

BETWEEN**DEAN BRIDE****PLAINTIFF****AND****DAVID OLIVER****DEFENDANT****JUDGMENT of Mr. Justice Barr delivered on the 4th day of May, 2017****Introduction**

1. This action arises out of a road traffic accident which occurred at 09:50hrs on 5th January, 2012, on the North Strand Road, Dublin. It is the plaintiff's case, that while cycling his bicycle in the cycle lane on the outbound side of the road, leading from the city going in the Fairview direction, that he decided to make a right hand turn and cross over to the cycle lane on the far footpath. The plaintiff states that as there was no traffic in either the bus lane, or the car lane, on his side of the road leading from the city, he was able to turn right and travel across these two lanes. He states that he then went through a gap in the traffic, which was backed up bumper to bumper going into the city and, having seen that there was no traffic in the far bus lane, he proceeded into the bus lane, where he was hit broadside on from the left side by the defendant's car, which had pulled out of the line of traffic and had entered the bus lane.

2. The defendant accepts that there was a collision between the plaintiff's bicycle and his car in the inner lane of the inbound carriageway. However, he denies that it was a bus lane at that point, but had become a lane for cars to use if they intended to turn left from North Strand Road into Seville Place. He stated that it was his intention to travel that way and that he had just pulled into the filter lane, when the plaintiff emerged from between the cars to his right and crashed into the side of the driver's wing of his car.

3. In these circumstances, liability is strongly in issue between the parties. In relation to the plaintiff's injuries, the parties have handed in a number of medical reports detailing his injuries and his treatment to date. No medical evidence was called at the trial of the action. There are no items of special damage.

The Evidence

4. The plaintiff stated that on the day of the accident, he had been cycling from the city centre direction along North Strand Road, going to a premises in the Ossory Road Industrial Estate, where he was due to start a trial for a position as a panel beater. He was due to start at 10:00hrs.

5. The plaintiff stated that he was cycling along North Strand Road in the outbound cycle lane, travelling towards the camera as shown in photograph 1 of the photographs furnished by Mr. Alan Conlon, the plaintiff's engineer. A closer view of his approach route is shown in photograph 2. Photograph 3 shows a closer view of the locus. The plaintiff stated that when he had come parallel with the Super Saver Shop, which is the premises with the blue shop front as shown in photograph 4, he noticed that there was no traffic to his right in the outbound bus lane or car lane. He stated that the traffic in the inbound car lane was completely backed up with cars bumper to bumper in the inbound car lane. Those cars were backed up from the traffic lights at the Five Lamps junction and were not moving.

6. The plaintiff stated that he turned to his right, intending to cycle through the line of traffic, which was stationary in the far car lane and proceed across the bus lane and onto the cycle lane on that side, which was on the footpath. His intention was to travel down that cycle lane and then make a right turn into Ossory Road.

7. The plaintiff stated that before entering the bus lane on the inbound carriageway, he looked to his left. He stated that he had a clear view of the bus lane stretching back for a few hundred metres in the direction of the Annesley Road Bridge. He stated that there were no buses, or other vehicles, in the bus lane as he went through the stationary traffic and entered into that lane. The general view of the bus lane, that he would have had looking back in the direction of the Annesley Road Bridge, is shown in photographs 7 and 8. The plaintiff stated that he had slowed down as he went between the stationary cars in the inbound car lane. He stated that when he looked in the bus lane there were no vehicles in it. As he crossed the bus lane, he was hit broadside on the left side by the defendant's car, which had pulled out of the line of traffic and proceeded down the bus lane. The plaintiff stated that it was definitely a bus lane at that point and was not a filter lane allowing traffic to turn left into Seville Place. The plaintiff stated that the front part of the defendant's car, being the front grill and area adjacent to the front number plate, made contact with the left side of his bicycle. He stated that his bicycle went up onto the bonnet of the defendant's car and he was thrown into the air, landing on the far footpath in the area of the tree as shown on the left side of photograph 4. He stated that a pedestrian came to his assistance and helped him up from the ground and put him sitting against the black railings, which are also visible on the left side in photograph 4. The plaintiff stated that the defendant stayed in his car and did not speak to him. Somebody called for the gardaí and an ambulance. The ambulance arrived a short time later and took him to the Mater Hospital.

