

# THE HIGH COURT

[2023] IEHC 597

[2019/4236 P]

**BETWEEN**

**AUDREY NEVILLE**

**PLAINTIFF**

**AND**

**JOHN GUBBINS**

**DEFENDANT**

**JUDGMENT of Ms. Justice Egan delivered *ex tempore* on the 26<sup>th</sup> day of**

**October, 2023.**

## **Factual Background**

1. At approximately 11 am on 17<sup>th</sup> January, 2018, the plaintiff was driving her Toyota Yaris along the Kilkenny Road from her home in Gaignamanagh to visit her sister who lives in Kilkenny. The weather was dry and mild and the plaintiff, who knew the road well, was driving at approximately 40 km per hour through a series of bends along the road.

2. The plaintiff's evidence is that as she approached a left hand bend, she was confronted by the defendant's Mercedes ATE 60 truck which came around the corner towards her on its incorrect side of the road. The plaintiff's evidence was that she first saw the truck when it was approximately 20 metres away and that, if there had been a line in the middle of the road, the truck would have been well over it. A collision ensued between the two vehicles.

3. Essentially, therefore, the plaintiff's evidence is that the defendant came around the bend on his incorrect side of the road, causing a serious accident.

4. The evidence of the defendant, who has been a rigid truck driver since 1992, is to the entirely contrary effect. The defendant's evidence is that he had been delivering Coca Cola to shops and pubs in the environs since 2015. On the occasion of this accident, the defendant was accompanied by his assistant, who did not give evidence to the court. The defendant's evidence is that he is familiar with this stretch of road and always drives well in on his side of the road. On this occasion therefore, he states that he was driving at approximately 65 or 70 km per hour with his passenger side wheels on the yellow line marking the inside edge of the metal surface of the road. The defendant's evidence is that as he was driving towards the bend (which from his perspective is a bend to the right) a red car started to appear around the bend. He did not gain the impression that the car was travelling at speed. Nevertheless, he states that, rather than turning, the car continued straight across the road towards his truck. The defendant's evidence is that he decelerated and swerved in as far as he could - approximately five feet into the grass verge - in an attempt to avoid a collision with the oncoming car. Notwithstanding this, he says that the plaintiff's car kept coming towards him and ultimately collided with the truck which was by this time well off the road. The accident happened extremely quickly - in a matter of seconds. The defendant's evidence is that although he had slowed down, his truck was still in motion at the time of impact and would have travelled perhaps the length of its body before coming to rest further down the grass verge.

5. The collision was not head on. The impact to the plaintiff's vehicle was by way of a diagonally angulated crash from the front driver's side, with much of the impact to

the driver's front corner. The impact to the defendant's vehicle was on the driver's side behind the front wheel arch.

6. The plaintiff sustained extremely serious injuries in the accident. These consist of a severe dislocation of the right elbow, a fracture to the right forearm, a fracture to the distal radius, a fractured distal ulna, a fractured olecranon, a fractured clavicle, a fractured third rib, a fractured jaw and a fractured sternum. The plaintiff had to undergo significant surgery and remains in pain and functionally limited. She also sustained psychological injuries.

7. I fully accept the plaintiff's evidence as to the severity and impact of her injuries. I accept that she experiences ongoing pain, scarring and functional limitation. I accept that these injuries impede her ability to perform her chosen vocation as a pastry chef.

#### **The plaintiff's apparent admission of fault at the scene of the accident**

8. It is clear that the plaintiff remembers very little after the impact. Although she has a memory of "*waking up*" in the car after the crash with a woman in the car behind her, she does not remember any of the conversation that took place as between them. In short, the plaintiff's memory of events post impact was, she fully accepted "*foggy*." This is of some importance because, as I will now detail, the defendant relies upon an apparent admission of fault made by the plaintiff at the scene of the accident.

#### **Evidence of Ms. Hooper**

9. Ms. Leanne Hooper is a health care assistant who volunteers with the ambulance corps. She is trained as a cardiac first responder and in general first aid. She lives close to the accident scene and attended in the aftermath thereof as a good Samaritan.

