

THE HIGH COURT**[2015 No. 7648 P]****BETWEEN****ASIF MOHAMMAD****PLAINTIFF****AND****DEIRDRE WALSH****DEFENDANT****JUDGMENT of Mr. Justice Bernard J. Barton delivered on the 8th day of July, 2016**

1. The Plaintiff was born on the 6th June, 1974 and is a chef by occupation. He brings these proceedings against the Defendant for damages for personal injuries and loss arising as a result of a road traffic accident which occurred at or shortly before 7pm on the 4th December, 2014. Liability is fully in issue.

2. The Plaintiff is a Pakistani national, married with three children. His wife and family live abroad. As a result of the accident, the Plaintiff sustained serious personal injuries as a result of which he was brought to the Mater Hospital by ambulance. A clinical examination disclosed bruising over the left side of his face and bruising over the left maxilla. X-rays performed in the Mater revealed extra-articular fractures of the first, second and third metatarsal bones of the right foot. X-rays of the Plaintiff's facial bones were reported as normal.

3. The Plaintiff was given painkillers and a below-knee backslab was applied. His foot was elevated and he was discharged the following day, returning for clinical review on 12th December, 2014 at which time a cast was applied. The Plaintiff was reviewed the following week and, on the 16th January, 2015, the plaster cast was removed and a boot was applied. The Plaintiff was allowed to fully weight-bear at that time but his evidence to the Court was that he could not walk unaided and had to use crutches. When he commenced weight-bearing, he developed a pain in his right knee. The injuries to his right foot were particularly painful and also involved a considerable limitation in movement as a result of which he was unable to walk properly. He described suffering from considerable emotional distress which was added to by the financial circumstances in which he found himself. He was unable to pay his rent and had to move to Galway where he stayed for a time with a friend. He then moved to Farranfore in Kerry where he now helps out a few days each week with running a shop. He described himself as having always been a hard worker. His injuries were such that he could no longer work as a chef; notwithstanding, a claim for enhanced general damages for loss of opportunity was withdrawn at the commencement of the trial.

4. The Plaintiff was unable to afford physiotherapy or other medical treatment but took painkilling medication to deal with his painful symptomatology. Whilst the bruising resolved, he continued to suffer from pain in the interior rib cage, lower back and in his foot and right knee. Though he had improved to some extent, he continued to be particularly symptomatic with regard to his foot and demonstrated to the Court a restriction in foot movement.

5. With regard to his injuries in general, the Plaintiff's GP gave evidence that his expectation was that with the passage of time, the Plaintiff's soft tissue injuries would be expected to resolve but that, so far as the Plaintiff's right foot injury was concerned, that was a subject upon which he would defer to the view of Mr. Moroney. As to that, Mr. Moroney, in a report dated 19th February, 2016 expressed the opinion that as a result of the fracture injuries it is entirely possible that the Plaintiff has developed post-traumatic osteoarthritis in the right mid-foot. The medical report prepared by the Plaintiff's GP and by Mr. Moroney were admitted in evidence. There was no significant dispute between the parties as to the Plaintiff's injuries; rather, the controversy between them was centred on the cause of the accident.

Background

6. At the time of the accident, the Plaintiff had been living in Whitehall for about two months. He was not that familiar with the area in general but was familiar with the junction where the accident occurred. On the evening of the accident, he had been given a lift part of his way home and had alighted from the car close to the junction of Drumcondra Road and Griffith Avenue, Dublin.

7. The junction is controlled by traffic lights which include pedestrian control lights. Engineering evidence was given on behalf of the Plaintiff and the Defendant. There was unanimity between the engineers as to the configuration of the junction, the sequencing of the lights and road measurements. The Garda who attended the scene shortly after the accident gave evidence that the traffic lights were operating normally and there was no suggestion that the light sequences on the evening were different to those ascertained by the engineers.

8. The pedestrian-controlled lights do not operate automatically as part of the light sequencing; that mechanism must be activated by the pressing of the pedestrian light buttons provided in the traffic light standards on either side of the road. Once activated, the pedestrian light is designed to engage at a defined moment in the general traffic light sequence with the result that the pedestrian light shows green at a defined time in that sequence. The engineering evidence establishes that when the green man signal shows, it remains on green for 6 seconds before turning yellow and remains on that colour for further 11 seconds before extinguishing.

