APPROVED
NO REDACTION NEEDED

COURT OF APPEAL
CIVIL

[Record No. COA 2026/31]

[Record No. HC 2022/1910P]

Neutral Citation Number [2026] IECA 146

Faherty J.

Owens J.

Sanfey J.

BETWEEN

JOSEPHINE HIGGINS

APPELLANT/PLAINTIFF

AND

RICHARD COLEMAN AND

THE MOTOR INSURERS BUREAU OF IRELAND

RESPONDENTS/DEFENDANTS

JUDGMENT of Mr Justice Mark Sanfey delivered on the 27th day of July 2026.

Introduction.

1. In this case, the plaintiff/appellant ("the appellant") appeals from an order of the High Court (O'Higgins J) of 28 January 2026 in which the appellant was awarded damages of €170,564 and costs of four of the five days of the hearing of the action, in which she sought damages for personal injuries and substantial economic loss, in circumstances which I shall set out below. There is no cross-appeal from the respondents.

2. The appellant was represented in the High Court by a full legal team, including senior counsel. She appears to have discharged that team, and has conducted her appeal from the outset without legal representation. While aspects of her notice of appeal and written submissions are unclear, it is evident that the appellant is aggrieved by the level of damages awarded by the High Court, both in respect of her personal injuries and her economic losses, and in some respects by the manner in which she alleges the trial was conducted and some of the conclusions drawn by the trial judge.

3. The hearing of the appeal took place on 30 June 2026. Both sides proffered substantial written submissions. The appellant represented herself throughout the hearing; the respondents/defendants ("the respondents") were represented by a single legal team.

The incident

4. The incident which gave rise to the proceedings took place on Main Street, Carrigtwohill, County Cork on 13 February 2020. As car parking facilities were scarce on the street, the appellant stood in a parking space which had just become available to hold it for her husband, whose imminent arrival in a jeep to deliver stools to an apartment owned by the couple on Main Street was expected. The appellant claimed that the first named defendant, who was seeking to gain access to one of the shops on the street, drove in such a way as to collide with her left knee, knocking her to the ground. While she was able to rise, she complained about being in a state of shock, and later that day experienced considerable back pain.

5. Liability for the incident was fully contested by the respondents at the trial. Having heard evidence from the appellant, her husband and the first named respondent, the trial judge set out his conclusions on liability at paras. 20 to 27 of his judgment. He found on the balance of probabilities that the first named respondent's vehicle struck the appellant, that he *"misjudged the situation, failed to keep a proper look-out and inadvertently struck the plaintiff who was standing on the roadway close to the footpath"* [para. 26]. The trial judge accepted the appellant's evidence that the impact was to her left knee, but her body was *"jerked"* as a result of the incident, and that she suffered the symptoms she described to her general practitioner the following day.

6. In effect, the trial judge found for the appellant on liability, and there is no appeal by the respondents from that decision. The greater part of the trial judge's lengthy and careful consideration of the issues related to the damages to be awarded for the appellant's personal injuries, and for the economic loss which she claimed flowed from the incident.

<u>The appellant's injuries</u>

7. The trial judge summarised the appellant's injuries and the medical evidence at paras 28 to 66 of his judgment. Evidence was given by the appellant, her general practitioner Dr Michael Thompson, Dr Mairéad O'Leary, a Consultant Psychiatrist to whom the appellant was referred by Dr Thompson, and Mr Paul Kiely, a Consultant Orthopaedic and Spinal Surgeon. For the respondents, evidence was given by Mr David Mulcahy, Consultant Orthopaedic Surgeon, Dr Conor McDonnell, Occupational Consultant, and Dr Catherine

Corby, Consultant Psychiatrist. The trial judge commented at para. 66 of his judgment that *"there are only limited areas of dispute between the parties on the medical evidence and on the question as to the appropriate bracket within the Personal Injury Guidelines each element of the plaintiff's injuries should lie"*.

8. At para. 67 of his judgment, the trial judge set out his findings in relation to the evidence regarding the appellant's personal injuries as follows:

- The accident resulted in *"significant personal injuries to the plaintiff and has negatively impacted her life to a serious degree for the last five years…"* [para. 67 (1)].