10. Ms. Hooper gave a statement to Garda Colm O'Loughlin at the scene.
11. Ms. Hooper's evidence to the court was given in as clear and comprehensive a manner as she could, bearing in mind that the accident had occurred over five years ago. Ms. Hooper recalls that when she arrived at the scene, she made an initial assessment of the plaintiff from outside the vehicle, the results of which she then conveyed to the emergency services who were then en route. Ms. Hooper reported that the plaintiff was awake, alert and able to respond. Ms. Hooper's evidence to the court was that the plaintiff was on the first point of the alertness scale, in other words, fully alert.
12. Ms. Hooper then requested the assistance of the other parties at the scene to smash in the back window of the car to allow her access to the car to further assess and render assistance to the plaintiff. Ms. Hooper therefore climbed into the back of the plaintiff's car and remained there until the ambulance service arrived. During this time, Ms. Hooper sat in the back seat of the car supporting the plaintiff's cervical spine by manually holding her head. Ms. Hooper remained with the plaintiff whilst she was being cut out of the car; all told this took about 30 or 40 minutes.
13. Whilst all this was going on, Ms. Hooper's recollection is that she periodically asked the plaintiff questions to check that her level of consciousness was not deteriorating. Ms. Hooper's evidence was that she asked the plaintiff on a couple of occasions what had occurred in the accident. Ms. Hooper's statement to the Gardaí immediately after the accident records that in answer to her first such enquiry, the plaintiff stated that she did not remember how the accident had occurred. In answer to Ms. Hooper's second enquiry, the plaintiff stated that she was on the wrong side of the road but was not sure why.

**14.** Ms. Hooper very fairly conceded that she did not now have a clear memory of this statement but said that she must have remembered it at the time, or it would not be in her statement.

**15.** When it was put to Ms. Hooper that the plaintiff was in a state of shock, Ms. Hooper's response was that in her view the plaintiff was fully conscious when in her company. She accepted, however that the plaintiff was clearly in an enormous amount of pain and distress.

#### Evidence of Michael Doyle

**16.** Mr. Michael Doyle, who has been a fire chief for ten years, attended the scene less than fifteen minutes after the accident. When he arrived, the plaintiff was trapped in the car. She was pushed downwards into the footwell, and the door of the car was caved in upon her. Ms. Hooper was in the back of the car tending to the plaintiff.

**17.** Mr. Doyle's evidence was that the plaintiff was in agony and was suffering from shock. She was frothing at the mouth; her lips were blue, and she was snow white.

**18.** It was put to Mr. Doyle by counsel for the defendant that Ms. Hooper's assessment was that the plaintiff was fully alert. Although he did not directly contradict Ms. Hooper's evidence, one gained the strong impression that this was not in accordance with Mr. Doyle's assessment of the plaintiff's overall condition by the time of his arrival.

#### Evidence of Mahala Roche

**19.** Mahala Roche has been the plaintiff's partner for over 30 years. She lives nearby and came to the scene very soon after the accident. Ms. Roche's evidence was that she travelled in the ambulance with the plaintiff to the hospital. During this journey, the

plaintiff did not realise that she was there and, in Ms. Roche's words, was coming in and out of consciousness. Ms Roche's recollection is that the plaintiff did not speak for the duration of this journey and afterwards did not remember getting to the hospital.

20. I will consider the combined impact of the evidence of Ms. Hooper, Mr. Doyle and Ms. Roche at para 61 below.

**Alleged contradiction between the defendant's evidence and his statement at the scene to Garda O'Loughlin**

21. It was put to the defendant that his account was lacking in credibility because his cautioned statement to Garda O'Loughlin, which appears to have been taken immediately post-accident at the scene does not state that the plaintiff was driving on her incorrect side of the road. The defendant's statement to Garda O'Loughlin was that he "*saw a small red car coming straight towards my truck.*" I will consider this further at para 63 below.

