Neutral Citation Number: [2005] IEHC 38

THE HIGH COURT

Record Number: 2000 No. 13628P

Between:
Padraig O'Gorman
Plaintiff
And

Motor Insurers Bureau of Ireland
Defendant

Judgment of Mr Justice Michael Peart delivered on the 17th day of February 2005:

The facts giving rise to the plaintiff's injuries in this case are, to say the least, unusual. On the morning of the 28th March 2000, having completed a night shift of work as a plant operator, he set off on his bicycle on the 6 mile journey home – a journey which normally takes him between 35 and 40 minutes By about 8.10am, he was cycling towards his home along the Midleton Parkway dual carriageway in the direction of Carrigtwohill, Co. Cork. He states that weather conditions were dry and bright.

The bicycle he was riding was a Raleigh Solo model, and I have heard evidence that this particular model of bicycle was not manufactured after 1988, so it must have been at least 12 years old at the time of this accident. It is a racing type bicycle with dropped handle bars, and five gears.

In his evidence the plaintiff described himself as a very fit man, who does a lot of cycling, running and swimming. He was 37 years of age on the date of this accident.

The east bound side of this dual carriageway is divided into three sections. As one travels eastwards along it there is on the left hand side a hard shoulder measuring 10' 3" wide stretching from a grass verge on the inside to a continuous yellow line on the outside thereof. Outside, or to the right of, this hard shoulder there are two traffic lanes, divided from each other by a broken white line. The inside traffic lane measures 12'4", and the outside lane measures 12'2". To the right of the outside lane is another narrower hard shoulder, which measures only 3'2" in width.

The plaintiff states that as he was cycling along the hard shoulder on the left hand side of this dual carriageway, he noticed ahead of him a Wheelie Bin Refuse lorry parked on the hard shoulder. It turned out to be an Ipodec refuse truck, and from photographs seen, it is a very large type of refuse truck. In fact the evidence has been that it is 8 feet, or even 8 feet and three inches in width.

The driver of that truck has stated in evidence that he had stopped this truck on the hard shoulder so that he could have a tea break, and that in fact he had pulled in to some extent at least onto the grass verge, and it is estimated that between the outside of his truck and the yellow line dividing the hard shoulder from the first traffic lane there would have been a width of about three feet.

The plaintiff has stated that from a distance of about five hundred yards he saw this stationary truck quite clearly ahead of him as he was cycling towards it about one foot inside the hard shoulder. He says also that before moving out to pass it, and when he was about 50 yards away from the rere of it, he looked behind him and saw a lorry approaching him at a distance which he stated to be three hundred yards. In cross examination he was referred to the fact that in his statement to the Gardai he had said that this lorry was behind him at a distance of three or four hundred yards, and he accepted that he had said that to the Gardai.

The plaintiff has been unable to say what speed the approaching lorry was travelling at, what type of lorry it was, or give any detail as to its size. Neither can he say whether it was simply the cabin of a truck or whether it had a container on board or a trailer attached behind. All he can say is that it was the high fronted large lorry.

He has stated that having seen the lorry approaching him from behind, he put out his right hand to indicate that he was moving out into the inside traffic lane to pass the stationary truck, went a further twenty yards with his right arm extended, that he then moved out about one foot into the traffic lane and went another twenty yards having replaced his right hand on the handle bar of his bike. He remembers nothing of what happened in the final ten yards before he collided with the rere end of the truck.

In cross examination it was pointed out to him that in his statement to the Gardai he had not mentioned anything about putting out his right hand and travelling twenty yards with his hand out and so on, but he stated that he did tell them these details. It was also suggested to him that it is in the engineer's report that the first mention of extending his right hand is suggested, and that the purpose of this was to in effect try and reconstruct a set of circumstances to enable the plaintiff make the case that he was blown into the back of the truck by the windrush from the passing lorry. The plaintiff accepted that the reference to extending his right arm first appears in the report, but not the latter suggestion as to its purpose.

