

THE HIGH COURT

[Circuit Court Record No: 2015 No. 250]

BETWEEN

CAITRIN COOKE

PLAINTIFF

AND

CATRIONA HACKETT

DEFENDANT

JUDGMENT of Mr. Justice Barr delivered on the 9th day of May, 2017**Introduction**

1. This action arises out of a road traffic accident which occurred at approximately 17:30hrs on 26th April, 2013, on the M7 motorway between Limerick and Nenagh at or about Killalane, Ballynahinch, Newport, Co. Tipperary. The issue in the case boils down to whether there were two separate and discrete incidents, or whether the collision which occurred between the vehicles was part of one single incident.

2. In essence, it is the plaintiff's case that while she was driving in the inside lane going from Limerick in the direction of Nenagh and Roscrea, she encountered a very heavy hailstorm, which caused her vehicle to veer to the right and go into the outer lane, at which time she turned the steering wheel to the left, causing her car to turn perpendicular to the direction which she had been travelling and cross back over the inner lane and onto the hard shoulder, where her vehicle struck a grass embankment and spun in an anticlockwise direction, coming to rest perpendicular to the road, but on the gravel area and hard shoulder to the left of the motorway.

3. It is the plaintiff's case that when her vehicle came to a halt, her husband unbuckled his seatbelt and got out to inspect the damage to their car. He looked first at the rear wheel on the passenger side, which had blown out. He then looked at the front of the vehicle and saw that there was grass in the area of the number plate, where their vehicle had come in contact with the grass embankment to the left of the motorway. It is the plaintiff's case that as her husband was just about to get back into the car, he noticed the approach of the defendant's vehicle also on the gravel area, coming straight for them. He sat into the car and shouted words to the effect that "*We are going to be hit*", before he had time to put on his seatbelt, they were struck forcibly on the driver's side by the defendant's vehicle.

4. In essence, the defendant's defence is based on the evidence of her passenger, Ms. Catherine O'Dwyer, as the defendant herself was badly injured in the accident and has no specific memory of it.

5. Ms. O'Dwyer's recollection was that the plaintiff's car came from the outer lane to their right, crossed over the inner lane in which the defendant was travelling and in an effort to avoid a collision, the defendant turned her vehicle in towards the hard shoulder to the left of the motorway. Ms. O'Dwyer stated that the plaintiff's car was rotating in an anticlockwise direction as it crossed their side of the carriageway and struck the embankment and continued turning and travelling towards the defendant's vehicle, which was proceeding up the hard shoulder and gravel area, where a collision ensued between the two vehicles. On her account, this all happened in a matter of seconds, as one single event.

6. In view of the stark conflict on the evidence between the parties, it is necessary to set out their evidence in some detail.

The Plaintiff's Evidence

7. The plaintiff is a married lady with two young children. She was born in 1978. At the time of the accident, she was the owner of a crèche. On the day of the accident, she had been in Roscrea earlier in the day and had then gone to Limerick City. At approximately 17:10/17:15hrs, she was driving along the M7 on her return journey to Roscrea. She was driving her Ford S-Max car. Her husband was in the front passenger seat.

8. Approximately 4km past Birdhill, the plaintiff came to the section of motorway shown in photographs No. 1, 2 and 3 taken by the plaintiff's engineer, Mr. Barry Tennyson. As she came to the area shown in photograph No. 3, there was a sudden violent hailstorm. This caused her car to veer suddenly to the right into the outer lane and head towards the central divide. The plaintiff stated that she turned the steering wheel to her left, to bring her back into the inner carriageway. She deliberately did not apply the brakes, as a few years previously, she had braked when travelling on ice and her car had gone into a skid. For this reason, she did not apply the brakes on this occasion.

9. The plaintiff stated that when she turned the car to her left, the car went back onto the left side of the carriageway. She said that as her car was going back, she looked in the rear-view mirror and saw that there was no traffic behind her in either lane. There was traffic in front of her. She saw the grass embankment to the left of the motorway, coming towards her. She closed her eyes and when she opened them, the car had turned 180 degrees. Her car had hit the embankment and had come to rest on the area to the left of the motorway, made up of the hard shoulder and an area of gravel. Her car came to rest perpendicular to the motorway. It was facing the road, but was not encroaching on the carriageway.