**Civil Liability Act**

22. Counsel for the plaintiff suggested that if unable to resolve the conflict of fact as between the plaintiff and the defendant, the court could have regard to s. 34 (1)(a) of the Civil Liability Act 1961 which provides that:

*"Where, in any action brought by one person in respect of a wrong committed by any other person, it is proved that the damage suffered by the plaintiff was caused partly by the negligence or want of care of the plaintiff ...and partly by the wrong of the defendant, the damages recoverable in respect of the said wrong shall be reduced by such amount as the court thinks just and equitable having regard to the degrees of fault of the plaintiff and defendant: provided that*

*a) if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally;”*

23. It was tentatively suggested that in the event of the court not being convinced by the account of either party, it could apportion fault on a 50/50 basis.

24. The difficulty, however, is that before the court can take this approach, I must first be satisfied that the defendant has committed a wrong, in other words that he drove without due care and attention and that this caused the accident and the plaintiff's injury. For the reasons explained below, I am not satisfied that the defendant has been guilty of negligence and therefore recourse to the Civil Liability Act does not therefore arise.

25. In light of the stark conflict of fact between the parties, it has been necessary, in the determination of this matter, to consider and be guided by upon other items of evidence. I am satisfied that this other evidence enables me to determine on the balance of probabilities how this collision came about and, further that the defendant is not liable for same.

26. I will now detail such evidence as I believe to be particularly relevant in this regard:

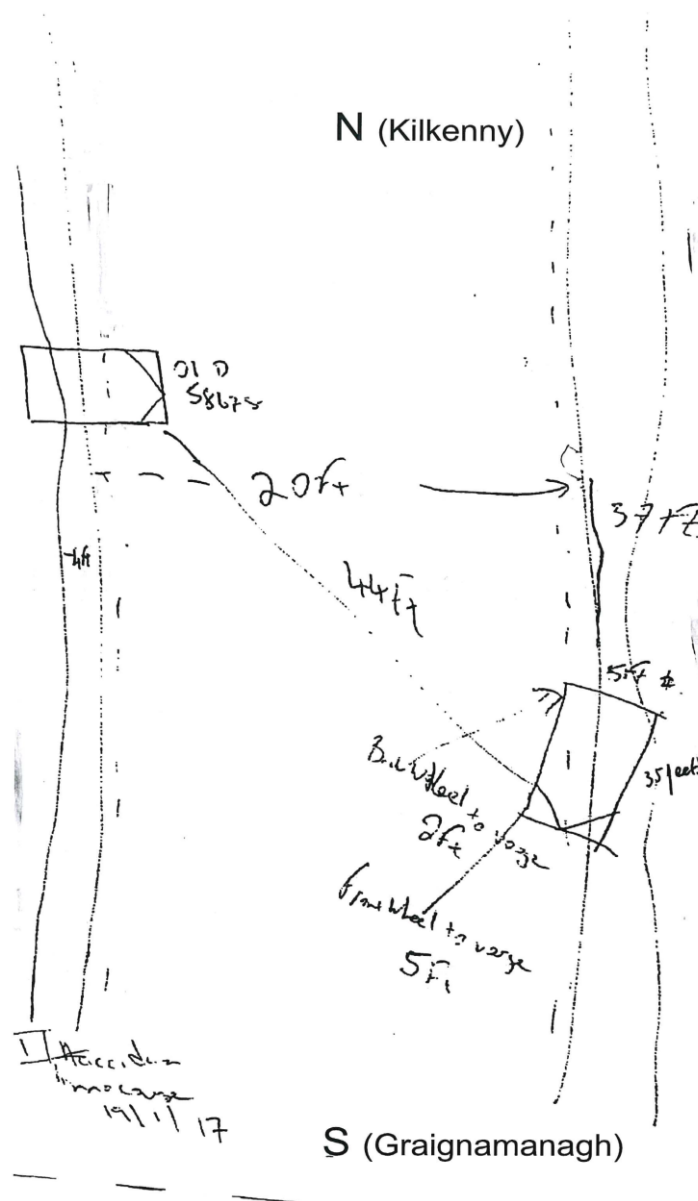
**Road dimensions, Position of vehicles after impact and Evidence of Garda O'Loughlin**

