THE HIGH COURT

[2012 No. 11439 P.]

BETWEEN

KEN DEVITT

PLAINTIFF

AND

ROBERT LAWLOR, PERMANENT TSB FINANCE LIMITED AND

MOTOR INSURERS BUREAU OF IRELAND

DEFENDANTS

JUDGMENT of Mr. Justice Barr delivered on the 12th day of May, 2017

Introduction

1. The plaintiff's action herein arises out of a road traffic accident which occurred on 21st October, 2004. At that time, the plaintiff's vehicle was crashed into by a vehicle driven by the first named defendant. It has been accepted for the purposes of this action, that the accident was caused due to the negligent driving of the first named defendant. It has been further agreed that the court can enter judgment in favour of the plaintiff in the sum of €75,000 as against the first named defendant.

2. It is accepted by all the parties that the first named defendant did not have a valid policy of motor insurance to cover his driving at the time of the accident.

3. The first named defendant had originally held the vehicle as lessee under the terms of a lease agreement entered into between the first named defendant and the second named defendant on 10th July, 2003. On 6th September, 2004, the second defendant had sent a termination notice to the first defendant, informing him that the leasing agreement was being terminated due to his failure to make the payments which were due under the lease agreement. The issue which the court must decide is whether the second defendant was the owner of the first defendant's vehicle at the time of the accident and is therefore liable to the plaintiff pursuant to the provisions of s. 118 of the Road Traffic Act 1961.

4. The second defendant maintains that having regard to the provisions of s. 49(1)(a)(ii) of the Road Traffic Act 1994, the first defendant was the owner of the vehicle at the time of the accident and as such, the second defendant is not liable to the plaintiff for the negligent driving of the first defendant on that occasion. The second defendant maintains that the plaintiff should seek to recover his damages as against the third defendant, the Motor Insurers Bureau of Ireland (hereinafter: M.I.B.I.), on the basis that his injuries were caused by an uninsured driver and owner of the relevant vehicle.

Background – the Leasing Agreement

5. From the documents submitted, it appears on 10th July, 2003, the first defendant entered into a leasing agreement, known as a Motor Plan Lease – Non-Consumer, For Business Users, with the second defendant. Under the said agreement, the second defendant purchased a Fiat Doblo van, registration number 03-TN-1790 for the first named defendant. Under the agreement, the first defendant agreed to purchase the vehicle from the second defendant over a period of 61 months, by means of monthly payments of €216.14, plus VAT, which payments were to commence on 16th August, 2003.

6. The agreement was signed by the first defendant on 10th July, 2003. It was signed by a Mr. Buckley on behalf of the second defendant on 11th July, 2003. Throughout the agreement, the second defendant is referred to as being the owner of the vehicle.

7. On the first page of the agreement, under the heading "*Notice of Interest Acknowledgment*", it was indicated that the first defendant had insured the vehicle with AXA Insurance company at its branch in Rathdowney, Co. Laois. The first defendant had signed that portion of the front page to confirm the taking out of insurance on the vehicle.

8. On the following page of the agreement, there were a number of terms and conditions. Clause 5 thereof dealt with the issue of insurance. Clause 5(i) is the relevant portion for present purposes. It was in the following terms:-

> *"(i) Until such time as the owner's interest in the vehicle has been completely discharged, the lessee shall at its own expense insure the vehicle for the full replacement value against loss or damage by accident, fire or theft and all risks which can be covered by insurance in the type of business/activity for which the vehicle is being used and to cover any driver who shall drive the vehicle at any time, the lessee shall procure that the vehicle shall be insured with reputable insurers under a comprehensive policy of insurance and the policy so affected shall be produced to the Owner upon demand. The insurance shall carry an endorsement recording the Owner's interest in the vehicle. The lessee shall irrevocably instruct the insurers to make all payments under the policy to the Owner in respect of any loss or damage to all or any part of the vehicle. The lessee shall punctually pay all premiums (and other sums) required to keep the said insurance effective and shall produce to the Owner all receipts for the premiums on demand and if the Lessee fails to do so, the Owner shall be entitled at the Lessee's expense to insure the vehicle and recover the costs thereof from the Lessee."*

9. Clause 6 of the terms and conditions set out the circumstances in which the owner would be entitled to terminate the agreement. Clause 6(a) is the relevant part of the agreement and it provided as follows:-