The plaintiff maintained in his evidence that the outside of the truck was only one foot inside the hard shoulder, and that therefore it was necessary for him to move into the traffic lane to pass it, whereas the driver of that truck says that he was parked slightly on the grass verge and that this meant that he was about three feet in from the traffic lane. This meant that there would be ample space for the plaintiff to pass the truck without going out into the traffic lane at all.

The plaintiff stated that before the impact with the rere of the truck he was cycling normally with both hands placed on the top of the handle bar of the bicycle, as opposed to being in the racing position – i.e. on the dropped portion of the handlebars. He says that he was riding in an upright position looking ahead of him. He could not say exactly what speed he was travelling at but was not going at a fast speed – more a normal speed.

The plaintiff cannot recall anything which happened in the time it took him to travel the final ten yards into the back of the stationary truck. But his contention is that on the balance of probabilities, the approaching truck passed so close to him as he was approaching the back of the stationary truck that he in effect blown to his left, causing him to crash into the rere of that truck, but he cannot remember. He can apparently remember that no other vehicle passed him at this stage of his journey home. He says there was no other traffic on the road at the time. The allegation is that the driver of the truck must have driven too close to him as he passed and that this caused him to be blown back into the hard shoulder lane and into the rere of the truck which he was about to pass. That is the extent of the negligence alleged against the driver of this truck. No truck stopped after the impact and this has resulted in the Motor Insurers Bureau of Ireland being named as the defendant in these proceedings.

It is impossible to state with accuracy what speed the plaintiff was cycling at. He himself thinks that it would have been about ten miles per hour. That is on the basis that the six mile journey normally takes him between thirty five and forty minutes. He says that he was cycling at a normal speed and not a racing speed. I have also heard evidence from Mr Barry Kildrew, who is a retailer of bicycles, and he took a look at the plaintiff's bicycle and says that it is at least 16 years old and not in good condition, and in particular that there was a problem with the sprocket which would mean that the plaintiff would not have been able to stand up on the pedals in order to increase speed as there was some defect in the sprocket. He estimated that the bicycle could not have been cycled at more than twelve or thirteen miles per hour. I stress however that Mr Kildrew is not an engineer but simply a bicycle salesman, but I am satisfied that his expertise and experience as such is sufficient to enable him to express the opinion which I have referred to. It was put to the plaintiff in cross examination that given the stated severity of the impact it cannot be the case that he was cycling only at ten miles an hour and that he must have being going considerably faster than that. The plaintiff denied that suggestion.

The damage caused to the plaintiff's bicycle was not extreme. It was described by Mr George McCarthy, Auto Engineer, as heavy damage rather than severe damage. The forks at the front were bent backwards about four inches, and there was a fracture of the bar which goes at a 45 degree angle from the front forks down to the pedals. There was little damage to the front wheel as such which must have turned to the left on impact. He also stated that when he examined the bicycle there was nothing to indicate that any damage had occurred to the right side thereof and therefore nothing to indicate that any contact from the lorry caused the plaintiff to be pushed to the left prior to the impact with the stationary truck. He stated that although he had no exact facts and figures as to the size and speed of the lorry supposed to have passed the plaintiff, his own experience of life told him that there is a wind rush effect as a lorry passes a cyclist, depending of course on the distance between the two. Under cross examination, he stated that cyclists would need to make allowances for such lorries passing them, and he thought that the plaintiff ought to have been able to apply his breaks in order to stop in a ten yard distance before impact with the rere of the stationary truck. He also was of the opinion that the plaintiff should have been able to hear the lorry as it approached from behind him. The need for a cyclist to make allowance for a passing truck was something stated also by Garda O'Leary when he was giving evidence.

