Neutral Citation Number: [2011] IEHC 461

THE HIGH COURT

2009 144 P

BETWEEN

NOIRIN MCGARVEY (A MINOR) SUING BY HER FATHER AND NEXT FRIEND RONAN MCGARVEY

PLAINTIFF

AND

WILLIAM BARR

DEFENDANT

AND

ANTHONY DELAP

THIRD PARTY

JUDGMENT of O'Neill J. delivered on the 21st day of December, 2011

1. This case arises out of a tragic, fatal road traffic accident which occurred on 27th May, 2008, on the highway just outside the village of Dunlewey, Gweedore in the County of Donegal.

2. The plaintiff was then aged four years of age, her date of birth being 24th December, 2003. She was a backseat passenger secured in a baby seat in a Hyundai Trajet motorcar Registration Number KJZ 1231, being driven by her mother, Sonia McGarvey, towards the village of Dunlewey, when a black Jetta, Registration Number 08 DL 2302, which was owned and driven by the defendant, William Barr, which was coming from Dunlewey village, crossed from its side of the road into the path of the McGarvey vehicle, causing a very serious impact, as a result of which the McGarvey car went off the road to its left, down an embankment and quickly went on fire.

3. In the accident, tragically, the defendant's wife, who was a front seat passenger in the defendant's car, lost her life and the plaintiff suffered very serious spinal injury which has left her very seriously, permanently disabled.

4. The plaintiff's mother was also severely injured in the collision but appears to have made a significant recovery. The plaintiff's brother, Aogan, was also in the McGarvey car, but seems to have escaped serious injury. The defendant also suffered some injuries, namely, a subdural haemorrhage, but appears to have made a good recovery.

5. In his defence to these proceedings, the defendant pleads that he is not liable for any injuries suffered by the plaintiff because he contends that the collision which occurred was an inevitable accident resulting from a medical ailment experienced by him immediately prior to the collision causing him to lose control of his vehicle, and hence, the defendant says there was no negligence or breach of duty on his part. Subsequent to the delivery of his defence, the defendant caused the third party to these proceedings, Dr. Anthony Delap, to be joined as a third party. The third party is a registered medical practitioner in general practice in Donegal, and had been for many years the defendant's General Practitioner.

6. When the proceedings came on for hearing before me in May of this year, it was necessary to adjourn the proceedings to July, pending the hearing of criminal proceedings in the Circuit Court in Donegal. When the matter came on for hearing again in July of this year, a settlement was reached between the plaintiff and the defendant which was approved by the Court. Thereafter, the issue between the defendant and the third party continued to be litigated and it is that issue that I am now asked to determine.

7. The case made by the defendant against the third party is essentially twofold. First, that the third party was negligent in certifying, on 17th July, 2006, for the purposes of the Road Traffic (Licensing of Drivers) Regulations 1999, that the defendant was fit to drive for a period of three years from that date, and, secondly, that the third party was negligent in failing to have advised the defendant to stop driving at various stages in the period from 17th July, 2006, up to the date of the accident on 27th May, 2008.

8. The first essential feature of the defendant's case that must be examined is his contention that the proximate cause of the accident was a medical ailment experienced by him immediately prior to the accident which caused him to lose control of his vehicle and thereby absolving him of any negligence.

9. Evidence was given by Garda Frank Lavan, who was a member of An Garda Síochána, and a City and Guilds qualified Forensic Collision Investigator. He prepared a map of the scene of the accident and accompanying book of photographs.

10. From these, it can be seen that the defendant was travelling towards or into a gradual left-turning bend immediately prior to the accident, but in fact, the point of impact would appear to have been at the very start of the bend rather than in the bend. The uncontradicted evidence of Garda Lavan was to the effect that there were no brake marks on the road from the defendant's car, and the position of the front wheels of that car, as found by Garda Lavan upon his examination after the accident, were straight, suggesting that no evasive steering had been attempted by the defendant.

11. Evidence was given by Mr. Dermot Devanney. He had been travelling in the car immediately behind the defendant for some distance before reaching the scene of the accident. Mr. Devanney said he had followed the defendant through the village of Dunlewey and on to the scene of the accident. His evidence was that during all that time, there was nothing amiss with the defendant's driving, but when the defendant's car came to the scene of the accident, instead of taking the bend, he drove straight on into the path of the oncoming McGarvey car, causing the impact which, in turn, resulted in the McGarvey car going off the road, down an embankment and bursting into flames.

12. Immediately on this occurring, Mr. Devanney, on his mobile phone, contacted the Emergency Services, and at the same time went

to the assistance of the McGarveys, as he could see flames coming from their car. In so doing, he passed the defendant's car and saw the defendant sitting upright in the driver's seat, and he described him as appearing to be conscious, but dazed, and with his glasses askew, apparently from the inflation of the airbag. He said that as he passed the defendant's car, the defendant looked at him.

13. Evidence was given by Mr. Cathal Mulligan, a retained Fireman, who came to the scene in response to the call put through to the Emergency Services. He estimated that it would have taken him approximately fifteen minutes to reach the scene of the accident. When he arrived there, he first attended to the plaintiff and other members of the McGarvey family and then the defendant. He estimated that he spoke to the defendant about ten to fifteen minutes after his arrival at the scene i.e. twenty-five minutes to half and hour after the accident. He found the defendant sitting in the driver's seat of his car and that he was conscious. In response to his questions, the defendant was not able to remember where he was or where he was coming from. When asked if he was on any medication, he replied that he did not think so. When asked for his age, he was unable to give it, but was, without any difficulty, able to state his date of birth.

14. Evidence was then given by Mr. James McAllister, Station Commander with the Northern Ireland Fire and Rescue Services in Bangor, County Down. Mr. McAllister was returning to his home in Bangor when he came upon the scene after the accident had occurred. He immediately went to the assistance of the McGarvey family in getting them out of their car, which was visibly on fire at that time. When that was done, he went to the defendant's car. He approached the passenger side of the car. Mrs. Barr was in that seat, apparently unconscious. Mr. McAllister asked the defendant's permission to remove her dentures. The defendant gave that permission. Mr. McAllister was unable to reach across Mrs. Barr to release her seatbelt, so he asked the defendant to do this. The defendant complied with this request and reached down and released the seatbelt. Mr. McAllister said that the defendant remained seated in his car during all of this and that the defendant appeared to be coherent during all of his conversation with him.