27. Engineering evidence was given on behalf of the plaintiff by Mr. Vincent O'Hara of Tony O'Keeffe & Partners and on behalf of the defendant by Mr. Stephen Mooney of Stephen Mooney & Associates. The evidence of both is that, allowing for

the respective width of both vehicles, and assuming both are on their correct side of the road, there is 3 feet approximately available for them to pass each other.

28. After impact, the vehicles came to rest in a manner outlined in a sketch prepared by Garda O'Loughlin who attended at the scene shortly afterwards. I set out this sketch below.

### Garda Sketch





**29.** The sketch shows that the resting position of the defendant's truck post collision is on the grass verge on his side of the road with the front of the truck angulated slightly out towards the road. Photographs taken at the scene by Garda O'Loughlin and by the defendant himself appear to show that the cab of the truck is located over the grass verge. The plaintiff's car is also on her correct side of the road but has turned 90 degrees and is therefore facing out towards the centre of the road. The rear of the plaintiff's car is partially against a hedge on the grass verge on her side of the road. The plaintiff's vehicle is somewhat north of the defendant's truck along the plaintiff's direction of travel.

**30.** The Garda sketch shows that the distance between the front of the plaintiff's vehicle where it came to rest and the front of the truck where it came to rest (allowing for the diagonal distance across the road) is in the order of 44 feet.

**31.** It is also relevant to note that, the Garda sketch shows that behind where the defendant's vehicle has come to rest is a tyre track in the grass verge on the defendant's side of the road which is approximately 37 feet in length. Allowing for the length of the defendant's vehicle which is estimated at 35 feet, it appears that the total length of this tyre track on the grass verge is in the order of 70 feet. Part of this tyre track is also clear on the photographs taken by Garda O'Loughlin, albeit that one cannot judge its distance from the photographs. Photographs taken by the defendant at the scene show that the tyre track appears to run at least the length of an ambulance parked behind the defendant's truck. Importantly, it appears from the Garda sketch map and from both sets of photographs, that this tyre track runs roughly parallel to the road.

**32.** Garda O'Loughlin who attended the scene confirmed that the distance between the front wheel of the car and the front wheel of the truck was 44 feet. He confirmed that at the rear of the truck there was a 70 foot tyre track on the grass verge marking the

point where the truck had gone into and travelled along the grass verge. Garda O'Loughlin also confirmed that the front driver's wheel of the truck was approximately five feet into the verge ("*front wheel to verge 5 ft*") and that the back driver's wheel was approximately two feet into the verge ("*Back wheel to verge 2 ft*").

**33.** Garda O'Loughlin's evidence was that there were lots of pieces of debris, small pieces of glass and plastic scattered on the road between the car and the truck. He was unable to confirm that there was any particular focus of debris.

**34.** Although he was unable to form a firm view on where precisely the collision had taken place, Garda O'Loughlin did not doubt that both the truck and the car had come to rest post-collision in the place where they were positioned at the time of his arrival at the scene.

**35.** Garda O'Loughlin also stated that he had identified no brake marks, skid marks or other marks on the road surface to suggest that the plaintiff's car had travelled to any degree either north or south along the road (which I will refer to as longitudinal movement) before coming to rest.

**36.** Garda O'Loughlin also confirmed that the steering mechanism of the truck appeared to have been disabled as a result of the collision. This meant that the vehicle had to be guided very carefully away from the scene to clear the road. Finally, Garda O'Loughlin also stated that the front tyre of the red car appeared to have been blown out as a result of the collision.