10. The plaintiff stated that she and her husband sat in the car for a few moments, thankful that they had not been injured. Her husband then got out of the car to check the damage to the vehicle. He walked to the front of the car and then towards the rear of the car. The plaintiff stated that her husband then jumped back into the car and said "*We are going to get hit*". The plaintiff said that she turned to look to her right at which time there was a loud bang, caused by the impact between the defendant's vehicle and the driver's side of her vehicle. She stated that the defendant's car hit the driver's door on her car. The glass in the driver's window, came in on top of her.

11. The plaintiff stated that after the impact, she was trapped in her car. She had severe pain in her right side. Her husband went to see if the occupants of the other car were injured. Their windscreen had shattered.

12. In cross examination, the plaintiff stated that she had initially been driving in the inner lane on the left, but that as a result of the hailstorm, the surface of the road turned to slush very quickly. She had been travelling at approximately 110kmh. Her car veered to

the right, heading towards the central meridian. She denied that she had been travelling in the right lane, prior to losing control of the vehicle. She had veered over into the right lane, had turned her steering wheel to the left and her vehicle then proceeded back across the inner lane and hit the grass bank to the left of the motorway. She accepted that her vehicle had gone suddenly back into the inner lane and proceeded on into the grass embankment. Her car had been turning in an anticlockwise direction.

13. It was put to the plaintiff that the defendant's passenger would say that the plaintiff's car had been in the right hand lane and had then veered into the left hand lane in front of the defendant. The plaintiff disagreed with this on two accounts. Firstly, she denied that she had been travelling in the right hand lane at any stage. She did veer into that lane, but immediately turned to her left and proceeded back across the left hand lane. She denied that there was any traffic behind her when she had veered to the right, or when she crossed the left lane going in the direction of the hard shoulder.

14. The plaintiff accepted that her car had gone out of control and this had caused them to hit the embankment to the left of the motorway. However, she was adamant that her vehicle was stationary, when the defendant lost control of her car and collided with her vehicle. She stated that her car was on the hard shoulder and gravel area to the left of the motorway and was perpendicular to the road. It was not on the left hand carriageway at the time of the impact.

15. The plaintiff reiterated that her husband had got out of their car and had inspected the damage to their vehicle prior to the time of the impact with the defendant's vehicle. He got back into the car after having inspected the vehicle. The plaintiff accepted that she had filled out an Accident Report Form (hereinafter: A.R.F) for her insurers, which had been signed by her on 9th May, 2013. It was put to the witness that in the form, she had stated as follows:-

"The car entered onto the embankment and rested partly on the hard shoulder and embankment. The car was not on the carriageway at any time. My husband went to get out of the car. As he turned around, he noticed a car losing control. It was heading straight towards us. Before we had time to react, the Fiesta hit me, impacting on the driver's door. We were stationary prior to the impact."

16. The plaintiff stated that that account was a mistake on her part. When she said "he went to get out of the car", she meant to say that he had been out of the car, had seen the damage to the vehicle and was getting back in, when he saw the defendant approaching. She did not accept that the account which she gave to her insurers was different to the account that she had given in her evidence. She did concede that the wording in the A.R.F., was somewhat different to the account given in her evidence. However, she remained adamant that her husband had got out of the vehicle to inspect the damage to the car. She accepted that it was wrong to state that when her husband went to get out of the car, he turned around and noticed the defendant approaching. She stated that he turned around when he got out of the car and saw the defendant. He was out of the car, when he first saw the defendant approach.

17. The plaintiff stated that her husband did not have his seatbelt on at the time of the collision with the defendant's vehicle. He had not put it back on at the time of that collision. She stated that if he had said something different at any time, to the effect that he was wearing a seatbelt at the time of the collision, that would not be correct. He only had the seatbelt on when they hit the embankment. It was put to the plaintiff that her husband had his seatbelt on when they were hit, as it was all one event, the plaintiff reiterated that her husband did not have his seatbelt on at the time of the impact with the defendant's vehicle.

18. The plaintiff stated that her car had been stationary for a period of time prior to the impact. It may have been approximately one minute, while her husband inspected their car, prior to the collision with the defendant.

19. The plaintiff confirmed that she had made a statement to the gardaí. She had gone to Newport to make that statement. She could not say whether the gardaí had encountered any difficulty contacting her husband to obtain a statement from him. However, he was resident in the U.K. from in or about June 2013, as he had gone there to work.

20. Evidence was given by the plaintiff's husband, Mr. Aiden Cooke. He had been a front seat passenger in the plaintiff's car. Just after they had passed the Birdhill junction, there was a sudden hailstorm. Their car aquaplaned towards the central divide. His wife turned the steering wheel, which caused the car to go back in the direction from which it had come and was heading towards the embankment. The front of their car hit the grass embankment to the left of the motorway. Their car rose up and turned in an anticlockwise direction. It came to rest on the gravel and on the incline of the embankment, facing towards the road.

