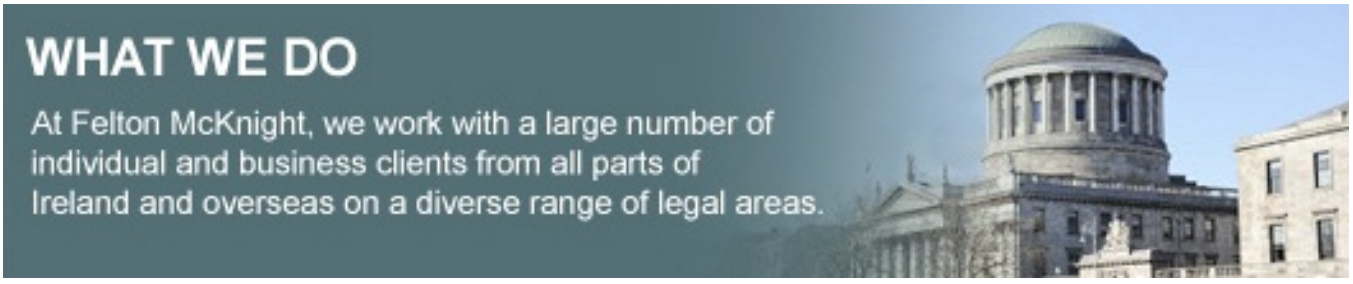
court to dismiss a personal injuries claim when the plaintiff knowingly gives evidence that is false or misleading in any material respect. The courts do have some discretion however and will not be required to dismiss a case when it would result in an injustice.

The legislation is commonly brought up by a defendant's insurers during trial when they have their own evidence to combat what has been said by the plaintiff under oath.

Insurers may engage personal investigators in a bid to uncover conflicting evidence in order to contradict the allegations of the plaintiff, and establish that the evidence being given is false or exaggerated.

If a plaintiff fails to disclose previous injuries, makes a false loss of earnings claims, or gives false evidence as to the extent of their injuries, they run a serious risk of having their case 'thrown out'.

Section 26 is an important weapon in the armoury of the defendant that they can use to protect themselves from fraudulent or exaggerated claims.



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