### **Engineering evidence**

**Plaintiff's engineer, Mr. O'Hara**

Site lines

**37.** Mr. O'Hara stated that as one approaches the bend where the accident occurred the road is relevantly straight for a short distance. Each car should have approximately 32 metres of visibility. This is of significance as the evidence of both parties was that they only saw the other party when they were roughly 20 metres away. The plaintiff estimated this by reference to the length of the courtroom. The defendant estimated this by reference to one of Mr. O'Hara's "approach" photographs. It is fair to say that both parties' estimates were no more than approximate.

#### Debris Field and point of collision

**38.** On examining the post-accident photographs, Mr. O'Hara expressed the view that there was debris on the road in front of the plaintiff's car extending to the imaginary midline of the road. Mr. O'Hara suggested that this might tend to indicate that the point of collision was on the plaintiff's side of the road. However, in the main, Mr. O'Hara could not disagree with Garda O'Loughlin's opinion that the debris on the road was of little assistance in pinpointing the point of collision as having been on one side of the road as opposed to the other (which I will refer to as lateral positioning on the road). This, it appears is because in an explosive collision such as this, debris will scatter widely.

**39.** Crucially, Mr. O'Hara accepted that although one cannot pinpoint on which side of the road the accident occurred, the debris field around the plaintiff's car suggests that the vehicles came together not far away from the point where the plaintiff's car is in the photographs post-impact.

70 foot tyre track on grass verge

40. Mr. O'Hara accepted that the plaintiff's vehicle is located quite close, longitudinally speaking, to the beginning of the 70 metre track in the grass verge on the defendant's side of the road. Mr. O'Hara's interpretation of the Garda sketch is that the plaintiff's vehicle was north of this point by only a very little distance.

41. Notwithstanding this, Mr. O'Hara stated that in his view the point of collision was, longitudinally speaking, north of the point where the plaintiff's car came to rest.

42. I have difficulty in understanding this view which appears inconsistent with Mr. O'Hara's apparent concession that the debris on the road – which is positioned in or around where the plaintiff's vehicle is stopped - marks the approximate general point of collision (see para. 39 above).

43. Mr. O'Hara accepted that if the point of collision was - from a longitudinal perspective - at or near the point where the truck had entered the grass verge, then this would be consistent with a fairly controlled manoeuvre by the defendant onto the grass verge. He also accepted that this would be consistent with the truck having been well on its own side of the road before the collision and indeed quite close to the grass verge of the road.

**Defendant's engineer, Mr. Mooney**

Nature of the road

44. Mr. Mooney did not agree with Mr. O'Hara's classification of the bend as a sharp bend. In his view the bend is a reasonably elongated sort of bend and is typical of the kind that one sees on a classification of road of this type. Having considered the aerial photographs of the road, I accept Mr. Mooney's view in this regard.

Speed of defendant's vehicle

**45.** Mr. Mooney's evidence was that the speed limit on the road was 80 km an hour and that therefore he would make no criticism of the defendant driving at 65 or 70 km an hour provided he was familiar with the road and was paying close attention.

**46.** Neither the plaintiff's engineer, Mr. O'Hara nor indeed Garda O'Loughlin made any suggestion that the defendant's vehicle was being driven at an excessive speed.

Debris

**47.** Mr. Mooney's view was that although the debris on the road starts on the plaintiff's side of the road, it appears to spread laterally across the whole road.

**48.** For my part, I think it is hard to tell from the angle of the photographs whether this is correct one way or another. Overall, I believe that the debris on the road tells one little about whether the accident occurred laterally. However, I accept Mr. Mooney's view that the debris field is nonetheless of assistance in locating the likely point of collision from a longitudinal perspective.

Tyre track in grass verge

**49.** Mr. Mooney's view was that the Garda sketch reasonably reflects what one sees in the photographs post-accident. I agree.

**50.** The truck is therefore positioned on the grass verge with a tyre track extending behind it in the grass verge measuring 37 feet (70 feet in total allowing for the length of the truck).