The evidence of the driver of the stationary truck, Denis McCarthy, has been that he had stopped on the hard shoulder about three feet in from the inside of the first traffic lane. He had been stopped for about five minutes when he felt a severe impact to the rere of his vehicle. He described the force of the impact by the bicycle as "frightening". He looked in his rere view mirror and saw a bicycle on the road lying half on the traffic lane and half on the hard shoulder. He got out of his truck, found the plaintiff on the road, helped him in off the road onto the grass margin and having helped the plaintiff into the truck, he drove him in his truck to Midleton Hospital. The bicycle was to the outside and behind the truck, so it is accepted that the plaintiff had not passed the truck in any way, but had collided with the rere thereof.

Mr McCarthy stated that at that point in time there was a lot of passing traffic on the road. He said that during the journey to Midleton the plaintiff had not discussed how the accident had happened.

When the plaintiff made a statement to the Gardai about this incident on the 6th June 2000 (just over two months after the date thereof) he stated therein that he did not know what caused him *"to hit the parked lorry"*. He also stated that he looked behind him and saw a truck *"about 3 or 4 hundred yards behind"* him and that he moved out into the inside lane to pass the parked truck and that this was all he could remember until Mr McCarthy (the truck driver) was standing over him at the side of the road.

It is noted on the Midleton hospital admission notes for the 28th March 2000 as follows: *"On bicycle and cycled into back of parked bin lorry."*

However, the situation was that the plaintiff was on that date brought to Cork University Hospital and those notes state as follows: *"Cycling along main road. Passing stationary rubbish truck. Another truck passed him and blew him into back of the stationary lorry."*

The above represents a very full account of the evidence, such as it is, as to the circumstances in which this accident happened. I have not yet detailed the evidence of Mr Philip O'Doherty, Consulting Engineer, who was called by the plaintiff to give technical evidence concerning the likely effect on a cyclist of wind forces created by a passing large truck. I should set out first of all what is the contention of the plaintiff in this regard.

The allegation of negligence against the driver of what the plaintiff has described as a large high fronted lorry which came up behind him and which he saw at a distance of between 300 and 400 yards, is that the driver first of all failed to see the plaintiff on his bicycle about to pass the lorry, and/or having seen him that he failed to pass him leaving a width between his lorry and the plaintiff sufficient not to cause a sideways wind effect such as would cause the plaintiff to lose control of his bicycle or otherwise cause him to run into the back of the parked truck, and that he thereby caused the plaintiff to collide with the rere of the truck.

Not being in a position to set up this allegation from his own evidence, the plaintiff has called Mr O'Doherty, Consulting Engineer, for the purpose of giving evidence of calculations designed to show that if the lorry passed the plaintiff at a certain speed, and very close to the plaintiff on his bicycle, the side wind caused by the passing truck would be sufficient to cause the plaintiff to be wobbled on his bicycle causing him to go to his left and thereby into the back of the stationary truck. These calculations are based on an estimated speed of the lorry, its size, the distance it was behind the plaintiff when he first saw it, and the speed at which the plaintiff states he was cycling at the time. Liam Gaynor SC for the Motor Insurers Bureau has stated that such technical evidence and calculations are purely theoretical and that there is no factual basis provided by the plaintiff's evidence from which to conclude negligence against the supposed passing lorry driver. He submits that it is all pure speculation.

Evidence of Mr Philip O'Doherty:
Mr O'Doherty has attempted to work backwards, as it were, from what happened to the plaintiff, and from that work out what the lorry driver would have to have done in order to cause the plaintiff to lose control of his bicycle and hit the back of the truck.

