Neutral Citation [2016] IEHC 482

THE HIGH COURT

[2015 No. 9334 P]

BETWEEN

ROTIMI OMOTAYO

PLAINTIFF

AND

KENNETH GRIFFIN

DEFENDANT

JUDGMENT of Mr. Justice Bernard J. Barton delivered on the 29th day of July 2016

1. These proceedings are brought by the Plaintiff against the Defendant for damages for personal injuries and loss arising as a result of a road traffic accident which occurred on 4th March 2015 at Custom House Quay, Dublin 1. A full defence incorporating a plea of contributory negligence was delivered in the proceedings; accordingly, the Plaintiff is on full proof of his claim.

Background

2. The Plaintiff was born on 14th October, 1975 and resides at 8 Windsor Avenue, Fairview, Dublin 3. On the date of the accident he was self-employed as a bicycle courier working under a sub-contract with Wheels Couriers, Belvedere Place, Dublin 1. The Defendant is a taxi driver by occupation. He resides at 328, Clogher Road, Crumlin. The accident involved a collision between a bike ridden by the Plaintiff and a taxi driven by the Defendant. Each party blames the other.

3. Engineering evidence was given on behalf of both parties. The engineers carried out accident locus surveys, took photographs and prepared maps which were proved in evidence.

4. Traffic is permitted to proceed in both directions on Custom House Quay. The accident occurred on the carriageway for traffic heading in the direction of East Point Bridge some two to three car lengths back from a set of traffic lights located opposite Sean O'Casey Bridge. It is common case that at the time of the accident these lights were showing red for traffic on both carriageways. The eastbound carriageway is divided by a continuous white line separating a bus lane to the left and an ordinary traffic lane to the right. The total length of the bus lane was measured by the Plaintiff's engineer at 25 metres. This lane commences with a series of broken white lines and then becomes a continuous white line which terminates at the stop line of the traffic lights. The continuous white line was measured by the Defendant's engineer at 18 metres in length.

5. Direction arrows are designated on the carriageway to the right of the broken white lines which indicate the commencement of the bus lane. These arrows direct non-public service vehicles away from the bus lane and into the outer lane for ordinary traffic. There is a large premises constructed of steel and glass located on the left hand side of the east bound carriageway known as the GHQ building and which occupies a site that extends through the entire length of the bus lane and beyond. To the west of the GHQ building is an inner sea/canal dock. Access to and egress from the dock was possible via 2 Victorian-era lifting bridges; one for each carriageway. The width of each carriageway narrows within the bridges to a point that permits single file traffic only.

6. A paved area extends into the road from the middle of each side of the lifting bridges and divides the Quay between the East and West carriageways. At the end of the paved area on the eastbound carriageway, at a point which is approximately opposite to the commencement of the bus lane, there is an area of hatched road markings bounded by two continuous white lines. The initial width of the hatched markings approximates to the end of the paving but tapers out to 0.7 metres by the time the hatched area reaches the traffic lights. Regulation 26 of the Road Traffic (Traffic and Parking) Regulations 1997 S.I. number 182/1997 prohibits entry by vehicular traffic over an area of the road on which hatched markings have been designated.

7. The next building beyond the GHQ building on the far side of the traffic lights is the Jury's Inn Hotel. Opposite the hotel on the river side of the road there are a number of premises, to one of which the Plaintiff intended to make a delivery. Further down and on left hand side of the Quay are the offices of PWC, where the Defendant intended to pick up a fare.

The Accident

8. It was common case that immediately before the accident there were a number of cars stopped in the lane for ordinary traffic due to the red light. The essential controversy between the parties concerned the cause and circumstances of the accident.

