

BETWEEN

KATIE MARTIN

PLAINTIFF

AND

MONAGHAN COUNTY COUNCIL AND MARTIN O'HARA

DEFENDANTS

JUDGMENT of Ms. Justice Bronagh O'Hanlon delivered on the 14th day of

February, 2019

Introduction

1. This action arises out of a road traffic collision which occurred between 13:30 and 13:45 on Wednesday, 30th October, 2013, on the RI 80 Ballybay to Carrickmacross in the townland of Peast, County Monaghan. The vehicles involved were a Hyundai Accent, driven by the plaintiff, registration numbers and letters MH2305 and a three-axle Scania tipper truck, registration numbers and letters 02MH538 driven by the second-named defendant. The second-named defendant was transporting stone to the townland of Lisdoolin, County Monaghan for the construction of a road drain. The plaintiff who resides at Drumconrath, Navan, Co. Meath entered onto the R180 by turning right from the L4040, a minor road, at a junction with the R180. On entering the RI 80, the plaintiff's vehicle travelled in the direction of Carrickmacross, while the defendant's vehicle was travelling towards Ballybay, i.e. in the opposite direction on the same road. A head-on collision occurred between the plaintiff's vehicle and the vehicle owned by the First named defendant and driven by the second-named defendant, causing significant damage to the plaintiff's vehicle, some damage to the truck, and damages are claimed for personal injuries, loss and damage in these proceedings.

2. The plaintiff resides in Drumconrath, County Meath. At the time of the collision, she was eighteen years of age and a student studying biotechnology at Athlone Institute of Technology, with the intention of gaining enough credits to transfer onto a veterinary course. She is now twenty-three years of age. The plaintiff, while still a student at Athlone IT, is on a reduced curriculum, as a result of medical problems sustained by her in the said collision.

3. The first-named defendant is a road authority within the meaning of s. 13 of the Roads Act 1993, with responsibility for maintenance of the public roadway within its administrative area. At the time of the collision, the second-named defendant was acting in the course of his employment as a lorry driver with the first-named defendant.

4. The plaintiff claims damages in respect of personal injuries suffered by her due to the alleged negligence and breach of duty, including statutory duty, of the first and second-named defendants. Liability for the collision is strongly at issue in these proceedings. This Court will consider the issue of liability and causation in this case at this point.

Liability and Causation

5. The evidence submitted in the within proceedings is complex and highly technical, but the legal question to be answered by the Court is comparatively simple. The question of liability in this case hinges almost entirely upon the positioning of the truck immediately prior to the collision. The Serious Traffic Collision report of Garda McColgan, prepared after a survey of the scene conducted on the 31st October, 2013, he notes the presence of fresh grind and gouge marks on the truck's side of the road, commencing 90 centimetres from the continuous white line in the centre of the road. This survey also notes the presence of shattered glass from a headlight unit on the truck's side of the road. Based on this evidence, the Detailed Scale Plan of the Scene drawn up by Garda McColgan places the point of impact in the truck's lane. In other words, both the plaintiff's and the defendants' vehicle were in the same lane, at least partially, at the same time. It goes without saying that for this to have occurred, the plaintiff's vehicle crossed over, at least partially, to the second-named defendant's lane at some stage prior to the accident.

6. The plaintiff does not disagree as to the locus of the area of impact. Rather, the points of contention relating to the area of impact between the plaintiff and the defendants centre around two disputed elements. Firstly, the plaintiff does not agree with the defendants' contention that the point of impact was in the truck's lane means that the plaintiff's vehicle crossed over into the truck's lane without reason or requirement. Secondly, the plaintiff does not agree with the defendant's contention that the plaintiff's crossing over into the defendant's lane was the chief causal factor of the accident. Instead, the plaintiff argues that the truck was overloaded with drainage stone, and that this adversely affected the truck's braking ability. It is argued that the truck's brakes were already deficient, and that, combined, these, and not the plaintiff's behaviour, were the causes of the collision.

Did the plaintiff have a reason to cross the continuous white line?