> *"(a) If the Lessee shall fail to pay any rental amounts or other sums payable under this Agreement within fourteen days of its becoming due or fail to observe or perform any of the terms and conditions of this Agreement or shall do or allow to be done, any act or thing which in the opinion of the Owner may prejudice the Owner's rights in the vehicle or any part thereof… Then in each and every such case the Lessor may at any time thereafter notwithstanding any subsequent acceptance by the Owner of any rental amounts (but without prejudice to any other rights hereunder or any pre-existing liability of the Lessee to the Owner) by notice in writing to the Lessee forthwith for all purposes terminate the hiring hereunder and thereafter the Lessee shall no longer be in possession of the vehicle with the Owner's consent, who shall thereupon become entitled to the immediate return of the vehicle and the Lessee shall deliver up the vehicle and all documents relating thereto to the Owner or his agent at the address of the Owner stated in this Agreement or at such*

other address as the Owner may specify or if not so required, shall hold the vehicle available for collection by the Owner or its agent. The Owner or its agent may without notice retake possession of the vehicle and for that purpose may enter upon any premises or land, on or in which the vehicle is or is believed by the Owner or its agent to be situated belonging to or in the occupation or control of the Lessee."

10. Clause 7 of the agreement dealt with the provisions relating to return of the vehicle upon termination. It provided as follows:-

"Upon the termination of this agreement for any reason, the lessee shall forthwith at its cost and risk return the vehicle to the Owner by delivering the same to such a place as the Owner shall specify in good order and condition and if the lessee fails to do so within ten days, the Owner shall have the right without notice to enter upon any premises where the vehicle or any part thereof may be and take possession of the same without prejudice to the right of the owner to retake possession earlier if the agreement is terminated by virtue of Clause 6."

Background – the First Defendant's Payment History

11. Evidence was given by Ms. Maria Shine. She worked in Permanent TSB Finance from 2001 until 2012, when she went to work for First Citizens Finance, when they took over the finance business of Permanent TSB in 2012. She stated that she was familiar with the leasing agreement relating to the first defendant and also in relation to the history of the operation of that agreement.

12. Ms. Shine stated that the Motor Lease Plan which was signed by the first defendant on 10th July, 2003, was the initial leasing agreement. As could be seen from the first page of the agreement, when entering into the agreement, the first defendant had to provide evidence that he had obtained insurance in respect of the vehicle. It appeared that he had done so, as there was reference to AXA Insurance company at its Rathdowney branch in Co. Laois. That portion of the agreement was also signed by the first defendant. Ms. Shine stated that the bank did not check the insurance details, as insurance companies would not give them details of the contract which they had entered into with the lessee. She stated that while there was a continuing obligation on the lessee to maintain adequate insurance cover in respect of the vehicle, the bank did not check these details during the operation of the leasing agreement, for the same reason.

13. Ms. Shine stated that under the terms of the agreement, the lessee had to make certain monthly payments to the bank. If these payments were not made, the first step would be that a letter would be written to the lessee informing him that the direct debit payment had not come through. Ms. Shine stated that where a lessee ran into difficulties in making his monthly payments, the bank would try to resolve the matter with him. However, if there was a repeated default on the part of the lessee, then the agreement could be terminated pursuant to Clause 6 of the agreement. Even where a termination notice had been sent by the bank to the lessee, the bank would still try to negotiate a payment schedule with the lessee. If the lessee came up with satisfactory proposals in respect of the monthly payments going forward and if he cleared all the arrears due under the agreement, then the termination letter would be nullified. The lessee would continue to hold the vehicle under the terms of the agreement as amended in relation to a payment schedule. However, Ms. Shine emphasised that the termination notice would not be nullified, unless and until all arrears had been discharged by the lessee.

14. In relation to ownership of the vehicle, Ms. Shine stated that this rested with the lessor until the leasing agreement had been completed in full. Even where the agreement had been terminated by the lessor, the lessee would still be liable to make repayments under the agreement until the vehicle was repossessed.

15. In its written submission, the second defendant confirmed the evidence as given by Ms. Shine that, in accordance with the stated terms and conditions of the lease plan agreement, unless and until a final lease payment was made, the second defendant remained the owner of the motor vehicle. They confirmed that a final lease payment had not been made by the first defendant in this case.

