

Compensation for the cost of care and the legal system

John Sadlier, Solicitor.
McMahon Goldrick Solicitors.



Any legal case taken by an individual who has suffered a spinal injury can never fully compensate someone for the loss that they have suffered. It can however, potentially provide financial assistance and a degree of closure that will hopefully assist an individual in their rehabilitation. A big concern for someone who has suffered a spinal injury is the cost of future care and the cost of medical equipment. These are ongoing costs which many people who have suffered a spinal injury will be required to finance for the rest of their lives.

Compensation is divided into two categories. General damages are awarded for pain and suffering and the maximum that can be awarded under this heading is €450,000. Special damages are also known as out of pocket expenses and they are awarded for specific costs that arise out of an injury. Special damages are awarded for expenses up to the hearing of a case and also expenses into the future. Special damages will include loss of earnings to date and loss of earnings into the future. This article will focus on care costs and medical expenses. A large part of any claim in a spinal injury case will relate to the costs of care and medical

equipment.

A care expert (who will have experience in the nursing industry) will assess an individual's care requirements. Care costs are assessed from the date of the accident and also into the future. It may be the case that an individual may not require a significant amount of care at present but will require it at a future date and this must be factored into the nursing expert's report. Consideration also has to be given to the fact that the amount of care required will increase as a Claimant gets older. Family members are entitled to be compensated for any care that they have provided since the date of the injury.

Medical aids and equipment are another life long expense and the cost of these can also be claimed as part of a Claimant's special damages. An occupational therapist will do a report on this aspect. The occupational therapist will also factor in how often a medical appliance will have to be replaced. There are on going advances and improvements in medical equipment and technology. A good example of this is the wearable battery-powered exoskeleton that allows wheelchair users to stand and walk. The technology is in its infancy but it is

something that claimants and experts should be considering to include in the claim.

Physiotherapy expenses are another item that can be claimed as part of a claimant's special damages. The amount of physiotherapy that will be required must be supported by medical evidence. It is common to estimate the monthly or weekly cost for physiotherapy and then give this figure to an actuary who will use it to arrive at a single lump sum figure which will then form part of the claim. The actuary will also be provided with the care expert's report and the occupational therapist's report and will use the figures from these reports to arrive at lump sum figures for the future cost of nursing care and medical aids and equipment.

The Defendant's solicitor will usually engage his/her own nursing expert and occupational therapist to assess the Claimant. The experts will also be required to meet with the Claimant in order to assess the individual's claim. They will also use their own actuary to provide a report based on the figures used by their nursing expert and occupational therapist in their reports.

As a result of all of this, there will be two sets of figures in relation to care costs

and medical equipment and expenses. One set of figures calculated by reference to the Claimant's reports and a second set calculated by reference to the Defendant's reports. The reports are often not exchanged between the parties until proceedings are at an advanced stage and a date for the hearing of the case is close at hand. The Claimant's figures will often be higher than the Defendant's figures. The question then arises as to which set of figures are to be favoured by the Judge. A Judge will rely on the expert evidence in order to provide guidance on what he/she thinks is an appropriate figure. The Judge will read the reports and the experts may be required to give evidence in Court. An expert can be examined by both the Claimant's and the Defendant's legal team so that their evidence can be tested.

The Judge, after weighing the appropriate evidence, ultimately decides what figure to use in relation to care and medical aids and equipment. Similar criteria are used by a Judge in relation to deciding what figure to award for other categories of special damages such as loss of earnings. Before a Judge decides what compensation to award a Claimant, the Claimant must prove that the Defendant is responsible for the injuries suffered by the Claimant. In some instances liability will already be admitted by the Defendant and the Judge will only have to make a decision as to the value of the case.

Many cases are settled before they are heard in Court before a Judge. However cases do not usually settle until proceedings are at an advanced stage. The question is often asked as to why cases settle? The answer to this is that there is always a degree of uncertainty as to what decision a Judge will make. A settlement meeting gives the parties an opportunity to take the matter out of a Judge's hands and to reach a settlement that they are comfortable with. A Claimant might agree to a settlement if there is a reasonable possibility that a Judge would award less than at a hearing of the action. Another influencing factor might be as to whether liability is disputed or not. A Defendant will be interested in settling a case in order to save on costs. If a Claimant is successful in his/her case it is usually the case that the Defendant will have to pay for the Claimant's legal costs. The actual



hearing of a case runs up a large amount of costs and a Defendant will seek to avoid this expense by settling if possible.

The Claimant's legal team will have to carefully consider the care report and the occupational therapist's report in order to be satisfied that any settlement offer takes into consideration (and gives adequate weight) to the expenses that a Claimant will incur in relation to his/her future welfare.

If appropriate provision is provided for care, this will hopefully give an individual who has suffered a spinal injury a degree of comfort in relation to his/her future welfare.

Prudent investment of any settlement/award is also significant in terms of future security and should be of paramount importance.

If there are any particular legal topics of interest to you please email [Spinal Injuries at info@spinalinjuries.ie](mailto:info@spinalinjuries.ie) or contact **McMahon Goldrick Solicitors at 01-8898580 or mobile 087-2854007 Ralph McMahon.**

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