

THE HIGH COURT
PERSONAL INJURIES

[2017 No. 4499 P]

BETWEEN**PATRICK WARD****PLAINTIFF****AND****MICHAEL WARD, MOTOR INSURERS' BUREAU OF IRELAND AND LIBERTY INSURANCE DAC****DEFENDANTS****JUDGMENT of Mr. Justice Twomey delivered on the 13th day of February, 2019****Summary**

1. The plaintiff, Mr. Patrick Ward ("Mr. Ward") of Kilcruttin, Tullamore, Co. Offaly claims damages from Mr. Michael Ward who in the relevant Personal Injury Assessment Board ("PIAB") forms completed in this case is stated to share the same address as Patrick Ward. Mr. Michael Ward was not represented in the proceedings and so he made no challenge to the claims put forward by Mr. Ward.
2. Mr. Michael Ward was driving a car, in which Mr. Ward was a passenger on a country road from Shannonbridge to Cloghan in County Offaly on the 16th February, 2016 at 1 am, when the car ended up in a ditch.
3. Mr. Ward alleges that he sustained neck injuries, rib injuries and an injury to his eye as a result of this accident. However, his evidence is that his injuries all cleared up in a short number of months and the only treatment he received was pain killers, anti-inflammatories and eye drops. Indeed, there is independent evidence that within two weeks of the accident he indicated to his GP that he was ok after the accident. However, although he has no loss of earnings as he is unemployed, he is making a claim in the High Court for damages in excess of €60,000 for these injuries.
4. Prior to the hearing, an issue arose regarding the alleged threadbare nature of the tyres on the car, and so it was unclear whether Michael Ward's insurance company, Liberty Insurance DAC, would indemnify him for the claim, and so both Liberty Insurance and the Motor Insurers' Bureau of Ireland (the "MIBI") are parties to the action.
5. The engineering evidence before the Court was that the incident occurred on a very straight stretch of road and that it seems that the car ended up in the ditch and came into contact with a pillar of a gate.

Factual Background

6. To be successful in his claim for damages, Mr. Ward must establish on the balance of probabilities that the accident occurred as he has claimed. When giving oral evidence to the Court, Mr. Ward was quite definitive that he was sitting in the front seat of the car and that the cause of the accident was the car slipping on snow.

7. However in assessing whether this evidence is credible, the following facts are relevant:

- (i) First, in the Form A completed for the PIAB dated 13th April, 2016, against Liberty Insurance, Mr. Ward states that he was a front seat passenger when the car went around a bend and lost control.
- (ii) Secondly, in the Form A completed for PIAB dated 5th December, 2016 against MIBI, Mr. Ward states that he was a back seat passenger when the car skidded in snow.
- (iii) Thirdly, in the Replies to Particulars dated 26th September, 2017, it is stated that Mr. Ward was asleep in the back seat when the vehicle lost control.

However, it should be noted that his solicitor with the benefit of hindsight gave evidence to the Court that he 'assumes' that this reply was not Mr. Ward's instruction but was a mistake on the part of the solicitor. He says this mistaken reply that Mr. Ward was in the back seat could have arisen from the fact that he was also acting for Dermot Ward, Mr. Ward's cousin, who was in the car at the time and who is also making a claim.

However, the acts of one's agents, in this case one's solicitor are the acts of the client and *prima facie* therefore Mr. Ward is bound by this Reply to Particulars made by his solicitor.

While it is of course a possibility that the solicitor's assumption is correct, which would explain the back seat reference, it is equally possible that Mr. Ward did instruct him that he was in the back seat, and this Court must decide this case on the balance of probabilities based on all the evidence and not just the assumption, with the benefit of hindsight, of Mr. Ward's solicitor.

- (iv) Fourthly, in the MIBI claim notification form completed on behalf of Mr. Ward dated 14th December, 2016, it is stated that the vehicle was 'rounding a bend' when it lost control and there is no reference to snow but rather the road conditions are described as 'ok'.

- (v) Fifthly, in the report of Mr. Gleeson, Consultant in Emergency Medicine, he states that 'Mr. Ward tells me that he was a front seat passenger' in the car. The cause of the accident in this report is stated not to be snow or a bend, but for the first time it is stated that the cause of the accident is stated to be a car which was travelling in the opposite direction which forced Mr. Ward's car into the side of the road and to hit the pillar.

- (vi) Sixthly, it was put to Mr. Ward that his cousin, Paul Ward, who was also in the car had also made a claim, but that in Paul Ward's Personal Injury Summons he had claimed that he was in the front passenger seat of the car, rather than Mr. Ward.

It should be noted that to add to the numerous inconsistencies arising from this accident, that in Paul Ward's Replies to Particulars, it is stated that he was in the back seat.

8. When cross examined about the multiple inconsistent versions referred to above, Mr. Ward never accepted any responsibility for the inconsistencies but simply blamed his solicitor or the doctor for incorrectly referencing what he had said at the relevant time or his cousin for giving false statements in his Personal Injury Summons.

9. In light of the amount of documentary evidence, which contradicts the version of events which is now being put forward by Mr. Ward, this Court cannot be satisfied on the balance of probabilities:

- Whether Mr. Ward was in the back seat or the front seat,
- Whether he was asleep or awake,
- Whether the car slipped coming around a bend or on the straight,
- Whether it slipped on snow or on a road where conditions were ok,
- Whether it drove into the ditch as a result of an oncoming car or went straight into the ditch with no other cars in the vicinity,
- How the car ended in the ditch
- Or indeed any detail of the claim as alleged by Mr. Ward

10. Based on the demeanour of the witness and the manner and substance of his evidence, this Court can conclude that it is not satisfied that Mr. Ward is a credible witness regarding anything that allegedly happened on the 16th February, 2016 and so this Court concludes that on the balance of probabilities that the events as alleged by Mr. Ward did not occur as he alleges.

11. For this reason, this Court dismisses the claim.