15. The defendant, in his evidence, said he remembered driving through the village of Dunlewey and on to a point about twenty yards from the bend where the accident had happened, but had no memory of anything after that. Although he remembered his journey up to that point, he did not, in his evidence, say that he felt unwell in any way, such as feeling dizzy or light-headed or feint.

16. The meticulous record kept by the defendant of his blood pressure and pulse taken twice daily in the weeks leading up to the accident, and in particular, in the days before the accident, demonstrate that his blood pressure was very well controlled and his pulse rate was at an acceptable and predictable level for a person on a Beta Blocker.

17. In short, when the defendant got into his car to make the fatal journey, there does not appear to have been anything present in his blood pressure condition which explains what happened in this accident. The only relevant event in the months leading up to the accident was a complaint made by the defendant to the third party on 8th April, 2008, of having experienced what the third party recorded in his note as "fainting spells". The third party says that the words "fainting spells" were his words, and that the defendant's actual complaint, which was in Irish, as were all the consultations between them, was of a feeling of "queasiness" or light-headedness, which occurred in the evening when sitting down and was transient in nature.

18. When the defendant attended the third party on four further occasions before the accident, i.e. 15th April, 2008, 29th April, 2008, 1st May, 2008, and 6th May, 2008, there was no further mention of that complaint.

19. Given this history leading into the accident, it is difficult to see a convincing explanation of precisely what happened that resulted in the defendant's vehicle crossing onto the incorrect side of the road, into the path of the McGarvey vehicle.

20. If one accepts the defendant's evidence, that up to twenty yards back from the bend he was driving his vehicle in a normal fashion, only a very few seconds separated him, from that point, until the impact. If he was conscious and alert a few seconds before the impact, if a loss of consciousness was what caused a loss of control of his vehicle, it can fairly be said that the loss of consciousness was of a very sudden and abrupt kind. The expert evidence establishes, to my satisfaction, that this kind of loss of consciousness is only caused by catastrophic cardiovascular events. It is quite clear from the evidence that nothing of this kind happened to the defendant. Even with such catastrophic events, there is generally some degree of warning.

21. In his evidence, the defendant made no mention of any feelings of being unwell in the last moments of this journey, such as feeling dizzy, light-headed or faint, and as his memory was intact during that time, it is to be inferred that he did not experience any such feelings during this journey up to approximately twenty yards back from the bend.

22. Even allowing for a lack of precision on the defendant's part in his estimate of exactly where he was when his memory of events ended, it is clear that he remembered travelling through Dunlewey and onwards towards the scene of the accident, and therefore during that part of his journey, he was not troubled by feelings of dizziness, light-headedness or fainting.

23. Thus, if complaints of that nature are to be considered relevant as a cause of his loss of control of his vehicle, these ailments could only have arisen within seconds of the collision.

24. In this connection, it is to be observed that until the defendant's vehicle, as Mr. Devanney put it, failed to take the bend, but continued on a straight path into collision, the defendant's driving was in all respects impeccable. This suggests, convincingly, that up to that point, there was nothing amiss with the defendant, reinforcing the conclusion that the timeframe before the impact during which the defendant's driving went awry was extremely short and no more than a few seconds, as said before.

25. Even if the defendant did begin to experience a feeling of dizziness or light-headedness or of fainting, the question is would these sensations immediately have robbed him of his capacity to control his vehicle. Apart from the episode of syncope experienced by the defendant in December 2007, there is no suggestion in any of the evidence that any other experience the defendant had of either dizziness, light-headedness or the like, involved any loss of consciousness or any significant impairment of normal functioning. In the December 2007 episode, the evidence was, that before this, the defendant had seen black spots in front of his eyes, and had not been feeling well that day.

26. Was it the case, therefore, that the onset of an experience of dizziness, light-headedness or of fainting, occurring in that tiny time span, deprived the defendant of his capacity to control his vehicle such that it drifted, uncontrolled, into the path of the McGarvey vehicle.

27. Whilst I would accept that it might have been possible for this to occur in that tiny timeframe, I am far from persuaded that it was probable that this is how the events unfolded. If the alleged loss of control is to be explained by the defendant fainting, it is highly improbable that this could have occurred without warning. The medical evidence persuades me that before fainting, a person

experiences feelings that indicate that they are going to faint such that protective or alleviating measures can be taken. Clearly, in this case, this did not happen. The fact that the defendant was conscious and alert, immediately after the impact as seen by Mr. Devanney, strongly suggests that the defendant had not fainted immediately before the impact.

28. Similarly, it would seem very unlikely that a feeling of dizziness or light-headedness of such severity as to cause incapacity engulfed the defendant in such a short timeframe.

29. I find myself driven to a conclusion that the defendant has failed to discharge the onus on him of proving, on the balance of probabilities, that the accident was caused by a loss of control, due to a medical condition, and in my opinion, in seeking the cause of the accident, a momentary lapse of concentration is, at the very least, as likely to have been the cause, as a loss of control due to a medical mishap.

30. This conclusion means that the defendant has failed to establish a casual link between any breach of duty on the part of the third party and the occurrence of the accident and, of itself, would be sufficient to determine this action.

31. However, as most of the evidence in the case was addressed to the breach of duty issues, I will express my judgment on these.

32. The defendant first asserts that the third party was negligent and in breach of statutory duty in certifying, on 17th July, 2006, for the purposes of the Road Traffic (Licensing of Drivers) Regulations 1999, that the defendant was fit to drive for three years from that date.

