

BETWEEN

NATALIE GRIMES

PLAINTIFF

AND

MOTOR INSURERS BUREAU OF IRELAND

DEFENDANT

**JUDGMENT of Mr. Justice Barr delivered on the 7th day of June, 2018****Introduction**

1. The facts of this case are somewhat unusual. It is the plaintiff's case that on the evening of 22nd March, 2011, she went for a drink with a Mr. Glen Sheridan, the father of her son, who was then twelve years of age. Mr. Sheridan drove the plaintiff's car. On the way home, he crashed into a lamppost, causing the plaintiff to suffer personal injuries and other loss and damage. The plaintiff had no insurance in respect of her vehicle. It appears that Mr. Sheridan did not have any insurance to cover his driving of the vehicle on the night in question.

2. The plaintiff states that, having left the accident and emergency department of Connolly Hospital after the arrival of the gardaí, the driver, Mr. Sheridan, was untraceable thereafter. On that account, the plaintiff maintains that she is entitled to bring these proceedings against the Motor Insurers Bureau of Ireland (hereinafter the MIB) as a sole defendant and that she is entitled to be compensated for her injuries and losses pursuant to the terms of the MIB agreement of 29th January, 2009.

3. In response, the MIB argues that the only reason that the whereabouts of Mr. Sheridan remained unknown to the plaintiff and her solicitor, was simply because they failed to make any inquiries of the investigating garda, who at all times had addresses within the jurisdiction where Mr. Sheridan resided. In such circumstances, it was submitted that it was a nonsense to suggest that Mr. Sheridan was "untraced" within the meaning of Clause 6 of the 2009 agreement. Accordingly, it was submitted that the plaintiff had not established either a cause of action, or a right of recovery, against the defendant pursuant to the terms of the agreement.

4. While there were other issues in the case, which will be dealt with in the course of the judgment, the central issue is whether Mr. Sheridan was in fact an untraced driver within the meaning of the 2009 agreement.

**Background**

5. In order to understand whether Mr. Sheridan was in fact an untraced driver, it is necessary to say a brief word about the background to the relationship between the plaintiff and her former partner, Mr. Sheridan. The plaintiff has stated that they had a brief relationship many years ago. They were not boyfriend and girlfriend in the ordinary way for a protracted period, but had had a very brief relationship, which resulted in the birth of the plaintiff's son in 1999. The plaintiff stated that there was very little contact between her and Mr. Sheridan, either prior to the birth of their son, or subsequent thereto. It appears that at one stage she obtained an order that he should pay maintenance of circa €50 a week towards the maintenance of her son, but apparently Mr. Sheridan never did so.

6. The plaintiff stated that the only contact between her and Mr. Sheridan, was of a somewhat infrequent nature, when she would bring her son to Mr. Sheridan's mother's house which was approximately ten minutes walk from her apartment, approximately once per month. This would be arranged by Mr. Sheridan's mother and the plaintiff would deliver her son to her house at the appointed time. Sometimes her son stayed overnight with Mr. Sheridan's mother and he would see Mr. Sheridan, who the plaintiff said lived at the house on occasion, but not all the time.

7. The plaintiff stated that she last saw Mr. Sheridan prior to the time of this accident sometime around Christmas of 2010, when Mr. Sheridan called to her apartment to see his son and give him a present. She stated that Mr. Sheridan had drink taken on that occasion and as a result she was not keen to allow him into the apartment; the visit had been somewhat short on that occasion.

8. In or about November 2010, the plaintiff had purchased a car second hand from a member of her family, who was going to Australia and for that reason wanted to get rid of his vehicle. She bought the 1998 BMW for approximately €1,500. She stated that she had taken out a loan from the Credit Union of €3,000 for the purpose of covering various Christmas expenses that might arise looking after herself and her son. She decided to spend half of that loan on a present for herself, being the car. However, she had no driving licence at that time, as she had only once sat her theory test, which she had failed. She did not, of course, have any insurance to drive the vehicle. For that reason, it had been delivered by her relative to the underground car park beneath her apartment. She said that it had stayed there unused since she purchased it in or around November 2010.

