

## THE HIGH COURT

[2012 No. 11552 P.]

BETWEEN

DENISE BYRNE

PLAINTIFF

AND

AZIZUR RAHMAN

DEFENDANT

**JUDGMENT of Mr. Justice Barr delivered on the 29th day of January, 2016**

1. This action concerns a road traffic accident which occurred on 17th November, 2011, on the Nangor Road, Dublin at approximately 18:15hrs. The accident occurred at the entrance/exit from Lidl supermarket, where it joins the Nangor Road. The plaintiff states that as she approached the entrance/exit to the Lidl car park, the defendant's car simply drove out in front of her and she collided into the side of his vehicle.

2. It is necessary to give an account of the road markings at the locus. As one travels in a westbound direction on the Nangor Road, there is one lane for ordinary traffic and a bus lane to the left. Approximately 57m back from the centre of the entrance/exit from the Lidl car park, the bus lane changes into a slip lane to allow traffic turn left into the Lidl car park. The bus lane then recommences just after the entrance/exit to the car park. The bus lane operates twenty-four hours a day, seven day a week. In the slip lane, there is a left hand arrow marked on the road, indicating that traffic in that lane may turn into the car park.

3. At the time of the accident, there was heavy traffic on the Nangor Road. It was dark and windy, but otherwise dry.

4. The plaintiff stated that she was travelling on the Nangor Road in a westbound direction intending to travel past the Lidl entrance/exit and proceed on to the next junction where she intended to make a left hand turn onto the Ninth Lock Road going in the direction of Clondalkin Village. The plaintiff stated that on the evening in question, the traffic was very heavy and slow-moving on the Nangor Road. The plaintiff decided that she would turn to her left into the bus lane and would proceed in this lane up to the junction with the Ninth Lock Road.

5. The plaintiff stated that she turned into the bus lane at the area shown in the foreground in photograph No. 11 of Mr. Culleton's booklet of photographs. She accepted that she was not entitled to turn into this lane as it was still a bus lane at that point. The plaintiff stated that she had put on her left indicator when she made the initial turn into the bus lane, but that her indicator then clicked off automatically once she had straightened up.

6. The plaintiff could not remember definitively whether she had her lights on at the relevant time. However, she stated that if it was dark, she would have had her lights on.

7. The plaintiff proceeded down the bus lane and into the left turn slip lane for the Lidl car park. She stated that it was her intention to drive across the entrance/exit to the car park and to proceed on down the bus lane towards the junction with the Ninth Lock Road.

8. The plaintiff stated that she could not remember what speed she was travelling at this time, but she stated that she would have been travelling within the speed limit. As she approached the entrance/exit to the Lidl car park, she states that the defendant's vehicle emerged suddenly from her left and proceeded to drive across the bus lane with a view to making a right turn. She states that she was given no opportunity to avoid a collision and the front of her car impacted heavily with the driver's side of the defendant's car.

9. In cross examination, the plaintiff accepted that she had entered the bus lane, before it turned into a left-turn slip lane. It was put to the plaintiff that she may have been on her mobile phone at the time of the accident. The plaintiff accepted that her phone was on the dashboard of her car after the impact, but she vehemently denied that she had been on the phone at any time. Indeed, she stated that the phone was "dead", as the battery had run out. She stated that it was for this reason that the gardaí had to go to her house after the accident, to alert her children to the fact that an accident had occurred. She stated that she had not been able to phone them on her mobile phone after the accident.

10. The plaintiff stated that she had not seen the defendant until it was too late, when he simply pulled out in front of her.

11. Evidence was given by Mr. Pat Culleton, Consulting Engineer, on behalf of the plaintiff. He stated that as one approached the entrance to Lidl, the bus lane terminated approximately 170ft before the entrance to Lidl and turned into a left turn slip lane to allow vehicles to enter the car park. The bus lane then recommences immediately after the entrance/exit to Lidl. He stated that if a car was stopped at the entrance/exit, the driver would have a line of sight of approximately 400ft to his right. He stated that the mouth of the entrance/exit to the car park was 80ft wide at the stop line marked on the road surface.

12. In cross examination, Mr. Culleton stated that a private car should not have been in the bus lane before the commencement of the left turn slip lane. He stated that photograph No. 11 was taken approximately 400ft/125m from the entrance to the car park. The Ninth Lock Road was 250ft beyond the accident locus. Mr. Culleton stated that the bus lane ceased approximately 170ft from the entrance to the Lidl car park and became a left hand turn for the Lidl car park. A car could only go into this lane if they were going to make a left turn into the Lidl car park.

13. Mr. Culleton stated that if a driver was going to make a left turn into the car park, he would have expected them to slow down in order to make the turn. However, it did not appear that the plaintiff had slowed down, as the air bag in her vehicle was deployed after the impact. Mr. Culleton stated that if the defendant had looked to his right, he should have noticed that the plaintiff was going too fast to make the left turn into Lidl.