33. The following are the relevant parts of the Regulations:

> *"Part 2*
>
> *Other Aspects of Physical and Mental Fitness*
>
> *Preamble*
>
> *Driving is more comfortable and safe if all medical conditions are under optimal control. Specialist opinion may be helpful in cases of doubt, not only to help decision-making when driving may no longer be safe but also to ensure a maximisation of health status and the provision of relevant compensatory measures i.e. spectacles, car choice, vehicle adaptations, physiotherapy.*
>
> *1. General*
>
> *(1) In the case of an applicant for a licence to drive a vehicle of any category, the medical examination shall take account of the following aspects of the applicant's physical and mental condition:*
>
> *. . . .*
>
> *condition of cardiovascular system*
>
> *. . .*
>
> *In so far as any condition of abnormality in any one or more of these aspects would affect such person's fitness to drive safely vehicles of that category having regard to—*
>
> *(a) . . .*
>
> *(b) the susceptibility of the person concerned to sudden incapacity, such as loss of consciousness, fainting or giddiness, which might affect such person's ability to operate the controls of the vehicle so as to bring the vehicle to stop safely, and*
>
> *. . .*
>
> *(2) Fitness to drive shall not be certified in the case of an applicant to drive a vehicle of any category who suffers from any condition or abnormality in any one or more of the aspects of such person's physical and mental condition set out in sub-paragraph (1) of this paragraph to such extent that the driving by the applicant of vehicles of the category to which the application relates would be a danger to the applicant or other road users.*
>
> *. . .*
>
> *4. Cardiovascular Diseases*
>
> *(1) Any disease capable of exposing an applicant for a first licence or a driver applying for a renewal of a licence to a sudden failure of the cardiovascular system such that there is a sudden impairment of the cerebral functions constitutes a danger to road safety.*
>
> *. . .*
>
> *(2) . . .*
>
> *(c) the question whether to certify a person suffering from abnormal arterial blood pressure as being fit to drive shall be assessed with reference to the other results of the medical examination, any associated complications and the danger they might constitute to road safety; and*
>
> *(d) generally speaking, fitness to drive shall not be certified in respect of persons suffering from angina during rest or emotion. Persons who have suffered myocardial infarction may be certified as being fit to drive subject to regular medical review.*

. . .

9. Drugs (prescription and illicit) and Medications

(1) Abuse:

In the case of an applicant for a licence to drive vehicles of any category, fitness to drive shall not be certified if the person concerned is dependent on psychotropic substances or, if the person is not dependent on such substances, regularly abuses them.

(2) Regular Use:

(a) In the case of an applicant for a licence to drive vehicles of category A1, A, B, EB, M or W, fitness to drive shall not be certified if the person concerned regularly uses psychotropic substances, in whatever form, which can hamper the ability to drive safely where the quantities absorbed are such as to have an adverse effect on driving. This shall apply to all other medications or combinations of medications which affect the ability to drive.

. . .

12. Miscellaneous provisions

(1) . . .

(2) As a general rule, where an applicant for a licence to drive a vehicle of any category suffers from any disorder not mentioned in sub-paragraph (1) above which gives rise to, or is likely to result in, a functional incapacity affecting safety at the wheel, the medical examination shall take due account of the risks and dangers involved in the driving of the vehicles in question and certification of fitness in such instances shall be subject to periodic medical review.

. . .”

34. The defendant has been a patient of the third party for several years prior to July 2006. Until May 2006, the defendant had enjoyed good health for a person of his age and was a robust, active man of 76, leading a fully independent, active life, including driving. The defendant’s wife suffered from a degenerative eye complaint and depended on the defendant for transport.

35. In June 2004, the defendant suffered a serious nosebleed on the right side, which required referral to Letterkenny General Hospital where it was cauterised. In April, 2006, the defendant again suffered a very serious nosebleed. This occurred initially on 27th April, 2006. His blood pressure at the time was 140/80 which was normal. The nosebleed on this occasion emanated from the left side of the nose. This nosebleed reoccurred on 8th May, 2006. On the following day, a very severe nosebleed occurred which required the defendant to be taken to hospital by ambulance.

36. In Sligo General Hospital, where the left side of his nose was cauterised on this occasion, a 24-blood pressure monitor disclosed that the defendant had borderline Systolic hypertension. An Echogram of his heart was normal. The defendant was commenced on a drug called Coversyl to control his blood pressure. Because of a complaint of headache on 15th May, 2006, his blood pressure medication was changed on 17th May, 2006.

37. This began a process of medication change to achieve optimum blood pressure control with minimum or no side effects, a process that continued up to the date of the accident and beyond.

38. On 24th May, 2006, a 24-hour blood pressure monitor was ordered. On that day, the defendant’s blood pressure was 140/85 which is normal. On 26th May, 2006, it was recorded in the third party’s notes concerning the defendant that the 24-hour blood pressure monitor found moderate daytime Systolic hypertension and his medication (Istin) was increased in dosage and Coversyl was reintroduced at a low dose. When the defendant was reviewed on 1st June, 2006, by the third party, the defendant was complaining of dizziness and staggering and of being unwell associated with nausea. His blood pressure on that day was 110/70 which was quite low. The Coversyl was withdrawn because the third party considered that it was the cause of the side effects being experienced by the defendant. The Istin was continued.

39. On 6th June, 2006, the defendant was reviewed by the third party. The defendant complained that the Istin was causing light-headedness. He was advised by the third party to take this medication at nighttime when going to bed and was switched to a drug called Emcor. On 8th June, 2006, the defendant complained of headaches. His blood pressure was 110/90. All of his medications were stopped at this time. On 19th June, 2006, the defendant was commenced on another medication for high blood pressure as his blood pressure on that day was 150/100.

40. Between that date and 17th July, 2006, the defendant attended the third party on five occasions. On four of these occasions, his blood pressure medication was changed. On one, namely, 3rd July, 2006, it was recorded that he was off all medications as he could not tolerate Atecor.

41. During that period, i.e. from 8th June, 2006, to 17th July, 2006, he made no complaint of dizziness or light-headedness, his only complaint being headaches and of feeling sick/nauseous.

42. Against this background, the defendant contends that the third party was negligent in certifying that the defendant was fit to drive for three years. This contention was supported by the expert evidence of Dr. Keegan, a consultant physician in Altnagelvin Hospital in Derry, Northern Ireland, and an accredited specialist in general medicine, Rheumatology and Rehabilitation Medicine, and also by Dr. Andrew Wilkinson, a Forensic Physician, a member of the Royal College of General Practitioners with extensive experience of general practice.

43. Before dealing with the criticisms that were made of the third party in this regard, I should mention what became an uncontentious aspect of the case against the third party and that was the admitted failure of the third party to record in the defendant’s notes details of the examination he carried out for the purposes of the certification in question and the results of these examinations. Whilst the third party vehemently denied any assertion that he had failed to carry out the requisite examinations, pointing to the report of same submitted to the licensing authority as evidence of and a record of the examination, he readily accepted that he should have recorded the examination carried out and its results in the defendant’s notes in his practice.