**51.** Mr. Mooney's opinion is that the line in the grass verge demonstrates that the angle at which the truck entered the grass verge is a very shallow angle. He states that, if the defendant's vehicle had been positioned well out in the road, or on its incorrect

side of the road, before it entered the grass verge then one would expect tyre tracks showing a C shaped angle or a diagonal angle, neither of which are present here.

**52.** Mr. Mooney therefore concluded that the mark on the grass verge is consistent with a reasonably controlled manoeuvre in which the defendant was steering off the road from a position on his own side of the road. Mr. Mooney also opined that if the defendant's vehicle had taken a very sharp manoeuvre in the form of a violent swerve into the ditch, then it is quite likely that the vehicle would have turned over.

#### Point of collision

**53.** Mr. Mooney also averred that because of the damage to both vehicles in the impact, the point of collision must have been very close to the point where they came to rest (as positioned in the post-incident Garda sketch and photographs).

**54.** The steering on the defendant's vehicle was damaged in the accident. This would have made it impossible, Mr. Mooney stated, for the defendant to safely steer his vehicle off the road post impact. This reinforces Mr. Mooney's view that the truck was already on its own correct side of the road, steering in a controlled manner towards the verge at the time of the impact and thereafter simply continued on its route stopping shortly after the impact.

**55.** Likewise, Mr. Mooney's evidence was that the damage to the plaintiff's car in the impact, which included the driver's wheel being crushed back into the body of the car, would have prevented the front driver's wheel from rotating. As a result of this, any longitudinal movement north or south along the road would have left clear scrub marks or marks from the wheel rim of the car on the road.

**56.** Therefore, when it was suggested to him that the collision could have occurred further up the road (towards the north of the Garda sketch), Mr. Mooney's response was that in such circumstances one would expect there to be significant scuff marks and

wheel marks on the road. One would also expect a debris field further up the road making the point of impact. The Garda had made a note of neither.

**57.** Mr. Mooney therefore concluded that in all likelihood, the point of collision was, from a longitudinal perspective roughly level with the point where the plaintiff's car was positioned post impact in the Garda sketch and photographs. He stated that the point of impact was therefore virtually level with the start of the 70 foot track in the verge.

**58.** This latter conclusion was he said supported by way of the Garda sketch map, which although not to scale, records only 44 feet between the two vehicles. It was also, he maintained, supported by the post-accident photographs which showed the plaintiff's vehicle as roughly level with the back door of an ambulance parked behind the defendant's truck. Indeed, Mr. Mooney suggested that the point of collision might even have been, longitudinally speaking, between the beginning and end of this tyre track.

### **Conclusion**

**59.** As stated, the factual evidence of the parties directly contradicts each other. Both accounts are communicated with certainty. Neither the plaintiff's nor the defendant's account were in my view particularly shaken on cross-examination.

**60.** I gained the impression that the plaintiff was a person of honesty and fortitude. She gave her evidence in a calm and understated way. The plaintiff's account does lack detail, but bearing in mind the serious injuries she sustained in the accident, this is to be fully expected. Indeed, if anything, the plaintiff's failure to "*fill in the blanks*" so to speak implies that she is not embellishing or tailoring her evidence.

**61.** Whilst I fully accept the honesty of Ms. Hooper's evidence and believe it likely that the plaintiff did utter words similar to those in Ms. Hooper's Garda statement, I

would place very little weight upon a statement made by someone in the aftermath of an extremely serious accident such as this. Overall, therefore, this evidence is of very limited assistance in determining how the accident occurred.

**62.** The defendant also struck me as an honest witness, albeit that he was clearly defensive about what he saw as being unfairly blamed for the accident. Overall, I found that the defendant's evidence was in many respects clearer and more detailed than that of the plaintiff. However, that is not unusual given that he was uninjured in the accident. I therefore place little weight on the comparative clarity of the respective parties' accounts.