16. From her examination of the documents contained on the file and in particular having regard to the File Note in the first defendant's name in respect of lease account No. 00593057, which was at Tab 6 of the booklet handed into the court, it was clear that the first defendant ran into difficulties in relation to meeting the payment schedule within a few weeks of the commencement of the agreement. The bank had sent a termination letter to the defendant on 23rd September, 2003. It appeared that that letter had been nullified, because the first defendant cleared the arrears that were then standing against the account.

17. It appeared that on 17th June, 2004, the bank sent another termination notice to the first defendant. It appeared that in July 2004, the first defendant had promised to clear the arrears on the account.

18. A third termination notice was sent on 6th September, 2004. It was addressed to the first defendant at his home address at Bawanughra, Rathdowney, Co. Laois. In that letter, the arrears were stated to have been €387.05. The letter was in the following terms:-

"Dear Mr. Lawlor

Due to default in repayment of instalments, and in accordance with the terms and conditions of the above mentioned agreement, we hereby terminate the said agreement.

Yours sincerely

Lynette Moran

Collections Department."

19. It appeared that in September 2004, the first defendant made a payment to the second defendant of €300. In October 2004, he made a further payment of €200.

20. From the file note, it appeared that on 22nd November, 2004, the first defendant advised the bank that he was then out of work. He also advised that the vehicle was in the garage getting parts fixed. On 30th November, 2004, when the bank contacted him on his mobile phone, he apparently stated that the vehicle had been crashed six weeks previously and was at a particular garage for repairs. There were further communications between the representatives of the bank and the first defendant, wherein the first defendant stated that he was out of work and would not be able to pay for the cost of repairs to the vehicle. It appears that the vehicle was retained at the garage, without any repairs being carried out, as the first defendant could not pay for same. Eventually on 30th

September, 2005, the bank sold the vehicle to a salvage company for €1,400.

21. In cross examination, Ms. Shine confirmed that there had been three termination notices in this case. The first was sent on 23rd September, 2003. The second on 17th June, 2004; and the final such notice was sent on 6th September, 2004. She stated that it appeared from the file that a further letter was written on 20th September, 2004, informing the first defendant that the bank intended to collect the vehicle from him within three days. She stated that under Clause 7 of the agreement, when the contract was terminated by the bank, they could repossess the vehicle without taking any further steps.

22. In relation to insurance on the vehicle, she stated that Clause 5 of the agreement provided that the lessee had to effect adequate insurance cover on the vehicle. This had to cover the value of the vehicle and also provide third party cover. The owner was entitled to demand sight of the insurance policy and evidence that the premium had been paid. When asked as to whether the bank had ever sought evidence of the existence of the policy, or evidence of the payment of the premium due thereunder, she replied that the bank had not done so. She stated that this was not usually done during the agreement, other than at the opening of the account. When signing this agreement, the first defendant had stated that he had insurance cover with AXA. She stated that the bank could not follow up on this because, as already stated, the insurance companies would not give out such information due to data protection issues. She accepted that if the bank had been noted on the policy, as was provided for under the agreement, then they would furnish the bank with this information. She accepted that there was no evidence on the file that the bank had tried to get any such information from the insurance company, or from the first defendant.

23. Ms. Shine stated that following termination of an agreement, the contract could not come back into effect until all arrears had been paid by the lessee. Until such time, the termination notice remained in full force and effect. She accepted that the bank could have repossessed the vehicle on foot of the September termination notice.

24. It was put to the witness that Mr. Michael Mulligan, an insurance investigator retained by the M.I.B.I., had spoken to a Mr. O'Dwyer in the bank. Mr. O'Dwyer had stated that the bank always saw themselves as being the owner of the vehicle. They had terminated the agreement because they were unhappy with the lessee's payment history. Mr. O'Dwyer had stated that there was no letter on file withholding their consent to the first named defendant's driving of the vehicle. Ms. Shine accepted that that would appear to be correct. In re-examination, she stated that the first defendant was driving subsequent to the September termination notice, without the express consent of the second defendant.

25. Evidence was given by Mr. Michael Mulligan on behalf of the third defendant. He stated that on 29th September 2005, he had spoken on the telephone to Mr. O'Dwyer, a representative of the second defendant. Mr. O'Dwyer confirmed that the bank had purchased the vehicle for the first defendant. They regarded themselves as being the owner of the vehicle until the first defendant paid a certain amount due under the contract, which had not been done by the first defendant.