- *"… The plaintiff's most serious injury is the psychiatric adjustment disorder described by Dr O'Leary… I accept the evidence of Dr O'Leary… that the plaintiff suffered from a prolonged and disabling adjustment disorder as a result of the accident, which was prolonged by extensive pain from her physical injuries… "* [para. 67(2)].

- The second most serious element of the appellant's injuries was her ongoing back complaint with related pain and soreness radiating to other areas of the body. According to Mr Kiely, the appellant's back complaint *"was localised to the lower lumbar region and also radiated to the right buttock and the anterior aspect of the right thigh as far as the knee. These symptoms began in February 2020 after the accident"*. [Paragraph 67(3)].

- In relation to the appellant's neck injury and related symptoms, *"… The preponderance of the evidence favours a conclusion that the neck and shoulder* *complaint is not attributable to the accident and is more likely connected with the previous surgery and general 'wear and tear'"*. [Paragraph 67(4)].

- In relation to the appellant's injury to her Achilles tendon in March 2025, while the injury gave rise to *"a significant deterioration in the plaintiff's mobility, requiring crutches and even a wheelchair for a period"*, the court was *"not satisfied that this has been evidentially connected to the accident… This aspect of the plaintiff's injuries was not caused by the accident"* [para. 67(5)].

- *"… On a fair reading of the evidence, the plaintiff's ability to carry out her working duties as a property manager was already seriously compromised by the combination of her adjustment disorder, psychological symptoms and primary physical complaint relating to her back injury with related secondary pain radiating into other areas…"*. [Paragraph 67 (6)].

The claim for loss of earnings

9. At para. 68 of his judgment, the trial judge characterised the appellant's claim for loss of earnings as by far *"the most problematic aspect of the plaintiff's overall claim"*. The appellant sought a sum of €1.752m, of which €1.4m was claimed for loss of earnings and €346,602 claimed for loss of capital appreciation of properties which, according to the appellant, had to be sold.

10. At paras. 28 to 33 of his judgment, the trial judge set out details of the appellant's background. The appellant was 63 at the time of the accident. The trial judge noted that the evidence supported that the appellant was a *"hard-working, determined, able and caring lady who put most of her energy into caring for her two boys, both of whom have profoundly serious challenges in life"* [para. 28]. The appellant *"had to play the role of carer and mother for a* *long number of years through the boys' childhood and later into their adulthood…"* [para 30]. The trial judge was satisfied that the *"dedication and desire"* of the appellant and her husband to provide for the future prompted them to save and buy investment properties as a retirement *"nest-egg"*.

11. Accordingly, the appellant and her husband accumulated a substantial portfolio of properties comprising one five-bed detached house, one three-bed semi-detached house, a guesthouse and lodge, a three-bed apartment, a two-bed apartment, and four one-bed apartments [see para. 33 of judgment].

The loss of earnings report

12. The claim for losses was based on a "loss of earnings report" of 16 September 2024 by Gerard Motherway ["the accountant"] Chartered Accountant, of CG Motherway & Co. of Youghal, County Cork. In the "background" section to the report, the accountant said that he had been *"advised that Mrs Higgins since the accident has been unable to continue to manage her rental property portfolio ... which was her full-time occupation up to February 2020"*. He set out a list of roles which the appellant performed in relation to the management of the properties, and stated that he was *"further advised"* that the appellant "intended to continue the practice of adding to her property portfolio on a cycle of every five years, beginning 2021…", and that "… three properties have been put on the market since the accident directly as a result of Mrs Higgins' inability [to] work in her former role".

13. In the "Findings" section of his report, Mr Motherway identified three bases of loss of earnings: firstly, the cost of engaging third parties to manage the portfolio; secondly, the lost opportunity of increasing income by buying new properties; and thirdly, the loss of rental receipts to date and into the future.

14. In relation to the cost of management, a number of assumptions were set out. Notably, the report assumed a vacancy rate of 8% per year per property, equivalent to two weeks per year per tenancy. The report also assumed that Mrs Higgins would have continued to carry out her various physical and administrative tasks until 2042, when she would be 85 years of age.

15. The report appended calculations of the apprehended loss up to the year 2042. The author calculated *"indicative management costs"* of 61.38% of the rent for 2024, a sum of €86,301. As indicated, it was assumed that each of the rental properties would have virtually full occupancy. The loss of earnings caused by the need to incur managerial expenses from 2024 to 2042 was estimated to be €974,465.