9. There is two-way traffic on all roads leading to the junction. On the north side of the junction, where the accident occurred, there is a traffic island. There is a pedestrian light governing the pedestrian crossing on the far side of the traffic island. The pedestrian lights on either side of the island operate independently with the result that a pedestrian crossing to the island must wait for the pedestrian light to show before crossing the other carriageway. It was suggested to the Plaintiff that he may have crossed on the basis of the further pedestrian light at a time when the nearest pedestrian light was showing red. He did not accept that this is what had happened.

10. Traffic approaching the junction travelling south towards Drumcondra may turn right or left as well as proceeding through the

junction. Some 65 yards prior to the junction, a right-hand turning lane was designated on the road. At the junction, there is a right-hand turning filter light built into the main traffic lights. Adjoining the filter lane is the lane provided for traffic intending to proceed straight through the junction. Beside that lane, there is a further lane for traffic intending to turn left into Griffith Avenue. The engineering evidence establishes that when the pedestrian signal shows, the traffic lights and filter lights are showing red for traffic in all lanes proceeding south and turning left or right. The total width of the southbound carriageway was measured at 10.7 metres. The width of each lane is approximately 3 metres.

11. Once it activates, the filter light shows green for 14 seconds, followed by amber light which shows for 2 seconds and at the end of which the filter light completely extinguishes. There is no red light on the filter. The main traffic signal shows red for 2 seconds before the filter light shows green. There is also a filter light on the far side of the junction allowing traffic travelling from the city to turn right into Griffith Avenue. Both sets of filter lights turn green at the same time. When that occurs, all other traffic faces a red traffic signal which remains showing during the entire filter sequence. When the pedestrian light is engaged it does not show until 5 seconds after the filter signal has extinguished. The junction is well lit by public lighting; there was no issue concerning the adequacy of the street lighting.

12. On the evening of the accident there was a show in the Point Theatre; traffic was particularly heavy. Darkness had fallen but weather conditions were dry. Having been dropped off, the Plaintiff proceeded to the north side of the junction which he intended to cross. His evidence was that when he got to the junction, there was what he described as a bus or large vehicle stopped at the traffic line of the junction in the inner lane waiting to turn left. He pushed the pedestrian button and when the green pedestrian light showed he proceeded to cross the south bound carriageway between the lines on the road designated for pedestrians to cross – the pedestrian crossing.

13. Once he left the footpath, the Plaintiff did not look to his right and was uncertain as to whether or not there was any traffic in the middle lane. As he crossed in front of the filter lane, a collision occurred between the Plaintiff and the vehicle driven by the Defendant. The nature of that collision is significant; neither saw the other approach and the Defendant's case was that the Plaintiff had collided with the front passenger side of her car. The Plaintiff fell to the ground sustaining injuries in respect of which he brings these proceedings. The type of injury to his right foot is consistent with one of the near side wheels of the Defendant's car rolling over it.

14. The Garda who attended the scene shortly after the accident took personal details from the Plaintiff and the Defendant but no statements were sought nor subsequently made to the police by either party or by any witness to the accident.

15. There was no suggestion that the Defendant's vehicle had been moved after the accident. The investigating Garda gave evidence that the rear of the Defendant's vehicle was positioned close to or immediately above the line of the pedestrian crossing closest to the junction – this is seen in photograph 5 of the photographs taken by the Plaintiff's engineer. The Plaintiff's evidence was that the pedestrian light was still showing at the moment of impact but had just turned to amber. If his recollection concerning the colour of the pedestrian light is correct then, on the basis of the engineering evidence, it follows that the Defendant had crossed into the pedestrian crossing without the benefit of a green filter light.

16. There was no evidence that the Plaintiff had been struck by the front of the Defendant's car nor, indeed, was there any evidence of damage to that part of the vehicle; the only damage noted was to the near side front door mirror.

17. Before the accident, the Defendant was travelling from her home southwards towards the junction in a white Fiat 500 car. It had wrap-around bumper lights which, together with dipped headlights, were illuminated. Initially, the Defendant had been travelling in what was the outer of two lanes until she reached the beginning of the filter lane. The traffic in both lanes was heavy and she described traffic movement in both lanes as moving in a stop/go fashion. When she reached the filter lane, she drove into that lane with the intention of executing a right-hand turn at the junction to make a visit to St. James' Hospital. She was very familiar with the junction.