44. I accept the third party's evidence that he did carry out the required examination and that he did report his findings in the appropriate places on the prescribed report form submitted to Donegal County Council.

45. It was not, nor could it have been, contended that the failure to record the examination and its result had any causal link to the accident that occurred on 27th May, 2008.

46. The real issue in this regard was whether the certificate should have been issued in the first place.

47. The essence of the criticism of the third party in this regard is that the defendant was suffering from Labile blood pressure from late May/early June 2006, up to 17th July, 2006, which had had not satisfactorily responded to a selection of blood pressure controlling medications and was associated with alarming symptoms, notably, dizziness, staggering and light-headedness, which could have impaired the defendant's ability to drive safely, if these occurred while he was driving. Both of these experts were of opinion that the certificate should have been withheld until such time as the cause of these symptoms was ascertained and an effective treatment established so that the defendant's blood pressure was adequately controlled and these symptoms eliminated.

48. It is worthy of note that all the medical experts called in the case agreed that the third party's professional care of the defendant's blood pressure problem, which all agreed was a challenging problem, was excellent, characterised by a remarkable level of attention to monitoring the problem and a very thorough and careful and selective use of the available medications for high blood pressure.

49. The third party, in his evidence, disagreed with all of the criticisms of him in this regard. His evidence was supported by the evidence of Dr. Stephen Murphy, an expert General Practitioner, and Dr. Brian Maurer, a consultant cardiologist.

50. Having carefully considered all of the evidence of these eminent experts, and also the evidence of the third party, I prefer the opinions expressed by Dr. Murphy and Dr. Maurer, and indeed, the explanations given by the third party himself, for the following reasons.

51. First, the defendant had been a patient of the third party for a long time. Indeed, he had previously certified him as fit to drive twice, in 2000 and 2003, although on both these occasions, there was the same recording lapse as occurred in July 2006. The defendant was well known to the third party as a fit, robust, active man. He was aware that he walked three to four miles daily, notwithstanding having had a serious left ankle injury which required surgery some years previously. The third party knew that the defendant was a fully competent person, living an independent life in the community, including driving, and in that regard, the third party expressed himself as aware that the defendant was a careful driver.

52. The condition of high blood pressure which the defendant began to experience in late May 2006, is one of the most common, if not the most common, conditions affecting people in the defendant's age group. Treatment for this condition is not only standard, but in the majority of cases, successful. It is not uncommon for General Practitioners to have to chop and change between a selection of available medications and to alter and adjust the dosage of these to achieve the optimum benefit for the patient, which is the adequate control of blood pressure with no side effects or the minimum of side effects. The symptoms of which the defendant complained i.e. of dizziness, light-headedness, staggering, headaches and nausea, are, according to the expert evidence, all well known side effects of these medications and are so described in the literature of their manufacturers.

53. When these symptoms emerged, the third party considered that these were side effects of the drugs used and not caused by anything else.

54. In my opinion, that conclusion was entirely reasonable. It may very well be the case that a different opinion was tenable, but in light of the third party's knowledge of his patient, his experience with these medications, his conclusion that the defendant's symptoms were side effects of the medication cannot be considered as anything other than an appropriate and reasonable professional conclusion.

55. The significance of this is that rather than being faced, as Dr. Keegan and Dr. Wilkinson postulated with a clinical quandary or conundrum, he was, in fact, dealing with a problem that had a clear cause and for which there was a selection of solutions that were likely to offer an effective treatment. And, indeed, as events unfolded through June and into July, his approach was amply justified, in that the symptoms that would have relevance to driving ability disappeared. Thus, what he was dealing with were transient symptoms which seemed to have little or no effect on functional capacity, and which disappeared predictably when the defendant's medication was altered.

56. In circumstances where the cause of the symptoms was understood and the elimination of them probable, I do not see a basis for declining to certify the defendant as fit to drive for three years, given that it is accepted by all experts that high blood pressure per se does not render the sufferer unfit to drive safely.

57. Thus, I have come to the conclusion that there was no negligence or breach of duty or breach of statutory duty on the part of the third party in certifying the defendant as fit to drive for three years on 17th July, 2006.

58. Next, the defendant made the case that at various stages between 17th July, 2006, and 27th May, 2008, the third party should have advised the defendant to stop driving, and again, this contention was advanced through the expert evidence of Dr. Keegan and Dr. Wilkinson. The third party disagreed, save that in his evidence he said that he did discuss driving with the defendant early in 2008, and told him that if there was a recurrence of the Syncope episode, as experienced in December, 2007, his continuing to drive would have to be considered.

59. The third party's approach to the treatment and advice given to the defendant during this time was, in the opinion of Dr. Murphy, good practice, and he rejected the criticisms of the defendant made by the experts called by the defendant.

60. The defendant continued to attend the third party regularly through July 2006 to January 2007 in connection with his blood pressure problems and some other minor health issues. He attended on 26th July, 2006, 28th July, 2006, 8th August, 2006, 10th August, 2006, 14th August, 2006, 21st August, 2006, 28th August, 2006, 1st September, 2006, 8th September, 2006, 22nd September, 2006, 2nd October, 2006, 10th October, 2006, 20th October, 2006, 1st November, 2006, 20th November, 2006, 11th December, 2006, 11th January, 2007, and 17th January, 2007. On all these occasions, his blood pressure medication was reviewed and some changes were made. On 28th August, 2006, the defendant complained of postural hypertension, a feeling of light-headedness or dizziness when rising quickly to the upright position. This is a common complaint in people of the defendant's age who have high blood pressure. Dr. Delap advised the defendant to rise slowly to avoid the experience, advice which all the experts agreed

was appropriate.

61. On 20th October, 2006, the third party noted as follows:

> *"BP 130/80. Excellent control, head still sxmatic refer physio."*

62. Dr. Delap's evidence was that the head problem referred to here was nothing to do with the blood pressure problem or the side effects of medication, but rather long standing degenerative changes in the defendant's neck for which he referred the defendant for physiotherapy. He was adamant he would not have referred the defendant for physiotherapy if the problem was related to dizziness or light-headedness due to the side effects of medication.