16. The lost opportunity of increasing income by buying new properties from 2021 to 2042 was calculated to be €307,726. The loss of rent from 2020 to 2023 was estimated at €127,842. The total value of loss of earnings under the three headings came to €1,410,032. The report, in a further appendix, set out a calculation for loss of capital appreciation of the three properties which the appellant had put on the market. The report assumed a selling price of €1,095,000. The calculated loss was €342,602. The full loss claimed therefore was:

Loss of earnings 2024 to 2042 -	€974,465
Lost opportunity of adding to portfolio 2021 to 2042 -	€307,726
Lost rent 2020-2023 -	€127,842
Loss of capital appreciation -	€342,602
Total:	€1,752,634.

17. The trial judge noted that the report, on the signature page, was stated to be *"approved by"* the appellant, who appended her signature beneath that of the author.

<u>The High Court's findings on loss of earnings</u>

18. It is fair to say that the evidence in relation to loss of earnings as presented by the accountant on behalf of the appellant was highly contentious, and the subject of trenchant criticism by the defendants during the course of the trial.

19. The trial judge commented at para.74 of the judgment that it was fair to say that *"flaws in the methodology utilised by the plaintiff's expert were already apparent from the evidence of the plaintiff and her husband, long before the accountant got into the witness box"*.

20. It emerged in evidence that the appellant and her husband had commissioned an earlier report on the appellant's losses – *"the EY Report"* - which advanced a claim for loss of earnings of €1.4m in total. Notwithstanding that this report had been sent to the defendants' solicitor, the appellant indicated that she did not intend to rely on the report, proffering instead the accountant's report as evidence of her losses. The trial judge commented that it was *"an uncomfortable and off-putting aspect of the case that the plaintiff and her husband appeared to be desirous of wringing every last ounce out of each heading of loss to maximise her claim for loss of earnings…"* [para. 81].

21. The accountant accepted in cross-examination that, in calculating lost rental income, he had taken figures for "*all of the unlet rental properties here"* from the appellant's husband without independently verifying them. He agreed that it was, in the words of senior counsel for the respondents in cross-examination, *"… inappropriate to come* [to court] *to give evidence without doing the appropriate follow-up work"*. The accountant accepted that he could not give evidence on property letting values as a chartered accountant [Transcript day four, pp. 84 to 85].

22. The report had been sent to the appellant for approval. The accountant's evidence was that the appellant had approved and signed the report before he himself signed off on it [pp. 90 to 91]. He had been *"advised"* that the appellant *"intended to continue the practice of adding to her property portfolio on a cycle of every five years, beginning 2021"* [page 1 of report]. However, the accountant accepted in his evidence to the court that he had not seen any evidence that this was so, and that he took this instruction *"at face value"*. He agreed that he should have looked at the historic basis of the acquisition of the properties, particularly in circumstances where no property had been bought by the appellant since 2009 [pp. 93 to 94].

23. The accountant was cross-examined in detail about three properties at Glasheen, South Terrace and Watergrasshill. The report claimed for the lost increase in value which these properties might have experienced between 2025 and 2042. However, it was pointed out to the accountant that the report claimed for these properties both a loss of rent and a capital loss for that period, and that both losses could not be claimed, as this would amount to double counting. The accountant accepted this [pp. 108-109].

24. It was put to the accountant that no reliance could be placed on the report for a number of reasons. It was not independent, as it was solely compiled on information supplied by the appellant and her husband without verification as to whether the information was correct or not. No checks were made between the date of the report and the trial to ensure the information was "*up-to-date, appropriate and comprehensive…"*. The accountant referred to difficulties he experienced due to serious illness. He accepted that he should have taken steps to verify the information given, and said that he would not submit the report *"now, starting here…"*, although he said that he would make the report *"more robust"*, and said that he did not think the substance of the report was *"incorrect"* [pp. 109 to 110].

25. The court was satisfied that the expert accountant *"did his best to provide the court with helpful and impartial testimony"*. However, it was not clear to the court *"to what extent the figures in the report represented the desired 'wish list' of the plaintiff and her husband, rather than (as one would expect) the wholly independent expertise and judgment of the expert"* [paragraph 79 of judgment].

