Neutral Citation Number: [2010] IEHC 409

THE HIGH COURT

2006 1969 P

BETWEEN

LOUISE FARRELLY (A MINOR)

PLAINTIFF

AND

JOHN EARLEY, BERNARD EARLEY, JACKIE FARRELLY

AND

GALLOGLY TRANSPORT LIMITED

DEFENDANTS

JUDGMENT of O'Neill J. delivered on the 3rd day of November, 2010

1. In this case, the plaintiff, Louise Farrelly, suffered very serious head injuries in a road traffic accident which occurred on 17th April, 2004, on the public road outside the house of her friend, Phillipa Maguire, at Carrickavogher, Aughavas, County Leitrim.

2. The plaintiff has settled her action with the first and second named defendants for the sum of €2,223,660, a settlement approved by the court. The first and second named defendants now seek a contribution in respect of their liability to the plaintiff from the third and fourth named defendants.

3. On the night in question, 17th April, 2004, the plaintiff, along with two friends, Claire Owens and Phillipa Maguire, went to a disco at Templeport in County Cavan. All three girls were approximately fourteen years of age at the time. Following the disco, it was arranged that the three girls would stay the night at Phillipa Maguire's house. They travelled to the disco aboard the fourth named defendant's bus, which was driven by the third named defendant. It was arranged that they would travel back to Phillipa Maguire's house on the same bus. They were collected at the disco at approximately 1.00am and the bus, with some thirty to forty teenagers, set off at 1.15am. Various passengers were dropped along the way, and at about 1.50am, the bus approached the Maguire house from the Carrigallen direction, going towards Mohill. The bus had not been scheduled in advance to stop there, but a short distance from the house, one of the girls asked the third named defendant to stop at the Maguire house. This he did.

4. He pulled up opposite the forecourt in front of the Maguire house on the left side of the road. The three girls alighted and walked along the side of the bus, going towards the rear of the bus. They walked in single file with Claire Owens in front, the plaintiff behind and Phillipa Maguire bringing up the rear.

5. As they walked towards the rear of the bus, the bus began to move off. When they reached the end of the bus, Claire Owens checked that there was no traffic coming from the right, namely, the Carrigallen direction. She looked to the left, and her evidence was that before she moved across the road, the rear of the bus had reached the gate just beyond the Maguire forecourt.

6. At this time, she could not see any traffic coming from the left, namely, the Mohill direction, and did not see any lights of oncoming traffic. She walked across the road. When she had reached the gravel portion of the Maguire forecourt, beyond the yellow line, she heard a thud behind her: this was the first named defendant's car striking the plaintiff. She thought the plaintiff was close behind her, but must have been mistaken in this, as it would appear that the plaintiff was not far over the centre line of the road on the Maguire side, when she was struck.

7. Phillipa Maguire substantially agreed with the evidence of Claire Owens. The plaintiff, because of her injuries, is unable to give evidence.

8. The first named defendant, in evidence, said he had gone out that night and met friends in a pub at 11.15pm and had a number of drinks with them until closing time at 12.30pm. He admitted having three pints of Heineken. He drove home in his Toyota Carina car, and this had him travelling from the Mohill direction past the Maguire house, going in the Carrigallen direction. As he approached the scene of this accident, he said he saw a large vehicle moving slowly, coming towards him. He put his speed at about 40 miles per hour. He said, in evidence, that he did not recognise this large vehicle as a bus. As he passed the vehicle, a person walked out from behind it. He was just past the vehicle when the impact occurred. He said the next thing, the person was on the bonnet: he braked immediately. He had not seen Claire Owens cross the road first. His evidence was that he had been driving at 40 miles per hour but had slowed down as he approached the large vehicle.

9. I accept the evidence of Helen Kearns and I am quite satisfied that the first named defendant's driving ability was impaired somewhat by the consumption of alcohol. If it were true that he was unable to recognise the fourth named defendant's vehicle as a bus, then the conclusion that his driving ability was very seriously impaired would be unavoidable. I do not, however, accept that he did not recognise the vehicle as a bus. I am satisfied that the internal lights in the bus were on, which would have readily conveyed to anyone driving behind or approaching the bus, that it was a bus. In a statement taken after the accident, the first named defendant clearly indicated that he saw a bus. Thus, I am satisfied that he was aware that he was approaching a bus and that as it was moving very slowly, and it was likely it had just dropped off passengers and was moving off again.