21. Mr. Cooke stated that they took a minute to see if they were alright. He then got out of the car and checked the damage to it. The back left wheel had blown out. There was grass at the front number plate. He then got back into the car. He looked back down the road and saw the defendant coming towards them sideways on. He did not have his seatbelt on at that time. He shouted to his wife that they were going to get hit. Then the impact between the vehicles occurred. He stated that the defendant had been coming sideways towards them. The front of her car hit the embankment, which turned her car around and she hit their vehicle with the front of her car.

22. After a minute or so, he got out of the car to check on the occupants of the other car. The heavy shower of hailstorms passed quickly, but there was a large amount of slush on the motorway. He noticed two other vehicles, which had also ended up on the embankment further down the motorway.

23. The witness confirmed that he had taken a series of photographs at the scene of the accident. These were taken after the emergency services had arrived on the scene. These are photographs 8 – 22 in Mr. Tennyson's booklet of photographs.

24. The witness stated that photographs 12, 14 and 20 showed the position of their vehicles after the impact. He stated that they had been stopped after the collision with the embankment, with their car being at a 90 degree angle to the motorway. There had been some rotation of their vehicle when the defendant hit them. The damage in the area of their front bumper, was probably caused when they hit the embankment. Mr. Cooke stated that after he had got out of their car, having hit the embankment, he saw another car ahead of them, which had also hit the embankment, some 70m further on from them.

25. In cross examination, the witness was asked about whether he was wearing a seatbelt at the time of the collision with the defendant's vehicle. He stated that he did not have time to put his seatbelt back on, prior to the collision with the defendant's vehicle. He was sure of that.

26. Mr. Cooke was asked as to whether he had a personal injury claim arising out of the same accident. He said that he did. It was put to the witness that his evidence in relation to not wearing a seat belt at the time of the impact, was contradicted by the initial letter of claim which had been sent by Mr. Brian D. Hughes, solicitor on 20th May, 2013 to the defendant's insurance company. They

salient parts of that letter were in the following terms:-

Dear Sirs,

We act for the above named Aidan Cooke and Caitrin Cooke who sustained personal injuries in a road traffic accident which occurred on 26th April, 2013 on the M7 motorway between Birdhill and Nenagh. On the occasion Caitrin Cooke was driving motor vehicle 07TN 20065, a Ford S-Max, while her husband Aidan was a front seat passenger. Both were wearing their seatbelts. Your insured Catriona Hackett was driving a black Ford Fiesta, Registered No. 00TN 3422 and collided into our client's vehicle. The accident was investigated by Garda Gerry Brazil, Newport Garda Station, Co. Tipperary. It is clear from our instructions that the accident was caused by the negligent manner of your insured's driving on the occasion.

Aidan Cooke's date of birth is the 10th December, 1980 and Caitrin Cooke's date of birth is 27th September, 1978. Both of our clients came under the care of Dr. Kevin Delargy, GP, Borrisoleigh, Co. Tipperary after being treated at the Casualty Department, Limerick Regional Hospital. Medical reports are awaited in respect of our clients' injuries.

We shall be obliged if you would write to us at this stage with confirmation of indemnity and liability.

Yours faithfully

Brian D. Hughes & Co."

27. Mr. Cooke stated that he was acquainted with Mr. Brian Hughes, who had acted as his solicitor in relation to various business transactions. He stated that, while he may have discussed the accident with Mr. Hughes, when he was in his offices in relation to other business, he never retained Mr. Hughes to act for him in relation to his personal injury claim arising out of the accident. He just discussed the accident in a general way with him.

28. It was put to Mr. Cooke that that was somewhat implausible, having regard to the fact that Mr. Hughes was able to quote his date of birth and his wife's date of birth. The witness stated that Mr. Hughes would have had such information on file arising out of other transactions, where he may have executed documents on behalf of the witness and his wife. Counsel pointed out that Mr. Hughes was also able to give the registration number of both vehicles, and at the top of the letter, he was able to quote the number of the defendant's policy of insurance. He was also able to inform her insurers that the witness and his wife had come under the care of Dr. Kevin Delargy. Mr. Hughes was also able to inform them that the matter was being investigated by Garda Gerry Brazil. The witness conceded that he must have given these pieces of information to Mr. Hughes. However, he denied that he had ever authorised Mr. Hughes to act on his behalf in relation to his personal injury claim.