18. On her evidence, and as she travelled along the filter lane, the right-hand turning filter light was showing green. She did not notice any other traffic in front of her as she travelled in the filter lane towards the junction. Once she entered the filter lane, she increased her speed. The traffic on both inside lanes was stopping or had stopped and there was a red light showing at the junction to that traffic. She could not recall what gear she was in or precisely what speed she was doing as she approached the filter lane. She did not think it was fast and, insofar as she was able to estimate it at all, she thought that it was approximately 25 miles per hour.

19. It is clear on the evidence, however, that whatever speed the Defendant was travelling at she would have had to slow down in order to take what would have been a sharp right-hand turn at the junction. In my view, the inference that she was travelling very slowly at the time of the collision is established by a significant fact, namely, that her vehicle had come to a halt just beyond the pedestrian crossing at the point identified by the investigating Garda. It is highly improbable that her car could have stopped at that point unless she had been travelling very slowly; there was no suggestion that the impact occurred anywhere other than on the pedestrian crossing.

20. The Defendant first became aware of the Plaintiff's existence when she saw a shadow out of the corner of her eye followed almost immediately by a bang which she located in the vicinity of the front passenger door area of the car. Consistent with that evidence was the evidence of damage to the front passenger door mirror. There was no suggestion that the door mirror had been damaged prior to the accident; the likelihood is, therefore, that it was caused as a result of the impact.

21. As to why the Defendant did not see the Plaintiff before the impact, she explained that she thought he had been wearing dark clothing. However, she did not see the Plaintiff before the impact until the last second and then only out of the corner of her eye; it is likely that that explanation is supposition on her part. The Plaintiff's evidence was that he was wearing blue jeans and a brown jacket. I accept his evidence in that regard.

22. If the Plaintiff is correct in her recollection, then a more probable explanation as to why the Defendant did not see the Plaintiff before the impact is provided by her evidence that, as she approached the junction, she was aware of and was concentrating on traffic coming in the opposite direction which was also turning right on a green filter light to travel into Griffith Avenue. Moreover, she had a green filter light permitting her to proceed; she would not have been expecting a pedestrian to cross the carriageway in front of her.

23. It is apparent from their respective accounts and from the engineering evidence that either the Plaintiff or the Defendant is incorrect as to which of them had a green light. The conflict of evidence on that question falls to be resolved by the Court on the

balance of probabilities.

Cause of the accident

24. Stationary, and facing the red light at the front of the middle lane for traffic intending to proceed through the junction, was a Toyota Avenis car driven by Ms. Lambe. She gave evidence at the trial. According to her evidence, the traffic was heavy and there was a queue of vehicles behind her. To her left lane but slightly ahead of her car, she noticed a large Guinness lorry. Its size and positioning obscured her view of the footpath to her left. She recalled that the filter light was showing green. Two or possibly three cars turned right on that light followed by a short time gap before the Defendant's vehicle passed alongside her car and which may explain why the Defendant had no recollection of seeing them, nor were they seen by the Plaintiff.

25. The witness first saw the Plaintiff on the crossing as he emerged from the front of the stationary lorry. He passed in front of her car and proceeded to cross in front of the filter traffic lane on the pedestrian crossing, at which point the accident occurred. She could not say what colour the filter light signal was at the moment of the impact but she was aware that it had been green up to that point.

26. The witness rejected a suggestion put to her on behalf of the Defendant that she was less than objective. Although she freely admitted having had lunch on the day of the trial with the Defendant, she insisted that she had absolutely nothing against the Plaintiff. Indeed, she knew neither of the parties involved at the time when the accident occurred. She accepted that she had not made a statement to the police but had made a statement to the Defendant's insurance investigator concerning the events of the accident which was the same as her sworn evidence to the Court.

27. I had the opportunity to observe the demeanour of this witness during the course of her evidence and am satisfied that she was a reliable witness who gave truthful evidence which I accept. Equally, I have little doubt but that the Plaintiff sincerely believes that he pushed the green button to call for the green pedestrian light but I am compelled, accepting the evidence of the engineers as to the sequencing of the lights and the evidence of Ms. Lambe which corroborates the evidence of the Defendant, that he must be mistaken in that regard. Accordingly, the Court finds as a fact that the accident occurred at a time when the right-hand filter light at the junction was showing green to the Defendant. It follows from the engineering evidence that the pedestrian light had to have been red at that stage; consequently the Plaintiff crossed the junction when he was not permitted to do so.

