Neutral Citation Number: [2005] IEHC 34

**THE HIGH COURT**
**Record Number: 2002 No. 15091P**

**Between:**
**Nuala Quinn**
**Plaintiff**

**And**

**Des Duffy and Maxol Limited**
**Defendant**

**Judgment of Mr Justice Michael Peart delivered the 16th February 2005:**

I do not propose to detail all the evidence which I have heard, but rather to make certain findings of fact based on the evidence which I have heard and I do so, as required, on the basis of a balance of probability. Mathematical certainty is neither possible nor required. At this remove in time from the date of this accident, it is inevitable that memories will have faded at least to some extent, but it is possible for the Court to find the probable causes of this accident from what has been stated.

The fact that the Court appears to favour one version of what happened rather than another, or indeed a mix of both accounts, does not mean that the Court believes that either the plaintiff or the defendant is being deliberately untruthful. Far from it – in fact I am of the view that all witnesses have given their evidence honestly and truthfully as far as their recollections allow. But inevitably the way in which the accident happened appears different depending on whether one is plaintiff or defendant.

First of all I am satisfied that on this bright and clear morning the defendant was driving at a reasonable speed as he travelled behind the truck before overtaking. I am also satisfied that the plaintiff cannot be correct in her estimate of what speed he was doing as he overtook it. It could not be so on the evidence which has been given that he was doing anything like 80mph or more even. Without going into the minutiae of the evidence which I have heard about time, speed and distance travelled in certain times dependent on speed and so on, I am satisfied in a general way that in order to overtake this truck, assuming that it was doing something like 40mph, the defendant would need to have accelerated to about 60mph. Indeed one's own experience of driving would confirm that he must have done this at least. He may well have exceeded that speed to some extent in order to complete his manoeuvre.

The defendant was travelling along a national primary road which was 19 feet wide in total excluding grass margins. Each carriageway was 9.5 feet in width. But there was ahead of him a junction with a minor road joining this main road at both sides – in other words a crossroads. That was a potential danger for anybody passing a truck at the point the defendant decided to pass and required some extra care. Because of that fact, the Co. Council had placed a warning sign, back from this junction by about 126 yards, plenty of time under normal circumstances for a driver passing it to take necessary care as he/she approached the crossroads, in case there was any vehicle waiting to exit onto or across the main road.

I do not consider that there is any evidence of excessive speeding on the part of the defendant, but I am satisfied that he did not see the warning sign and therefore took no particular care coming to the junction, for the simple fact that he was unaware of its existence. By not seeing the sign he had deprived himself of that opportunity to take extra care. It matters not whether his view of the sign was or was not obscured by the truck in front of him. He ought to have been in a position to see it at a distance of 126 yards back from the junction, and it is in this way that I believe that the defendant must bear a considerable share of the blame for the accident. I am of the view that had he seen the sign, he either would not have overtaken at this point, or ought not to have done so, and at the very least would have been on the look-out for somebody such as the plaintiff. The evidence is that he did not sound a horn, and this indicates to me not only that he was not aware of the plaintiff's presence at the junction, but was in all probability not even aware of the junction at all.

As far as the plaintiff is concerned, I am satisfied that she is being completely truthful when she says that she did not remain at the stop line but went up to the yellow line to get a better view. She is well familiar with this road junction and knows that she is unable to get an adequate view of the road if she wishes to turn left. However, I am satisfied on the balance of probability that she must have come a little beyond the yellow line, either by moving forward from her original stopping position or by actually stopping a few feet beyond the yellow line. That is the only reasonable explanation for the nature of the damage caused to the front of her car. If she was stopped at or just behind that line the defendant's car would have had to be much further over to her side than the evidence shows. I am satisfied that at the point of impact the defendant must

have been close to the centre of the road because the left front wing of his car hit slightly the right side of the truck and there is no evidence that the truck was over the white line at any point.

I cannot decide whether the plaintiff's car was stationary or moving at the point of impact but one way or the other I feel she must have been further out than she recalls, or ought to have been, especially given her knowledge of this junction. I feel that she probably looked to her right, as one does in these circumstances, and probably moved forwards either just before she ensured that her way was clear to her left, or without checking to her left at all – otherwise she would have seen the defendant's car sooner.

However the defendant had the primary duty in my view to take care as he overtook the truck, and for that reason I find him to be liable to the extent of 80%, and the plaintiff to be 20% liable on the basis of contributory negligence.

**Injuries:**

The plaintiff suffered neck shoulder and back pain in this accident. She would also have been shocked greatly by the impact. That would be natural. I am not satisfied on the basis of probability that she can reasonably attribute her low back symptomology or her Carpal Tunnel Syndrome to the accident. She has had back difficulties in that area in the past before this accident, and had undergone a number of x-rays for that.

Mr Walshe has given evidence that the causes of Carpal Tunnel Syndrome can be various, such as rarely from a Collis fracture of the wrist, sometimes from rheumatic disease, and also from an under active thyroid. The plaintiff has been diagnosed as suffering from an under-active thyroid. He has described it as extremely unlikely that it has resulted from the trauma of the accident.

However there can be no doubt but that she sustained a nasty neck and shoulder injury. She may have had some low back symptoms in the immediate aftermath of the impact but nothing which could be termed long-term. For that there have been other more likely causes.

I am also satisfied that there have been other reasons for her depression, which while perfectly understandable and for which she is entitled to the Court's sympathy, nevertheless cannot be placed at the door of the defendant.

I award the sum of €40,000 for general damages for the past pain and suffering, and in view of the good prognosis I award the sum of €8000 for the future, to which I add the sum of €4000 agreed special damages. That gives a gross figure of €52,000.

Allowing for a deduction of €20% for contributory negligence, I give judgment in the sum of €41,600 and costs.