9. In cross examination, the plaintiff stated that it had been his intention to cross over onto the cycle lane and footpath which was on the far side of the road, being the side on which Marino College was situate and to proceed down that cycle lane and then make a right turn into Ossory Road. He accepted that he could have made the right turn at the previous junction, being the Five Lamps junction, or he could have waited until the next set of traffic lights at Annesley Bridge. However, he stated that when there was no traffic on his side of the road to his right, he decided to cut through the stationary traffic and proceed up the cycle lane on the far side of the road. The plaintiff stated that he slowed right down as he was crossing through the stationary line of traffic. He stated that he had a good view of the bus lane over the cars which were stationary in the outer lane. There was nothing in the bus lane when he proceeded onto it. When he emerged between the stationary traffic and was travelling across the bus lane, the defendant drove his car into the bus lane and collided with him. He stated that he had not seen the defendant in the bus lane prior to the impact.

10. It was put to the plaintiff that the evidence of the investigating garda would be that the brakes on his bicycle were not working, when he examined the bicycle after the accident. The plaintiff stated that his brakes had been working, as he had to slow down to go

between the stationary line of vehicles.

11. It was put to the plaintiff that he had emerged from between the stationary vehicles and had cycled into the side of the defendant's car, causing damage to the wing mirror on the driver's side. The plaintiff denied that he hit the side of the defendant's car, or that there had been any damage caused to the wing mirror.

12. It was put to the plaintiff that the defendant would say that he only left the inbound car lane, when he was entitled to do so, when the bus lane turned into a filter lane for traffic turning to the left at the Five Lamps junction into Seville Place. It was put to the plaintiff that the defendant only entered into the left hand filter lane at the arrow as shown in photograph 1, of the booklet of photographs prepared by PLC Engineering Services Limited, the consulting engineers retained on behalf of the defendant. The defendant would further state that a number of other vehicles had already turned into that lane and were ahead of him and would have been to the right of the plaintiff, as he emerged onto the inner lane. The plaintiff denied that there were any cars to his right. He stated that the inside lane was completely empty.

13. It was put to the plaintiff that when he emerged from between the cars in the stationary line of traffic, he was very close to the defendant's vehicle. The plaintiff stated that he did not see the defendant as he entered that lane. He would have been very close to the defendant. He stated that he was cycling across the bus lane when he was hit broadside on by the defendant's vehicle.

14. It was put to the plaintiff that when the defendant got out of his car after the accident, the plaintiff criticised him for taking his time getting out of his vehicle. The plaintiff denied this. He stated that the defendant did not get out of his car after the accident. It was put to the plaintiff that the defendant would say that the collision occurred in the left hand slip lane as shown in photograph 1 at a point which was immediately in front of Marino College, which was to the left and just out of shot in that photograph. The plaintiff did not accept that the collision had occurred in that area.

15. The plaintiff accepted that he had spoken to the garda who arrived on the scene. He had been in the ambulance, when he spoke to the garda. He did not accept that he told the garda that he had cycled out in front of the defendant's car.

16. The defendant's evidence on liability was as follows: He stated that at the time of the accident, he lived in Artane and worked as a civil servant in the Customs House. He stated that he drove to work everyday. He stated that he would travel down the Malahide Road, proceed through the Five Lamps junction and turn left at Amien Street. He stated that he had used that route for approximately thirteen years.

17. A little later on in his evidence, he gave a slightly different account of his route to work that day. He stated that he normally travelled down North Strand Road and turned left into Seville Place at the Five Lamps junction. The defendant stated that on the morning in question, there was heavy traffic going into the city. The inbound traffic was moving very slowly. When he reached the arrow marking on the road, as shown in his engineer's photograph 1, he turned into the lane to his left, which had ceased to be a bus lane and had become a filter lane allowing traffic to turn left into Seville Place. He stated that he had turned into this left filter lane at the first arrow, which was shown directly in front of the refuse lorry, in photograph 7 in his engineer's booklet. The defendant stated that there was other traffic in the filter lane ahead of him at that hour in the morning.

18. The defendant stated that when he had just pulled out into the filter lane, he was travelling in first gear, when the plaintiff's bicycle appeared right in front of him from the right. He stated that he braked hard and the car skidded a little and the plaintiff's bike hit the side of his car and went onto the bonnet. There was damage to his front right wing mirror and the front of the driver's side. He stated that he had travelled approximately 5m after applying the brakes.