29. Counsel queried whether such assertion could be true, having regard to the fact that it appeared that by letter dated 26th September, 2013, the Personal Injury Assessment Board (hereinafter: P.I.A.B) had written to Mr. Hughes, asking him to clarify the date of the accident. Thus, it would appear that he must have been notified to the Board as being the solicitor who was acting on behalf of Mr. Cooke. Furthermore, Mr. Hughes replied by letter dated 30th September, 2013, confirming the correct date of the accident. The witness could not explain how these letters came to be written by Mr. Hughes, because he had in fact retained another solicitor, Mr. Brian Healy, to act as his solicitor in the matter.

30. It was put to the witness that along with the Form A, which he had submitted to P.I.A.B., his solicitor had submitted a medical report from Dr. Delargy dated 17th June, 2013. Mr. Cooke stated that he had never given Mr. Hughes permission to submit that report on his behalf. He could not explain how Mr. Hughes got the medical report from his GP.

31. It was put to the witness that in that medical report, Dr. Delargy had stated: "Mr. Cooke was a restrained front seat passenger ...". Mr. Cooke accepted that that was contained in the medical report, but stated that he had just given a very brief account of the circumstances of the accident to his doctor. He did not know when the doctor had compiled the report. It was put to him that he had seen the doctor on 1st May, 2013 and the report was dated 17th June, 2013. Mr. Cooke stated that he told the doctor, that he had had his seatbelt on when they hit the embankment. He was asked as to why he would tell the doctor that he had had the seatbelt on when he had hit the embankment, but failed to tell him that he had no seatbelt on at the time of the accident. The witness stated that he did not know why he had not told the doctor that.

32. Counsel suggested that perhaps it was because he was in fact wearing his seatbelt at the time of the accident. Mr. Cooke stated that that was not correct. He had just given his doctor his own account of the accident.

33. It was put to the witness that he had told Dr. O'Riordan that he had been a front seat passenger wearing a seatbelt. The witness stated that he had seen that doctor for all of thirty seconds. He did not know what that doctor had written down. It was put to him that he had told Mr. Hughes, Dr. Delargy and Mr. O'Riordan that he had been wearing a seatbelt, but that was supposed to relate to the time when they hit the embankment. The witness stated that that was correct.

34. It was put to the plaintiff that in his personal injuries summons issued on 11th May, 2015, it was stated twice in the endorsement of claim on the summons, at paras. 1 and 6, that at all material times, the plaintiff, meaning him, had been a restrained front seat passenger in the second named defendants motor vehicle. The witness stated that he could not explain why those statements were made in his personal injuries summons. He accepted that it was his claim which was being put forward by his solicitor. All he could say was that there were two separate incidents, firstly when they hit the embankment and secondly when they were hit by the defendant's car.

35. Mr. Cooke confirmed that he never made any statement to the gardaí. He stated that he did not know that he was required to make a statement to them. Shortly after the accident, in June 2013, he had gone to London to work. He stated that the gardaí did not contact him looking for a statement. His wife did not tell him that the gardaí were looking for a statement from him.

36. The witness stated that he had met Garda Gerry Brazil at the scene. He had told him that they had hit the embankment, that he got out of the car to examine the damage to it, then he got back in and then they were hit by the defendant's vehicle. Mr. Cooke confirmed that he had taken the photographs Nos. 8 - 22 in Mr. Tennyson's booklet. He said that he had taken those photographs as he just wanted to record what was going on.

37. Evidence was also given by two motor engineers. The first of these was Mr. William Woods, who had been asked by Zurich Insurance to examine the plaintiff's car. He examined the vehicle three days after the accident on 29th April, 2013. The damage to the vehicle involved initial frontal damage, which was consistent with the vehicle hitting a grassy bank. There was also damage all

along the off side of the vehicle. The lower part of the front bumper had been broken away. There was mud and grass on the radiator cover and behind the number plate all along the front of the car. He stated that the damage to the front of the vehicle as shown in the last of his photographs, was consistent with the vehicle striking the embankment, while the vehicle was in the process of being turned.

38. Evidence was also given by Mr. Joseph Clohessy, who had been retained by Liberty Insurance Company, the defendant's insurers. He examined the vehicle on 1st May, 2013. He examined both vehicles. The damage to the defendant's vehicle, being the Ford Fiesta, was to the front of the vehicle and along the full length of the driver's side. He had taken a number of photographs of the defendant's vehicle, which showed damage all along the driver's side of the vehicle.