14. The defendants' version was that at approximately 18.00hrs, he was coming out of the Lidl car park. It was dark, windy and quite cold. Traffic was very heavy on the Nangor Road and was effectively backed up from the junction with the Ninth Lock Road. The defendant's wife and his two children were in the car with him.

15. The defendant stated that he was stopped at the stop line, awaiting a chance to make a right hand turn onto the Nangor Road. He stated that a man driving on the Nangor Road stopped to let him out. He looked to his right and saw the plaintiff's car in the bus lane. He stated that it was a long distance away. The plaintiff's lights were on and her left indicator was also on.

16. When the man in the traffic on the Nangor Road, stopped to let him out, the defendant then brought his vehicle out onto the bus lane, intending to proceed through the gap in the traffic and turn right onto the Nangor Road. The defendant stated that at this time he was looking to his left to see if there was any traffic approaching along the far carriage way on the Nangor Road. The defendant stated that his wife then said to him "*She is going to hit us*", at which point he applied the brakes and there was an impact between the front of the plaintiff's vehicle and the side of the defendant's vehicle.

17. The defendant stated that he proceeded onto the bus lane, because the plaintiff had her indicator on and he was certain that she was going to turn left into the Lidl car park.

18. In cross examination, the defendant stated that he had been stopped at the stop line at the entrance/exit to the Lidl car park for four or five minutes, waiting for a gap in the traffic. He stated that when he looked to his right, he saw the plaintiff approach with her left indicator on. He moved out because he was sure that the plaintiff's car was going to turn left into the car park. He accepted that he had seen the plaintiff for a considerable period of time. He stated that when he moved out, the plaintiff was three to four car lengths away from him. He was adamant that the plaintiff's left indicator had been on.

19. It was put to the defendant that in his PIAB form, he had said that he looked to his right and left, but there was no mention of the plaintiff's indicator being on. The defendant stated that that form had been filled in by a colleague of his, who had better English. It was further put to him that in his own personal injury summons, there was no mention of the defendant's indicator being on. It was suggested that this was due to the fact that the plaintiff's indicator was not on at the time of the accident. The defendant did not accept this and remained adamant that the indicator was on. It was put to the defendant that he had become somewhat impatient, because he had been waiting for a long time to get a break in the traffic and that when a driver flashed for him to come out, he moved off swiftly so as to get into the space that had been made for him. The defendant stated that that was not the case.

20. Evidence was also given by Garda Tom Connolly, who had arrived at the scene at approximately 18:30hrs. He stated that the plaintiff's car was in the bus lane just at the opening of the entrance/exit to the Lidl car park. The defendant's car was turned in towards the footpath. There was damage to the side of the defendant's car and to the front of the plaintiff's car. There was a mobile phone on the dashboard of the plaintiff's car. However, no suggestion was made to him at the scene that the plaintiff had been on the phone at the time of the accident. The defendant gave Garda Connolly his account of the accident. However, there was no allegation made that the plaintiff's indicator had been on. Nor did the defendant state that he thought that the plaintiff was going to turn into the Lidl car park.

21. Evidence was also given by Garda Kilpatrick who had accompanied Garda Connolly to the scene. On her arrival, the fire brigade was cutting the plaintiff out of her vehicle. The garda spoke to the plaintiff, who had stated that she had pain in her head and neck. The air bag in her car had been activated. According to Garda Kilpatrick, the plaintiff told her that she was turning left into Lidl. The garda thought that this was strange, as from the position of the vehicles, she noted that the plaintiff had proceeded beyond the entrance lane into the car park. She noted this observation in her notebook.

22. In cross examination, the garda accepted that this had been a traumatic accident for the plaintiff, who had to be cut out of her car. She had a note in her notebook that the plaintiff was turning left into Lidl, and she assumed that the plaintiff had told this to her. She had also put in her own observation "*But had passed entrance to Lidl*". She said that she had made a note of what the plaintiff said to her, but this was undermined by the position of the point of impact, which was evident from the position of the vehicles at the scene.

23. Garda Kilpatrick stated that at the entrance/exit to Lidl, there was a dedicated left turn lane to enable cars go into the car park. She stated that a taxi could be in a bus lane if he has a passenger and he would be entitled to go straight across the entrance to Lidl and continue on towards the Ninth Lock Road, even if his indicator was turned on.

24. Finally, evidence was given by Mrs. Rahman, the wife of the defendant. She stated that she had been in her husband's car that evening. They were waiting at the exit from Lidl car park and had been waiting there a few minutes, awaiting a gap in the traffic. She stated that the traffic was very heavy at that time. A man flashed his lights to enable them to come out from the car park. Her husband pulled out and with that the plaintiff crashed into the side of their car. She stated that when she first saw the plaintiff, her vehicle was far away and all the lights were on, including the headlights and the left indicator.