10. Although it is unnecessary for me to decide the question of negligence on the part of the first named defendant, having regard to the settlement of the plaintiff's action by the first and second named defendants, it is readily apparent that the first named defendant was negligent in driving under the influence of alcohol in failing to drive at a speed which would enable him to stop within the distance he could see to be clear, in failing to anticipate the presence of passengers that had alighted from the bus, and in failing to slow down sufficiently or to stop to avoid colliding with the plaintiff.

11. The first and second named defendants allege negligence on the part of the third named defendants on a number of grounds. Before considering the specific allegations of negligence made against the third and fourth named defendants, a conflict in the evidence concerning how far the bus had travelled from the point where the plaintiff alighted, and where the first named defendant collided with the plaintiff, must be considered.

12. The evidence of Anthony Caffrey, then fifteen years of age, who was a passenger sitting on the backseat of the bus, was that when the bus began to move off, he turned around and knelt on the backseat to watch, through the back window, the girls behind the bus. He then became aware of car lights, and almost immediately, the accident occurred. He was not sure what he saw being struck. He mentioned seeing a handbag. He saw something on the road and presumed it was the plaintiff. When he saw the lights first, the car had passed the bus. His evidence was that the bus was only one length away from the point of impact when the collision occurred.

13. Claire Owens, who went across the road first, said the bus moved off and she did not see any traffic coming from the right. The back of the bus had reached the gate on the Mohill side of the Maguire forecourt when she commenced her crossing. She did not see any car or any car lights coming from the left side.

14. The evidence of the third named defendant was that he had moved off for two to three bus lanes, when he noticed the first named defendant's car coming around the bend in the Mohill direction. He continued on for another two to three bus lengths, at which point the two vehicles passed each other. The third named defendant continued on his journey and was unaware of the accident occurring behind him. He said that approximately half a mile further on, a passenger, namely, Anthony Caffrey, said to him, in what he described as vague terms, that he thought there may have been an accident and asked him to stop the bus so that he could get off. The third named defendant was not persuaded by this, thinking that this could have been a ploy to get the bus to stop so that some passengers could get off for a smoke. He continued on to his destination. Later, as he was returning in a minibus, he came across the scene of the accident.

15. Claire Owens' evidence is broadly consistent with the evidence of the third named defendant. On the basis of her evidence, namely, that there was no sign of a car or car lights and the back of the bus was at the gate, that is, thirty-four metres away, it is probable that the first named defendant's car was, at that point, approximately another thirty metres further back than the bus, thirty metres being the length of the beam of light cast by dipped headlights. This would have placed the first named defendant's car at approximately sixty metres away from the point from which the three girls crossed the roadway, and, indeed, also, the point of impact. Travelling at approximately 40 miles per hour, or slightly less, it would have taken the first named defendant's car four seconds to reach the point of impact, which was the time it would have taken Claire Owens to complete her crossing of the roadway.

16. Obviously, it is hard to reconcile the evidence of Anthony Caffrey with this analysis. I am inclined to think that his estimate of the distance between the bus and the point of impact must be mistaken. He, himself, when pressed on it in cross-examination, was unsure of his estimate of distance. There is no doubt that the lights of the first named defendant's car would have illuminated the scene, post-accident, including the plaintiff on the roadway, and he would have had a view of this for some distance, as the bus moved away. It is significant that when Mr. Caffrey first noticed the lights of the first named defendant's car, it had, by then, passed the bus.

17. The plaintiff was struck very close to the centre line of the roadway. She came in contact with the right front of the first named defendant's vehicle, about half a foot or a foot in from the right side of the vehicle. The brake mark left by the right-hand tyre or one of the right-hand tyres of the first named defendant's car, was close to the centre line and was parallel to it for its entire length. This suggests very strongly that the first named defendant's car was travelling very close to the centre of the roadway as he approached the point of impact.

18. If that were so, having regard to the width of the bus and the width of the roadway, if the bus and the car passed each other close to the point of impact, they must have been almost touching. I think it is highly unlikely that this occurred.

19. I am persuaded that it is much more likely that the estimation of distance given by Claire Owens and the third named defendant are substantially correct, and that the car and the bus passed each other approximately sixty metres back from the point of impact with the plaintiff. A necessary consequence of this finding is that the first named defendant should have reverted to full headlights, promptly after passing the bus, which would have illuminated the three girls on the roadway. Critically, he failed to react in this way. Perhaps of greater significance is the probability that, as a result of his intoxication, his visual recovery time after passing the lights on the bus would have been slow, with the result that his vision into the dark spot beyond the lights of the bus did not recover in time to be able to see the plaintiff and her companions. In this regard, it is very significant that he did not see Claire Owens at all, even though she had crossed the road directly across his intended path, immediately before the plaintiff.