63. I accept the third party's explanation in this regard and am quite satisfied that the note of 20th October, 2006, did not record any complaint relevant to the defendant's blood pressure or possible side effects of his mediation.

64. Thus, apart from the postural hypertension complaint made on 28th August, 2006, from early June 2006 until the end of January 2007, the defendant did not report any symptoms to the third party which would call in question his ability to drive safely. The complaint of postural hypertension, in the first place, could not be said, rationally, to impinge on safe driving, was easily managed by the advice given and in any event, disappeared after 28th August, 2006.

65. I am quite satisfied that there was nothing in the defendant's medical history between early June 2006 and the end of January 2007 that warranted any advice from the third party to the effect that the defendant must or should discontinue or curtail driving a motorcar.

66. At the end of January 2007, the defendant suffered an acute myocardial infarction for which he was an in-patient in Letterkenny General Hospital from 29th January, 2007, until 6th February, 2007. It is quite clear from the tests carried out on the defendant that he came through this attack without suffering any significant damage to his heart. An angiogram revealed that the output or flow of blood from the heart, at 60%, was comfortably in the normal range. This angiogram also revealed that there was a 30% blockage of the left descending artery and an 80% blockage of the first diagonal artery which were obviously the cause of his heart attack.

67. The defendant was treated conservatively i.e. with medication, in hospital, and post-discharge. During this period, his blood pressure remained stable.

68. Approximately two weeks later, on 19th February 2007, the defendant suffered a recurrence of chest pains and shortness of breath and immediately attended his general practice where he was seen by a doctor other than the third party. There, he was given Nitro-glycerine spray and oxygen and an ambulance was arranged to take him to Letterkenny General Hospital. While in the surgery, his blood pressure appears to have been recorded twice: the first time at 180/100, and later at 120/80.

69. Until 28th February, 2007, the defendant was largely under the care of the doctors in Letterkenny General Hospital and St. James's Hospital to which he was referred for stenting which was done on 26th February, 2007. He was discharged from Letterkenny General Hospital on 28th February, 2007. In a letter dated 1st March, 2007, which was scanned in by the third party into the defendant's notes in the practice, the following brief history of his treatment in the care of Letterkenny General Hospital was given by Dr. Jose Miranda, a consultant physician. He wrote as follows:

> *"Dear Dr. Delap,*
>
> *This patient was admitted to Letterkenny General Hospital on 29th January, 2007, with a two-hour history of fretosternal chest pain while he was shopping. He was diagnosed with a non-ST elevated MI, as his ECG showed T-wave inversion inferior laterally, and his T-troponin was elevated at 0.57. He had an angiogram done, which showed stenosis of 30% in the left anterior descending artery and 20% stenosis in the right coronary artery. His medical treatment was adapted accordingly and he was discharged on 6th February, 2007. He came in again on 19th February, 2007, with the same symptoms. He was referred again to St. James's Hospital where PTCA and stenting was done on 26th February, 2007. He was advised to stay on Plavix for one year with the other medications above. He was discharged eventually on 28th February, 2007, in good clinical condition. He will be reviewed in two months time in the clinic.*
>
> *Yours sincerely*
>
> *Dr. Ihab Elseed SHO to Dr. Jose Miranda, Consultant Physician."*

70. When the defendant was admitted to Letterkenny General Hospital on 19th February, 2007, i.e. when he had the recurrence of his symptoms related to his heart attack, the note taken, probably by the Triage nurse, was in the following terms:

> *"Letterkenny General Hospital*
>
> *Attended 19th February, 2007*
>
> *Chest pain, Cardiac LOC (significant), SOB, BP 186/97, T36.2, P61, R19, Sats. 97%, HX Epistaxis, NSTEMI, angio two weeks ago, reports that main artery 80% blocked, PT experienced sudden onset of central chest pain, also SOB whilst pain was present, had pain for over an hour but resolved spontaneously, experienced chest pain again and saw GP who referred PT here as had GTNX two puffs with good effect, Bp 188/97, on arrival PT pain-free, d/c ac."*

71. There are two curious features to this note. First, there was clearly an error in the reporting of the 80% blockage in the left descending artery. More significantly, the record of "Cardiac LOC (significant)" is difficult to fit into the known picture. It is not at all clear when this loss of consciousness occurred or whether, in fact, it was an error in reporting or recording. It is clear that when the defendant initially suffered his heart attack on 29th January, 2007, he had been out shopping when he experienced chest pain and there is nothing in the history given relative to that which would indicate the occurrence of a period of loss of consciousness. There is no evidence of this having occurred during his period of hospitalisation in Letterkenny General Hospital from 29th January, 2007, until his discharge on 6th February, 2007. When the plaintiff suffered a recurrence of his symptoms on 19th February, 2007, he was at home and he went to the third party's general practice where he was stabilised before being sent by ambulance to Letterkenny General Hospital. There is no record of any complaint of loss of consciousness in the time up to his being put in the ambulance and sent to hospital. Neither is there any record of this loss of consciousness occurring in the ambulance on the way to hospital, and indeed, it would seem very unlikely that it would have, having regard to his stabilised condition at that time.

72. Although this period of loss of consciousness was put to the third party in cross-examination, its actual origin in time or place was not explored.

73. I have the gravest doubts as to whether such a period of loss of consciousness occurred, having regard to the manner in which the defendant presented his complaints on both occasions and the absence of any specific record as to when such a loss of consciousness occurred and where. I am inclined to the view that it is probable that the reference to this cardiac loss of consciousness was, in all probability, a recording error. If it did occur, it appears to have been directly related to his heart attack from which he made, in due course, a very good recovery. It was the third party's evidence that for a period of six weeks from the occurrence of his heart attack, the defendant would not have been driving at all, as this is the standard advice given to all patients who have heart attacks. I accept his evidence in this regard.