7. The plaintiff argues that, although the plaintiff probably did at least partially cross over into the truck's lane, this was preceded and necessitated by the second named defendant crossing over, at least partially, into the plaintiff's lane. The plaintiff argues that the point of entry of the truck into the grass margin, combined with the type of steering box on the truck, means that the truck must have been travelling at a leftward trajectory immediately prior to the collision. If the truck was in fact travelling at a leftward trajectory, it could only have been because, at some point before the collision, it had crossed back over from the plaintiff's lane. If this was the case, it is possible that the plaintiff only crossed over into the second-named defendant's lane in order to avoid the truck. The truck then could have crossed back into his correct lane before the plaintiff could move fully out of what would have been, for her, the incorrect lane.

8. The theory that the truck was on a leftward trajectory immediately prior to the collision emerged only on 16th November, 2018, when the plaintiff's forensic engineer suggested same in an addendum to this report. It directly conflicts with the evidence of the second-named defendant, who, in his statement to the Gardaí, said that:

"All of a sudden I saw a car coming in the opposite direction towards me. I was entirely on my side of the roadway as was the other vehicle when I first saw it. Shortly before it was due to pass me, it come over my carriageway and collided with my lorry causing damage to my lorry and causing a blow out of the front driver 's wheel of my lorry. I did my best to avoid the collision but all I could do was stand on the brake as there was no hard shoulder. I can 't account for why the vehicle crossed over into my lane other than to say that it was driving normally and then just shot into my

lane when it was 15 or 20 feet away.”

9. The defendants’ forensic engineers argue further that the suggestion that the truck was on a leftward trajectory overlooks conflicting evidence that the truck was travelling alongside the line of the road, and not across it. This includes (from the defendants’ forensic engineers’ addendum report):

- "1. Garda McColgan's evidence that he found 'tyre tracks in the grass verge bordering the Ballybay bound lane. The tracks commenced adjacent to the gouge'.*
- 2. The fact that the road on the immediate approach to the accident point and on the Ballybay side—i.e. after impact section is not straight but curves to the right;*
- 3. The measurement of score marks on the road, the damage to the car places the near side of the truck immediately to the grass verge when the impact occurred;*
- 4. That Garda photograph 5 shows the tyre marks on the verge about 20/25 metres on the Ballybay side of the collision point. These marks are at a very shallow angle to the line of the road at that point;*
- 5. That Denis Wood Associates [the defendant 's forensic engineers] photograph 20 showing some six weeks after the incident a shallow entry angle of the tyre mark;*
- 6. While the steering box has a low reverse efficiency [sic], the jolting forces on the offside front wheel of the truck would have been transmitted to the steering wheel and caused oscillatory movement of the steering wheel;*
- 7. That the offside front wheel of the truck was forced rearward thus pulling the track rod and thus potentially imparting a slight left turn to the nearside front wheel."*

10. The Court notes that the plaintiff, regrettably, although perhaps also mercifully, is unable to remember anything about the events leading up to the collision after she turned right and was heading in the direction of Carrickmacross, effectively south bound towards her home. The plaintiff has therefore been unable to give evidence herself as to what precisely occurred although she asserts that she never went over to the other side of the road before. However, based on the evidence that has been submitted to the Court and on the cross-examination of expert witnesses by counsel, the Court finds, on the balance of probabilities, that the truck driven by the second-named defendant was not on the wrong side of the road prior to the collision. Nor does the defendant appear to have been otherwise driving dangerously or negligently prior to the collision. The Court finds that the plaintiff's vehicle probably and inexplicably did cross over into the second-named defendant's lane prior to the collision. To find otherwise would be to ignore the most logical interpretation which the objective forensic evidence, as has been made available to the Court, demands.

But for overloading and deficient brakes, would the collision have occurred?

11. With this finding in mind, the Court must now move to remedy the second point of contention between the parties, and ask whether the collision would have occurred 'but for' the overloading of the truck and its deficient braking system. The defendants have not contested that the truck was overloaded at the time of the collision as, quite objectively, it plainly was. The gross weight of the truck and load was 29,230 kilograms. The Road Traffic (Construction, Equipment and Use of Vehicles) (Amendment) Regulations 2002 provides that, for this type of vehicle, the maximum weight laden is 26,000 kilograms. This is an excess weight of 3,230 kilograms.