**63.** I place no weight upon the defendant's failure to use words similar to "*the plaintiff was on the incorrect side of the road*" in his statement to Garda O'Loughlin. His statement records that the car came "*straight towards my truck*," that he tried to avoid the car by pulling onto the grass verge as far as he could, but that the car collided with the side of the front cab of the truck and bounced back into the ditch. This fully reflects the evidence which the defendant gave in his direct examination. Indeed, in his direct evidence to the court, the defendant, did not expressly state that the plaintiff was on her incorrect side of the road but rather that she came around the bend and instead of following the bend came straight across the road towards his truck. The defendant's Garda statement is not therefore inconsistent with his evidence. In substance they describe the same account of events.

**64.** The defendant's evidence suffers from the frailty that the actions which he attributes to the plaintiff appear to be inherently counter-intuitive. If the defendant was, as he says, well in on his correct side of the road, then it is very hard to understand why the plaintiff would come around the corner, cross to her incorrect side of the road, fail to correct her position and collide with his truck. This is all the more difficult to



understand given on the defendant's impression that the plaintiff was not travelling at high speed.

**65.** On the other hand, however, although this scenario might appear unlikely, these things do occur. Drivers occasionally lose concentration, or they may panic and lose control of their vehicle. As Mr. Mooney states in his report, the plaintiff's car was driving on a left-hand bend with hedges on her left. In such circumstances, the first view obtained of a large vehicle approaching can give a car driver a perception that it is taking up the full width of the road. This can in turn cause a driver to panic or freeze.

**66.** Ultimately, it goes without saying that I cannot discern what was going through either parties' mind at the time of the accident. However, as counsel for the defendant points out, it is not for the court to determine why, in terms of human behaviour, the accident might have occurred. This court's function is to determine, on the balance of probabilities how, and not why, the accident occurred.

**67.** Nor do I place any particular weight on the suggestion that either one or other of the plaintiff or defendant did not see the approaching vehicle at the distance one would expect, thereby implying either inadequate concentration or excessive speed. Insofar as such evidence exists it is virtually even handed. Both drivers say that they saw the other vehicle when it was twenty metres away from them. The evidence is therefore that both parties saw the other vehicle at approximately the same distance away. This does not suggest that either party was paying less attention than they should have been or indeed that either party was driving faster than they should have been. In short, like much of the evidence in this case, this particular point does not advance matters one way or the other.

**68.** Furthermore, I am not convinced by the plaintiff's argument that if the defendant swerved five or six feet to the left before the collision, he must have been

driving on his incorrect side of the road immediately before that. Given that, as shown on the Garda sketch, the defendant's vehicle came to rest with its front passenger wheel approximately five feet into the verge, this factor is equally consistent with his having been on his correct side of the road prior to the collision. In short, the mere fact that the defendant says that he swerved five or six feet to the left before the collision does not necessarily suggest that the defendant was well out from his side of the road or otherwise over the dividing line prior to making this manoeuvre.

**69.** Both the plaintiff and the defendant state that they were on their correct side of the road and that the other driver crossed to their incorrect side of the road thereby causing the collision.

**70.** The plaintiff's argument is that the collision occurred some distance up the road from the final resting place of her vehicle and that her car was shunted back down (and across) the road by the force of its collision with the heavier truck. It appears that the plaintiff's theory is that it was only after this collision, which was caused by the defendant being on his incorrect side of the road, that he righted his alignment and drew into the verge, making the marks on the grass verge apparent on the Garda sketch. By contrast, the defendant's version of events is that, longitudinally speaking, the collision occurred close to the beginning of the 70-foot track. The defendant's argument is therefore that the defendant must have been well in on his side of the road and indeed on the verge prior to and at the time of the collision.

**71.** It follows that determining the likely proximity of the point of collision of the vehicles to the beginning of the 70-foot track on the verge on the defendant's side of the road is of considerable importance. In this respect, I have found the Garda sketch and the helpful and objective evidence of both parties' engineers of particular assistance in attempting to reconstruct the circumstances in which the accident occurred.

