Neutral Citation [2012] IEHC 437

THE HIGH COURT

[2011 No. 6992 P]

BETWEEN

JADE PRICE

PLAINTIFF

AND

MILEY CONNORS

AND

THE MOTOR INSURANCE BUREAU OF IRELAND

DEFENDANTS

JUDGMENT of O'Neill J. delivered on the 30th day of October, 2012

1. These proceedings arise out of a tragic fatal road traffic accident which occurred in the early hours of 15th May 2010.

2. The plaintiff was a front seat passenger in a car driven by the late Mary Connors which went out of control on the N81 road close to The Embankment public house. The accident happened just after midnight. It would appear that the plaintiff and Mary Connors were returning from the Blue Gardenia public house to Tallaght where they both lived.

3. In the road traffic accident, Mary Connors was tragically killed and the plaintiff suffered serious injuries, including traumatic injury to the facial area of her head. As a result of that and the associated unconsciousness, the plaintiff has no memory of the accident itself and very little memory of the preceding day and week and the week following the road traffic accident.

4. In the trial, all of the depositions furnished for the purposes of the inquest were admitted in evidence. The first named defendant, who is the personal representative of Mary Connors (deceased), did not defend the proceedings.

5. It is clear from these depositions that the primary cause of this fatal accident was the negligent and indeed reckless driving of Mary Connors, as a result of which she lost control of the motor vehicle after it had travelled at high speed causing it to spin around so that the rear of the vehicle led, as it left the carriageway, crossed a ditch and was brought to a halt when the driver's side of the car collided violently with a tree.

6. The impact with the tree was a severe one and the car was comprehensively destroyed in the impact.

7. It would appear that the driving of the vehicle on this occasion was not covered by any insurance policy. Hence, the Motor Insurance Bureau of Ireland (MIBI) is a party to the proceedings.

8. The MIBI resists the plaintiff's claim on three grounds.

9. Firstly, they say that the plaintiff knew that there was no insurance on the car and, nonetheless, willingly travelled in it as a passenger.

10. Secondly, they allege contributory negligence on two grounds, namely, that the plaintiff permitted herself to be carried in the car as a passenger when she knew or ought to have known that Mary Connors (deceased) had consumed an excessive quantity of alcohol and was not fit to drive. Furthermore, they say that the plaintiff was not wearing a seatbelt when this road traffic accident happened. I will deal with each of these in the foregoing order.

11. Firstly, there is the allegation that the plaintiff knew that there was no insurance on the vehicle. In respect of this defence, the second named defendants rely on clause 5.2 of the Motor Insurance Bureau of Ireland Agreement dated 29th January 2009, which is as follows:

> "*5.2 Where at the time of the accident the person injured or killed or who sustained damage to property voluntarily entered the vehicle which caused the damage or injury and MIBI can prove that they knew that there was not in force an approved policy of insurance in respect of the use of the vehicle, the liability of MIBI shall not extend to any judgement or claim either in respect of injury or death of such person while the person injured or killed was by his consent in or on such vehicle or in respect of damage to property while the owner of the property was by his consent in or on the vehicle*."

12. To succeed under this provision, the onus is on the second named defendant to satisfy this Court on the balance of probabilities that the plaintiff actually knew that the deceased did not have insurance to drive the car on the occasion in question.

13. I am satisfied that the evidence establishes that the plaintiff was a good friend of the deceased, having known her for at least four years. The plaintiff frequently babysat the deceased's four children and occasionally travelled with the deceased in her car.

14. On 14th May 2010, the day before this accident occurred, I am satisfied that the plaintiff was in the company of the deceased at various times during the day. The plaintiff has a vague memory of going with the deceased, her children and the partner of the deceased's mother, to collect a new car for the deceased. The plaintiff's evidence was that she sat in Mr. Billy Cauley's car, in which they had travelled to the motor dealer, while the deceased concluded the business of purchasing the car.

15. The car acquired was the vehicle which was involved in this road traffic accident early on the morning of 15th May 2010. The

plaintiff's evidence was that she knew nothing about the deceased's car insurance arrangements. She was aware of the fact that the deceased had a car for some time prior to this accident and drove it habitually for normal purposes. The plaintiff assumed that the deceased had insurance to drive the car. She was aware that the deceased had never been in trouble with regard to the insurance of her car.

16. I am satisfied that the plaintiff's evidence on the car insurance question is credible. Accordingly, I am satisfied that the second named defendant has failed to discharge the onus on them of establishing, on the balance of probabilities, that the plaintiff knew that there was no policy of insurance covering the driving of this car when the plaintiff permitted herself to be carried in it as a passenger on 15th May 2010.