He has stated first of all that a large lorry travelling between 50 and 60 mph along the inside traffic lane should have no effect whatsoever on a cyclist travelling halfway inside the hard shoulder. That means that if the passing lorry was to have an effect on the plaintiff the two would have to have been nearer to each other than that. He explained that when a large lorry is moving forwards it displaces the air it moves into in such a way that this air disperses behind along the sides of the vehicle. The effect of this air displacement is dependent on a number of factors such as the frontal area of the vehicle and the speed at which the vehicle is travelling. He opined that at 20mph the air displacement would have no effect and would be undetectable by any person being passed. If travelling at 40 mph there would be effects which could be felt but that it would depend on how close a person was to the side of the vehicle as it passed. He stated that if a large lorry was travelling at 60mph it would cover thirty yards per second and 800 cubic yards of air would be displaced. This air can separate from the side of the vehicle and spread out beyond the side of the vehicle creating a vortex or side-draft. He also stated that this effect is not dependant on the length of the lorry, or whether there is any trailer or container behind. It has to do only with the design of the front of the lorry. In other words some lorries can be more aerodynamically efficient than others thereby causing less air displacement and disturbance. He stated that the average truck has limited aerodynamic construction, and that without precise details as to the type of vehicle in this case it was not possible to be accurate as to the air displacement.

However, he stated that taking the average type of large truck he would expect that at a speed of 60mph, the air displacement would be ten pounds per square foot and that this must go somewhere, and that it travels back from the front of the vehicle. He says that speed causes it to separate and move out sideways, and that therefore the closer a person is to the side of the vehicle the greater the pressure which will be felt. He opined that at a distance of, say, five feet from the side,

the pressure felt would be simply that of a light draft. However, at a distance of eighteen inches, there would be substantial pressure felt. He stated that any distance within two feet of a large truck would be sufficient to feel twenty pounds of force, and this would be significant.

In his first report Mr O'Doherty states that the plaintiff told him that *"he recalls this truck being in close proximity to him just as he himself approached the back of the parked truck."* He also notes that the plaintiff stated that he was "well clear" of the parked truck as he approached it and that the plaintiff *"feels that it was a sudden draft of air from the overtaking truck which forced him to his left. In my view this is a plausible explanation for the accident."*

In this report he states that the liability of the driver of the passing truck would depend on how close he came to the plaintiff, and that such a driver would be obliged to pass a cyclist at a safe distance, and that the driver should know that his vehicle at high speed would create dangerous drafts which could affect the balance of a cyclist.

A calculation being attempted by Mr O'Doherty is to calculate the speed of the lorry. He has attempted to do this by taking the distance the plaintiff states the lorry was behind him when he looked around (i.e. 300-400 feet), and then taking the period of time the plaintiff states elapsed between looking behind him and hitting the back of the truck (i.e. 50 seconds) and thereby concluding the speed the lorry would have to have been travelling at. He could then estimate the sideways pressure which would be felt by the plaintiff, varying, as it must, depending on what distance from the side of the passing lorry the plaintiff was at the relevant time.

In his second report, Mr O'Doherty has stated as follows:

"……..If we assume that the truck passed within say 18 inches of the plaintiff at a speed of 60 mph, then we can be sure that there was a substantial gust of sideways-moving air coming off the side of the truck and this gust of air would have applied a sideways force on the plaintiff and his bicycle. If we assume for a moment that the speed of this gust of air was 40 mph for example, then (by calculation) this would give rise to a sideways pressure on the plaintiff of 5lbs per sq. ft. If we assume that the combined area of the plaintiff and his bicycle that was exposed to this pressure was 6 sq. ft, then a total sideways force of 30 lbs would have been applied to the plaintiff and his bicycle. A sideways force of this magnitude would indeed cause an average cyclist to wobble."

All of this is of course predicated on an assumption that the lorry was passing the plaintiff within about two feet of him. The plaintiff cannot say this. The case against the defendant is predicated on an assumption that this is so, and that there is no other reason why the plaintiff collided with the rere of the truck.