26. The trial judge noted that the report was *"effectively a draft report"*, although no changes were made to it between the date of the report (September 2024) and the date of trial (May 2025). It was also noted that the initial claim, as originally advanced in May 2022, was €50,000 in respect of two years' loss of earnings at that time, and that the appellant was *"unable to explain the disconnect between this claim and the vastly larger claim the accountant was instructed to bring"* [paragraph 87].

<u>Conclusions on loss of earnings</u>

27. In his judgment, the trial judge referred to the judgment of this court in *Duffy v McGee* [2022] IECA 254, in which the court referred with approval to the exposition of principles set out by Cresswell J in *National Justice Compania Naviera SA v Prudential Assurance Company Ltd* (*"*the *Ikarian Reefer"*) [1993] 2 Lloyd's Reports 68 at 81-82. The trial judge then set out the principles distilled by Noonan J from authorities in this jurisdiction on the duties of experts at paragraphs 91 to 99 of *Duffy*.

28. The trial judge found that there was *"a singular failure by the expert to stress test or independently assess the instructions received from his clients"* [paragraph 79]. The trial judge accepted that "*the accountancy expert and the plaintiff made reasonable acknowledgements in their replies to questions*", and that but for this fact, he would have had little option but to dismiss the entirety of the loss of earnings claim.

29. The court found that the appellant's claim for loss of earnings, as presented in the accountant's report, had not been evidentially sustained, and that much of the evidence given by the appellant and her husband was *"unclear and vague"*. The court however held that it was *"beyond any serious doubt that the plaintiff's ability to carry out her working tasks was severely compromised by the mental and physical injuries she sustained… The plaintiff has undoubtedly suffered a diminution in earnings as a result of the injuries the subject of these proceedings"* [paragraph 94].

30. The court took the view *"that it would be disproportionate to exclude the entirety of the plaintiff's claim for loss of earnings, notwithstanding my negative findings on the extravagant claim advanced on the basis of the accountant's report… It was clear that she suffered financial loss from not being physically or mentally able to rent out some of the properties…"* [paragraph 99].

31. The court analysed the past losses in relation to certain of the properties, but commented that *"… [T]here was a lack of clarity on precisely when properties were available for rent and why certain properties did not have an established history of rental receipts. In view of this uncertainty and the plaintiff's candid evidence as to other properties having a chequered history of flooding and planning delays, the court can only do its best to estimate the true extent of the past losses"* [paragraph 104].

32. Crucially, the trial judge said at paragraph 106 of his judgment:

> *"I have little doubt but that the actual value of the work done by the plaintiff pre-accident would have been greater than the figure I propose to allow for past losses, possibly considerably so. However, arising from the wholly unrealistic claim advanced by the plaintiff for future losses and the, at times, uncertain claim advanced for past losses, the court has been left in a situation of having to estimate the value of the*

plaintiff's past losses. Therefore, out of fairness to the defendant in particular, the court must err on the side of caution and choose a minimum figure at the bottom end of the likely range".

33. In the circumstances, the court decided that *"the justice of the case would be met by allowing a total figure of €15,000 net per annum for all of the plaintiff's properties, and bookending the loss of rentals claimed to 4 years from the date of the accident"*. [para. 108]

Damages for physical injuries

34. The court found that

- The appellant's psychiatric injuries fell into the *"€40,000 to €80,000 range"* for *"serious psychiatric damage"* on page 14 of the Personal Injuries Guidelines adopted by the Judicial Council in March 2021. The court assigned a value of €75,000 to these injuries;

- the appellant's back and related injuries fell into the bracket of "moderate" back injuries, for which the range of damages in the Personal Injuries Guidelines was €20,000 to €35,000. The court assigned a value of €33,000 to these injuries, discounted by one-third due to it being a secondary injury involving overlap factors. The court accordingly awarded damages of €22,000.

35. The total damages awarded therefore were:

- €75,000 in respect of the appellant's psychiatric injuries;

- €22,000 uplift in respect of the appellant's back injuries;

- €60,000 damages for four years past loss of earnings;

- €13,564 in agreed special damages.

Total : €170,564.