19. The defendant stated that when he got out of his vehicle, the plaintiff said to him that it had taken him a long time to get out of his car. He did not reply to this comment. He stated that he asked the plaintiff if he was alright. A pedestrian helped the plaintiff up and brought him over to the railings on the Marino College side of the road. He walked behind them. As the traffic was building up behind his vehicle, he returned to the car and moved it into the parking area in front of Marino College. The ambulance and the gardai arrived shortly thereafter. He stated that he spoke to the garda at the scene.

20. In cross examination, he stated that he had told his engineer that he had applied the brakes, but he could not state why that was not mentioned in the engineer's report. In relation to his speed, he stated that he had been travelling very slowly at the time of the impact. It was put to him that he had told his engineer, that he had been travelling at between 20/30kmh. The plaintiff stated that he thought that he had been doing a maximum of 20kmh at the time of the impact. He had just pulled out from the line of stationary traffic, when the bike emerged in front of him. The defendant stated that he had indicated to make a left turn. He did not see the plaintiff's bicycle before the impact.

21. In his evidence, he had stated that the accident occurred at approximately 10:00hrs. He was asked as to why he had told his engineer that the accident had, in fact, happened at 09:50hrs. He stated that he did not remember saying that to the engineer. It had been an estimate of the time of the accident. He was now of opinion that the accident occurred around 10:00hrs. It was put to the defendant that he had become impatient at being stuck in a line of stationary traffic and had pulled out quickly into the bus lane. He denied that he had entered into the bus lane. He said that as soon as he pulled into the filter lane, the plaintiff was there in front of him. He had not travelled far. He stated that he did not see the plaintiff prior to the impact. He stated that he had first seen the front tyre of the plaintiff's bicycle peeping out between the stationary vehicles. He had been approximately one to two cars back at that stage. He had not seen the plaintiff coming between the traffic before the collision.

22. The defendant was asked why if he had been in the line of stationary traffic, he had he not seen the plaintiff crossing from the far side of the road. The defendant stated that there had been some traffic coming out of town. He did not know where the plaintiff had come from. He wasn't paying attention to oncoming traffic. He later accepted that he could not actually say whether there was traffic coming out of town at the time.

23. The defendant was asked why he had not seen the plaintiff passing between the stationary cars. He accepted that he had had a clear view, but had not seen the plaintiff. He stated that there were cars in front of him stretching down to the junction at Seville Place. He was not able to estimate how many vehicles there were. He stated that once he had pulled into the filter lane, the plaintiff's bicycle was in front of him.

24. It was put to the defendant that when the plaintiff had looked down the bus lane, his vehicle had not been in that lane and that he simply darted out into the bus lane and had collided with the plaintiff. The defendant denied that that was true. He stated that he did not see the plaintiff, because he was hidden by the cars. It was put to the defendant that he had been so concerned about dodging into the bus lane, that he did not see the plaintiff. He denied that that was true. It was put to him that that was the true

reason why he did not have any conversation with the plaintiff after the accident. He denied that that was correct. He stated that he had remained for a couple of seconds in his car before getting out after the impact. After he had parked his car in front of Marino College, he had gone back and stood with the pedestrian. The witness was asked why none of that had been put to the plaintiff and suggested that it was due to the fact that this was new evidence, which was being told by the defendant for the first time. The defendant denied that that was true. It was put to him that he knew that the accident was his fault and that that was why he had stayed away from the plaintiff. The defendant denied that that was correct.

25. The defendant was asked about an estimate in respect of the repairs to the damage to his car. It was put to him that this estimate simply stated "To repair damage – front bumper, grill section and bonnet". The defendant accepted that there was no mention of any damage to the wing mirror in the estimate.

26. It was put to the defendant that the estimate for the car damage indicated that this was a frontal impact between the car and the bicycle. The defendant stated that the damage to the wing mirror had been repaired before he had obtained that estimate. He could not say by whom those repairs had been carried out. The witness was asked why there would have been frontal damage to his vehicle, if the plaintiff collided with the wing mirror area of the car. The defendant stated that the bicycle went onto his bonnet and fell down, damaging the front grill.

27. The defendant was asked why he had told his engineer that he had been going at a different speed than that given in his evidence. The plaintiff stated that that had been his estimate of the speed that he was travelling at, at the time of the impact. His evidence now was that he had been barely moving at the time of the impact. He accepted that he had told his engineer that he may have been travelling at 20kmh.

28. Finally, evidence was given by Garda McGrath who had been based in Store Street Garda Station at the time of the accident. He had received a call from Central Control and arrived at the locus shortly after the accident. At that time, the plaintiff was being treated in the ambulance. The defendant was in his car, which was parked outside Marino College.