17. The next question that arises is whether the plaintiff was aware that the deceased had consumed an excessive quantity of alcohol on the night in question.

18. The autopsy report included in the depositions clearly establishes that the deceased had an excessive quantity of alcohol in her system when the accident happened. The vague recollection of the plaintiff and the evidence of the plaintiff's father established that the plaintiff was in the company of the deceased at various stages during 14th May 2010.

19. The deposition of Mr. Michael McGinley, who was passing by the Blue Gardenia pub just after midnight on his way home from his work as a Chef in the Tulfarris Hotel in Blessington, proves that the deceased's car emerged, rear first, from the Blue Gardenia pub. Mr. McGinley went round this car, but moments later, this car was right behind him, apparently tailgating him in a dangerous manner, eventually hitting Mr. McGinley's car without causing any damage to it. Mr. McGinley slowed down and allowed the deceased's car to overtake him.

20. As the car did overtake him, he noticed that the number plate contained the letters "OY". Such was Mr. McGinley's alarm at the erratic driving of this vehicle that he rang the gardaí to alert them to the dangerous nature of this driving. Very shortly after this, he noticed this car in the ditch. He continued on his journey but then turned back to the scene where, at that stage, a number of cars had gathered.

21. I am quite satisfied from Mr. McGinley's evidence of the description of the car that he saw emerge from the Blue Gardenia and his observation of the letters "OY" in the number plate, that this car was the deceased's car.

22. From this, it is to be inferred that the plaintiff was in the company of the deceased in the Blue Gardenia pub that evening, during which time it apparent that the deceased, and probably the plaintiff, consumed a considerable quantity of alcohol. There is no doubt that the plaintiff was in the car with the deceased when this accident happened.

23. In giving her evidence, the plaintiff impressed me as an intelligent, collected person. I think it inconceivable that she was unaware that the deceased had consumed a lot of alcohol that night before getting into the car to drive home with the plaintiff. I am quite satisfied that the plaintiff did know that the deceased had an excessive amount of alcohol in her system when she permitted herself to be carried as a passenger in this car that night. In my view, the appropriate deduction for the plaintiff's contributory negligence in this regard is 30%.

24. The next question which arises is whether or not the plaintiff was wearing a seatbelt.

25. The plaintiff has no recollection of whether she was or was not wearing a seatbelt. Her evidence was that she always did wear a seatbelt. Therefore, she believes that she was wearing a seatbelt on this occasion.

26. The deposition of Garda Paul McCauley, who was on the scene soon after the accident happened, says that he found the deceased slumped over onto the front passenger side of the car with her legs trapped under the steering wheel. Garda McCauley said the plaintiff "was resting between the driver's and the front passenger seats".

27. The deposition of Aleric Collier, the fire fighter who participated in removing of the plaintiff from the car, says nothing about whether the plaintiff was restrained by a seatbelt or not. The medical report admitted in evidence of Dr. Martin Rochford, who was the consultant in the A&E Department at Tallaght Hospital, to which the plaintiff was brought by ambulance, says the following:

> "*According to the ambulance sheet, Ms. Price had been found unrestrained in the front seat with a reduced level of consciousness*."

That is the totality of evidence bearing directly on the question of whether the plaintiff was wearing a seatbelt.

28. The position in which the plaintiff was found by Garda McCauley and also the position of the deceased strongly suggests that the plaintiff had left the passenger seat. For that to happen, either she had not been wearing a seatbelt, or, if she had been wearing a seatbelt, she had somehow broken free from its restraint in the impact. It would seem to me that the former of these possibilities, namely, that she was not wearing a seatbelt, is more likely.

29. The plaintiff did not have any injuries suggestive of a violent engagement with a seatbelt as she was being wrenched from its restraint by the violence of the impact. Furthermore, the traumatic injuries to the facial area of the plaintiff's head indicate that her head had come in contact with some part of the car, probably the windscreen or a side pillar, all of which tends to suggest that she was not restrained by a seatbelt.

30. The injuries in the plaintiff's pelvic region are neutral so far as the seatbelt issue is concerned, as are the fracture of her right arm and the laceration of her liver. The violence of the impact and its direction - from the right-hand side - could have caused these injuries regardless of whether she was restrained by a seatbelt or not.

31. I am satisfied on the balance of probabilities that the plaintiff was not wearing a seatbelt. In reaching this conclusion, I have had regard to the injuries contributed to by the absence of a seatbelt, namely, the head injuries, and also to the fact that other injuries, such as the pelvic, liver and the arm injuries were not, in all probability, contributed to, by not wearing a seatbelt. It would seem to me that the fair deduction in respect of contributory negligence in not wearing a seat belt is 25%. Thus, there will be a total deduction in the damages to be assessed of 55%.