9. The Plaintiff's evidence was that he had been cycling along the left side of the eastbound carriageway beside the footpath until he emerged from under the lifting bridge. He then altered course and cycled between two cars which were stopped in a line of traffic then occupying the outer lane. Having passed between the two cars, he proceeded to cycle along the outside of the stationary traffic in the outer lane and beside the hatched markings towards the lights. As he did so, the Defendant's car, positioned two to three cars back from the lights, suddenly pulled out sharply to its right in front of him. He tried to swerve to avoid a collision but impacted broadside with the driver's door area, breaking the door mirror in the process and was thrown over or onto the bonnet landing on the road immediately in front of the car.

10. This description of the accident is in marked contrast to that of the Defendant. On his account, he was stopped in the lane for ordinary traffic two or three cars back from the lights intending to proceed down the Quay to pick up a fare at the premises of PWC. Waiting for the lights to change, he heard a bang which came from the driver's door area of the car. He looked to his right and saw the Plaintiff and his bike on the ground to the right hand side of his car.

11. The Defendant rejected the suggestion that he had moved out of position before the collision or that he had done so with a view to executing a U-turn. However, he did accept that his car, although stationary, was angled slightly to the right towards the hatched markings at the time when the collision occurred. This was significant for a number of reasons which will become apparent.

12. The Gardaí were not called to the scene at the time but the accident circumstances were subsequently investigated by Garda Stephen Emmett who gave evidence at the trial. He visited the scene and subsequently prepared a sketch map on the basis of information he had received from witnesses including the parties. The Garda abstract of the investigation, including witness statements and the map prepared by Garda Emmett were admitted in evidence.

13. The Garda sketch map, which is not drawn to scale, shows an approximate point of collision. The Plaintiff and the Defendant both made statements which identified where the accident had occurred. Their evidence was that the Defendant's vehicle was positioned some two to three cars back from the traffic lights. However, when the Defendant was asked to place his vehicle on the carriageway immediately before the impact by reference to a map and photographs of the scene, he identified a point on the carriageway adjacent to the beginning of the bus lane just beyond the end of the traffic direction arrows – a point which is considerably further back from the lights than two to three cars.

14. His evidence was that he had entered the outer traffic lane because, in his experience, it would be quicker than using the bus lane on that part of the Quay; he needed to get down to the PWC building to collect a fare. Having emerged from under the lifting bridge, he had followed the traffic direction arrows with the result that he was brought from left to right across the carriageway until he had to stop behind a car which was stopped in front of him.

15. I took this evidence to be an explanation as to why his vehicle was found to be angled to the right in the outer lane rather than being straight, as one would expect, especially if he was only positioned two or three cars back from the lights. At that point, there would be no reason in the ordinary way for a car to be anything other than straight.

16. The engineers, Mr. Tony O'Keeffe and Mr. Alan Conlon, were in agreement in relation to the relevant road markings and the dimensions of the respective carriageways and lanes. The outer lane for ordinary traffic was measured at approximately ten feet in width. There was no evidence to suggest that any vehicles in the outer line of traffic were other than ordinary cars. The width of the average car was given as 5.4 feet and the average length was given at 14 feet.

17. Having regard to the width of the lane, there was ample room for a car to straighten up and stop once it entered the outer lane. When an allowance was made for a gap between the stop line of the traffic lights and the first car in the line, as well as a gap between it and the next car, it was Mr O'Keefe's evidence that three cars would be comfortably accommodated within the length of the outer lane measured by the 18 metre continuous white line of the bus lane.

18. Stephen Dawson, who was working in the CHQ building, was called as a witness on behalf of the Defendant. He had his back to the river at the moment of impact. He heard a commotion, turned around, and saw the Defendant's taxi stopped. He noticed some people arriving at the scene and he too went to lend assistance. He noted that the Defendant's taxi was at a slight angle to the right on the carriageway and that the right front wheel was just touching the continuous white line of the hatched markings on the Defendant's side of the road.

19. By reference to the photographs, he placed the Defendant's vehicle on the carriageway in much the same position as the Defendant had done. Whilst he did not agree that the accident had occurred closer to the lights, he accepted that if the Defendant's car was only two or three cars back then he might be mistaken in that regard.

