

THE HIGH COURT

[2010 No. 11502 P]

BETWEEN

LIAM O'CONNOR

PLAINTIFF

AND

DAVID LAFFAN

DEFENDANT

JUDGMENT of O'Neill J. delivered on the 18th day of December, 2012

1. The plaintiff claims that at 8.15am on 26th September 2009, he was involved in a road traffic accident at Blackhall in Dublin in which he was struck by the wing mirror on the passenger side of a white Mercedes Vito van, the property of the defendant, as the plaintiff was completing his crossing of Blackhall Place to get to his taxi which he had parked halfway up on the footpath on the western side of Blackhall Place.
2. The defendant denies any involvement in this incident and insisted, in his evidence, that whilst he had travelled through Blackhall Place on a number of occasions at about this time, he was never there on a Saturday morning when the plaintiff alleges this incident occurred.
3. The plaintiff, in his evidence, said that he had been at work as a taxi man since 4.00am. The day was a bright, crisp clear day at the end of September. He pulled up at the side of Blackhall Place to get coffee and something to eat in the Spar shop located at the junction of Blackhall Place and Ellis Quay. When he came out of the shop with his purchases, he walked up Blackhall Place on the side where the shop was located i.e. the eastern side, to a blue box as shown in the photographs. From there, he proceeded to cross to his taxi on the far side. As he approached the centre line of the road, a van came around the corner from Ellis Quay into Blackhall Place.
4. In his evidence, the plaintiff said the driver of this van indicated to the plaintiff to cross the roadway and permitted him to do so. The plaintiff said he saluted the van driver and proceeded to cross in front of the van. He said the van gave him a wide berth behind him.
5. As he approached his car, the plaintiff's evidence was that he was struck by the wing mirror of another van, which he inferred must not have seen him cross in front of the first van. The plaintiff's evidence was that this wing mirror caught him in the area of his neck, head and shoulder on the right side and the force of the impact lifted him in the air so that he was thrown against the side of his car, and from there he tumbled to the ground, landing heavily on knees and elbows. The left knee, he felt, suffering the most serious impact.
6. The plaintiff said the van did not stop but travelled on to the junction of Blackhall Place and Benburb Street where it stopped at red lights which controlled the junction to facilitate the Luas line. While still on the ground, the plaintiff said he saw the defendant get out of the van, walk around the front of the van to the left side and he readjusted the wing mirror, after which he got back into the van. The plaintiff waved at him and shouted at him. In the meantime, the lights had gone green in favour of the defendant but he missed this opportunity because of adjusting his wing mirror. When he got back into his van, the defendant then proceeded through a red light, and in the process narrowly missed colliding with another Luas train.
7. At this stage, it was the plaintiff's evidence that he realised that the defendant was not going to stop and deal with the plaintiff. Whilst still on the ground, the plaintiff said he wrote the Registration Number of the van with his finger in the dirt on the lower section of the plaintiff's taxi. The plaintiff said he then saw the defendant's van pull in and stop a short distance ahead at the premises of the Law Society. He said he saw the defendant either out of the vehicle or merely with the door open, look back to where the plaintiff was. It was the plaintiff's evidence that by this time he had got himself off the ground and was in his taxi, bent on hot pursuit of the defendant. He said the defendant took off at speed. There were about three or four cars in between the defendant's van and the plaintiff's vehicle. At Hanlon's Corner, the chase ended, when the defendant got through the lights but the plaintiff did not.
8. The plaintiff then transferred the Registration Number of the defendant's van to a piece of paper and he gave this to the gardaí on the following Tuesday, 29th September 2009. The matter was investigated by Garda Brian Graydon who traced the Registration Number to the defendant who admitted being the owner of the van but denied any involvement in an incident as described by the plaintiff.
9. There are many aspects of the plaintiff's evidence that are improbable and unconvincing.
10. First, there is his evidence of how this incident occurred, which is different in a very material way to his description of the incident given in his statement to the gardaí, made on 19th November 2009.
11. In that statement, he mentions two vans coming around the corner from Ellis Quay, but he says that the first van passed him by and it was the second van, namely, the defendant's van that waved to him to cross. The plaintiff's complaint was that this van did not give him enough time to complete his crossing before setting off again, thereby hitting him with the left side mirror.
12. As is apparent, this is a wholly different description of how this accident allegedly occurred to that given by the plaintiff in his evidence.
13. The plaintiff sought to explain this discrepancy by saying that his memory was affected by a head injury he suffered in a later accident when he fell, striking his head off a tile which caused a serious laceration of his skull or scalp.