**The Day of the Accident**

9. This brings us to the day of the accident, being 22nd March, 2011. That day, Glen Sheridan rang the plaintiff to see how she and her son were getting on after the death of the plaintiff's grandfather, which had occurred approximately two weeks earlier. In that phone call, Mr. Sheridan apparently suggested to the plaintiff that they might go out that evening and the plaintiff agreed. Later that evening, Mr. Sheridan walked over to the plaintiff's apartment. A conversation took place between them about going out to a pub in Clonee. The plaintiff stated that she said to Mr. Sheridan that she did not know how they would get to the pub, because she was not in a position to drive her car; to which Mr. Sheridan replied that he had open insurance to drive any car. The plaintiff stated that she took this at face value and allowed Mr. Sheridan to drive her car that night.

10. The plaintiff stated that she had accepted his statement in relation to having open insurance, as she knew that Mr. Sheridan had driven in the course of jobs that he had previously held in the past. However, she did not know if he was working at that particular time, or whether he was driving any car at that time. She knew that he had walked over from his mother's house to her apartment that evening.

11. The plaintiff and Mr. Sheridan drove to the Grasshopper pub in Clonee where, according to the plaintiff, she had two pints of Coors Lite and Mr. Sheridan had two pint bottles of Bulmer's cider. She stated that they were in the pub from approximately 18:30hrs until either 21:30hrs, or 22:15hrs. She gave two different times in the course of her evidence. It would appear that it may have been

closer to 22:15hrs when they left the pub, because it appears that the accident happened shortly before a call to the ambulance service which was recorded at 22:30hrs. It was accepted that the accident had occurred approximately fifteen minutes after they left the public house.

12. It is the plaintiff's case that having played some pool and had the amount of alcohol that she stated, and chatted, that they decided to leave the pub and drove some fifteen minutes from the time they left the pub until, as they were proceeding around a gentle left bend, the car veered out of control and struck a lamppost head on, which was on the left hand footpath. The plaintiff stated that at the time of the accident she was sitting in the front passenger seat with her seatbelt on, but was looking at her mobile phone because she was trying to play particular songs on her phone. Her only recollection of Mr. Sheridan doing anything, was that he may have glanced down at the gears just prior to the impact, but other than that she could not give any explanation as to why the car went out of control and left the road and struck the lamppost.

13. An ambulance was called either by the plaintiff, or by a passer-by, who came to their assistance and the ambulance took them to James Connolly Hospital. In the accident and emergency department, a male garda and a female garda arrived, but the plaintiff stated that neither she, nor Glen Sheridan gave any details to the gardaí in the hospital. The plaintiff stated that Mr. Sheridan said to her "We have to get out of this dump, I am banned"; meaning that he was banned from driving. The plaintiff stated that she immediately left the accident and emergency department with Mr. Sheridan. She had not received any treatment prior to leaving. She stated that she got a taxi to her apartment. She presumed that Mr. Sheridan also got a taxi to his mother's house, or elsewhere.

#### **The Evidence of the Plaintiff and her Solicitor on Tracing Mr. Sheridan**

14. The plaintiff stated that she had not seen or heard from Mr. Sheridan since the night of the accident. She stated that on one occasion she telephoned Mr. Sheridan's mother and told her that she was looking for Glen Sheridan to tell him that he might be prosecuted. She stated that she asked Mr. Sheridan's mother to get in touch with her son. Mrs. Sheridan said that she would pass on the message to her son that he would be done for criminal damage. The plaintiff stated that she never heard from Mr. Sheridan since the accident, or subsequent to that telephone call to his mother.

15. When asked in cross examination when she had last seen Mr. Sheridan, she stated that she had seen him in the corridor outside the court on the first day of the hearing, which was 18th April, 2018. One can presume that he was there, either under subpoena or voluntarily, at the request of the defendant, because he was not present at the request of the plaintiff, because it is her case that she did not know where he was.