Notice of appeal

36. The appellant lodged a notice of appeal on 18 February 2026, indicating on the notice that she did so as a *"lay litigant"*. Where required to specify on the notice whether it was sought to appeal *"from (a) the entire decision or (b) a part or parts of the decision…"*, the appellant replied *"[A] or [B]. Due to the plaintiff's civil rights, this judgment should not go through as it stands, due to errors in law and errors in fact because of injustice to the* [appellants] *and two other people [necessary] to the case"*.

37. The notice then set out a number of "*errors in law"* and *"errors in fact"* relied upon by the applicant. The matters set out were lengthy and somewhat difficult to follow; however, the *"errors of law"* may be summarised as follows:

(i) the court had erred in law by failing to put the appellant in the position she would have been in had the wrong perpetrated by the respondents not occurred, and in particular by '*treating a successful business woman as a domestic employee*';

(ii) allowing '*conflict of interest evidence'* and *'inadmissible flawed withdrawn evidence'*. Complaint was also made about the conduct of the respondents' solicitor in relation to disclosure requirements, and "*the defendant's barrister directly taking advantage of the plaintiff, in cross-examining her…*";

(iii). '*Failure to accurately appraise the plaintiff's injuries and applying the inaccuracies to the judgment'*;

and

(iv) '*appealing for a stay of the judgment on the grounds of manifest injustice to the plaintiff and two people libelled in the judgment, without evidence…*'".

38. Numerous matters were set out under the heading *"errors of fact"*. Many of these related to the accountant's evidence and expert report, which the appellant considered to be *"totally in order, where no one found anything wrong in it, because the principles in Ikarian and Duffy were adhered to…"*. There were a number of complaints as to instances of alleged unfairness in the conduct of the trial, and criticism of the approach of the court to the calculation of damages.

39. The respondents' notice of 23 March 2026 opposed the entirety of the appellant's appeal, and set out its grounds for doing so. There was no cross-appeal by the respondents.

40. The appellant delivered lengthy written submissions. The respondents proffered replying submissions. The transcripts of the five-day trial were made available to the court, as were the legal authorities relied upon by the parties. All of this material has been taken into account by the court in reaching its present decision.

The hearing of the appeal

41. The appeal was heard by this court on 30 June 2026. The appellant, who the court was informed has both undergraduate and Masters degrees in law, represented herself. The respondents were represented by senior and junior counsel.

42. It would be fair to say that there were three main themes to the appellant's submissions. Firstly, that the findings in relation to loss of earnings were inappropriate and unjust; secondly, that the findings in relation to her physical injuries were unwarranted; and thirdly, that the trial had been conducted unfairly in that the appellant, her husband and Mr Motherway the accountant had been *"libelled"*.

43. In their written submissions, the respondents emphasise the established principles in relation to how this court must conduct an appeal. Those principles are set out in decisions such as in *Hay v O'Grady* [1992] 1 IR 201 and *The Leopardstown Club Ltd v Templeville Developments Ltd* [2017] 3 IR 707. In relation to findings of fact, this court is bound by findings by the trial judge which are supported by credible evidence, and should be slow to substitute its own inferences of fact for those of the trial judge where such depend upon oral evidence.

The loss of earnings claim

44. In relation to the loss of earnings claim, the appellant emphasised that - as she put it at page 7 of her written submissions – *"the one job she didn't do was figures…"*. She relied on her husband, a chartered accountant, to supply figures for the EY report, and it seems that these figures were used uncritically by Mr Motherway for the purpose of his report.

45. The claim for loss of earnings, then, was entirely dependent on the report and evidence of the accountant. Unfortunately, it is very clear from the evidence before the court as set out in the transcripts that the report was riddled with hearsay, uncorroborated and untested figures, inaccurate assumptions, and errors of calculation. The accountant accepted that his report was a draft report based solely on unverified information supplied by the appellant or her husband. He did not receive or seek any independent verification of property or rental values, and accepted that, as a chartered accountant, he was not in a position to proffer expert evidence in this regard. He accepted that he did not see any evidence of letting agreements prepared by the appellant.

46. The trial judge was particularly unimpressed by the court being provided with an expert's report vouching a claim for loss of earnings which the author acknowledged had included double counting in respect of rental and capital losses. He stated that *"this* *acknowledgement, coupled with the other defects, calls into question whether the court can place any reliance on the report"* [paragraph 90].