12. The defendants have not strongly contested the deficiency of the truck's brakes, although they have called into question the efficacy of the tests used to establish that deficiency, and have disagreed with the plaintiff as to the emphasis which ought be placed on the issue of the defective brakes. Tests conducted on 8th November, 2013 (after the collision) by Sergeant Walsh, a Public Services Vehicle Inspector for the Garda Síochána, found the overall braking efficiency of the truck to be 38%, while the minimum requirement describes a braking efficiency of 45%. The same tests found that the emergency brake efficiency was 16%, while the minimum requirement is 22.5%, and, further, that the truck had a tendency to swerve to the left when heavy braking was applied. The plaintiff's forensic engineer's report describes the brakes as "grossly deficient," and states that he "cannot recall investigating an incident in recent times where the braking on a truck was so poor."

13. A report from the defendants’ forensic engineers, however, disputes the validity of the braking tests carried out by Sergeant Walsh. It notes that the tests were conducted on the truck after it had been involved in the collision and had therefore already been severely damaged. In particular, the truck's offside suspension was broken. Further, the tests were carried out at a low speed and with Sergeant Walsh applying the brake sharply, which the defendants’ forensic engineers argued amounted to abnormal driving conditions not reflective of those that existed immediately prior to the collision. This led the defendants' forensic engineer to conclude that Sergeant Walsh's tests "are invalid and are not representative of the behaviour of the truck under braking prior to the collision." The Court also notes that, under cross-examination by the defendant counsel, Sergeant Walsh observed that although it was his opinion that the condition of the brakes rendered them in breach of the Road Traffic (Construction, Equipment and Use of Vehicles) Regulations, and that "the overall braking efficiency was reduced and exaggerated by the excessive weight," the brakes, however defective, were still capable of bringing the vehicle to a stop, and that any defect in them could be overcome by a driver.

14. While the Court is prepared in theory to agree that the truck may have been defectively maintained and loaded and that this amounts to negligence, the causal link between this and the unfortunate accident cannot be firmly established on the balance of probabilities. The Court cannot say that, but for the overloading and deficient brakes, there would have been no collision. The Court is forced to conclude that the *causa causans* (that is, the real effective cause of damage) was not the overloading or the deficient brakes, but rather the plaintiff's action in changing lanes.

15. It is relevant, here, to cite the Supreme Court judgment of Dálaigh C.J. in *Kenny v. O'Rourke* [1972] I.R. 339, in which the plaintiff, a housepainter, was injured falling off a ladder provided by the contractors on the building site on which he was working. The ladder was found to be defective, but a jury found that this was not the cause of the plaintiff's personal injuries—rather, the cause was the plaintiff's leaning over too far while on the defective ladder, and overbalancing, for which the defendant could not be liable. Despite the arguable breach of duty on the part of the defendant in providing a defective ladder, it was the plaintiff's own negligent act which caused the accident. The Court also notes the somewhat contrasting case of *Guckian v. Cully* (Unreported, Supreme Court, 9th March, 1972), reference in which a defendant was found liable for personal injuries in spite of the fact that the *causa sine qua non* (that is, an act without which there would have been no incident causing damage) was an act of the plaintiff. The Court is satisfied, however, that there are sufficient facts present in the within proceedings to bring this case outside the realm of the findings in *Guckian*. In *Guckian*, the plaintiff's *sine qua non* action was not negligent—he pressed dough down into a machine with his hands, but he did not press down too far or without due care. Rather, the stool on which he was standing was unstable and

unsuitable, causing him to lurch forward when he was pressing down the dough and causing his hand to come into contact with a blade inside the machine. In this context, the provision of this defective stool by the defendants did amount to negligence. In the within proceedings, however, the Court is prepared to find that the plaintiffs action of crossing the line without apparent warning or reason did amount to negligence or want of care, to the extent that it could be said that the plaintiff was herself causally responsible for the collision. But for the plaintiff crossing the continuous white line between the lanes on the RI 80, there would have been no collision.

Conclusion

16. The Court cannot ignore the principles of causation. The plaintiff's memory loss means that we may never truly learn of the exact events which led to the collision between the plaintiff and the second-named defendant on the R180, but the evidence which is available overwhelmingly suggests that, on the balance of probabilities, liability for the collision cannot be attributed to the defendants. Accordingly, I must dismiss the plaintiffs claim on the issue of liability.