39. In cross-examination, he was asked about seatbelt pretensioners. He stated that he did not think that there were any pretensioners in the defendant's car, as it was a 2000 model. There were seatbelt pretensioners on the plaintiff's car, however these had not been activated. That was probably due to the fact that there was no heavy blow to the front of the vehicle. If there had been a heavy frontal impact, the seatbelt pretensioners would have been activated. He was of the view that there was no heavy impact to the front of the plaintiff's vehicle, as the impact had been to the off side of the vehicle.

40. The witness stated that he could not say if the plaintiff and her husband had been wearing seatbelts at the time of the collision with the defendant's vehicle. He accepted that in an email to the defendant's solicitor, he had said that he was satisfied that the seatbelts were in operation at the time of the impact. He stated that that referred to the impact with the embankment and not to the side impact with the defendant's vehicle.

41. Finally, evidence was given on behalf of the plaintiff by Mr. Barry Tennyson, consultant engineer. He stated that he had been first retained on 1st September, 2016. He went to the locus of the accident, took photographs and also assessed documents that had been sent to him, including documents concerning the hearing which had taken place in the Circuit Court. He stated that to find the locus of the accident, he had used Mr. Cooke's photographs and also photographs taken by Mr. O'Keeffe, consultant engineer. He was satisfied that he was able to correctly identify the locus.

42. As the locus was a busy motorway, he was not able to measure the width of the road. However, he was able to give general dimensions of the width of carriageways on a motorway. The width of the carriageways was 3.5m each. The width of the hard shoulder was 2.75m. There was a drain at the foot of the embankment. This was the gravel referred to by the witnesses; it was in fact a French drain.

43. Mr. Tennyson stated that in the event of there being a sudden hailstorm, a driver must reduce speed carefully and immediately. If there was a build-up of slush on the road surface, this would have increased the risk of aquaplaning. Hence it was necessary to reduce speed without applying the brakes. It was also necessary to keep a distance from the vehicles ahead. Normally the safe headway distance would be a distance of 4 seconds on a wet road. So at the speed limit applying on a motorway, this would be 1.32m on a wet road. This distance should be increased if there was slush on the road surface.

44. Mr. Tennyson stated that Mr. Clohessy's photographs of the Ford Fiesta, showed damage to the right front of the vehicle, damage to the side of the vehicle and there was a severe dent on the right rear side. This latter area of damage, appeared to be caused by point loading above the rear wheel, which was pushed in and upwards and at a diagonal angle. He was not able to explain how it occurred. There was no part of the S-Max vehicle, which would have caused that damage.

45. Mr. Tennyson confirmed that he had been initially retained on 1st September, 2016 and had carried out his inspection of the locus in November 2016. He did not know whether any engineer had been retained for the Circuit Court hearing. He did not think that it was odd that he was being brought in for the appeal. He confirmed that he did not consult with the plaintiff, or her husband, at the locus of the accident. He did not obtain an explanation directly from them as to the circumstances of the accident. However, he had received detailed instructions from the plaintiff's solicitor in relation to the hearing in the Circuit Court. He also had the benefit of the reports prepared by Mr. Clohessy and Mr. Woods, when doing his report. His comments in relation to the damage to the defendant's car, was based on the photographs taken by Mr. Clohessy and on the photographs taken by the plaintiff's husband.

46. Mr. Tennyson stated that in his report he had said that perhaps a third party vehicle could have been involved, having regard to the unexplained damage to the rear of the defendant's vehicle on the driver's side. He accepted that that was speculation on his part as to the possible cause of the rear damage to her car. The witness accepted that there could have been paint transfer between the vehicles in the damaged rear wheel area of the defendant's car. However, he could not explain the damage to that portion of the defendant's car. One could not be certain that there was paint transfer between the vehicles in that area.

The Defendant's Evidence

47. The defendant stated in evidence that she currently lives in London and is employed as an I.T. Consultant. At the time of the accident she had been studying in the University of Limerick. The day of the accident was a Friday, and was the final day of her lectures before her final examinations. She was driving home to Two-Mile-Borris. Her friend, Catherine O'Dwyer was with her.

48. When they left Limerick city, the weather was good. Then there was a sudden hailstorm, as she was driving in the direction of Nenagh in the inner lane. She was aware of another vehicle ahead of her in the outer lane. She had a memory of her passenger screaming and she gripped the steering wheel tightly. She had no other memory of the accident.