47. The court concluded that *"the plaintiff's claim for loss of earnings, as presented in the report of the accountancy expert, has not been evidentially sustained"* [para. 93]. In this regard, he referred to the appellant's failure to mitigate her losses because of her steadfast refusal to countenance hiring a property management agent or other contractor to do work that she was unable to do because of her injuries.

48. In my view, the trial judge's conclusion that the claim for loss of earnings had not been sustained by the evidence was one he was manifestly entitled to reach on the basis of the evidence before him. His findings of fact in this regard are fully supported by the evidence before the court. The appellant submitted that, in the absence of a contrary report taking issue with Mr Motherway's evidence, the appellant's case must be accepted. That is incorrect. The burden of proof of the losses claimed was on the appellant and the trial judge correctly concluded that the evidence of the accountant was not sufficient to sustain the appellant's case.

49. The trial judge could simply have concluded that the appellant had not proved her loss of earnings claim, and left it at that. However, the judge formed the view that, as the plaintiff had *"undoubtedly suffered a diminution in earnings as a result of the injuries the subject of these proceedings"*, it would be "*disproportionate to exclude the entirety of the plaintiff's claim for loss of earnings, notwithstanding my negative findings on the extravagant claim advanced on the basis of the accountant's report*" [para 99].

50. On this basis, the court arrived at the position set out in paragraphs 106–108 of the judgment, as summarised at paragraphs 32–33 above. As the respondents pointed out at paragraph 21 of the written submissions, *"... An argument could have been made that in the absence of any appropriate evidence no claim for loss of earnings ought to have been allowed* *by the Court"*. However, the respondents took no issue with the trial judge's approach and have not cross-appealed.

51. As the trial judge's finding that the evidence proffered by the appellant did not sustain her overall claim for loss of earnings is one that is supported by credible evidence and is in all the circumstances an appropriate inference, and in circumstances where there is no cross-appeal in relation to the trial judge's estimate for past losses, there is no basis for disturbing the trial judge's conclusion that the appellant should be entitled to damages of €60,000 only in respect of her loss of earnings claim.

Damages for physical injuries

52. The appellant did not accept the trial judge's findings that her neck and shoulder complaints were *"not attributable to the accident"* and likewise that her Achilles tendon injury was *"not caused by the accident"*. She took particular exception to the finding that her most serious injury was the psychiatric adjustment disorder. She argued that *"the spinal injury was the reason that [she] was diagnosed with an Adjustment Disorder. Not the other way around"* [page 15, written submissions]. In her view, she could not work because she had three herniated discs in her back and neck, and this led to her rupturing her Achilles tendon.

53. As indicated above, a considerable amount of evidence from medical practitioners was heard by the trial judge. This evidence was carefully set out and considered by the trial judge at paragraphs 28 to 67 of his judgment, which paid particular attention to the evidence given by the applicant's general practitioner Dr Michael Thompson, the consultant psychiatrist Dr Mairead O'Leary to whom the appellant was referred by Dr Thompson, and Mr Paul Kiely, the consultant orthopaedic surgeon to whom the appellant was referred and who provided three reports of 7 May 2021, 16 May 2022 and 29 January 2024 in addition to giving evidence at the trial.

54. The trial judge not only summarised the evidence heard by the court, but perhaps conscious that it is possible only to give *"a limited summary"* of the medical evidence in his judgment, specifically stated that he had *"reviewed all of the medical reports in the case and also the transcripts of the oral evidence given by the doctors called for both sides…"* [paragraph 66]. The trial judge set out his findings at paragraph 67 of his judgment and gave a detailed explanation of the basis for each finding.

55. In particular, the trial judge explained why he took the view that neither the neck/shoulder complaint nor the Achilles tendon complaint were attributable to the accident. He noted that the neck symptoms were first mentioned to Dr Thompson 15 months after the accident. Mr Kiely considered that the neck and shoulder complaint *"may have been exacerbated by the injury to her back but was not caused by it"*. The defendants' consultant orthopaedic surgeon and their occupational consultant were both of the view *"that the neck complaint was not related to the accident"*. The trial judge concluded that these complaints were "*more likely connected with the previous surgery and general 'wear and tear'*" [paragraph 67(4)].