32. There is no doubt that the plaintiff suffered serious injuries in this road traffic accident. She had multiple fractures. She was initially rendered unconscious and was brought by ambulance to Tallaght Hospital. She remained in a state of near unconsciousness

for a number of days after that, gradually recovering. She had serious injuries to her facial area involving multiple fractures of the bones in her face and her nose. She also suffered significant scarring around her forehead and the side of her nose. She suffered a fracture of her right ulna, and multiple fractures in her right pelvic area and an undisplaced fracture of the left a sacral ala.

33. All of these injuries were treated in the usual way. The liver injury was treated conservatively and that injury recovered, uneventfully. So far as her facial injuries are concerned, she has had two treatments to her nose, one a manipulation and the other a more invasive surgical procedure, all designed to straighten her nose back to its original condition. These procedures have not been entirely successful. Consequently, her nose is left somewhat deviated and she also continues to suffered difficulty in breathing through her right nostril.

34. The main problem, insofar as the plaintiff's facial injuries are concerned, is that because of the slightly depressed nature of one of the fractures on the right side of her face, is that this has the effect of causing her to have a sunken eye and a dropped eye. It would appear from the medical reports of the surgeon, Professor Stassen, that no further surgery is contemplated to correct that problem. Some additional surgery is contemplated to improve the situation with regard to her nose. So far as the scarring is concerned, it would appear from Professor Eadie's report that no further surgery is contemplated there.

35. The plaintiff's pelvis had a number of fractures and these were dealt with Professor McElwaine and were set out in detail in his report. These were undoubtedly serious fractures, some of which required to be surgically fixed. As are result of that, she had a considerable amount of screws and metalwork in her pelvis. But the surgery has been successful. She has a symmetrical and stable pelvis, but she is left with considerable scarring, both as a result of the original injuries in that area and also as a result of the surgical scars from the various procedures carried out. That is significant scarring in a visible location should the plaintiff ever wish to wear a bikini. The plaintiff is also left with tenderness in that particular area which is described in the following terms by Professor McElwaine in his last report, who said:

> "*This lady sustained a horrendous injury to her pelvis, as outlined. Her pelvic fractures have healed. The symmetry of pelvis has been restored and the stability of her pelvis has been restored. She is left with considerable cosmetic deformity in the right side of her pelvis. She also has scarring on the left side. It is my opinion this lady has very significant cosmetic deformity in her pelvis. As already stated, it is above the bikini line and consequently it would be quite noticeable if she was wearing a bikini. She has some pain and discomfort over the iliac bone and this is tender. The reason for this is because the iliac bone is a superficial bone and is covered with scar tissue. This renders this particular area quite tender, particularly to touch. This is likely to persist into the future. As far as her numbness is concerned, she has a bit of numbness in the latter aspect to her anterior thigh, this is likely to be permanent but not interfere with any function*."

36. The plaintiff has also suffered psychologically as a result of this accident. This is hardly surprising as it was a horrific event resulting in the death of her friend. She has been afflicted since then by flashbacks and nightmares. Dr. Thakore says he detected Post Traumatic Stress Disorder. Dr. Sinanon doubted this. I would think the plaintiff probably has suffered Post Traumatic Stress Disorder but of a relatively mild degree. This has been associated with some degree of depression. She could benefit from psychotherapy and anti-depressive medication but she is unwilling to take that kind of medication and that is understandable. I have to disentangle from all of that her natural upset at the death of her friend for which she is not entitled to damages.

37. The plaintiff still has double vision as a result of the slight deformity in her facial bones resulting from her dropped eye and sunken eye, as I have already said, it would appear that Professor Stassen does not contemplate further surgery there. She has headaches which have been troubling her and will continue to do so. She has all of the scarring mentioned which she will have to live with, as is, from now on. Her mental state will continue to be fragile for some time to come, though I think she will fully recover in due course.

38. Bearing all of this in mind, it seems to me that the assessment of the plaintiff's damages for pain and suffering to date should be €60,000 and her pain and suffering in the future should be €150,000.

39. There is a sum of approximately €13,500 claimed for future treatment. It would appear that a further procedure is contemplated on her nose and also some additional dental work will be required as a result of the trauma to her teeth which had the effect of driving them slightly backwards.

40. I will include that sum of €13,500 in the assessment.

41. The total assessment comes to €223,500. The plaintiff is entitled to recover 45% of that which means there will be judgment for the sum of €100,579.