In his final report dated 12th July 2004, Mr O'Doherty states the following:

"*The problem we have here is that there are so many unknown variables that it would be impossible to calculate the wind forces involved. The unknown variables relate to the direction and force of the atmospheric wind; the speed of the passing truck; the clearance of the passing truck from the plaintiff and the stationary truck; the frontal area of the passing truck; and the aerodynamic styling of the front of the truck. The absence of accurate information on any one of the above variables would make it impossible to estimate the wind speeds involved."*

He goes on as follows:

"……..It seems to me that we should not get bogged down in these technicalities. The reality is that all large trucks travelling at speed generate side-winds, eddy currents and vortices which can affect nearby cyclists. While the forces from these side-winds can vary substantially depending on the variables mentioned above, the reality is that in virtually all situations where a high-sided truck is passing close to a cyclist there would be side-winds of such magnitude that would cause an unprepared cyclist to wobble. Once we make assumptions about the speed of the side-winds, then we can make a fair assessment of the type of forces likely to arise, as indicated in m y report of the 21st January 2003. In my opinion, a side force of as little as 20lbs would be sufficient to cause a cyclist to wobble and the probability is that there was a side force much greater than this involved on the date of the accident."

This report has attached to it some diagrams which seek to demonstrate a distinction between the size of the side force caused by a truck which is not aerodynamic in design, and one which is. The former is said to constitute a potential hazard for cyclists, and in respect of the latter it is stated that the streamlining effect reduces the amount of buffeting experienced by nearby cyclists. In the present case we do not know which category of design the approaching truck falls into.

Mr O'Doherty was cross-examined by Mr Gaynor, and it was suggested to him that as stated in his final report everything which he was stating by way of conclusion was based on pure speculation as to material facts, and that his statement as to 30lbs of side pressure coming to the plaintiff in this case was not reliable. Mr O'Doherty stated that it was based on information that the plaintiff had given to him such as that, when he was 50 yards away from the stationary truck he saw

the large lorry behind him at 400 yards. Mr Gaynor examined Mr O'Doherty as to what speed the truck must have been travelling at in order to catch up with the plaintiff while he travelled the fifty yards into the back of the truck. To answer this Mr O'Doherty stated that he would assume that the plaintiff was cycling between ten and thirteen miles per hour, and that if the plaintiff was cycling at, say, ten miles per hour and if the lorry was travelling at sixty miles per hour, the lorry was covering six times the distance that the plaintiff was covering in the same time. At these speeds the plaintiff would travel the fifty yards to the back of the truck in about 10.2 seconds, and in the same time the truck would travel 300 yards. The plaintiff's estimate is that the lorry was between 300 and 400 yards back from him when he first looked behind him.

Therefore if the lorry was 300 yards behind the plaintiff when first seen, it was 350 yards behind the truck at that stage. In order to cover that distance in the 10.2 seconds it took the plaintiff to reach the back of the truck the lorry would have to be travelling at just over 65 mph.

If the lorry was 350 yards back from the plaintiff when first seen, it was 400 yards back from the truck, and would have to be travelling at something just over 75 mph in order to catch the plaintiff in the available distance.

Similarly if the truck was 400 yards back from the plaintiff, it was 450 yards behind the truck, and would have to have been travelling at something in the region of 85 mph.

It follows that if the plaintiff was cycling a bit faster than the 10mph estimate which he has stated, then the lorry speeds would have to be increased pro rata.

For the lorry to have reached the back of the truck travelling at 60 mph, it would have to have been only 250 yards back from the plaintiff when he first saw it – 300 yards from the back of the truck, and the plaintiff's evidence does not put the distance below 300 yards in any of his accounts. If it was travelling at less than 50 mph, the distance would have to be even less. At this point of the calculations it would suggest that if the truck is assumed to have been travelling at 60 mph, it was not at all safe for the plaintiff to pull out into the lane the lorry was travelling in, as the lorry would have to have been quite close to him, and one would have thought that the plaintiff would consider it preferable to wait the ten seconds or so it would take the lorry to pass rather than pull out in front of it as he says he did.