74. Following his discharge from Letterkenny General Hospital on 28th February, 2007, the plaintiff returned to the care of the third party. He was seen by the third party on 1st March, 2007, and was noted to be well, post-stent, and his blood pressure normal and he was to be reviewed a week later. On 8th March, 2007, his blood pressure was 170/90 and his blood pressure medication was altered with the addition of Cadicor. He was also given GTN to relieve chest pain. He was seen again on 12th March, 2007, by the third party when he complained of being dizzy/off-balance. His blood pressure was 120/80. He attended again on 14th March, 2007, when he was seen by a colleague of the party, Dr. Trail. He again complained of being dizzy and off-balance. His blood pressure was 130/74. It would appear from the note that Dr. Trail was of the view that his dizziness was related to an inner ear problem because he prescribed a drug called Byvertin. He attended the third party the following day, 15th March, 2007, and no complaint of being dizzy or off-balance is recorded, and his blood pressure was noted to be "overall good control". He was then referred to Orla Noonan to commence a cardiac rehabilitation programme. He attended again on 22nd March, 2007, 27th March, 2007, 29th March, 2007, 28th April, 2007, 23rd April, 2007, 24th April, 2007, 26th April, 2007, 27th April, 2007, 1st May, 2007 and 16th May, 2007. During all of these visits, the defendant's blood pressure was under very active review, including having a 24-hour blood pressure monitor applied. The defendant was during this period monitoring his own blood pressure at home and keeping what were meticulous records of this. During all of this period, up to 16th May, 2007, there was no further complaints of dizziness or light-headedness or the like.

75. About this time, namely, 15th May, 2007, the defendant was again in Letterkenny General Hospital with complaints of upper gastric pain. An upper G.I. Endoscopy was done on 15th May, 2007, which revealed severe duodenitis, severe generalised gastritis and a hiatal hernia with linear ulceration in the distal 1cm of the oesophagus.

76. It is quite clear that the pain the defendant was suffering at the time was not related to his heart condition, but rather, severe duodenitis for which he was treated. The defendant was again in Letterkenny General Hospital on 18th May, 2007, apparently to have a stress test done. This could not be done because of his left ankle injury, but at the time, he complained of dizziness, which was noted to "comes on after taking tablets". The defendant was returned to the care of the third party. He attended the third party on 7th June, 2007, where his blood pressure was 150/90. On 15th June, 2007, it was noted that his blood pressure control was poor and Coversyl was added to his medication.

77. On 25th June, 2007, a letter in the following terms was sent to the third party by the consultant physician in Letterkenny General Hospital:

> *"Dear Dr. Delap,*
>
> *Mr. Barr was admitted on 18th May, 2007. He was scheduled to have an exercise stress test this morning. He felt dizzy and experienced central chest pain on arrival to the hospital. The condition was present for three weeks prior to admission with central chest pain radiating to the left arm, relieved by rest and GTN spray.*
>
> *On examination, there was no positive objective chemical findings. FBC renal profile CK, Troponin, LFT'S and coagulation stream were normal. ECG showed sinus bradycardia with T-wave inversion in inferolateral leads. He was on beta-blocker, which was discontinued. His serial data and ECG were negative. In view of his recent OGD (15th May, 2007) showing severe doudenitis/gastritis, he was treated with a high dose of PPI and he responded well to this.*
>
> *He was discharged on 23rd May, 2007. He will be reviewed in Dr. Miranda's outpatient clinic on 23rd July, 2007.*
>
> *Yours sincerely"*

78. Although the defendant appears to have made a complaint of dizziness on 18th May, 2007, in Letterkenny General Hospital, he does not appear to have made any such complaint on any of his attendances with the third party from 14th March, 2007.

79. After his discharge from hospital on 23rd May, 2007, he next attended the third party on 7th June, 2007. There was no complaint of dizziness, and similarly, on his next attendance on 15th June, 2007. He attended next on 23rd July, 2007, to have his ears syringed. He next attended on 26th July, 2007, when his blood pressure was 150/90 and his Lipitor was increased to 40mg.

80. It would appear from a letter written by a consultant physician in Letterkenny General Hospital on 24th July, 2007, that the defendant was reviewed in that clinic on 23rd July, 2007, where it would appear his only complaint was occasional episodes of angina-like pain until about three to four weeks previously, and that in this three to four weeks prior to 23rd July, 2007, he had been completely asymptomatic, although there had been no change in his medication. It was recommended to the third party by the consultant physician to start the defendant on a beta blocker again at a low dose.

81. The defendant continued to attend the third party regularly, namely, on 24th August, 2007, 31st August, 2007, 21st September, 2007 and 12th October, 2007. No complaint of any relevance to the defendant's driving ability was made on any of these occasions and his blood pressure appears to have been well controlled. During all of this time, the defendant was continuing to monitor his own blood pressure at home by taking readings twice daily. On every visit to the third party, he would bring in his up to date records in that regard which were reviewed at each consultation by the third party.

82. By a letter of 31st October, 2007, from Orla Noonan, cardiac rehabilitation coordinator, the third party was informed that the defendant had satisfactorily completed the cardiac rehabilitation programme.

83. The defendant did not attend the third party again until 20th November, 2007. His problem at this stage appears to have been related to cervical spondylosis. He attended again on 27th November, 2007. His complaints between both of these two visits appear to have been related to his head i.e. headaches on both sides of the head. He was found to be tender in the C2 area. An X-ray taken on 3rd December, 2007, revealed degenerative disc lesions with associated spondylitic changes, and early OA changes identified in

relation to the inter-apophyseal joints. Loss of normal lordosis was noted. His blood pressure appears to have been stable and no symptoms of dizziness or light-headedness were reported.

84. On 15th and 16th December, 2007, the defendant was seen out of hours by "Nowdoc". On both of these occasions, he was suffering from severe neck pain and headache, and on 15th February, 2007, his blood pressure was 200/100 and his Istin was increased to 10mg. The defendant attended the third party on 17th December, 2007, when his blood pressure was 160/82 and there was no change made to his medication. He attended again on 18th December, 2007, when his blood pressure was 140/80 i.e. normal. During the entirety of the year 2007, the only occasion when symptoms relevant to driving occurred was when he reported on 18th May, 2007, in Letterkenny General Hospital that he had been experiencing dizziness, apparently after taking medication. He also complained of chest pain then, and it is not clear whether his complaint of chest pain was of three weeks duration and whether that also referred to the dizziness. He was treated at that time in Letterkenny General Hospital for doudenitis and responded well to that treatment. He also made a very good recovery from a heart attack suffered in January and the stenting procedure carried out in February 2007, and successfully completed a cardiac rehabilitation programme. The third party's evidence was that during his period of recovery from the heart attack for a period of at least six weeks, the defendant was not driving, as is the norm for persons recovering from a heart attack. As noted earlier, no complaints were made to the third party during the months of March, April or May 2007, concerning any dizziness or light-headedness. The complaint made by the defendant in Letterkenny General Hospital in this regard on 18th May, 2007, was eventually notified to the third party in the letter from the consultant physician dated 25th June, 2007. By this time, the defendant appeared to be doing very well, and whilst discharged back to the care of the third party, he remained under review in Letterkenny General Hospital until late July. From then until late December, the defendant had no symptoms which would call in question his fitness to drive.