20. Evidence was also given on behalf of the Plaintiff by a Mr. Meleady who was also employed as a courier. At the time of the accident he was proceeding in the same direction as the Plaintiff. He recalled coming under the lifting bridge and that he was travelling close to the footpath. He was unsure as to the exact state of the traffic both in terms of the number of cars and the type of cars, and was also uncertain as to whether or not the traffic was moving or stopped. It was the sudden movement of the Defendant's car which drew his attention to it. It turned sharply to its right, perhaps 45 degrees. He saw the Plaintiff try to swerve and avoid the car but he was unable to do so and struck the driver's door mirror area. On his recollection, the Plaintiff landed on the ground just in front of the Defendant's car. In relation to the question of whether or not the Defendant's car moved out of position before the impact, his evidence corroborated that given by the Plaintiff.

Decision on the location of the accident relative to the traffic lights

21. The Plaintiff was emphatic that the Defendant's taxi was positioned two or three car lengths back from the lights, exactly where the Defendant positioned his car in his Garda statement. I accept the evidence of Mr. O'Keeffe that if that positioning is correct then the Defendant's vehicle was comfortably within the outer traffic lane designated by the continuous white line when the accident occurred. I am satisfied on the evidence that the taxi was two to three cars back from the lights when the collision occurred.

22. In my judgment, the Defendant and Mr. Dawson were mistaken when, by reference to photographs, they placed the Defendant's taxi where they did. Significantly, the Defendant did not resile from the vehicle positioning referred to in his Garda statement. It follows that insofar as the placing of his vehicle at the point indicated on the photographs was offered by way of an explanation as to why his vehicle was at a slight right hand angle towards the hatched markings, that cannot be correct and is rejected.

23. The positioning of the Plaintiff relative to the Defendant's car and the position of the car relative to the hatched markings immediately after the accident was also the subject matter of some dispute. The Plaintiff and Mr. Meleady gave evidence that the vehicle was at a much more significant and acute angle to the hatched markings at the point where it stopped and that the Plaintiff ended up to the front of the Defendant's vehicle either on or slightly to the other side of the hatched markings.

24. The Defendant and Mr. Dawson gave evidence that the Plaintiff was positioned more to the right hand side of the car after the accident than to the front of it, that the angle of the car was slight rather than acute, and that the off-side front wheel was just touching the continuous white line of the hatched markings.

25. The Plaintiff gave evidence that the handle bars of his bike had been moved out of position as a result of the impact, that the front bicycle wheel was slightly buckled – a fact which he discovered only when he went to ride it after the accident – and that, subsequently, he discovered that the bicycle frame had been fractured. Apart from this own evidence in this regard, no photographic or documentary evidence from a bicycle retailer or repair shop was given to vouch the damage.

26. Both engineers gave evidence that if the vehicle was at the more acute angle suggested by the Plaintiff and Mr. Meleady rather than that suggested by the Defendant and Mr. Dawson at the moment of impact, and if the bike had sustained damage of the nature suggested by the Plaintiff, then they would have expected corresponding damage to have been caused to the driver's side area of the car. As it was, the only objective evidence of damage to the Defendant's vehicle was to the door glass mirror.

27. Given that that was the only damage to the Defendant's vehicle, the engineering evidence establishes that that was more consistent with a glancing blow probably caused by the handle bars of the bike as it struck the door mirror. Moreover, it is consistent with a less acute angle of the Defendant's vehicle being presented to the Plaintiff's bicycle at the moment of impact.

28. Having regard to the nature of the damage to the car and accepting the engineering evidence as I do, the Court is satisfied, on the balance of probabilities, that the angle of the Defendant's vehicle which was presented to the Plaintiff was far less acute than

that suggested by Mr. Meleady and himself. In such circumstances, it is unlikely that the Plaintiff would have made contact with the bonnet of the car. If he had done so, it is likely that that there would have been some damage to the bonnet. In the event, there was none. In order for the Plaintiff to have been thrown over the bonnet, without touching it, the engineering evidence established that he would have had to have been travelling at a considerable speed.