29. Garda McGrath stated that the defendant had said that he was travelling inbound approaching the junction with Seville Place, when the plaintiff cyclist came across him. He stated that he asked both parties where the accident happened and they both said that it had occurred outside Marino College. The defendant stated that the plaintiff had cycled across the traffic in front of him.

30. Garda McGrath stated that the plaintiff's bicycle was standing at the railings on the Marino College side of the road. He preserved the bicycle and examined it after the accident. He found that the front and rear brakes were not working.

31. Garda McGrath stated that he spoke to the plaintiff when he was in the ambulance. The plaintiff said that he was cycling across the road from the Super Saver Shop, which was the blue shop shown in the plaintiff's booklet in photograph 4 and in the defendant's booklet in photograph 7. The plaintiff stated that he had cycled through the line of stationary cars and was then hit by the defendant's car. He stated that he had written in his notebook "Plaintiff appears at fault". The garda stated that the plaintiff told him that he had cycled out in front of the car. He accepted that that had not been noted in his notes, but it was something which he remembered the plaintiff saying.

32. When the witness was pressed as to what exactly the defendant had said to him, he stated that he did not have a note of the defendant's exact words. He had written in his notebook "*Driver stated he in left lane*". The witness accepted that there was no mention in his notes, made at the time, that the accident had occurred outside Marino College. He stated that that was something else that he remembered the parties saying at the scene of the accident.

33. Garda McGrath stated that his recollection was that the car damage to the defendant's vehicle consisted of a minor scratch on the bonnet and some damage in the area of the VW sign at the front of the vehicle. It was put to him that that level of damage was not consistent with a repair estimate which had been furnished in the sum of €2,000. The witness stated that he could not comment on the cost of repairs to the vehicle.

34. It was put to the witness that there was no reference in the garda abstract report, or in any documentation that had been furnished to the parties, that the brakes on the plaintiff's bicycle were not working. The garda said that he could not explain that omission. He accepted that the plaintiff had not been prosecuted for failing to have his brakes in proper working order.

35. In re-examination, Garda McGrath stated that no criminal proceedings were contemplated against the defendant, as the cyclist had admitted cycling out in front of the car. In further cross examination, the witness stated that that information would have come from him and would have been entered onto the PULSE system. He had a recollection that the plaintiff said to him in the ambulance, that he had cycled out in front of the car. He accepted that the defendant had said very little to him, he had just said that he had been driving in the left inbound lane.

Conclusions on Liability

36. The plaintiff has been consistent in his account of the accident. When he was in the ambulance after the accident, he told Garda McGrath that he had crossed the North Strand Road when he was opposite the Super Saver Shop. Garda McGrath had noted this in his notebook. While no map or engineering evidence was given, the court has been supplied with helpful sets of photographs taken by the plaintiff's engineer and the defendant's engineer. It is clear from photograph 4 in the plaintiff's booklet and photograph 7 in the defendant's booklet, that on the far side of the road, across from the Super Saver Shop, there is a bus lane. It had not turned into a left filter lane at that point.

37. While Garda McGrath had stated that the parties had said that the accident had happened in front of Marino College, that had not been entered in his notes taken at that time. He stated that this was something which he recalled had been said at the time of the accident, which was not recorded by him at that time, yet over five years since the accident, he had a recollection of this verbal statement being made.

38. When one considers that this was a relatively minor road traffic accident, in terms of the accidents to which the garda may have been called in the course of his duties, and when one considers that in the five years which have elapsed since the accident, the garda has probably been involved in many other serious and dangerous incidents in the course of his duties, such as incidents of domestic violence, public order offences and drugs offences, where he may have been placed in situations of considerable personal danger, it is difficult to believe that five years after the accident, he would have a clear recollection of a brief verbal statement made at the time of that minor accident, but which had not been noted by him in his notebook. In the absence of any compelling evidence as to why he would have such a clear recollection of a brief verbal statement made at that time, the court is uneasy about accepting such evidence.