20. Although it could be said that a consequence of a finding that the bus and car passed each other approximately sixty metres from the point of impact, is that the bus had effectively left the scene of the accident before the accident happened, and that, as a consequence, the first named defendant's first and principal allegation of negligence against the third and fourth named defendants ceases to have relevance. Nevertheless, I will consider it as it has been advanced in the evidence and legal submission.

21. The first and second named defendants allege negligence on the part of the third and fourth named defendants on a number of grounds. Firstly, they say that the third named defendant, when he approached the Maguire house, should have driven the bus off the public road onto the forecourt in front of the Maguire house. If this had been done, they say that the three girls could have got off the bus in complete safety and would not have had to cross the road, thus completely avoiding the accident that occurred.

22. Whilst all the engineering experts agreed that driving onto the Maguire forecourt could have been safely accomplished, Dr. Jordan, who was retained by the plaintiff, but called by the first and second named defendant, conceded, in cross-examination, that the emergence of the bus back onto the public roadway would have created a potential hazard for traffic coming from the Mohill direction. Dr. Jordan's evidence in this regard was to the effect that it would have taken the bus eight seconds to exit from the forecourt and get itself straightened out on the roadway. At the same time, a car travelling at 60 miles an hour, would take only four seconds to get from the brow of the hill in the Mohill direction to the Maguire forecourt, resulting in such a car having to slow down or stop to avoid colliding with the bus as it slowly made its way cross the road.

23. Dr. Woods, called on behalf of the third and fourth named defendants, appear to agree with this scenario, save that, in his opinion, the bus, towards the end its manoeuvre of emerging from the forecourt, would have cleared the side of the carriageway on which a car travelling from Mohill was on, so that the period when the bus would have obstructed that carriageway would be shortened to approximately six seconds. Dr. Woods was particularly concerned about the hazard a bus emerging from the forecourt would present traffic coming from the Carrigallen direction. The reason for his concern was the fact that the driver of the bus would

have been unsighted insofar as traffic coming from that direction was concerned because of the reliance on the external side mirror to see behind the bus. Parked in the forecourt, these mirrors would, he said, completely fail to show traffic coming from the Carrigallen direction.

24. Mr. Tennyson, when recalled, said that the side mirror would give a view back to the bridge or bend on the Carrigallen side, but for this purpose, the bus would have to be aligned parallel to the road and fairly close to the carriageway.

25. Dr. Woods, in cross-examination, agreed that if the bus were turned diagonally towards the road before emerging onto it, the driver would have a limited view through the passenger's window on the left, but this would have given no more than fifty metres of view back towards Carrigallen.

26. Mr. Tennyson was not impressed at all with this kind of manoeuvre, and felt a good driver would avoid reliance on such a view.

27. Dr. Woods was adamant that a bus driver would not, or should not, put himself in a position such as this where, in his opinion, he could not safely emerge from the forecourt without the aid of someone on the road guiding the bus out.

28. In my view, there is much merit in the concerns expressed by Dr. Woods and Dr. Jordan. I think Dr. Woods was right that a bus emerging from the Maguire forecourt would present a serious hazard to traffic coming from the Carrigallen direction. Even if the mirror on the bus gave the driver of the bus a view back to the bend, it has to be borne in mind that the view of a car coming from the Carrigallen direction would be very seriously compromised if the bus was in the forecourt and attempting to emerge from it. A less serious, although, nonetheless, significant hazard for traffic coming from the Mohill direction would also be created.

29. I am satisfied, therefore, that there was no negligence on the part of the third named defendant in not driving off the road onto the Maguire forecourt to allow the plaintiff and her companions to alight. I am also satisfied that the position where the third named defendant stopped the bus was a safe as could be achieved, in that it allowed a sight distance of approximately 100 metres to traffic approaching behind it from the Carrigallen direction, and approximately 140 to 150 metres to traffic approaching in the opposite direction from Mohill. Obviously, for somebody in the position of the third named defendant, a judgment had to be made at the time as to what was a safe position to adopt. It would seem to me that, in all the circumstances, he adopted a stopping position that was as safe, in all the circumstances as could be achieved, and, in my opinion, his judgment in that regard cannot be faulted.