28. Crossing the junction in those circumstances exposed the Plaintiff to the danger of a collision in the filter lane which, unfortunately for him, is exactly what happened. Moreover, whilst he proceeded to cross, he fairly admits that he did not look to his right at any time, never saw the Defendant's vehicle and only became aware of its existence when the accident occurred. I accept the evidence of the Defendant that she heard a bang which came from the vicinity of the near side front door area of her car – evidence which is corroborated by the absence of any evidence that the Plaintiff had been struck by the front of the vehicle, and by the evidence that the only damage to the vehicle was to the front passenger door mirror. Accordingly, the Court finds as a fact that the point of impact between the Plaintiff and the Defendant's vehicle was, as a matter of probability, to the front passenger side and not the front of the vehicle. Consequently, I am driven to conclude that the Plaintiff walked into the side of the Defendant's car as it passed in front of his path of travel at a time when the Defendant had the right of way.

Decision on Liability

29. Upon these findings, I am satisfied that the Plaintiff crossed a junction against a red pedestrian traffic light signal and that he did so without keeping a proper look out, with the result that he failed to see and was otherwise unaware of the presence of the Defendant's vehicle until he collided with it at a time when it had the right of way. It follows that the Plaintiff was guilty of causative negligence for the accident.

30. Turning to the question as to whether or not there was any negligence on the part of the Defendant, it was submitted by senior counsel for the Plaintiff, Mr. Keane, that if the Court were to accept the case made by the Defendant as to how the accident occurred, then there was still an issue of negligence on the part of the Defendant. She had fairly admitted that she had never seen the Plaintiff until an instant before the impact. In this regard, it was submitted that the Plaintiff was plainly visible on a well-lit junction and ought to have been seen by the Defendant.

31. It was submitted that there was no substance to the suggestion that the Plaintiff had been wearing dark clothing: he had been seen by Ms. Lambe emerging from the front of the lorry and then crossing in front of her vehicle; it followed that there was no good reason why he should not also have been seen in good time by the Defendant. Neither the fact that she may have been concentrating on traffic coming in the opposite direction and turning right on a green filter light, nor the fact that a green filter light was showing to her relieved the Defendant of the duty of care which she plainly owed to other road users including the Plaintiff.

32. Senior counsel for the Defendant, Mr. Brennan, submitted that the Court had to have regard to the fact that the Defendant would have been no more than a metre off the ground when sitting in the driver's seat of a Fiat 500. Ms. Lambe was seated in a vehicle which was stationary at the junction whereas the Defendant was passing a line of traffic stationary to her left which would have further restricted her view – a restriction which remained until she had almost come to the junction and reached the vehicle driven by Ms. Lambe.

33. The attention of the Court was drawn to the decision of the Supreme Court in *Doyle v. Murray* [1967] I.R. 390 and to S. 7 of the Rules of the Road upon which Mr. Keane relied. Mr. Brennan drew the attention of the Court to the provisions of the Road Traffic (Parking and Traffic) Regulations 1997, all of which have been read and considered by the Court.

34. It is quite clear from the authorities cited that, even though the duty of a motorist having the benefit of a traffic light controlled junction is not as onerous as would be the case if the junction was uncontrolled, there is nevertheless a duty to observe a reasonable standard of care commensurate with the circumstances prevailing at the relevant time, particularly in regard to keeping a proper lookout, when proceeding onto a controlled junction.

35. The Court is satisfied on the evidence that, in the circumstances of this case, there was also a failure on the part of the Defendant to keep a proper look out and that had she driven into and struck the Plaintiff, that would have constituted causative negligence on her part. However, on the evidence and findings made, it was the Plaintiff who collided into the Defendant's car and not the reverse. Accordingly, there was no causative negligence on the part of the Defendant for the accident. It follows that the Plaintiff has failed to discharge the onus of proof on the issue of the Defendant's liability.

Ruling

36. Whilst the Court is conscious of the seriousness of the injuries sustained by the Plaintiff, it follows as a consequence of the decision it has reached on the issue of liability that the assessment of damages in respect of his injuries does not fall for

consideration. The Court will, therefore, make an order dismissing the Plaintiff's claim.