49. She received extensive injuries in the accident. She had to be cut from the vehicle and taken by helicopter to hospital. She subsequently awoke in Cork University Hospital, but was kept under sedation in the I.C.U. for 3/4 days. She had no memory of anything occurring while she was in the I.C.U., but she did recall some things from her time on the high dependency unit. She was detained in hospital for a total of 10 days.

50. In cross-examination, the defendant stated that she had passed her driving test and obtained her driving licence a short time prior to the accident, but had been driving for approximately 1.5 years previously. She could recall that she and her friend were chatting before the accident. She could see the defendant's car in front of her in the outer lane. She could not recall if the plaintiff's vehicle had overtaken her at some stage beforehand. She was just aware of a car in front of her in the outer lane. She could not say if she was gaining on this vehicle. She was aware of them being in front of her before the hailstorm started. She could not recall when she first became aware of the plaintiff's car.

51. The defendant confirmed that on 16th November, 2013 she had made a statement to Garda Mulcahy. She accepted that that statement gave an accurate account of her recollection of the accident. She accepted that the statement suggested that when the hailstorm occurred, she became aware of the plaintiff's vehicle and that was the last thing that she remembered. She accepted that

there was no suggestion that the hail shower started after she had seen the plaintiff. However, she stated that she may have seen the plaintiff's vehicle on the road earlier.

52. It was put to the defendant that from her statement, it was evident that her car had been behind the plaintiff's car, and was gaining on it and that this was happening while the hail shower was ongoing. The defendant denied this. She did not think that she was gaining on the defendant's car during the hail storm. It was put to her that she was gaining on the defendant's car during the hail storm and had not been breaking at that time. The defendant did not agree with that assertion. It was put to her that she was going too fast for the weather conditions then prevailing. She did not agree that that was true. She stated that she did not drive fast, especially in bad weather. She would not be confident to drive at speed in such circumstances.

53. It was put to the defendant that the damage to the rear quarter panel of her vehicle was such, that the plaintiff's engineer could not account for it. She was asked whether there had been some other collision between her car and some other vehicle or object, to which the defendant stated that she did not think so. That damage was not done before the accident. She could not explain how it got there, as she could not recall the collision itself.

54. Evidence was given by the passenger in the defendant's vehicle, Ms. Catherine O'Dwyer. She is a secondary school teacher, living in Dublin. She had lived previously with the defendant, while they were both in college. On the day of the accident, they had left the university and were driving home. Initially the weather had been good, but there was a sudden hail shower, while they were on the road. There was a car in the fast lane in front of them, which veered across the road in front of them. She screamed and the defendant turned to the left, in an effort to avoid the plaintiff's car.

55. The witness stated that when the sudden hailstorm occurred, the defendant made a conscious decision to slow down. Then the plaintiff's car lost control and the left side of the vehicle came in front of them, across the slow lane and headed towards the embankment. The defendant veered to the left to avoid the plaintiff's vehicle. The next second, they hit the plaintiff's vehicle. When the plaintiff's car hit the embankment it came towards them. The defendant veered to the left to avoid the collision. However, she was unable to do so and the defendant's vehicle collided into the side of the plaintiff's car.

56. After the collision, she was sitting in the car in shock. She was then helped from the car. The defendant was unconscious at this stage and was making a gurgling sound. She screamed at the defendant to wake up. She stated that the defendant's car was not involved in any other collision, other than that with the plaintiff's vehicle. She confirmed that she had brought a personal injuries claim arising out of the accident, which had been settled on the steps of the court. On the advice of her solicitor, she had sued both drivers. She had been paid compensation by one of the insurance companies, but she thought that there was an agreement between the insurers that liability would be determined in the present proceedings.

57. In cross-examination, Ms. O'Dwyer stated that the hail shower had started when they were in Birdhill, shortly before the accident. She had not been aware of the plaintiff's car before the accident. She was asked about her comment that the defendant had made a conscious decision to slow down when the hailstorm occurred. The witness stated that the defendant had said "*We better take our time getting home*". She then slowed down. The witness was sure that that had happened. She stated that the defendant had always been a very safe driver, any time that she had travelled with her. It was put to her that she had not mentioned the defendant slowing down in her statement to the gardaí. She accepted that she had not mentioned that, she had just said that Catriona was travelling in the slow lane. Counsel put it to her that she had not suggested in her statement that the defendant had slowed down at any time. The witness stated that she had said in her statement that the plaintiff was travelling in the slow lane. She thought that that was sufficient. She was asked whether this was the first time that she had ever said that the defendant had slowed down. The witness stated that she could not recall what evidence she had given in the Circuit Court. Counsel suggested that the defendant had not slowed down. The witness was adamant that the defendant had slowed down when the hailstorm started.