29. It is also clear on the engineering evidence that having struck the door mirror the Plaintiff's momentum was such that he would have continued to travel in the direction in which he had been proceeding immediately before the impact. In this regard, the Plaintiff said that he had swerved in order to try and avoid an impact. The contact of the near side handlebar with the door mirror would have had a rotational affect, thus rendering it more likely that he would have been thrown to the side albeit forward of the Defendant's vehicle.

30. In my view of the evidence it is more likely that, whilst the Plaintiff ended up forward of the car on the ground, it was to the side rather than to the front of it that he came to rest. I am satisfied that Mr. Dawson was mistaken in his recollection that he saw the Plaintiff's bicycle and saw the Plaintiff getting up from a position close to the off-side passenger door area of the car. However, whilst he is likely mistaken as to precisely where he saw the bicycle and the Plaintiff getting up, he did put the Plaintiff and the bicycle beside and not in front of the car – a fact which is consistent with the engineering evidence.

Liability

31. The Court is called upon to resolve the conflict of evidence with regard to the cause of the accident. Simply put, the Defendant's case is that the Plaintiff cycled too close to him and collided with the driver's door mirror of a stationary vehicle. The Plaintiff's case is that the Defendant turned into his path. The suggestion was that the Plaintiff was executing or attempting to execute a U-turn. I am satisfied that the Plaintiff could not have known what the Defendant's intention was in pulling out to his right, and that the suggestion amounts to supposition on his part. It was a suggestion which was completely refuted by the Defendant. Although his business base was in Stephen's Green, the Defendant's evidence was that he was on his way to pick up a fare further down the Quay at the premises of PWC. To turn back up the Quay would make absolutely no sense given his intended destination. The Defendant produced a printout to show that he did proceed to PWC and picked up a fare shortly after the accident. He said the fare was a woman but the printout referred to the name of a man, Robin. No explanation was offered to explain this inconsistency but the Defendant remained adamant that the fare was a woman.

32. Mr. Meleady was the only person who actually witnessed the accident. It was the motion of the Defendant's vehicle which drew his attention. He was uncertain about whether the traffic was moving or stationary, or the number of cars in the traffic. He had previously completed a questionnaire in which he had estimated the speed of the Defendant's vehicle at 20 or 30 km an hour immediately before the accident. When it was put to him that it was common case that the car had been stopped in the line of traffic, he accepted that he must have been mistaken in this regard and admitted that he was not very good at assessing speed. He was also uncertain about a number of other matters but remained adamant that the Defendant's taxi had pulled out to his right into the path of the Plaintiff.

33. He went to the Plaintiff's assistance and gave the Plaintiff his contact details. He had also drawn a rough sketch map on which he had placed the point of collision to the left of a number of boxes drawn on the map. He was very familiar with the area having regard to his occupation. Although he indicated that the boxes represented the centre of the road, I consider it more likely that they represent the hatched markings. The position of the point of collision indicated on his sketch map was inconsistent with the evidence which he gave to the Court that the collision happened on the hatch markings and that the Plaintiff ended up either on the markings or just over them and onto the opposite carriageway. In all these circumstances, and although his account corroborates the evidence of the Plaintiff as to the cause of the accident, I do not consider his evidence sufficiently reliable in deciding the issue.

34. When the Plaintiff ultimately got up off the road, I am satisfied a conversation took place between himself and the Defendant. His evidence was that both Mr. Meleady and Mr. Dawson gave him his contact details and that the Defendant had apologised to him for the accident and had also said that he had not seen him coming. On the Plaintiff's account, the Defendant gave him his details on a note which was produced in evidence. That note contained the Defendant's mobile telephone number together with the registration number of his car. The Plaintiff was in some shock at this time. He took the note. It transpired that the telephone number was unclear and subsequent attempts to ring the number proved fruitless. The Defendant's identity was subsequently established by the Gardaí through the car registration number on the note.