Mr Gaynor also suggested to Mr O'Doherty that if the evidence is accepted that the stationary truck is parked in on the grass verge as Mr McCarthy has described, and the outside of it is therefore 3 feet inside the hard shoulder, and the plaintiff has moved outside the truck by one foot, there is still two feet between the plaintiff and the commencement of the traffic lane, and that this would mean that the passing lorry, travelling normally and in the centre in that lane, would be another couple of feet out, giving a clearance of at least four feet between the cyclist and the passing truck. Based on this clearance Mr O'Doherty was asked to opine as to the likely side wind forces which the plaintiff might have experienced. However Mr O'Doherty stated that there were too many variables for him to say. Earlier in his evidence, as I have already set forth, Mr O'Doherty had stated that at a clearance of eighteen inches to two feet, the force would be 30 lbs and enough to cause a cyclist to wobble. For that to have occurred on the basis of Mr McCarthy's evidence and the plaintiff's own evidence, the passing truck would have to have been travelling partly in the hard shoulder lane itself, and there is no evidence of that.

James O'Driscoll SC for the plaintiff has submitted that the Court should not tie itself too exactly to the precise distance the lorry may have been behind the plaintiff, and accepts that the plaintiff may well be wrong about the distance the lorry was back from the plaintiff when he first saw it. He says that the Court must ask itself how this accident can have happened. In this regard he submits that one explanation which has to be ruled out is that the plaintiff simply cycled at normal speed into the back of the truck without seeing it. He points to the fact that the plaintiff has sworn that he saw the truck about 500 yards ahead of him, and for the Court to find that this was how the accident happened would require a finding that the plaintiff is lying.

The other possibility is that the passing lorry was travelling so fast that even if correctly travelling in his lane, and a reasonable distance out from the plaintiff, the wind forces generated were so great that the plaintiff was forced off his line and into the back of the truck. But he suggests that this speed would have to be so great it is unlikely.

Another possibility, and he asks the Court to accept this explanation as the probable one is that the lorry driver did not see the plaintiff moving out to overtake the stationary truck (there has been no evidence that any horn being sounded was heard either by the plaintiff or Mr McCarthy), and was far too close to him at that moment, thereby causing such an amount of side wind as to cause the plaintiff to move to his left and into the back of the truck. Mr O'Driscoll has pointed to the evidence of the damage caused to the plaintiff's bike, consistent with the speed the plaintiff says he was travelling at (about 10mph). He also points to the consistency of the plaintiff's story, namely the fact that when he got to Cork University Hospital, he has stated that he was blown into the back of a lorry. He has pointed also to the position of the bike after the impact, and where the plaintiff ended up – i.e. half in the hard shoulder lane and half in the inside traffic lane. I assume him to be suggesting that the truck was parked other than on the grass verge, causing the plaintiff to try and pass him by going

into the traffic lane.

Mr O'Driscoll submits that if the Court allows for the possibility that the plaintiff is wrong about the distance of the lorry behind him and the distance the plaintiff was back from the truck when he first saw the lorry approaching, and does not pay too much attention to precise measurements of speed and time, the theory put forward as to how this accident happened can be fitted into the conclusions given by Mr O'Doherty, and that it is therefore reasonable to conclude that however it occurred this lorry put the plaintiff in enough difficulty to cause him to collide with back of the truck. He submits that the driver any large truck must allow a sufficient distance when passing a cyclist so as not to cause him difficulty, and that as a matter of probability the driver of this lorry failed to do so.