58. Ms. O'Dwyer stated that the plaintiff's car had come from the right-hand lane, had gone through the slow lane, went across the hard shoulder and hit the embankment and turned 180 degrees. Her vehicle was in the process of turning or rotating when it hit the embankment. That had all happened in a matter of seconds. The defendant tried to turn to the left, but both cars collided with each other. The plaintiff's car was in the process of rotating in an anticlockwise direction as it crossed the slow lane and hit the embankment. When the plaintiff's car hit the embankment it continued rotating. The defendant had veered sharply to the left and hit the plaintiff's car on the driver's side. After the plaintiff's car had hit the embankment, it continued travelling towards their car and they collided with the driver's side of the plaintiff's car. She was sure that after the plaintiff's car hit the embankment, it continued turning. The whole manoeuvre was a 180 degree turn. The front of the plaintiff's car was facing towards them, when they collided with it, after it had struck the embankment.

59. Counsel for the plaintiff put to the witness that if the defendant had stayed in her own lane, there would have been no accident. The witness stated that it was an instinctive reaction by the defendant to turn to the left to avoid the collision. She had turned to the left instinctively and did not continue driving straight on in her carriageway. She could not recall if the defendant braked prior to the impact.

60. Counsel further put it to the witness that the defendant's car had gone out of control, had hit the embankment, and then hit the plaintiff's car. Ms. O'Dwyer did not accept that assertion. She stated that there was no other collision prior to the impact between the defendant's car and the plaintiff's car.

61. At the conclusion of the cross examination of Ms. O'Dwyer, the court gave the plaintiff's counsel an opportunity to put to the witness, the substance of the plaintiff's evidence, that having struck the embankment, her husband had alighted from the vehicle to inspect the damage to it and had then got back into the vehicle in the moments prior to the impact. However, counsel did not take up this invitation.

62. Finally, evidence was given by Garda Gerry Brasil. He stated that when he arrived at the scene, the paramedics and the fire brigade were already there. In the course of carrying out investigations at the scene, he took the photographs, which were handed in marked A – J. He confirmed that he had a conversation with the plaintiff's husband at the scene. He had a clipboard and paper on which he made notes. He took details of the plaintiff's name and address and the same details for her husband. He could recall speaking to the plaintiff's husband, but he could not recall his account of the accident.

63. Garda Brasil stated that he also spoke to Ms. O'Dwyer at the scene. She was very upset. She gave him a clear description of what had happened. She stated that she had been a passenger in the Ford Fiesta. There had been a heavy hailstorm. Her vehicle took avoiding action to avoid the plaintiff's car which had skidded. The defendant's car also skidded and crashed into the plaintiff's car. He stated that he had heard the account given by her in her evidence. He confirmed that it was the same as what she had told him at the scene of the accident.

64. In cross examination, the witness accepted that he had not made any notes of the account given by Ms. O'Dwyer at the scene of the accident. He was asked as to why he had not made notes of the accounts of various witnesses. He stated that this has been a major incident on a busy motorway. He had to make arrangements for the arrival of a helicopter. His main concern was the preservation of life of the injured parties. There had been a number of accidents along the motorway. It was a somewhat chaotic situation at the locus. He was asked how he could recall the precise details of Ms. O'Dwyer's account of the accident. He stated that he could recall the main points of what she had said to him at the scene, although she did not go into specifics at that time. Ms. O'Dwyer had stated to him that the defendant had taken avoidance action and her car had skidded off the road. He stated that the impact between the vehicles had been severe. The damage shown to the plaintiff's vehicle in various photographs, was as a result of the collision between the vehicles. He accepted that the engineer had given evidence that the impact between the plaintiff's vehicle and the embankment had occurred at low velocity. The damage as shown in photograph 3 had been caused by the defendant's vehicle.

Conclusions on Liability

65. As was said at the outset of the judgment, the key issue in this case is as to whether there were one or two incidents involved in the lead up to the collision between the plaintiff's car and the defendant's car. There are a number of facts that are effectively agreed between the parties. Firstly, it was agreed that there was a very severe hailstorm in the minutes leading up to the crash. Secondly, whatever about the moments leading to the plaintiff's car entering the outside or right hand lane, it is agreed that the plaintiff's car turned to its left and went from the outside lane across the inside lane, went across the hard shoulder and collided with the grass embankment. Thirdly, it was agreed that there was a collision between the vehicles on the gravel and hard shoulder area to the left of the inside carriageway.

