

The High Court**Record no 2010/5425P****Between****Bridget Flynn****plaintiff****and****Bus Átha Cliath****Defendant****Judgment of Mr Justice Charleton delivered on the 11th day of October 2012**

1. Whilst travelling upstairs on the number 38A bus from O'Connell Street in Dublin to Blandchardstown, at 18:18 hours on the 5th of October, on rising from her seat to disembark, the plaintiff Mrs Flynn was thrown to the ground when the bus driver braked sharply to avoid a child. It is claimed that the bus driver could and should have avoided the accident by gently bringing the bus to a halt.

2. Mrs Flynn remembers that the journey from O'Connell Street was uneventful. There was very little traffic and the bus was making good progress. Other passengers confirmed this impression that the journey was relaxed and one passenger was able to follow his usual habit of reading while travelling. As the bus approached Corduff Sports Centre, Mrs Flynn got up from her seat on the upper deck to get off the bus and was in a tricky position of reaching for a rail to steady herself when she was flung backwards by the sudden braking manoeuvre. She was unable to get up. The other passengers were asked to leave the bus and an ambulance transported her to James Connolly Memorial Hospital. She was discharged about six hours later. She had bruising to her legs. Her main complaint as to damages is that a dormant back complaint, arising from normal degenerative change, was aggravated. For a year or two she had serious problems. She took two weeks off work as a cleaner in the National Museum in Kildare Street, retiring two years later. She is now relatively well and has returned, she says, to around three quarters of the pain-free condition which she described prior to the accident. She is clearly an honest and decent woman.

3. This case was keenly contested as to liability. The plaintiff could describe little as to the circumstances of the accident, merely remembering that she was flung to the ground. No other passenger was able to add any information as to whether the bus driver was negligent in the way that he stopped the bus. Modern CIE buses, however, are equipped with video cameras. These record the driver's view of the road forward, the stairwell from two angles above and below, and the lower saloon and the upper saloon looking forwards and backwards. By reference to landmarks, the speed of the bus has been worked out at 42 km/h in a 50 km/h zone. It has also been calculated as probable that the boy who was seen on the video, and who caused the accident by running towards the bus, was in the centre of the road about 20 metres or 30 meters ahead of the bus. At that speed, a vehicle will travel 11.666 m in the second. The normal reaction time of the driver is 0.75 of a second. The bus is 10 meters long. This means that the boy on the road was between one and two bus lengths away from being killed or seriously injured had the driver not reacted by braking sharply.

4. The driver of a public service vehicle has a duty of care towards the passengers in that vehicle. In addition, as with any driver, there is a duty towards other road users. This may be described as an obligation to obey the rules and regulations of the road, including the applicable requirements in the circumstances of the case. These include such straightforward obligations as keeping within the speed limit, driving a safe speed, obeying traffic signs and not driving at speed exceeding that which would enable the driver to halt the vehicle within the distance that can be seen to be clear. Ordinary experience of driving in Dublin indicates that it has become common for pedestrians to walk out onto the roadway and that this occurs, on occasions, quite randomly. A responsible driver must take this possibility into account. Notwithstanding that, it is clear that emergencies occur. Where another driver or a pedestrian does something that imperils their own safety, even by behaving unpredictably, the duty of care of the driver towards other road users is not met by reference merely to what should have happened; instead, the duty to take care for the safety of others may be translated into the obligation to do what in the circumstances is capable of being done to avoid injury. Where children are present in an area, a careful driver will be aware that children can act spontaneously and without apparent reason, thus requiring a heightened level of caution from all drivers. This was such an area, notwithstanding that it was after normal school hours. This area was a suburb and a school with relevant signage was close by.

5. Eoghan O'Friel, the driver of the bus gave evidence that some 30 m ahead of him while he was travelling at a moderate speed, a boy rushed out into the middle of the road. He sounded his horn and applied the brakes simultaneously. The child was warned off and returned to the footpath on the right-hand side of the road from whence he had come. Since the road is 9.5 m wide, a few strides would have put the child in danger and a few more strides would have seen a perhaps fatal accident. The Court has had the benefit of seeing replayed the video recording showing the driver's journey at the relevant point. This gives 2 to 3 images per second and amply corroborates Mr O'Friel's account. Whereas he had a duty of care towards his passengers, the evidence establishes that he was faced with a situation where had he not reacted quickly and decisively, the result could have been a fatal or serious accident. There is no doubt that Mr O'Friel acted in accordance with the highest standards of driving and is to be commended for avoiding a tragedy.