85. In light of this history of events throughout the year 2007, I am wholly unconvinced that the third party, at any time during that period, apart from the immediate aftermath of heart attack, when it appears he was not driving anyway, should have advised the defendant to desist from driving. The reality was that the defendant was still a robust, 77 year old, and was still fully active, who had made a full recovery from what seems to have been a relatively minor heart attack, which did no damage to his heart, and who had an ongoing blood pressure problem which was very well monitored and generally well controlled, and the single occasion when there was a complaint of dizziness was when he was in hospital when faced with a stress test and no such complaint was made in any of his numerous visits to the third party in relation to his blood pressure, and later in the year, his neck problem.

86. I am quite satisfied that I should prefer the evidence of Dr. Murphy and Dr. Maurer to that of Dr. Keegan and Dr. Wilkinson on the question of whether, at any time during the year 2007, the third party should have advised the defendant to discontinue driving.

87. On 21st December, 2007, the defendant suffered a syncope episode. This occurred while he was a back seat passenger in his son's car. It would appear that the defendant was feeling unwell, had a headache, had black spots in front of his eyes and lost consciousness for about two minutes. When he recovered, he did not remember and felt slightly dizzy afterwards. He was taken to Letterkenny General Hospital where he was an in-patient for three days. While there, a CT scan was done on his brain which disclosed small vessel disease. In a letter dated 29th January, 2008, from the Senior House Officer to Dr. Jose Miranda, consultant physician, the following was said to the third party:

> *"I reviewed Mr. Barr in Dr. Miranda's outpatient clinic today. As you know, Mr. Barr was admitted to hospital for three days on 21st December 2007, complaining of headaches and one episode of syncope. This headache had been occurring for five months and extended to his occiput and neck. CT brain showed small vessel and telemetry was normal.*
>
> *Post-discharge from hospital, Mr. Barr had gastroenteritis on 26th December, 2007. At the time, he stopped taking all his medications. Due to the fact that his headache disappeared in conjunction with not taking his medications, he decided to only take aspirin, Clopidogrel and Ideos since. He has had no headaches or neck pain since. Therefore, Mr. Barr is not taking Diovan, Isosorbide, Mononitrate, Pantoprazole, Atorvastatin, Amlodipine or Perindoporil since the end of December 2007.*
>
> *Thank you for performing 24-hour BB monitoring on Mr. Barr which showed an increased systolic B/P during the day.*
>
> *Examination today was normal apart from elevated B/P of 195/97.*
>
> *I discussed Mr. Barr's case with Dr. Miranda who recommended restarting Mr. Barr's medications in a stepwise fashion. By doing this, we may find which medication is causing Mr. Barr's side effects. We recommended first starting Diovan 40mg b.d. then Atorvastatin should be started 20mg nocte then Isosbide Mononitrate and Amlodipine may be started if he has no side effects. Mr. Barr should continue on Clopidogrel at least until the end of February 2008.*
>
> *We would appreciate if you could repeat his 24-hour B/P monitoring in six months time. We are happy to discharge Mr. Barr back to your care."*

88. The defendant attended the third party on 27th December, 2007, and his blood pressure was noted at 140/80, and he was recorded as having stopped all medications except aspirin/Plavix/Paralief. He was seen again the following day, and his blood pressure was 140/80 and a 24-hour monitor was planned. On 2nd January, 2008, the 24-hour blood pressure monitor was attached, the first reading was recorded at 176/93. He was back the next day at the end of the 24-hour monitoring period. The 24-hour monitor showed slight hypertension in the morning and normal during the rest of the day and night. The defendant continued to monitor his own blood pressure at home as he had been doing theretofore. He re-attended on 11th January, 2008, when it was recorded that his blood pressure readings were good and he was continuing on aspirin and Plavix. He attended again on 14th January, 2008, and his blood pressure was 146/90. He attended again on 17th January, 2008, when his blood pressure was recorded at 148/88 and it was noted that he was not on any anti-blood pressure medications. On 21st January, 2008, the 24-hour blood pressure monitor was recommenced with a commencement reading of 160/92. The following day, when the monitoring period was completed, the record showed he had moderate daytime isolated systolic hypertension and mild nighttime diastolic hypertension and the recommencement of anti-blood pressure medication was considered. He attended again on 28th January, 2008, complaining of headache and his blood pressure was 175/100 while lying and 170/100 when sitting. He was commenced on a calcium antagonist drug, namely, Istin. He attended again on 4th February, 2008, complaining of severe headaches which the third party considered to be secondary to the Istin drug. His blood pressure that day was 170/100 and his medication was changed to a drug called Bisopine and he was to be reviewed the following Friday. He attended on 8th February, 2008, when he was reported as being well. His blood pressure was 130/80 and he had no headaches. He was continued on his then current medication and he was to be reviewed the following Tuesday. He attended again on 12th February, 2008, when his blood pressure was recorded at 160/80. He next attended on 19th February, 2008, when his blood pressure was the same, 160/80, and he was to continue Bisopine at 10mg. He was seen again by the third party on 26th February, 2008, when his blood pressure was recorded at 170/90 and his Bisopine medication was increased with the addition of 5mg

Nocte. He attended again on 4th March, 2008, when the following note was made: "*Great B/P control at last. Continues to record daily*". He next attended on 11th March, 2008, when it was recorded, "B/P control now excellent. Wsee two weeks". He attended on 25th March, 2008, when it was recorded that his blood pressure was normal and his prescription continued.