30. The first and second named defendant say that the third named defendant was negligent in failing to advise or warn or instruct the plaintiff and her companions not to cross the roadway until the bus had moved away and they could see that there was no traffic coming. The following passage from the judgment of Blayney J., delivering judgment in the Supreme Court from which there was no dissent, on 25th March, 1993, in the case of *Peter Mulcahy (A Minor) v. Anne Lynch and Michael Butler*, is of particular relevance to this case. He said the following at p. 8 of the judgment:

> *"What has to be considered here is the extent of Mr. Butler's duty of care as the driver of the school bus. He clearly had a duty of care towards the children he was transporting and the question is whether that duty was confined to when they were actually on the bus or getting off, or extended to the period after they had left the bus. In my opinion, Mr. Butler's duty was confined to transporting the children safely from the place where he picked them up to the place where he left them off. His function was to drive the bus, so his primary duty was to drive the bus carefully, with a view to ensuring that it was not involved in any accidents. In addition, he had to keep order amongst the children while they were on the bus, and finally, in picking up the children or letting them off, he had to choose a place where this could be done safely, without exposing the children to any risk. These were, of themselves, duties requiring considerable attention and concentration, and it seems to me that it would be unreasonable to impose any additional duty on Mr. Butler, once the children had left his bus. Once they had left the bus, by reason of his being the driver of the bus and no more, I consider that he ceased to have any duty of care in regard to them. I would accordingly dismiss the appeal insofar as Mr. Butler is concerned."*

31. Given that, in that case, what was in issue was the duty of care of the driver of a school bus, it can be said that the reasoning of Blayney J. applies *a fortiori* to the duty of care of the third named defendant who was not driving a school bus on which there would be children of all ages, but was driving a bus transporting teenagers to and from a disco.

32. It would seem to me that there is no basis on which the reasoning of Blayney J. can be distinguished from the facts of this case, and accordingly, I must find that the third named defendant's duty of care did not require him to give any advice or warnings to the plaintiff and her companions as to how they were to conduct themselves or manage their road safety once they had left the bus. It is, of course, an essential part of the education of every child that they be trained in road safety. As indicated by Blayney J., a driver of a bus has more than enough to do to concentrate on ensuring that children are safely transported while they are on the bus, and the imposition of a duty to supply or supplement part of their road safety training for when they are not on the bus, would be, in my opinion, excessive.

33. I am satisfied, therefore, that there was no negligence on the part of the third named defendant in this respect.

34. It is suggested, also, that the third named defendant should not have moved off until the girls had completed their crossing of the roadway. I am satisfied that this was not at all necessary to ensure the safety of the plaintiff and her companions. On the contrary, by remaining *in situ*, the bus would have created or continued a hazard to them insofar as it obscured their view of oncoming traffic from the left, and more importantly, obscured them to traffic coming from that direction.

35. The third named defendant was criticized for not flashing his lights at the first named defendant as he approached, or for not sounding his horn, to warn of the presence of the plaintiff and her companions, they having just alighted from the bus. I cannot see that there is any negligence on the part of the third named defendant in this regard. In the first place, the flashing of lights or the sounding of a horn, are a crude means of communication and it cannot be assumed that the intended message would be actually perceived by other road users. The flashing of lights at night time carries with it the risk that the dazzle effect of headlights will be made worse. Generally, the sounding of a horn alerts those who hear it to the presence of a vehicle that is sounding its horn. It cannot be relied upon to convey any further message. In this case, the presence of the bus was, or ought to have been, readily apparent to the first named defendant so that the sounding of the horn had little or nothing to contribute in that regard.

36. Finally, the third named defendant was criticised for not having his hazard lights on. Hazard lights are generally appropriate to a stationary vehicle, or perhaps a vehicle of unusual size, carrying a load of exceptional size at an exceptionally low speed. It could not, in my opinion, be reasonably expected that a bus, executing the entirely normal manoeuvre of moving off, having stopped to allow passengers to alight, should have its hazard lights on. The signal given by hazard lights in such circumstances would be either

meaningless, or, indeed, possibly misleading. In addition, in moving off, the bus might need to indicate that it was pulling out by using its indicators. Of necessity, this would preclude having hazard lights on.

37. I am satisfied that there was no negligence on the part of the first named defendant in this regard.

38. For all of these reasons, I have come to the conclusion that there was no negligence on the part of the third or fourth named defendants, and the first and second named defendants are not entitled to any contribution from them towards their liability to the plaintiff.