16. Evidence was given by Mr. Martin McPolin, the plaintiff's solicitor. He stated that on 28th September, 2012, which was some eighteen months after the accident, he wrote a letter to Blanchardstown Garda Station, giving the name of his client, giving her address, stating that it concerned a road traffic accident on 28th March, 2011 [sic] at approximately 10:00pm at Ongar, Clonee, Dublin 15. In that letter, he stated as follows:-

*"Our instructions are that your station investigated this accident. Please confirm our instructions in this regard are correct. We are instructed that the third party who caused the accident is Mr. Glen Sheridan. We require a garda report on this accident. If a report is presently available, please confirm this fact to our office and a cheque in payment of the usual fee will be forwarded. If this report is not yet available, please note our interest in the matter and confirm that we will be advised when the report is prepared. In the meantime we would be obliged if you would let us know the following:*

*the full name and address of the driver and owner of the other vehicle;*

*the correct registration number of the other vehicle;*

*the name and address of the other driver's insurance company and his policy number;*

*names and addresses of any witnesses to the accident.*

*Should you have any queries or require any further information, please contact Ashling at the number below or alternatively ashling@ianmallon.com.*

*Thank you for your assistance in this matter."*

17. Mr. McPolin stated that when he did not receive any response to that letter, he wrote a reminder letter on 13th November, 2012, simply referring to the previous letter and enclosing a copy and asking for a response thereto. By chance, it would appear that also on 13th November, 2012, a letter was sent by the inspector at Blanchardstown Garda Station on behalf of the Superintendent in response to the first letter and this indicated that in relation to the particular road traffic accident, the matter was being investigated or handled by Garda David Laird, Unit B, Cabra Garda Station.

18. Mr. McPolin stated that following that, probably towards the end of November 2012, there were a number of phone calls passing between his office and the gardaí, in respect of which he did not have a particular note. However, there was a file note dated 4th December, 2012, which simply stated: "No report from gardaí". Mr. McPolin stated that that would indicate that there was a no garda abstract report available at the time that that note was made, probably pursuant to the telephone calls that had passed in the days prior to that time.

19. A third letter was written by Mr. McPolin's office on 24th January, 2018. This was addressed to Garda David Laird at Blanchardstown Garda Station. Now that may have been incorrect in that he may have been at Cabra Garda Station, but in any event, it was addressed to Garda Laird at Blanchardstown. It again indicated that they acted for the plaintiff in respect of the road traffic accident and it continued:-

*"Our instructions are that you investigated this accident. Please confirm our instructions in this regard are correct. We are instructed that the person who caused the accident was Glen Sheridan. We believe that there is no garda report in relation to this accident but we would be obliged if you would contact Martin McPolin to discuss your recollection of the events that night."*

20. There was then a follow up letter sent by Mr. McPolin on 29th March, 2018, which merely referred to the letter of 24th January, 2018 and stated that they would be obliged to hear from the gardaí in response to that letter.

21. Mr. McPolin stated that there were a number of telephone calls subsequent to that, passing between his office and the gardaí. In late March 2018, he managed to speak to Garda Laird. He asked him to look into the matter and to come back to him. He said that Garda Laird did call him back, but he missed him on that occasion and that when he phoned Garda Laird back, he was not able to contact him, as he was on night duty at that time. He did not get to speak to Garda Laird subsequent to that phone call in late March 2018.

### **The Evidence of Garda David Laird**

22. Garda Laird stated that on the night of the accident, he received a call from the Dublin Fire Brigade that there had been a crash on the road leading from Clonee to Ongar Village. When he arrived at the scene, the two occupants of the vehicle had been removed by ambulance to hospital. He described the locus as being a long road with a slight left bend. There was a clear line of vision for over one hundred yards. On the left, there was a footpath and then a grass verge between it and the road. The front of the car had impacted heavily with a lamppost. Garda Laird was of the opinion that this was indicative of considerable speed at the time of the impact. The car was completely on the grass verge. It was not encroaching onto the road. Accordingly, Garda Laird took the tax and insurance discs, but left the vehicle in situ. The only other damage to the car, was that the windscreen was severely cracked, but it had not shattered.