39. Of more concern was the admission which was allegedly made by the plaintiff while in the ambulance, that he had cycled out in front of the car. The plaintiff vehemently denied that he had made any such admission. This was clearly an important statement. Yet, even though the garda did make notes of what was said to him at the scene, he did not enter this in his notebook. When Garda McGrath came to give his evidence, he stated that although that statement had not been entered in his notes, it was something which he recalled having been said by the plaintiff, while in the ambulance. It is difficult to believe that where a garda goes to the bother of making notes at the scene, that he would not include in his notes an important admission made by one of the parties. The court is uneasy about this level of recall of verbal statements, when such recall comes so long after a minor road traffic accident. The court prefers to act only on the matters which Garda McGrath thought were significant enough to record in his notes at the time. He did make a record of the fact that the plaintiff stated that he had turned right opposite the Super Saver Shop on the North Strand Road.

40. The court is also struck by the fact that, as recorded by Garda McGrath, the defendant merely stated that he had been in the left lane on the inbound carriageway. The court finds it remarkable that, if the defendant genuinely thought that the accident was the fault of the plaintiff, he did not make any such assertion to the investigating garda at the scene of the accident.

41. In relation to Garda McGrath's evidence, that after the accident the brakes on the plaintiff's bicycle were not in working order, the Garda did not say what the cause of their malfunctioning was. He did not say whether they were disk breaks or block breaks, or whether they were damaged to such an extent that they could not be used, or if they were block breaks, whether the pads had simply worn down. This allegation was denied by the plaintiff. In the absence of any allegation that the plaintiff was travelling at speed, it is not necessary to make any finding on this issue.

42. The court has also had regard to the fact that the evidence of the defendant was unsatisfactory in a number of respects. Firstly, there was the evidence given by the defendant in relation to the damage to his car. In support of his assertion that the plaintiff had cycled into the side of his vehicle, he stated that the wing mirror on the driver's side had been damaged. However, when it was put to him that the estimate which had been furnished in relation to the car damage did not make any reference at all to the wing mirror, but referred solely to damage to the front of the vehicle, the defendant stated that the wing mirror had been repaired prior to that estimate being obtained. However, he could not say by whom such repair had been carried out.

43. Secondly, the defendant was inconsistent in relation to his speed at the time of the impact. In evidence, he stated that he had only just pulled out into the filter lane and had been travelling in first gear, when the impact occurred. However, in cross examination, he accepted that he had told his engineer that he had been travelling at approximately 20/30kmh at the time of the impact.

44. Thirdly, the court has had regard to the fact that in his evidence, the defendant described having a far greater interaction with the plaintiff after the impact, than had actually been put to the plaintiff in the course of cross examination. The court is satisfied that after the impact the defendant stayed away from the plaintiff and had, at most, only a very minor interaction with him, wherein the plaintiff abused him for taking his time in getting out of his car. The court is of the opinion that this conduct is consistent with knowledge on the defendant's part, that he had in fact been responsible for causing the accident.

45. Fourthly, the defendant stated in evidence that he had braked, and skidded somewhat, just prior to the impact. He stated that he had told his engineer that he had braked, he could not explain why that was not mentioned in his engineer's report. Fifthly, the court is of the view that when the defendant stated in his evidence that the accident occurred at 10:00hrs, rather than at 09:50hrs, as he had apparently told his engineer, this was a subtle attempt on the part of the defendant to infer that the plaintiff may have been rushing to be in time for his first day of work at a premises in the Ossory Road Industrial Estate.

46. Sixthly, the defendant admitted in evidence that he had not seen the plaintiff prior to the impact. He stated that he had not seen the plaintiff cross over his side of the road, or go between the line of stationary cars. The court is satisfied that the defendant did not see the plaintiff because he was not looking at what was happening in front of him.

47. Having regard to these inconsistencies and having seen the parties give their evidence, I am satisfied that the plaintiff has given a reasonably accurate account of how the accident actually happened. I am satisfied that the plaintiff crossed the road when he was parallel to the Super Saver Shop and went straight across his side of the carriageway and through the line of stationary cars and into the bus lane, which was a bus lane at that time and had not become a left turn filter lane.

48. I am satisfied that the plaintiff looked to his left and could see that the bus lane was clear going back in the direction of Annesley Road Bridge.

49. I am further satisfied that the damage to the defendant's car is consistent with the account of the accident as given by the plaintiff. The impact was a frontal impact to the car, which hit the bike broadside on from the left, rather than an impact between the bike and the side of the car in the area of the driver's wing mirror.

50. Having regard to the extent of injury to the plaintiff and to the fact that he was thrown in the air by the force of the collision, I am satisfied that the defendant was not barely moving as stated in his evidence, but was probably travelling at circa 20/30kmh, as he had indicated to his engineer. I am satisfied that he pulled out of the lane of stationary traffic at unreasonable speed, without keeping a proper look out of what was in front of him.