Submissions

26. At the conclusion of the case, submissions were made on behalf of the third defendant. Counsel submitted that the present case was covered by the decision of the Supreme Court in *Homan v. Kiernan* [1997] 1 I.R. 55, where the first defendant had entered into a leasing agreement with the second defendant, but had failed in his obligations under the agreement to insure the vehicle. The plaintiff had suffered injury when he was involved in an accident, due to the negligent driving of the first defendant's truck. The point at issue between the parties was whether the second defendant, as owner of the truck, should satisfy the amount of damages payable to the plaintiff, or whether the M.I.B.I. should do so. The second defendant had conceded that it was the owner of the vehicle, but contended that the consent it had given to the first defendant to drive the vehicle, had been revoked by his failure to insure the vehicle and that accordingly they had no liability to the plaintiff.

27. The Supreme Court held, in allowing the first defendant's appeal; firstly that at the date the first defendant signed the agreement, there had been no vehicle and no agreement in respect of which the declaration that he had insured the vehicle in accordance with the agreement could operate, since he had not yet been approved for a loan. Secondly that the second defendant's failure, after accepting him for a loan, to check whether he had insurance in force, indicated that it was not concerned about whether he had a policy, or whether he would keep it in force. Thirdly that it would be contrary to the policy of s.118 of Road Traffic Act, 1961 and a great hardship on the public, that leasing companies might let vehicles out on the road, as owners, and yet be in a position to say that the driving was not with their consent because no insurance had been taken out. Lastly, it was held that in the circumstances of the case, the failure of the first defendant to insure the vehicle, did not vitiate the consent which the second defendant had given him to drive it.

28. Counsel submitted that in this case, a similar set of circumstances existed. The first defendant had an obligation under the agreement to effect insurance, on the vehicle. He had not done so. However, notwithstanding the termination notice, the second defendant had permitted him to continue driving the vehicle and had not checked whether or not he had effected insurance on the vehicle.

29. Counsel submitted that clause 7 of the agreement provided that upon termination of the agreement, the lessee should forthwith return the vehicle to the owner. It went on to give the owner a right to take repossession of the vehicle. In this case, the first defendant had not returned the vehicle to Permanent TSB, the owner, and no proceedings had been issued against him for the return of the vehicle. It was submitted that notwithstanding the termination notice dated 6th September 2004, the second defendant had permitted the first defendant to continue using the vehicle. In such circumstances, they were the owner of the vehicle and were liable to the plaintiff pursuant s. 118 of the Road Traffic Act 1961. Counsel accepted that s. 49 of the Road Traffic Act 1994 defined the owner under a leasing agreement in the following terms:-

> *"Owner', when used in relation to a mechanically propelled vehicle, trailer or semi-trailer, which is the subject of a hire-purchase agreement or letting agreement, means the person in possession of the vehicle under the agreement."*

30. Counsel submitted that the first defendant was not in possession of the vehicle under the agreement. The agreement had been terminated by the bank on 6th September, 2004, some 40 days before the accident. Thereafter, the first defendant had been driving the vehicle with the consent of the owner, but not pursuant to the leasing agreement, as that had been terminated and that termination notice remained valid until the first defendant discharged all the arrears due under the agreement. That had not been done, so the termination notice was not nullified, meaning that the agreement remained terminated; accordingly the first defendant did not come within s. 49 of the 1994 Act.

31. Counsel submitted that based on the evidence given by Mr. Mulligan, the second defendant had acknowledged that they regarded themselves as the owners of the vehicle until such time as the first defendant paid a certain amount of money off the loan and discharged the arrears. In this case, the first defendant had not paid that amount.

32. In these circumstances, the M.I.B.I. made the case that the second defendant was the owner of the vehicle involved in the accident on the public highway, for which the driver of the vehicle, was entirely responsible. In these circumstances the bank, as owner of the vehicle, was liable to satisfy the plaintiff's award of damages pursuant to s. 118 of the Road Traffic Act 1961.

33. In his oral and written submissions, Mr. Kearney B.L., counsel for the second defendant, stated that the *Homan* case referred to where the driver had been driving with the consent of the finance house. Under the leasing agreement in that case, the lessee had to take out insurance on the vehicle, but had not done so. The finance house had argued that his failure to take out appropriate insurance, had vitiated the leasing agreement and therefore his driving of the vehicle was no longer done with their consent. The Supreme Court held that the lessee's failure to take out insurance, did not vitiate the leasing agreement. The court held that the lessee continued to drive the vehicle with the consent of the finance house. The Supreme Court held further that the finance house had been negligent in allowing the vehicle out onto the road, without ensuring that there was adequate insurance in place.