**72.** Although the plaintiff argues that the point of collision was some distance above the beginning of this 70-foot track, Mr. O'Hara's evidence is not really consistent with this theory. Mr. O'Hara accepted under cross examination that in all likelihood, the car did not move to a very great extent post impact. He also accepted that the plaintiff's car came to rest only a very short distance longitudinally speaking above the beginning of the 70 foot tyre track in the grass verge on the defendant's side. Together these factors suggest that the point of collision occurred close to the beginning of the 70 foot stretch in the verge.

**73.** It is not possible to ascertain with certainty the precise point of collision by reference to the final resting position of the vehicles. This court is not competent to untangle the post collision dynamics involved. This would depend upon the relative speed of the vehicles, the relative weight of the vehicles, the angles of impact and also on the road surface. It would also depend on the particular kind of impact involved, whether for example it was a glancing impact or a heavy impact.

**74.** However, I am of the view that the vast preponderance of evidence points to the likelihood that the point of collision was at or close to the position of the plaintiff's car on the Garda sketch.

**75.** If the point of collision had been northwards in the plaintiff's direction of travel, then one would expect debris on the road at that point. Conversely, there would be little explanation for the wide spread of debris on the road at the point where the plaintiff's vehicle came to rest.

**76.** Furthermore, I accept Mr. Mooney's evidence that one would expect skid marks, scuff marks or tyre rim marks from the plaintiff's vehicle travelling longitudinally down the road from the point of collision to its final resting place. The absence of such road markings is all the more difficult to reconcile given that the

plaintiff's front wheel was locked in position. The plaintiff's vehicle would therefore have been scudding down the road towards its ultimate resting place with its front wheel locked in position. In addition, I note that as the defendant's steering mechanism was apparently knocked out by the accident, it would have been difficult for the defendant to steer in a controlled manner into the verge after a collision some distance away.

**77.** In short, there is no objective evidence that the collision occurred further up the road as contended by the plaintiff. All objective evidence is, in my view, to the contrary.

**78.** I therefore find that on collision, the impact with the defendant's vehicle forced the plaintiff's vehicle into a rotatory and lateral manoeuvre but that there was very little longitudinal, in other words north south, movement. I further find as a fact that the point of collision was reasonably close to the point where the plaintiff's vehicle came to rest.

**79.** In my view the photographic evidence and the Garda sketch establish that longitudinally speaking, this point - and therefore the point of collision - is at or close to the beginning of the 70-foot track in the grass verge on the defendant's side of the road.

**80.** This, in my view leads to the inevitable conclusion that the defendant was on his correct side of the road at the time of the impact. I cannot otherwise envisage how the truck could in so short a distance post collision reposition from the allegedly incorrect side of the road to well off the road on its correct side. Bearing in mind the length and weight of the defendant's vehicle, so sharp a manoeuvre would have been hard to control. Indeed, I accept that there would have been a substantial risk that in the course of such manoeuvre, the truck would have tipped over, particularly as it was mounting a ditch. Further, there is no evidence that such a sharp manoeuvre was executed. If this had occurred, one would expect the track in the grass verge to be C-shaped or diagonal.

**81.** There is therefore no evidence indicating that the truck executed a sharp swerve, or any form of uncontrolled or emergency manoeuvre. Indeed, such tyre marks as are available at the scene suggest that the truck went on to the grass verge at a reasonably shallow angle, consistent with the truck having been roughly aligned with its side of the road immediately prior to the point of impact.

**82.** For all the above reasons, I find that in all likelihood the defendant's vehicle was on his correct side of the road and indeed had swerved towards the grass verge by the time of the impact.

**83.** In all the circumstances, I cannot but accept the defendant's evidence that on rounding the corner the plaintiff's vehicle did not follow the line of the road but instead continued straight towards, and ultimately collided with, the defendant's vehicle. I further accept the defendant's evidence that, when he saw the plaintiff's vehicle rounding the corner and approaching his vehicle, he executed a gradual swerving manoeuvre from his position on the correct side of the road to the grass verge. There was, in my view, nothing further that the defendant could have done to avoid the collision. It follows that the defendant was not liable for this accident and that I must dismiss the plaintiff's claim.