23. Garda Laird stated that he went to the accident and emergency department of Connolly Hospital. He inquired of the triage nurse as to whether a male and female had come in, who had been involved in an RTA. The nurse pointed out the plaintiff and another male, who were sitting on a bench seat. They appeared to Garda Laird to be involved in an argument among themselves. As he approached them, they put their heads down and went quiet. They refused point blank to talk to him.

24. Garda Laird stated that he noticed that the two people, being the plaintiff and Mr. Sheridan, had glazed eyes. He also detected a smell of alcohol, but he could not say from whom it came. He stated that had he seen either of them driving, he would have formed the opinion that they were probably guilty of the offence of driving having consumed more than the permitted level of alcohol. However, he could not prosecute either of them, as he had not seen them driving, nor had he any other evidence that they had actually driven the vehicle. Thus, there was no criminal prosecution in the matter. As no statement of complaint had been made, there was no civil investigation as such. He returned the keys to Mr. Sheridan and told him that the vehicle had been left at the scene.

25. Garda Laird stated that as he was not able to get names and addresses from the plaintiff or Mr. Sheridan, he returned to the triage nurse and obtained two of the usual stickers, which are compiled by the triage team, giving the names, addresses and dates of birth of each of the parties.

26. Garda Laird stated that he was not aware of any of the correspondence that had passed between Mr. McPolin and the gardaí. He stated that if he had been contacted in relation to the address of Mr. Sheridan, he would have indicated that he did have an address for him, however, he would not be able to give that out over the telephone. Instead, the solicitor would have to go through the normal channels, by making a request of the Superintendent. The Superintendent would then instruct Garda Laird to release that information in writing to the solicitor. He stated that if his Superintendent had authorised him to give Mr. Sheridan's address to Mr. McPolin, he would have done so.

27. Garda Laird further stated that over the years he had a number of addresses for Mr. Sheridan. In 2011, he had an address for Mr. Sheridan at 12 The Dales, Manorfield, Dublin 15. He had obtained this address from the triage team, when he had attended at the A&E department of Connolly Hospital on the night of the accident. From the PULSE system, he was able to ascertain that in 2012, there was an address for Mr. Sheridan at No. 2 Cornerfield, Clonsilla, Dublin 15. In 2014, there was a further address recorded on the PULSE system, also in Clonsilla which was, in fact, Mr. Sheridan's mother's address. Garda Laird stated that if requests had been made of him, he could have given these addresses to the plaintiff's solicitor.

### **Conclusions**

28. The MIB is not a tortfeasor. It is a body which has been incorporated pursuant to the Companies Acts. Its function is to provide compensation to persons who are injured as a result of the negligent driving of other persons, whose driving is not covered by a valid policy of motor insurance at the time of the accident. However, where a person is injured as a result of such negligent driving, they are still obliged to sue the offending driver in the usual way. The usual procedure is for the plaintiff to issue proceedings against the uninsured owner and/or driver and also naming the MIB as a co-defendant. If the plaintiff succeeds in establishing liability on the part of the uninsured driver, he or she can then recover such judgment directly from the MIB.

29. Clause 2 of the 2009 agreement provides for the circumstances and means by which the terms of the agreement may be enforced. The relevant parts of Clause 2 are in the following terms:-

#### **"2. Enforcement of Agreement**

*A person claiming compensation by virtue of this Agreement (hereinafter referred to as the claimant) must seek to enforce the provisions of this Agreement by:-*

*...*

*2.3 citing MIBI as co-defendants in any proceedings against the owner and or/user of the vehicle giving rise to the claim except where the owner and user of the vehicle remain unidentified or untraced."*

30. Clause 6 of the agreement sets out the provisions where there is an unidentified or untraced vehicle, owner or user. It is in the following terms:-