35. There was some dispute as to the purpose for which the note had been given. The Defendant's evidence was that he had given the note to the Plaintiff so that he could contact him with a view to paying for the damage to his door mirror. On the Plaintiff's account, it was because the Defendant was at fault for the accident. The Defendant refuted any suggestion that he had any discussion with the Plaintiff about the cause of the accident or that he had apologised. The Defendant considered the Plaintiff to be at fault and expected him to pay for the damage. However, he did not seek the Plaintiff's contact details so that he could make a claim. Furthermore, he subsequently had the mirror repaired at his own expense.

36. Mr. Dawson witnessed these events and made a statement to the Gardaí in which he said that the taxi driver and the cyclist were debating who was at fault and that details were exchanged. Both parties were still at the scene when he left to go back to his work.

37. I had an opportunity to observe the demeanour of the Defendant as he gave his evidence. I found him to be less than convincing and unreliable as a witness. If he considered himself to be the innocent party and expected the Plaintiff to pay for the damage to the door mirror of his car, I consider it unlikely that he would not have asked the Plaintiff for his contact details. Moreover, I consider it more likely that giving his mobile number and car registration number without asking for the Plaintiff's contact details is more consistent with a sense of responsibility for the accident than with a *via media* by which the Plaintiff was to contact him to pay for the damage to the car.

38. With regard to the question as to whether or not a conversation of the type overheard by Mr. Dawson occurred and as to whether or not the Defendant was apologetic at the scene, I consider it pertinent to observe that the Defendant refuted the suggestion that such a conversation had taken place or that he had been apologetic. Mr Dawson was a witness called on behalf of the Defendant and my impression is that he was doing his best to give truthful evidence to the Court. He was willing to accept that he might have been mistaken in relation to the positioning of the taxi relative to the lights. Although less emphatic in his evidence to the Court, he accepted that he had made a Garda statement in which he had referred to a conversation between the parties and that this involved a discussion about fault. I accept this evidence concerning the conversation which he overheard at the scene. Although he had no recollection of a discussion specifically about fault, Mr. Meleady said that the Defendant was generally apologetic.

Conclusion

39. For all these reasons and the findings made I am satisfied that the most probable explanation for the cause of the accident is that

the Defendant pulled out from a stationary position into the path of the Plaintiff albeit not at as an acute an angle as that suggested by the Plaintiff. In the circumstances of the case I consider it unnecessary to reach any conclusion as to why the Defendant did so. Such an exercise would in any event be speculative.

40. I am also satisfied that the Plaintiff was cycling on the eastbound carriageway close to the continuous white line of the hatched markings before he attempted to swerve to avoid a collision with the Defendant's car. I accept the evidence of Mr. Dawson that, after the collision, he found the Defendant's vehicle with its right front wheel just touching the continuous white line of the hatched markings. Given the position of the door mirror on the Defendant's vehicle and the rest position of the car as described by Mr Dawson, the door mirror would have to have been located over the carriageway and not on the hatched markings. As the taxi had moved from a stationary position, it follows that the door mirror would have been positioned further out over the carriageway at the moment of impact.

41. There was an account in the report of Mr. Conlon which suggested that the Plaintiff had been cycling in the hatched markings prior to the accident. Had that been so it would have been of some significance having regard to the prohibition on traffic entering the area of hatched markings provided by Regulation 26 of the Road Traffic (Traffic and Parking) Regulations 1997 S.I. No. 182 of 1997. As it happens, Mr. Conlon produced his consultation notes in the course of his evidence which disclosed that the Plaintiff had not in fact made such a statement.

42. Having regard to the location of his intended delivery on the river side of the Quay, the Plaintiff was entitled to cycle where he did in the outside lane. He had the right of way and in the circumstances he was sufficiently close to the Defendant so as to give rise to a duty of care on the part of the Defendant. In the event, the Defendant was totally unaware of the Plaintiff's presence until the accident occurred. Accordingly, he failed to keep a proper look out before he executed his manoeuvre and of which there was no evidence of an indication. Pulling out into the path of the Plaintiff in these circumstances was negligent.