51. I am satisfied that the hypothesis put to the defendant by the plaintiff's counsel, Mr. Byrne, S.C., was the more likely explanation for the accident; that the defendant had become impatient with the traffic being backed up in the car lane on the inbound carriageway and had darted into the bus lane earlier than permitted, with a view to proceeding into the left turn filter lane. The reason why he did not see the plaintiff, was probably due to the fact that he was looking in his left wing mirror to ensure that it was safe for him to enter the bus lane. His conduct after the accident and the limited account given to Garda McGrath, as noted by him in his notebook, which did not involve any allegation of blame on the part of the cyclist, is consistent with this hypothesis.

52. In these circumstances, the greater proportion of liability must rest with the defendant. What the plaintiff did on the occasion, while not in breach of the rules of the road, was an unusual manoeuvre. Coming across from the far side of the road and passing between the line of stationary vehicles, was something that could only be done by a pedestrian, or a cyclist, having regard to the fact that the cars in the inbound lane were bumper to bumper. In such circumstances, there was a heavy onus on the cyclist to keep a very sharp lookout for traffic coming down the bus lane, as those drivers may not have anticipated his emergence into the bus lane from between the stationary cars. Even though it was a bus lane at this locus, a cyclist must still anticipate that some car drivers do enter the bus lane before the commencement of a left turn filter lane. This happens very frequently on the roads in and around Dublin City. Thus, there was an onus on the plaintiff to go very slowly between the stationary cars and to keep a very careful lookout down the bus lane to his left. I am satisfied that the plaintiff did not keep a sufficient look out when executing this unusual, albeit lawful,

manoeuvre on the road. In the circumstances, I find that the defendant was 80% responsible for this accident and the plaintiff was guilty of 20% as contributory negligence.

The Evidence on Quantum

53. In relation to his injuries, the plaintiff stated that after the accident, he had been taken by ambulance to the Mater Hospital. At this time, he was very sore on the left and right side of his body, in particular in his head, neck and legs. He was detained for a number of hours for observation and was then discharged. In the weeks after the accident, he developed severe pain in his left knee. He also became very anxious about cycling on the road. He became very nervous generally and did not go out socialising, as he had done prior to the accident. He lost approximately two stone in weight.

54. The plaintiff stated that before the accident, he had done a lot of Thai boxing, at which he was very good. He had pursued this sporting activity since he was fifteen years old. He also did a lot of gym training in relation to his sport. He attended the gym and the Bridgestone Club in Manor Street, approximately three to four times per week. After the accident, he had to give up this sporting activity, as his left knee would swell up and become very painful.

55. When his knee symptoms did not settle, he was referred to Prof. John O'Byrne, who carried out an arthroscopy and removed a cyst from the knee. He told him that he had a tear on the meniscus, but that if he removed that he would go on to definitely get arthritis. For this reason, it had been left in situ. Since that time, he had returned to training and had strengthened the muscles around his knee, which were helping to keep the knee stable. He stated that after the arthroscopy operation, his knee had improved. However, it continues to get stiff and sore and he has a clicking in the knee, especially in cold weather and when cycling. He felt that he had lost power in his knee. He stated that at present, he would experience knee pain two to three times per week at a level of 2/3 out of 10.

56. There was no medical evidence called in this case. However, the court was furnished with a number of medical reports from both the plaintiff's doctors and the defendant's doctor. In his first medical report, Mr. Eamon Brazil, Consultant in Emergency Medicine at the Mater Hospital, noted that the plaintiff had initially presented with pain in his neck, left shoulder and elbow region. One week after the accident, he developed persistent headaches, which occurred on a daily basis. In addition, he developed painful symptoms in his left knee, when walking for a long period of time. He remained very anxious since the accident and had not returned to cycling. His sleep pattern was poor and he had lost approximately three stone in weight. Dr. Brazil was of the opinion that the plaintiff had developed a mild phobic anxiety which was manifesting as regular headaches. He recommended that he should attend his G.P. for review and if necessary, should be seen by a consultant psychiatrist. However, he hoped that these symptoms would settle quickly. He anticipated that there would be significant improvement within the following three to six months from the date of that examination in April 2012.

57. He was of opinion that the plaintiff had also suffered a soft tissue injury to the left knee, which he thought would improve with exercise. He had advised the plaintiff to return to working out in a gym and to build up his stamina with regard to knee and shoulder work. Again, he anticipated that a full recovery would be made.