6. Arguments have been advanced for the plaintiff as there was very little traffic and as the driver could see about 160 m ahead of him, that he should have anticipated this sudden manoeuvre from the child and slowed down further. The video shows that as the bus approached, two children were standing at a bus stop on the opposite side of the road and that one of these decided to cross the road in the path of the bus. There was no reason to anticipate this manoeuvre, even at the level of a bare possibility, but there was every reason, once it had occurred, to react to it appropriately. That reaction, regrettably, necessitated sudden braking and this knocked the plaintiff Mrs Flynn, and another lady downstairs, off their feet. The courts cannot apply a counsel of perfection. The duty of care expected of a driver is a high standard but it is still to be measured by the reactions and expectations of reasonable men and women. Mr O'Friel, as a bus driver, cannot be faulted for avoiding an obvious and serious danger of injury to another person. Nor can it be expected that he would weigh up the possibility that people who were preparing to disembark from the bus might not have at that moment a firm grip on the ample bars for steadying passengers with which every bus is equipped. Even was the court entitled as a matter of law to require a bus driver to weigh the balance of harm, and it is not, the decision made was the correct one. In

making decisions in emergencies, the court must bear in mind that detached reflection and the weighing of various options is not to be expected and is certainly not required where a human life is to be saved.

7. The Court would finally comment that in this case three expert witnesses were called. These comprised an engineer for the plaintiff and an engineer for the defendant and an expert in driving for the plaintiff. The expert in driving had vast experience as the driver of emergency vehicles in Dublin and elsewhere for about 40 years. The engineers looked at the video and commented on it from each side. This comprised the advancing of arguments as to why the court should make a decision in favour of the plaintiff or in favour of the defendant. At one point the Court was informed by an expert of the average speed of the average person walking. What has this got to do with a boy running onto a road? A sprinter can cover 10 meters in a second; Eamon Coughlan could end a 5,000 meter race with a 400 meter lap of 53 seconds or less. This is all within the sphere of ordinary human observation. People can dash about quickly: that is common knowledge.

8. A habit has grown up of proofing experts for every case involving personal injuries. Where required, an expert is a benefit to resolving a specialised issue. The purpose of an expert witness is to enable the court to be instructed on arcane disciplines which are outside the experience of a judge or jury. These disciplines might include, for instance, how childbirth is properly managed or how a horse can be predicted to react in a particular situation. Driving is not an arcane discipline, unless the driving in question is a specialist form of driving such as recreational driving at high speed on a motor track. The examination of vehicles for defects which might contribute to a road accident is a recognised and valuable discipline.

9. It should be born in mind that experts have a particular privilege before the courts. They are entitled to express an opinion. In doing so, their entitlement is predicated upon also informing the court of the factors which make up their opinion and supplying to the court the elements of knowledge which their long study and experience has furnished to them whereby they have formed that opinion so that, in those circumstances, the court may be enabled to take a different view to theirs. Experts are also privileged by being able to express a view on the ultimate issue before the court. This is because the unusual nature of the issue that requires their expertise enables a view to be expressed, sometimes but not in every case, on an issue upon which the case may turn. Driving is not an arcane discipline. Reacting to potential emergencies on the roadway and taking reasonable care is within that vast area of experience of ordinary life which judges and juries are expected to have. Experts, further, are not entitled to supply the place of the place of counsel and argue the case out on each side. The view expressed here is not a criticism of any expert in this case. All three experts were competent, careful and honest. It is worthwhile, in a general sense, to refer back to the principles of evidence and to note that with the exception of making a calculation as to the speed of the bus by reference to landmarks passed on the video and the distance ahead of the child was on the road, none of the testimony that was given by the experts involved any expertise. Nor was the evidence, outside that set of calculations as to speed and distance, admissible as expert evidence. Instead, it was inadmissible opinion and comment. In addition, five medical personnel were to be called in this simple case about bruising to a leg and a sore back. One wonders why one medical expert on each side is not enough? The proliferation of experts renders trials immensely expensive and draws out the court time required for even simple cases.

10. This Court merely points out, that repetitious evidence may be controlled by a trial judge, even if not objected to, and that the application of the rules of evidence should have excluded all but agreed calculations in this trial. This comment is not a criticism of counsel, as it is not a criticism of the experts involved. The practice is now universal and it is worthwhile controlling it as additional costs and excess length of time taken to try a case may impede the constitutional right of citizens to have recourse to the courts. Appropriate orders as to costs focusing on unnecessary experts may assist in that regard as may further rules of court.

11. Nothing could have been done to avoid the accident to Mrs Flynn. The bus driver Mr O'Friel reacted correctly to a potential hazard to life. In the circumstances, the case must be dismissed.