34. Counsel submitted that the *Homan* decision was felt to be very harsh and that an effort to ameliorate that position had been catered for in s. 49 of the 1994 Act. That Act defined the "owner" under a hire-purchase agreement, as the person who was in possession of the vehicle "under the agreement". Counsel submitted that in this case, the first defendant had at all times been in possession of the vehicle "under the agreement". Accordingly, he was the owner of the vehicle at the time of the accident and as he did not have insurance in place, the judgment against him had to be satisfied by the M.I.B.I.

35. Counsel submitted that the third defendant had argued that, as the agreement had been terminated, the provisions in the 1994 Act did not apply. Counsel submitted that that was too restrictive an interpretation, as the agreement referred to in s. 49 of the 1994 Act, did not refer to a validly subsisting hire-purchase or letting agreement. The section refered to a vehicle, "the subject of a hire-purchase or letting agreement". The vehicle in this case was the subject of such an agreement, so the section applied to this case. Counsel submitted that the third defendant could not argue that as the agreement had been terminated, the bank was the owner of the vehicle.

36. In the alternative, he submitted that if the agreement had been terminated by the termination notice dated 6th September, 2004, then the first defendant was driving without the consent of the bank. His obligation at that time was to return the vehicle to the bank. He did not do that, so he was not driving with their consent at the time of the accident. Accordingly the second defendant did not come within the provisions of s. 118 of the 1961 Act. In such circumstances, the driving of the first defendant was uninsured and thus became the responsibility of the M.I.B.I.

37. In reply, Mr. Duggan B.L., on behalf of the third defendant, submitted that the 1994 Act, was not enacted to set aside or ameliorate the decision reached by the Supreme Court in the *Homan* case. That decision had been delivered after the 1994 Act came into force. It had been handed down on 22nd November 1996. He submitted that the second defendant was trying to adopt a teleological approach to s. 49 of the 1994 Act, in an effort to avoid their liability to the plaintiff. The key words in that section were "under the agreement". In this case, the agreement had been terminated, so the first defendant was not in possession of the vehicle "under the agreement" and accordingly s. 49 of the 1994 Act did not apply.

38. Counsel submitted that there was no disagreement, that the second defendant was the owner of the vehicle. It had terminated the agreement, but left the first named defendant in possession of the vehicle. It had taken no steps to recover the vehicle. They had entered into ongoing negotiations with him to see if he could clear the arrears. Accordingly, he continued driving the vehicle after the termination notice dated 6th September, 2004 with the consent of the second defendant. This was sufficient to render the second defendant liable under s. 118 of the 1961 Act. In such circumstances this was not an M.I.B.I. case.

Conclusions

39. The central issue in this case is what was the effect of the termination notice sent on 6th September, 2004. I accept the evidence of Ms. Shine that where there has been a default on the part of the lessee in making the monthly payments due under the agreement, the bank will always try to negotiate with the lessee, to see if there is any further agreement that can be reached between them in relation to the leasing of the vehicle. Such negotiations will take place even after a termination notice has been served.

40. I note that in this case, there had in fact been three termination notices served on the defendant. The first of these was dated 23rd September, 2003. According to Ms. Shine, that termination notice was nullified some time later, when the first defendant cleared the arrears on the account. It appears that a second termination notice was sent on 17th June, 2004. Ms. Shine stated that in July the first defendant had accepted that he had been in arrears and promised to clear them. For this reason the bank had not acted on that termination notice. She stated that the first defendant defaulted again during the summer of 2004 and that it was that default which had prompted the issuance of the third termination notice on 6th September, 2004.

41. Thus, it appears that, whatever about the strict legal rights which the bank may have, had, once it validly terminated the agreement, in particular, the right to immediately repossess the vehicle, in reality the bank will always try to reach a compromise with the lessee. They will negotiate with him, to see if an agreement can be reached in relation to an acceptable level of monthly payments going forward. Even if agreement can be reached on that aspect, the termination notice remains in effect until the lessee discharges all the arrears on the account. Ms. Shine was very clear that it would only be when the arrears had been fully cleared, that any given termination notice would be nullified.