89. He attended on 8th April, 2008. His blood pressure was recorded at 140/80 and there is a complaint recorded of "fainting spells". The third party's evidence was that this phrase was his words and that the actual complaint made was one of queasiness and light-headedness which occurred in the evening. The third party recommended GTN and a review in one week. The defendant returned on 15th April, 2008, and appears to have been well and his blood pressure recorded as 130/76 and with no recorded complaints. A similar picture emerged when he attended on 29th April, 2008. He attended the third party on 1st May, 2008, in relation to a Dexa-scan which had been done on 22nd April, 2008. He attended again on 6th May, 2008, to have a freezing procedure carried out to an abnormality on his lip. That was his last attendance prior to the accident on 27th May, 2008. The defendant continued to record his own blood pressure twice daily at home and also his pulse rate, and throughout the months of April and May his blood pressure appears to have been entirely normal and his pulse rate at a predictable or acceptable level for somebody taking a beta blocker.

90. The experts called on behalf of the defendant criticise the third party for not having advised the defendant to stop driving after the occurrence of the Syncope on 21st December, 2007, and in light of the result of the brain scan conducted then which showed small vessel disease which, they opined, was indicative of degenerating or declining health and consequently functioning. These criticisms were rejected in the expert evidence called for the third party.

91. As a result of the investigations that were carried out in Letterkenny General Hospital after the Syncope episode, the conclusion appeared to be that this episode was probably caused by the defendant's medications. The defendant himself decided to discontinue all his blood pressure medications, and in late December and until the end of January 2008, he was entirely free of headaches and any other relevant symptoms. At that stage, it became apparent that his blood pressure was rising again to unacceptable levels and medication was reintroduced, as recommended by the consultant physician in Letterkenny General Hospital on a step-by-step basis. This approach seemed to lead to the most satisfactory period, so far as treating the defendant's blood pressure was concerned, in that very effective blood pressure control was achieved without apparent side effects. This remained the position until 8th April, 2008, when the defendant made a complaint of queasiness or light-headedness which the third party recorded as "fainting spells". It would appear that this complaint was of a transient nature and when he attended one week later, the complaint seems to have disappeared. Thereafter, until the date of the accident, the plaintiff appear to have had a very good period in terms of blood pressure control without side effects.

92. Firstly, in relation to the CT finding of small vessel disease, I am quite satisfied that the evidence of the third party himself and the experts is to be preferred, namely, that it is a common finding in scans of this kind conducted on persons in the defendant's age group who have no clinical signs of any disease and are fully competent. This finding of small vessel disease in the context of the defendant's continuing robust health, notwithstanding his blood pressure problem, did not, of itself, have any real significance so far as the defendant's ability to drive safely was concerned.

93. Undoubtedly, the Syncope episode that occurred on 21st December, 2007, was an event of significant importance in the context of assessing the defendant's fitness to continue driving and a matter requiring consideration, in that context, by the third party. It is apparent from the attendances of the defendant on the third party during the month of January 2008, that he was well and had no symptoms, save that towards the end of the month, his blood pressure began to rise again. The Syncope episode had been investigated in Letterkenny General Hospital and by a letter dated 29th January, 2008, to the third party, from the defendant's consultant physician, it seems implicit that the cause of the Syncope is attributed to the medications that the defendant was on when the Syncope occurred. In this context, it is to be noted that on 15th December, 2007, when the defendant was seen out of hours by "Nowdoc", the dosage of the blood pressure medication he was on was doubled from 5mg to 10mg. When the defendant came off all his blood pressure medication in late December, the headaches from which he had been suffering disappeared, and he had no other symptoms during that period.

94. I am satisfied that in the circumstances, the third party was entitled to take the view that the Syncope episode was related to his medication at the time, and the approach of reintroducing blood pressure medication on a step-by-step basis would be likely to avoid any reoccurrence of the event that occurred on 21st December, 2007. It must be borne in mind that the defendant had, apart from the incident of cardiac loss of consciousness noted in Letterkenny General Hospital on 19th February, 2007, no other loss of consciousness apart from the Syncope episode. Insofar as the former loss of consciousness was concerned, if it occurred at all, it seemed to have been directly linked to the heart attack he suffered at the time from which he had made a good recovery, and the Syncope episode appeared to be firmly related to his medication which could be adjusted to avoid recurrence of a similar experience.

95. I am satisfied that in these circumstances, and against a background where the defendant was still generally in good health, and manifestly fully competent, advice to stop driving would have been inappropriate. I accept the third party's evidence that he did raise the question of driving with the defendant soon after the Syncope episode, and that he told him that if there was any recurrence of the Syncope, that his continuing to drive would have to be considered. I am satisfied that in the circumstances that prevailed at the time, the third party's approach was an appropriate and reasonable discharge of his professional duty to the defendant, all the more so when it is considered that the defendant was enjoying a period of very good blood pressure control without side effects. I do not think that the complaints made by the defendant on 8th April, 2008, materially alters this picture. The actual complaint made was of a transient feeling of queasiness or light-headedness which appears to have disappeared very quickly.

96. It has to be remembered that the defendant himself was a fully competent, mature adult, and was himself primarily responsible for ensuring that he himself could drive safely. Needless to say, anyone in the position of the defendant, if they knew or apprehended that they were about to be dizzy or light-headed, they would have a responsibility to either not go out and drive, or if it happened while driving, to stop driving. There is no evidence at all of the defendant's ever experiencing any of these symptoms while driving and I infer from this that this did not occur.

97. As matters moved on through March, April and into May 2008, it is apparent that a very satisfactory position emerges with regard to the defendant's blood pressure. In that context, it would be simply unreal and unwarranted for the third party to have advised the defendant to stop driving.

98. I have come to the conclusion, therefore, that there was no negligence or breach of duty on the part of the third party in relation to any advice given by him to the defendant concerning driving during the period from December 2007 until the date of the accident.

99. In conclusion, therefore, I am satisfied that there was no negligence at all on the part of the third party in the manner in which he dealt with the defendant concerning the defendant's ability to drive, or in failing to give him any advice which was required in that regard or in the advice which was actually given.

100. On the very difficult question of whether or not the third party owed any duty of care to the plaintiff in circumstances where the plaintiff suffered injury as a result of the actions of the defendant, a patient of the third party, in light of the foregoing conclusions it is unnecessary for me to express any opinion on that question. I am mindful of the learned submissions made on behalf of both these parties on this issue, but I think it is preferable that a judgment on that issue is left to a case in which it is necessary to determine the issue.

101. Accordingly, the defendant's claim for indemnity or contribution against the third party fails.