58. The plaintiff was reviewed by Mr. Brazil on 29th April, 2015, some three years and three months post accident. By that time, his anxiety symptoms had abated. His neck and shoulder region was no longer causing any problem. However, he continued to experience painful symptoms in the left knee, which would come on when he was walking for up to one hour, or when cycling for a long period of time. He was concerned that he could no longer participate in Thai boxing, as he experienced anterior knee pain when attempting to do so. Examination demonstrated a normal range of movement in the knee. He was able to squat fully. Due to the longevity of his symptoms and the difficulties that it was causing the plaintiff in his sporting pursuits, an MRI scan was performed on the left knee. This demonstrated a complex tear to the medial meniscus, with a small parameniscal cyst. Dr. Brazil recommended that the plaintiff should be examined by Prof. John O'Byrne, Consultant Orthopaedic Surgeon.

59. The plaintiff was examined by Prof. O'Byrne on 19th February, 2016, some four years after the accident. The left knee continued to be painful, particularly when walking or carrying out basic activities of daily living. The doctor noted that prior to the accident, he had been very involved in cage fighting and mixed martial arts. He had tried to resume his sporting activities, however, he experienced pain in his left knee both on the medial and lateral sides. He was able to cycle his bicycle up to an hour. However, after training, he described clicking and pain in his knee. He had tried wearing an elasticated knee support, which had given some relief. However, his symptoms had not improved and were interfering with his ability to participate in sports.

60. Examination of the left knee showed no effusion and the plaintiff had a full range of motion in his left knee. The knee joint itself was stable. However, he had tenderness over the postero medial joint line. He had discomfort in the suprapatellar area. However, his pain was predominantly on the postero medial joint line. Prof. O'Byrne noted that the MRI scan showed a complex tear of the medial meniscus, with a small para-meniscal cyst.

61. Prof. O'Byrne was of the opinion that the plaintiff had suffered a meniscal tear at the time of the accident. The plaintiff had stated that he had had no knee problems prior to the accident. He was of opinion that the plaintiff would require a knee arthroscopy and partial medial meniscectomy.

62. On 14th September, 2016, the plaintiff underwent arthroscopic examination, which revealed a partial tear of the posterior horn of the medial meniscus which was stable. Due to the fact that there were some adjacent degenerative changes on the femoral condyle tibial plateau, it was decided not to remove the meniscal tissue, as that would have left the degenerative articular surface more exposed. He was also noted to have some slight changes in his lateral compartment.

63. Prof. O'Byrne stated that in summary, the plaintiff's arthroscopy had shown damage to the meniscus. He also had some degenerative change affecting the articular cartilages on the medial side and also to a lesser extent, on the lateral side. The doctor was of opinion that that was consistent with the mechanism of injury and with the plaintiff's symptoms.

64. In terms of a prognosis, Prof. O'Byrne thought that the plaintiff would have some ongoing trouble with his knee. He stated as follows:-

"He does have to have meniscal tissue excised and this is more encouraging in terms of him not developing ongoing arthritis. I think he may have some ongoing symptoms that limit him in the manner he currently describes. I do not think he will progress rapidly to develop knee arthritis, however, I think he may have some ongoing discomfort".

65. The plaintiff was seen by Mr. Robert McQuillan, Consultant in Emergency Medicine, on behalf of the defendant. He was first seen on 29th September, 2015, some three years and nine months post accident. The doctor noted the plaintiff's account of his medical

history since the accident. He noted that the plaintiff had had an MRI scan of his left knee, but he did not have details of that scan at the time of writing his report.

66. At the examination, the plaintiff stated that he had pain on either side of his knee extending to behind the knee. The knee would swell if he tried to train. There was no locking and no giving in the knee. The plaintiff used a brace on his knee with benefit. Physical examination revealed that the knee was normal in appearance. There was tenderness at and below the joint line medially and laterally. There was no significant joint line tenderness. He had mild patellofemoral discomfort with no significant crepitus. He had a full range of movement in the knee. He complained of discomfort on full extension. There was no knee effusion. Stress on the intra-articular cartilage was pain free.

67. Mr. McQuillan was of opinion that the plaintiff had sustained a soft tissue injury following the accident in January 2012. At the time of the examination, he had persisting left knee symptoms. His clinical examination did not suggest anything of significance, but the doctor had not had an opportunity to view the MRI scan which had been taken of the left knee. He noted that at that examination, the plaintiff made no complaints of any symptoms relating to anxiety.