14. Accepting that the plaintiff did suffer a skull or scalp laceration, as he described it, I do not think an injury of that kind would account at all for the sort of memory loss he ascribed to it and I reject that explanation. The plaintiff may indeed have forgotten what he told the gardaí, but I am quite satisfied that that was not the result of any head injury.

15. Without putting it any further, I am quite satisfied that the plaintiff's evidence as to how he alleged this incident occurred is unreliable.

16. In his evidence, the plaintiff insisted that he was struck by the wing mirror on the right side of his head, neck or shoulder. Having regard to the fact that a vehicle coming from Ellis Quay would have approached the plaintiff from his left side as he was walking across Blackhall Place, it is simply not credible that the plaintiff could have been hit on the right side.

17. The wing mirror appears to have been of a fairly standard type and it is demonstrated in photographs put in evidence by both sides. It is one which does not protrude far from the side of the vehicle and is capable of being adjusted, and on an impact, such as that alleged by the plaintiff, the wing mirror would undoubtedly have collapsed inwards towards the vehicle.

18. It is difficult to see how an impact simply with the wing mirror such as this would have had the effect, as described by the plaintiff, of throwing him into the air, particularly a person of the size and weight of the plaintiff, and causing an impact as he described.

19. In addition, having regard to the fact that the plaintiff is described as over 6ft in height, it would seem to me to that it would have been impossible for the plaintiff to have been hit at the back of his neck, shoulder or head area if he was walking across the roadway, as he described it. Had he been stooped, he could not have been hit by the wing mirror at all as other parts of his body would have been impacted with the side of the vehicle. The plaintiff was probably walking reasonably upright in which case it would have been simply impossible for this wing mirror to have struck him where he says it did.

20. After the accident happened, the plaintiff said he went to the Accident & Emergency Department of the Mater Hospital. Having waited there several hours without being attended to because the A&E was full of persons whom he described as drug addicts, the plaintiff left the hospital.

21. The following Monday, he attended a Chiropractor on the Navan Road whom he said X-rayed him. He attended this Chiropractor on a number of occasions until one of his own relatives, who is a Chiropractor, returned from holidays.

22. He first attended his General Practitioner, Dr. Ward, on 12th October 2009. It is apparent from Dr. Ward's reports that the plaintiff did not make any complaint of any head injury or neck injury on this occasion. His complaints were of soft tissue injuries to the chest on the left side, soft tissue injuries to his lower back and soft tissue injuries to both knees.

23. When the plaintiff attended Mr. Bough, an orthopaedic surgeon, on 22nd June 2010, he complained that he *"suffered a head injury to the right parietal region where there was bruising and haematoma"*. This injury had not been mentioned at all to Dr. Ward in October 2009.

24. Although the plaintiff's main complaint of ongoing pain and difficulty is in relation to his knees which, he said, prevents him kneeling, causes him difficulty on stairs and limits his walking tolerance, it is plainly obvious from Mr. Bough's reports that the plaintiff did not tell him at all of his history of rheumatoid arthritis for which he was taking medication.

25. I appreciate that the plaintiff's evidence was that this condition had affected him badly a number of years before this accident had occurred and had stopped him doing his regular weekend walking, but that it was cured or controlled on medication. Nevertheless, his failure to inform Mr. Bough of this condition is quite remarkable, although I do accept that the plaintiff did tell Mr. Martin Walsh of this complaint.

26. I find myself having no confidence in the plaintiff's evidence. Having regard to the emphatic denial by the defendant, who impressed me as a truthful witness of any involvement in this alleged incident, I have come to the conclusion that the plaintiff has not discharged the onus of proof on him of satisfying me on the balance of probabilities that he suffered injuries in the incident he alleges occurred, as a result of the negligence of the defendant.

27. Accordingly, I must dismiss this action.