66. The essential point of difference between the parties is as to whether there was one or two separate incidents. The plaintiff states that having gone into a skid, she ultimately collided with the grass embankment to the left of the motorway and then came to a halt. She and her husband maintained that the car was stationary and was at a right angle to the motorway. They state that the plaintiff's husband then got out of the car, inspected the damage to it and as he was getting back into the car, he saw the approach of the defendant's vehicle towards him. He got back into the car. They are both adamant that he did not have time to put on his seatbelt again, prior to the impact between the two cars.

67. The defendant's version, which is essentially based on the evidence of her passenger due to the fact that the defendant herself has no memory of the actual collision, is to the effect that when the plaintiff's car veered to its left, crossed the inside lane and struck the grass embankment, it continued turning and then proceeded down the hard shoulder and gravel area coming towards the defendant's car, which by this time, was also on the hard shoulder and gravel area, as she had veered to her left in an attempt to avoid a collision, and then the impact occurred between the vehicles.

68. In determining which account is correct, the issue in relation to whether or not the plaintiff's husband was wearing a seatbelt is of some significance. It was put to the plaintiff's husband that his evidence in this regard was totally inconsistent with the initiating letter written by his solicitor, the medical report issued by Dr. Delargy, the personal injuries summons issued in his own personal injury claim and the note taken by the consultant, Mr. O'Riordan. In an attempt to explain away these contradictions, the plaintiff's husband gave a rambling and somewhat incoherent account as to how Mr. Hughes had acted without any authority in writing the initiating letter and entering into subsequent correspondence with the P.I.A.B. This evidence was simply not credible. I am satisfied that the letter written by Mr. Hughes accurately set out the instructions given by Mr. Cooke. I am satisfied that he had told the solicitor that he was wearing his seatbelt at the time of the impact.

69. Neither did the defendant's husband have any credible explanation as to how these allegedly incorrect statements were made in his own personal injury summons and in the various medical reports. The court is satisfied that these statements appear in the various documents, simply because that was what the plaintiff's husband had said to the various parties at that time. What he told them was a true statement of fact. He was wearing a seatbelt at the time of the impact between the vehicles. I do not accept that the version given by him in evidence, was a truthful account of what happened.

70. The court is further satisfied that the statement made by the plaintiff in the A.R.F. submitted to her own insurers in her own handwriting and dated 9th May, 2013, to the effect that "*My husband went to get out of the car, as he turned around, he noticed a car losing control. It was heading straight towards us*", is not consistent with the version of events given by her in her evidence.

71. The court was impressed by the evidence given by Ms. Catherine O'Dwyer. She gave her evidence in a clear and straightforward manner. She did not attempt to avoid any difficult questions. The court is satisfied that her account of the accident is a reliable, accurate and truthful account of what actually occurred.

72. It was noteworthy that when given the opportunity to put the plaintiff's version of events to Ms. O'Dwyer, counsel for the plaintiff declined to do so. That may well have been a very wise decision in the circumstances.

73. The plaintiff's assertion that the defendant's car hit the grass embankment before colliding with her vehicle, is not supported by any evidence. In particular, there was no evidence of damage to the defendant's vehicle, which was suggestive of there having been any impact between that vehicle and the grass embankment.

74. The evidence in relation to the damage to the respective vehicles and the multiple photographs taken at the scene of the accident, are all consistent with the evidence given by Ms. O'Dwyer. They are not consistent with the version of events put forward by the plaintiff and her husband.

75. Taking all of these matters into consideration, I am satisfied that this accident and the resulting injuries to the plaintiff, were not caused by any negligence on the part of the defendant. Faced with a situation of extreme danger, she instinctively turned her vehicle into the hard shoulder. In so doing, she had acted in a reasonable manner to avoid the danger which had been presented on the roadway by the loss of control and skidding of the plaintiff's vehicle and the ensuing collision with the embankment and the fact that the plaintiff's car was then heading towards the defendant along the hard shoulder. I accept the evidence of Ms. O'Dwyer that prior to the emergency being created on the highway by the skidding of the plaintiff's vehicle, the defendant had been travelling at a slow and reasonable speed having regard to the severe hailstorm then in progress. In all the circumstances, there is no basis for finding any liability for this accident on the part of the defendant. Accordingly, I dismiss the plaintiff's action against the defendant.