

Returning to work after a spinal injury and the legal system

The legal system can often appear to be perplexing and unduly complicated. Many people have misunderstandings about how the legal system works. Unfortunately this can create apprehension for those who are taking a case. The purpose of this article is to provide some clarity in relation to a central aspect of any case taken by someone who has sustained a spinal injury namely a claim for loss of earnings.

In any successful case involving a spinal injury, compensation is awarded for losses suffered. Compensation is awarded under two separate categories; “general damages” and “special damages”. General damages are awarded for pain and suffering. The maximum that can be awarded under this category is €450,000. Special damages are awarded for out of pocket expenses. This category will include expenses up to the date of any court hearing or settlement and also expenses that are likely to arise into the future. There is no limit on the amount of special damages that can be awarded in a case. Areas of special damages include the costs of nursing care, medical aids and equipment, alterations to housing and crucially, any loss of earnings from the date of the accident together with loss of earnings into the future. All claims for special damages must be supported with evidence, the majority of which will require the use of expert witnesses. The relevant expert will be appointed by the claimant’s solicitor and will prepare a report and will then give evidence in court if necessary. The Defendant will have solicitors who will in turn appoint their own experts to prepare reports for that Defendant. If the Defendant has insurance, the insurance company will deal with the case and will instruct solicitors to defend the case.

An individual’s ability to return to work will have a significant impact on any case. If someone is unable to return to full time work, this will have to be factored into their case as a person is entitled to compensation for any loss to their future earnings as well as any loss of earnings since the date of injury. The loss arises either because an individual is unable to return to work or they can only return to work on a part time basis and has thus suffered a loss when compared to what they previously earned. A situation can also arise whereby an individual will have to leave their former employment and move into a different type of work. It is possible that their new job will lead to a reduction in wages and a claimant is entitled to compensation for this shortfall.

Returning to work is important as a

means of reintegration following a spinal cord injury. A number of factors will influence this such as the individual’s level of injury and education as well as the nature of the pre-injury work. It may not be possible to return to this previous employment and in these circumstances it may be necessary to consider vocational retraining as a means to return to work. Vocational retraining is of particular relevance when the person taking the case is young and potentially has many years left in employment. Some of the possibilities for re-entering employment include having a job to return to where employers are willing to facilitate, being self-employed, further study, employment in the services for persons with a disability or working from home.

The question can arise as to how a Judge determines as to whether someone who has sustained a spinal injury will be able to return to work? A Judge makes a decision based on evidence including expert evidence. This will be in the form of medical evidence together with a report from an expert called a vocational assessor. A vocational assessor will meet with someone who has sustained a spinal injury and will analyse their work history and any relevant qualifications. The vocational assessor will then prepare a report and if necessary will then give evidence in court. The Defendant will also (in all likelihood) have their own vocational assessor meet with the person who is taking the case and they will prepare their own report. The Judge will then hear the evidence and read the reports of both vocational assessors in order to determine whether an individual will be able to return to work. If an individual is able to return to work, the Judge will have to decide in what capacity they will be able to return to work. It may be full time, part time or full time but at a reduced rate of pay.

An actuary is used to calculate the loss arising into the future as a result of any reduction in earning capacity. This figure will then form part of a claim. Any settlement reached cannot be re-visited at a later date even if circumstances change significantly. This is why it is important that a claimant explores all possible future employment scenarios with his/her legal team and considers them accordingly.

It can take time for a spinal injury case to be ready to be heard in court. Many cases ultimately settle and are not heard



by a Judge in court. However it is usually but not always the case that cases are only in a position to be settled when a case is at an advanced stage and close to hearing. During this period of time, it is possible that someone may be able to return to work before their case is finished. The most important thing for an individual who is taking a case following a spinal injury is that they take care of their health and avail of whatever rehabilitation services that are available. If a claimant has received medical approval, there is no reason why they should not make efforts to return to work before their case is finished, provided of course, that this is a realistic option. Any case should be built around the person taking the case and if someone feels that they are able to return to work before their case is heard they should make efforts to do so.

Returning to work, even on a part time basis before a case has concluded, will also be instructive as to how an individual will fare in future employment. It should give an indication as to the likelihood of a full time return to work or indeed whether an alternative career path should be pursued.

As legal advisors we can be asked whether a client should or should not accept any job offer prior to their case being heard. The answer is yes, provided of course that the client is medically fit to do so. I am of the view that an individual’s dignity and respect is of much greater significance than any case and returning to the workplace can only ever be a positive development in this regard.

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