Mr Gaynor has pointed to the complete lack of any hard evidence to support then plaintiff's theory as to how this accident happened. He has also pointed to the only hard evidence given, and that is by the plaintiff who has stated that when he was fifty yards behind the stationary truck, which he seen at a distance of 500 yards, he looked round, saw a lorry at 300 – 400 yards behind him, put out his hand to indicate he was moving out to overtake, travelled twenty yards with his arm extended, and another twenty yards with both hands on the upper handle bars of his bike, and remembers nothing of the final ten yards up to the rere of the truck. Mr Gaynor has pointed to the fact that even accepting this hard evidence and making allowance for inaccuracy in the distances, it is impossible for the lorry to have caught up with the plaintiff in sufficient time to cause him a side-wind rush to cause him to wobble and put him into the back of the truck. Therefore he submits that the theory cannot be accepted on any probability basis, and that the plaintiff has failed to discharge the onus of proof upon him to demonstrate that the lorry driver drove negligently. Mr Gaynor has expressed surprise that the plaintiff has no recollection of the final ten yards at the back of the truck, since all the evidence is that he did not lose consciousness and was able to be immediately helped by Mr McCarthy into the truck so that he could go to Midleton Hospital. Mr Gaynor suggests that the reason why the plaintiff does not remember anything about the truck is that there was none at all.

Finally, I should refer to the fact that Mr O'Driscoll referred the Court to the judgment of O'Dalaigh C.J. in **Gahan v. Engineering Products Ltd [1971] I.R.30**. That was a case in whi9ch the plaintiff suffered an eye injury from a flying metal fragment during the course of his employment. The precise source of the fragment was not proved, although it was established that some welding work was going on in the vicinity of the plaintiff when the incident occurred. A jury found the plaintiff's employers to be negligent in failing to equip the plaintiff with goggles. On appeal the defendants submitted, inter alia, that there had been insufficient evidence of the source of the fragment to support a finding that they had been negligent. The Supreme Court held in this regard that *"the jury's finding that the defendants had been negligent would not be set aside since the evidence at the trial established facts from which negligence on the part of the defendants might e inferred reasonably."*(my emphasis)

It had been submitted on behalf of the defendants that the plaintiff had failed to show how the accident happened, and that three possible explanations had been put forward, but that this was not sufficient to establish negligence. On behalf of the plaintiff fit was submitted that there was ample evidence from which the jury could have been satisfied that the defendants had been negligent in failing to supply goggles and to support their finding that the plaintiff's eye had been struck by a flying fragment of metal. It was submitted that negligence could be established by direct evidence of facts and by reasonable inferences from those facts. It was submitted that the only reasonable inference was that the injury was caused by a fast-moving particle of metal from the welding work. In his judgment, O'Dalaigh C.J. stated as follows:

"Mr Doyle, for the defendants, submitted that the plaintiff 'has got to have a story', and that the plaintiff had failed to show that any one of these three causes was more likely than another. The relevant question which was left by the trial judge to the jury, and which was answered by them in the affirmative, was 'was the plaintiff's injury caused by a flying fragment?' Mr Doyle, in my opinion, is not right in his insistence that a plaintiff 'must have a story'. All that is required for a plaintiff to succeed is to establish facts from which an inference of negligence on the part of the defendant can be reasonably inferred. The observation of Lord Buckmaster in Jones v. Great Western Railway Co. is in point:- "It is a mistake to think that because an event is unseen its cause cannot be reasonably inferred."

The plaintiff's case consists not merely of his own story but also of the other matters proved in the case; I am satisfied that in this instance the jury were entitled to draw the inference that the plaintiff was struck by a flying fragment arising out of the welding process rather than by anything arising from the drilling or (as was directly suggested in cross-examination) by the plaintiff being struck by mesh wire when bending down over the wheelbarrow or when crouching down over the floor to pick up pieces of this mesh wire."

He went on:

"Other evidence by one of the welders described how little bits of molten lead fly out during the welding process and he described how the slag or rough surface is chipped off with a hammer after the welding is completed and he said that, as this is being done, the slag breaks up like the black crust of a loaf of bread. I am satisfied that the evidence points to the welding process as being the most likely of the three sources of injury."

Mr O'Driscoll submits that in the present case there is sufficient fact established for the Court to draw the reasonable inference that what caused the injury to the plaintiff is negligent driving on the part of the driver of the lorry by him passing too close to the plaintiff and at a speed which he ought to have known would cause the plaintiff to wobble and lose control of his bicycle, thereby causing him to collide with the back of the truck.