56. The trial judge also noted that the Achilles tendon injury occurred in *"approximately March 2025, over five years after the index accident"*, and that neither Dr Thompson nor Mr Kiely linked the injury to the accident. In those circumstances, the trial judge concluded that the appellant's injury was not caused by the accident.

57. In my view, it is clear that the trial judge conducted a careful and thorough assessment of the medical evidence. The conclusions which he drew were amply supported by cogent evidence. There is accordingly no basis for disturbing his findings.

58. As regards the finding that the appellant's most serious injury was the psychiatric adjustment disorder, the appellant's senior counsel, in the course of his submissions to the court at the end of the trial, expressly accepted that this was the case: see day 5, page 169 lines 9 to 23. At paragraphs 110 to 115 of his judgment, the trial judge held that the psychiatric injuries fell into the category of *"serious psychiatric damage"*, for which the Personal Injuries Guidelines provide a range of €40,000 to €80,000. He explained why he did not consider the higher category of *"severe psychiatric damage"* was appropriate, noting that *"the plaintiff is able to get by and function on a day-to-day basis, does not take psychotropic medication and has never had any psychosis issues or any complications of that nature"* [paragraph 114].

59. These findings were appropriate, rooted in the evidence and cannot be disturbed by this court. The trial judge assigned the value of €75,000 to the injuries, thus choosing a figure very near the top of the appropriate range.

60. As regards the appellant's back injury, the appellant's senior counsel accepted that the appropriate range of the personal injuries guidelines was *"Moderate (ii)"*, the range for which is €20,000 to €35,000. Counsel also accepted that, as a secondary injury, the damage would have to be discounted by 30%: see day 5, pages 170 to 171. The trial judge awarded a figure of €33,000 - once again, very close to the top of the range - and discounted it by a third, to arrive at a figure of €22,000. Once again, these findings and awards were appropriate and there is no basis for setting them aside.

<u>A fair trial?</u>

61. It was clear from the appellant's written submissions and at the hearing before this court that the appellant is aggrieved at the way in which the trial was conducted. She considers that there were *"untrue accusations"* and *"innuendos"* in relation to the conduct of herself, her husband John Higgins and Mr Motherway. She considered that the good name of those parties had been traduced. On the final page of her written submissions, the appellant sets out a list of complaints about the conduct of the trial.

62. The first thing to be said about the appellant's complaints about the course of the trial is that she was represented by senior and junior counsel, who were there to protect her interests and would have had no hesitation in doing so if inappropriate matters were raised by defence counsel.

63. It is clear from the five days of transcripts that no such matters were raised. The appellant and her witnesses were cross-examined robustly but fairly. The defendants were entitled to question why the EY report, which had been sent to the respondents' solicitors but later withdrawn, was not relied upon in court, notwithstanding that the figures from that report for rents and property values were relied upon by Mr Motherway with the approval of the appellant and her husband. The respondents were entitled to raise issues concerning the increase of the claim from €50,000 to over €1.7 million.

64. If, as the appellant alleges, there was an *"ambush"* on her in cross-examination, the appropriate way of dealing with this was for the appellant's counsel to object to the question posed. This did not occur. The appellant referred to *"a signed white paper"* put to her; counsel for the respondents suggested to this court that the two-page document was in fact the application made by the appellant to the Personal Injuries Assessment Board: see day 2, page 17. While the appellant may not have expected to be presented with this document, she could hardly object to it being introduced and to being cross-examined on its content, and no objection was raised by her counsel to this. There was no basis on which an objection could be maintained.

65. The appellant also complains that the EY report was produced, although it was *"not in discovery"*. Counsel for the appellant in fact objected to production of the report at the trial, and counsel for the defendants did not press for its inclusion in evidence. The trial judge acknowledged in his judgment that he had not seen the report: see paragraph 81 in this regard.

66. In any event, if, as the appellant alleges, there was non-compliance with disclosure requirements, the time to raise that is in advance of the trial, or at latest at the trial itself. Other than in relation to the EY report, there was no controversy during the trial between the parties regarding production of documentation, and it is not open to the appellant to raise any such issue at the appellate stage.