68. In a follow up letter dated 31st August, 2016, Mr. McQuillan noted that the MRI scan showed a complex tear of the medial meniscus, with a small para-meniscal cyst. He noted that at that time, Prof. O'Byrne had advised that the plaintiff would require an arthroscopy. He noted that Prof. O'Byrne had stated that the plaintiff had no knee pain prior to the accident and as such, the pathology was likely to be related to the accident.

69. Mr. McQuillan stated that the meniscal cyst may suggest that there was a pre-existing degenerative situation. At the time of his examination, the plaintiff had no giving or locking of the knee. He did have some tenderness at and below the medial joint line and over the lateral aspect. Prof. O'Byrne described tenderness over the postero medial joint line. The plaintiff also had discomfort in the supra patellar area. Mr. McQuillan stated that it had to be accepted that the accident could have been associated with damage to the meniscus and that surgery was required. The outcome would depend on the extent of the surgery, but he thought that as the plaintiff had no giving or locking of the knee and his symptoms were relatively low grade, he was hopeful that surgery would not be too extensive. It does not appear that the plaintiff was examined by any doctor on behalf of the defendant subsequent to the arthroscopy carried out on 14th September, 2016.

Conclusions on Quantum

70. The plaintiff in this case is a young single man of 25 years of age, having been born on 10th July, 1991. He is an unemployed panel beater. He was involved in an accident on 5th January, 2012, when he was struck broadside on by a car, while riding his bicycle. As a result of the impact, he was thrown into the air and came to land on the pavement some short distance away.

71. The plaintiff was very shaken by the accident. He was sore on left and right sides of his body and also had pain in his neck, left shoulder and elbow region. He was detained in hospital for a number of hours for observation.

72. The progress of the plaintiff's injuries, has been set out in detail in the previous section of this judgment. It is not necessary to set out those details again. In summary, the plaintiff had two main sequelae as a result of the accident. The first was a mild phobic anxiety, which manifested itself in the form of headaches and an inability to go out socialising. It appears that this condition abated over a number of months. The plaintiff did not require any medication, or psychiatric intervention in relation to this aspect of his injuries.

73. The plaintiff's main injury was to his left knee. Due to persistent symptoms of pain and associated disability, the plaintiff underwent an MRI scan of his left knee. This demonstrated a complex tear to the medial meniscus, with a small parameniscal cyst.

74. The plaintiff came under the care of Prof. John O'Byrne, Consultant Orthopaedic Surgeon, who was of the opinion that the plaintiff sustained a meniscal tear at the time of the accident. Treatment in the form of an arthroscopy was carried out on 14th September, 2016. This revealed a partial tear of the posterior horn of the medial meniscus, which was stable. Due to the fact that there were some adjacent degenerative changes on the femoral condyle tibial plateau, it was decided not to remove the meniscal tissue, as that would have left the degenerative articular surfaces more exposed. He was also noted to have some slight changes in the lateral compartment. Prof. O'Byrne was of opinion that the damage to the meniscus revealed in the arthroscopy, together with some degenerative changes affecting the articular cartilages on the medial side and to a lesser extent on the lateral side, was consistent with the mechanism of injury and with the plaintiff's symptoms.

75. Prof. O'Byrne is of the opinion that the plaintiff will have some ongoing discomfort in his left knee in the future. He did not give any definitive time within which such discomfort may resolve and therefore, one must conclude that the plaintiff is going to have such discomfort into the long term.

76. In his evidence, the plaintiff did not seek to exaggerate the continuing level of his symptoms. He accepted that after the arthroscopy, his knee had improved. However, the knee would still get stiff and sore on occasion and he still has clicking in the knee, especially in cold weather and when cycling. However, he accepted that he was able to cycle and walk reasonably well. He stated that he has lost some power in his knee. He experiences knee pain two/three days per week at a level of 2/3 out of 10.

77. Taking all of these matters into account and having regard to the present level of his symptoms and taking account of the prognosis as furnished by Prof. O'Byrne, I assess general damages at full value at €40,000. Having regard to the plaintiff's young age and the opinion of Prof. O'Byrne that he will have ongoing discomfort in his left knee, I award the sum of €20,000, for pain and suffering into the future. Allowing for the apportionment on liability, the plaintiff is entitled to judgment in the sum of €48,000.