Conclusions:
Accepting the principles emerging from the judgment of O'Dalaigh to which I have referred, it is necessary to see what facts are actually established by the plaintiff from which reasonable inferences can be drawn which point to a probability of negligence on the part of the driver of the lorry. Firstly, we know that the plaintiff was riding his bicycle at a speed likely to be about 10mph. We know also that he saw a stationary truck ahead of him at about 500 yards, pulled over into the hard shoulder in which he was cycling.

We know also, on the basis of an acceptance of very specific evidence by the plaintiff, that when he was fifty yards behind the stationary lorry he looked behind him and saw a large lorry approaching from a distance of anything between 300 and 400 yards. I do not think that it is reasonable, as suggested by Mr O'Driscoll, to allow for the plaintiff being wrong about this distance. The plaintiff has allowed room for error by stating it as between 300 and 400 yards.

We also know that the early morning was bright and that there was no other traffic on the road at the time. The latter seems unlikely to me given the time of morning (8.10am) on a busy main road, but I am accepting it on the basis that the plaintiff has sworn it to be so. We know for certain that he collided heavily with the rere of the truck. In the absence of any other relevant information the Court is asked to infer that in the time it took for the plaintiff to reach the back of the truck, the lorry had caught up with the plaintiff and drove so close to him that he was blown by the force of the side wind into the back of the truck.

I have considered this proposition very carefully on the basis of the evidence which has been given, and I have allowed for the plaintiff possibly being inaccurate in his assessment of the distance of the lorry behind him. But the more I think about it the less likely it becomes that the calculations made by Mr O'Doherty can be made to fit the event alleged. The difficulty is that if one presumes that the plaintiff is wrong and that the lorry (which is being presumed to be travelling at 60 mph – that being the speed limit on that stretch of road) was in fact nearer to the plaintiff than the 300-400 yards, it becomes more and more likely that the plaintiff moved out when he should not have, and that he very soon realised the danger he had posed for himself by moving out rather than waiting for the lorry to pass, and pulled back into the hard shoulder and hit the back of the lorry. In that situation the plaintiff could not point to any negligence on the part of the driver.

Equally, if one assumes that the plaintiff is wrong about the distance and that in fact the lorry was further back from him than the 300-400 yards he says, then the lorry would have to be have been travelling at a vastly greater speed than the speed limit of 60 mph in order to catch up with the plaintiff, and in the absence of any evidence of speed whatsoever, that would be going too far in my opinion. It would be pure speculation for the purpose of trying to fit facts to the theory being propounded.

The result of this examination of the evidence is that the technical evidence adduced by the plaintiff cannot reasonably be interpreted so as to make the plaintiff's theory probable. This distinguishes this plaintiff's case clearly from the facts in Gahan v. Engineering Services Ltd to which I have referred, where the facts were relevantly clear and certain so that a reasonable inference could be drawn from them. On the evidence in the present case, I cannot reasonably infer simply from the fact that the plaintiff saw a lorry at some distance behind him, and that the plaintiff hit the back of the lorry, that it was the driver of the lorry who was negligent by driving too close to the plaintiff as he was passing him. The scientific evidence put forward for the purpose of such an inference does not in my view make such an inference reasonable, as I have attempted to demonstrate. I have taken a considerable time to consider the evidence carefully, since any Court is painfully aware of the consequences to a plaintiff of a dismissal, but equally the Court must be fair to the defendant, which, although having broader shoulders on which to bear any award made against it, nevertheless is entitled to have justice administered in a way which is not unfairly influenced by sympathy for the plaintiff in his plight. Even that care has not enabled me to stretch a point so as to find or infer negligence in this case against the lorry driver.

The plaintiff has not discharged the onus of proof which rests with him to prove facts, either directly or by way of inferences which can reasonably be drawn, which demonstrate that it was the driver of the lorry whose negligence caused the plaintiff to suffer injury.

With great regret I must dismiss the plaintiff's claim.