67. In the concluding part of her lengthy written submissions, the appellant alleges that she was *"called a liar"*, *"called a colluder"*, and *"called a gold digger for stopping a flawed report while the opposition pushed it into the case knowing it was flawed…"*. None of these epithets was used in relation to the appellant by the respondents or by the trial judge. The appellant may consider that the import of matters put to her in the course of the trial gave rise to these inferences. At one point, counsel for the respondents did suggest to the appellant that she was being *"untruthful"* and explained why he considered this to be so. The appellant rejected the suggestion, and responded fully to counsel's questions [day 2, pages 46 to 48]. The respondents were entitled to raise issues as to the truthfulness of the appellant or any of her other witnesses, and findings in this regard were entirely a matter for the trial judge.

68. The trial judge noted at paragraph 36 of his judgment that "*the two doctors who best knew the plaintiff, formed a positive impression of her, and concluded that that she was caring, able and determined"*. The trial judge noted at paragraph 32 that the appellant and her husband were *"extremely dedicated to their two children…"*, and that she had been *"motivated, dynamic and happy"* prior to the accident [paragraph 47]. The trial judge considered in detail the evidence in relation to the appellant's adjustment disorder.

69. The trial judge did criticise the appellant for *"advancing an overall claim that was wholly unreasonable, excessive and unrealistic"* [paragraph 81]. The court did however note at para. 82 the *"reasonable acknowledgements"* by the appellant and the accountant *"particularly in the context of cross-examination by counsel for the defendant…"*. The trial judge stated that, but for these acknowledgements, he would have had to *"dismiss the entirety of the loss of earnings claim as being wholly devoid of credibility"*. The court concluded at paragraph 92 that *"… The parties most to blame for the inadequacies in the report and the inadequacies in the overall loss of earnings claim are the plaintiff and her husband. It is they who are guilty of overreach and it is they who are responsible for a grossly excessive and wholly unrealistic claim being presented to the court"*.

70. The trial judge commented at para. 100 that *"the excessive claim for loss of earnings was deeply unimpressive and did not reflect at all well on the plaintiff or her husband. I am prepared to accept that their zeal and determination to provide a nest-egg for their children operated to cloud their judgment and contributed to them putting forward a wholly unrealistic claim"*.

71. At paragraph 109, the trial judge commented that he "*should add that the court was (understandably) not invited by the defendant to dismiss the proceedings under s. 26 of the Civil Liability and Courts Act 2004 (as amended), notwithstanding the wholly unreasonable loss of earnings claim into the future. While the plaintiff was robustly and fairly cross-examined, there was no basis for any such application… <u>The court makes no finding that the plaintiff knowingly sought to mislead the court or gave evidence which she knew to be false</u>*" [emphasis added].

72. In my view, it is clear that the trial judge, while making adverse findings in relation to the validity of the loss of earnings claim, took particular care to be fair to the appellant and declined to attribute base motives to her. He does not state anything in his judgment which suggests that he concluded that she was a "*liar"*, a *"colluder"* or a *"gold digger"*. He attributes creditable motives to her, albeit that much of the evidence tendered by her or with her approval was found to be unreasonable, excessive and without credibility.

73. In the circumstances, there is no basis whatsoever for suggesting that the trial was conducted unfairly in some way. The appellant was treated appropriately in cross-examination, and the transcripts and judgment show that the trial judge conducted the trial with scrupulous fairness.

Conclusion

74. I find that:

- there is no basis for suggesting that the findings or award of the trial judge in relation to the appellant's claim for loss of earnings or damages for personal injuries were inappropriate or unjust;

- there is no basis for suggesting that the trial was conducted unfairly, or that the reputations of the appellant, her husband or Mr Motherway were unfairly or improperly impugned.

75. In the circumstances, the appeal must be rejected and the order of the High Court affirmed. As the respondents have been wholly successful in resisting the appeal, the provisional view of the court is that they are entitled to the costs of the appeal as against the appellant. Should the appellant wish to dispute this she may do so by way of written submissions (not more than 1500 words) to be delivered no later than 14 days after the date of delivery of this judgment. Should the respondents wish to respond to any submission the appellant may make, they may do so by written submissions (not more than 1500 words) within 14 days thereafter.

76. As this judgment is being delivered electronically, Faherty and Owens JJ have authorised me to record their agreement with it.