#### **"6. Unidentified or Untraced Vehicle, Owner or User**

*The liability of MIBI shall, subject to the exclusions of Clause 5 above, extend to the payment of compensation for the personal injury or death of any person caused by the negligent use of a vehicle in a public place, where the owner or user of the vehicle remains unidentified or untraced."*

31. It is clear from the terms of the agreement, that the MIB may only be sued as a sole defendant where the owner or user of the offending vehicle, remain unidentified or untraced. In this case, the driver of the plaintiff's car, Mr. Glen Sheridan, was always identified. There is no dispute in relation to that. The key issue for determination is whether he remained untraced once he left the accident and emergency department in Connolly Hospital on the night of the accident.

32. The evidence of the plaintiff was that she had no idea as to the whereabouts of Mr. Sheridan from the night of the accident, until she saw him in the corridor outside the court in April 2018. She stated that on one occasion, she had telephoned Mr. Sheridan's mother and asked her to pass on a message to her son, that he was likely to be prosecuted for some offences arising out of his driving of the vehicle on the night in question. The plaintiff stated that Mr. Sheridan's mother agreed to pass on that message. She did not make any other inquiries as to the whereabouts of Mr. Sheridan.

33. The plaintiff engaged a solicitor to act for her in the matter. Mr. McPolin stated that at all times, the plaintiff instructed him that she did not know of Mr. Sheridan's whereabouts.

However, she had not told him about the phone call to Mr. Sheridan's mother. Mr. McPolin made inquiry of the gardaí seeking production of a garda abstract report. It appears that by letter dated 13th November, 2012, Mr. McPolin was informed by the garda authorities that the investigating garda was Garda David Laird of Unit B, Cabra Garda Station. According to the date stamp on the letter, that letter was received by Mr. McPolin's office on 16th November, 2012. While there may be a file note dated 4th December, 2012, indicating that there was no garda abstract report available, which information may have come about as a result of subsequent telephone calls towards the end of November 2012, it is accepted that no effort was made to make direct contact with Garda Laird prior to 2018.

34. Had the plaintiff, or more particularly her solicitor, made contact with Garda Laird subsequent to 16th November, 2012, he would have been in a position to furnish two addresses for Mr. Sheridan within the jurisdiction. He had the initial address, which he had obtained from the triage nurse on the night of the accident and there was also a subsequent address recorded on the PULSE system during 2012. If the request had been made later in 2014, a third address being Mr. Sheridan's mother's address was also recorded on the PULSE system that year.

35. In these circumstances, it is simply untenable to argue that Mr. Sheridan remained untraced since the time of the accident. If Garda Laird had been asked, he would have confirmed that he did indeed have addresses for Mr. Sheridan. He would not have been able to give those addresses out over the phone for data protection reasons, but if a request had been routed through his District Officer, he would then have furnished the information in writing to the plaintiff's solicitor.

36. The Oxford English Dictionary defines the word "untraced" as meaning: "not found or discovered by investigation." In this case it is not possible to say that the whereabouts of Mr. Sheridan were not found or discovered by investigation, because no enquiry was made of Garda Laird, who had the requisite information all along. In these circumstances, I am not satisfied that Mr. Sheridan was an untraced driver, within the meaning of the 2009 Agreement.

37. As the MIB can only be named as a sole defendant in circumstances where the owner or driver of the offending vehicle remain unidentified or untraced, the plaintiff has not established an entitlement to sue the MIB as a sole defendant in these proceedings. Accordingly, I must dismiss her claim.

38. There were other issues canvassed in the course of argument, such as whether the plaintiff allowed herself to be carried in the vehicle knowing that Mr. Sheridan did not have insurance cover to drive the vehicle, whether she allowed herself to be carried in the vehicle knowing that Mr. Sheridan had consumed an excessive quantity of alcohol and whether the claimant had breached Clause 3.4 of the agreement, which provides that the claimant shall cooperate fully with An Garda Síochána or any other authorised person in their investigations of the circumstances giving rise to the claim; however, in view of the findings made on the primary issue in this case, it is not necessary to make any determination on these issues.