42. It was also accepted by Ms. Shine, that notwithstanding the service of the termination notice, the bank had not taken any steps to repossess the vehicle following on the service of such notice and prior to the time when the accident occurred on 21st October, 2004. Indeed, from the File Note, which was handed in detailing the various communications between the bank and the first defendant, it would appear that it was only some considerable time later, in September 2005, when it became clear to the bank that the first defendant would not be in a position to pay for the repairs to the vehicle, or discharge the arrears, or continue to make the monthly payments, that the bank eventually took steps to sell the vehicle to a salvage company.

43. Looking at the history of this account and in particular the actions of the second defendant following service of the various termination notices and having regard to the evidence giving by Ms. Shine, which I accept, it seems to me that service of a termination notice, has the effect of terminating the agreement, which can only come back into being when the termination notice has been nullified, when the lessee has agreed to make a certain level of payments going forward and has also discharged all the arrears due on the account. Thus, during the period following service of the termination notice and during which negotiations are held and during the time while the arrears are being discharged, the lessee is not holding the vehicle pursuant to the leasing agreement. He does however hold the vehicle at that time with the consent of the bank, being the owner.

44. In these circumstances, it seems to me that s. 49 of the 1994 Act does not apply, as the lessee does not hold the vehicle at that

time under the agreement. The termination notice dated 6th September, 2004 was very clear. It stated that the leasing agreement was terminated. However, the first defendant continued to hold the vehicle with the consent of the bank, as owner of the vehicle. In these circumstances, it seems to me that the bank is liable for any injury caused by the driving of the lessee, as he was deemed to be their servant or agent by virtue of the fact that he was driving the vehicle with their consent. In the circumstances of this case, where the agreement had been terminated by virtue of the notice dated 6th September, 2004 and had not been reinstated, because the arrears had not been discharged, the second defendant was the owner of the vehicle at the time of the accident and accordingly they are liable to the plaintiff pursuant to the provisions of s. 118 of the 1961 Act.

45. I do not agree with the submission made on behalf of the second defendant, to the effect that if the agreement was in fact terminated by the termination notice, dated 6th September, 2004, the driving of the first defendant thereafter was without the consent of the second defendant, as the first defendant was in breach of his obligation to immediately return the vehicle to the bank.

46. That assertion, misses the reality of the situation, which was that following service of the termination notice, the bank would not take steps to immediately repossess the vehicle, but would make contact with the leasee to see if any alternative arrangements could be put in place to secure the making of future rental payments and the discharge of arrears on the account. Ms. Shine was very clear in her evidence in this regard. In these circumstances, I am satisfied that the continued driving of the first defendant after 6th September, 2004, while enquires and negotiations were ongoing, was done with the consent of the second defendant.

47. Unknown to the second defendant at the time that it issued the termination notice dated 6th September, 2004, the first defendant was in breach of the leasing agreement, by failing to have his driving of the vehicle properly covered by a policy of insurance. However, based on the *Homan* decision, I am satisfied that such breach of the agreement on the part of the first named defendant, did not mean that the consent of the second named defendant was vitiated, so as to mean that the first defendant was no longer driving with the consent of the second defendant. Accordingly, the fact that the first defendant had not taken out adequate insurance cover at the time of the accident, did not mean that he was not driving with the consent of the second defendant at the time of the accident.

48. The second defendant's position was protected by clause 5 of the lease agreement, which not only placed an obligation on the lessee to effect comprehensive insurance cover on the vehicle; it also provided that the policy so effected shall be produced to the owner on demand. It further provided that there would be an endorsement on the policy recording the banks interest in the vehicle. This would enable the bank to obtain information directly from the insurance company, as to whether there was a valid policy of insurance in existence at any given time. In this way the second defendant, could ensure that its position was adequately covered by a valid policy of insurance.

49. In the circumstances, I am satisfied that the lease agreement had been terminated by the second defendant by virtue of the termination notice dated 6th September, 2004. Thereafter the second defendant, as owner of the vehicle, permitted the first defendant to drive the vehicle while enquires and negotiations were ongoing. Accordingly, the first defendant was driving the vehicle with the consent of the second defendant, when he negligently crashed into the plaintiff's vehicle on 21st October, 2004, causing the plaintiff personal injury, loss and damage. In these circumstances, the plaintiff is entitled to a joint and several judgment against the first and second defendants in the sum of €75,000.