25. In cross examination, the witness stated that they had a good view to the right looking down the Nangor Road. When they were flashed out by a car in the slow moving traffic, they moved out from the stop line. She then saw the lights of the plaintiff's vehicle. It was very close to them. The witness stated that when she first saw the plaintiff, she was some distance away, perhaps at the further arrow as shown in photograph No. 4 of the plaintiff's book of photographs. When she saw the plaintiff again, they had moved out onto the bus lane and the plaintiff's car was very close to them. She could not say whether she had first seen the plaintiff before or after the man had flashed for them to emerge out onto the road. The next time she saw the plaintiff's car was just before the collision. She remembered saying "*She's hitting us*" and her husband braked and then the collision ensued.

26. It is admitted in this case that the plaintiff left the line of traffic on the Nangor Road and entered the bus lane before she was entitled to do so. This action, while unauthorised, did not create any particular hazard on the roadway. The plaintiff then proceeded down the bus lane and into the designated slip lane for the Lidl car park. At that point, the plaintiff was not breaking the rules of the road. She was entitled to be in the slip lane if she intended turning left into the car park. Unless a person was driving a bus or taxi, they were not entitled to go into the slip lane unless they were intending to turn left into the car park.

27. The plaintiff did not intend to turn left into the car park, but instead was going to travel across the mouth of the entrance/exit to the Lidl car park and proceed back into the bus lane and continue on in that lane until she rejoined a further slip lane which would enable her to turn left onto the Ninth Lock Road.

28. The plaintiff states that while she did indicate initially when she was leaving the line of traffic and going into the bus lane, she maintains that her left indicator was automatically cancelled once she straightened her vehicle in the bus lane. This is contradicted by

the evidence of the defendant and his wife, who state that the plaintiff's left indicator was continuously flashing. Insofar as there is a dispute between the witnesses on this aspect, I prefer the evidence of the defendant and his wife. I find, as a fact, that the plaintiff's left indicator was flashing at the time of this accident.

29. Normally, if a driver is going to exit from the left onto a more major road and they see a car approaching from their right with its left indicator flashing, they cannot assume that that vehicle is going to turn left into the road from which the person is exiting. The other driver may be indicating his intention to turn left into a house or road, which is some further distance up to the left of the exit where the person is coming out. The person exiting from the more minor road, or from private property, has to ensure that they only emerge out onto the more major road when it is safe to do so. They cannot make any assumption as to where a particular vehicle will turn left when it is indicating its intention to make a left hand turn.

30. However, those are the rules which apply in a normal situation. At this particular locus, one is not dealing with a normal situation. There was a bus lane along the extreme left of the westbound carriage way. The bus lane stopped approximately 170ft back from the Lidl entrance/exit. At this point, it turned into a slip lane, but it was only there to facilitate cars turning left into the Lidl car park. In such circumstances, a driver stopped at the entrance/exit to the car park, looking to his right would be entitled to assume that any approaching vehicle on the slip road was going to turn left into the Lidl car park, as there was no other option available to private vehicles, which were in the slip lane. For this reason, it was entirely reasonable for the defendant to assume, when he saw the plaintiff's car approaching in the bus lane and indicating with its left indicator, that she intended to turn left into the Lidl car park, as that was the only lawful manoeuvre that she could undertake.

31. Unfortunately, in this case the plaintiff was not intending to undertake a lawful manoeuvre. Instead, she intended to travel across the mouth of the entrance/exit from Lidl car park and proceed on into the bus lane once again. This was an unauthorised manoeuvre on her part. Once the plaintiff decided that she was going to use the slip lane, not for the purpose of entering the car park, but as a means of proceeding faster towards her intended destination on the Ninth Lock Road, and as she had intended to break the rules of the road by going back into the bus lane, the onus rested on her to take extreme caution when carrying out such an unauthorised manoeuvre. She must have known that any vehicles exiting the car park, whose driver looked to the right and saw her approach, would naturally assume that she was intending to follow the rules of the road and turn left into the supermarket car park. Once she had made up her mind to travel across the mouth of the junction and proceed back into the bus lane, there was a duty on her to take extreme caution, as other road users would not be aware of her intention to carry out such an unauthorised act.

32. It was entirely reasonable for the defendant to assume that the plaintiff was going to turn left into the car park. That was the only lawful action that she could take on that particular stretch of roadway. He is not to be criticised for a failure on his part to anticipate that the plaintiff intended to breach the rules of the road.

33. It was the plaintiff who decided that she would breach the rules of the road and in so doing created a situation of great danger. She must bear responsibility for the accident which ensued. Accordingly, I dismiss the plaintiff's case against the defendant.