43. Having regard to all of the evidence and the findings made, the Court is satisfied that there was no negligence on the part of the Plaintiff. Consequently, full liability for the accident rests with the Defendant.

Quantum
44. As a result of the accident, the Plaintiff suffered soft tissue injuries to his right thumb and over his left shin. He attended his G.P., Dr. Patricia Carmody, on the day following the accident complaining of pain in his right thumb and left shin. Dr. Carmody prepared a medical report for the assistance of the Court dated 23rd April, 2015. This report was admitted in evidence. Clinical examination on 5th March, 2015 disclosed reduced mobility of the right thumb with obvious swelling. There was also tenderness noted over the left shin with a small haematoma palpable. He was reviewed by the G.P. on 10th and 18th March, 2015 for medical certificates. The Plaintiff said that approximately a week after the accident he noticed increasing pain in his right shoulder. He attended St. Vincent's Hospital A&E where x-rays of both shoulders were carried out. The x-rays were reported as normal.

45. The haematoma over the left shin cleared up quickly but the Plaintiff continued to suffer from pain in his right thumb and in his right shoulder. He also developed some back pain in the upper thoracic area. Despite his ongoing difficulties he attempted to return to work on 17th April, 2015. However, his contract was terminated on that date by his employer. He remained unemployed until the end of June and brings a claim for loss of earnings from the date of the accident until the beginning of July when he secured alternative employment doing office work which lasted until December, 2015.

46. On 25th May, 2015 he was reviewed by a Dr. Vinny Ramiah, Consultant in Emergency Medicine. He prepared a report for the assistance of the Court dated 25th May, 2015, which was admitted in evidence.

47. Because the Plaintiff was suspected of having an injury to the ulnar collateral ligament of the right thumb consistent with having put out his arm to save himself in the fall, he was referred to the orthopaedic facture clinic of Mr. Darragh Hynes, Orthopaedic and Upper Limb Surgeon. Dr. Ramiah noted that the Plaintiff's complaints mainly related to his right shoulder. The Plaintiff was unable to lie on his right hand side and his sleep had been affected due to a constant dull pain in the right shoulder. Clinical examination disclosed reduced function of the shoulder. At that stage, the Plaintiff said he was unable to ride a bicycle and was nervous about doing so. He complained of a feeling of instability around his shoulder. His right thumb had improved but it still felt painful especially when attempting to fully oppose the thumb and little finger.

48. Dr. Ramiah noted evidence of disuse atrophy of the deltoid muscles together with some subacromial impingement signs and symptoms. He advised the Plaintiff to undergo physiotherapy. In his opinion, this treatment was necessary if the Plaintiff was not to experience chronic instability and symptomatic subacromial impingement of the right shoulder joint.

49. The Plaintiff was first seen by Mr. Hynes on 24th March, 2015. He too recommended a course of physiotherapy. At that juncture the Plaintiff was complaining of pain in his right thumb, particularly when on movements of the thumb into flexion. The pain was located on the dorsal and volar aspects of the metacarpophalangeal joint.

50. At the time of that medical examination, the Plaintiff was also complaining of ongoing symptoms of pain in his shoulder. He reported that the pain was particularly bad over the previous ten days. He complained of ongoing upper back pain. Clinical examination of the Plaintiff's right thumb disclosed a very slight restriction of the range of motion in the metacarpophalangeal joint. Medical examination was otherwise normal though the Plaintiff did complain of pain at the extremes of movement.

51. Clinical examination of the right shoulder disclosed significant tenderness to superficial palpation superiorly. It appeared to Mr. Hynes that the Plaintiff had significant pain on movement of the shoulder itself. With appropriate physiotherapy, he did not anticipate that the Plaintiff would have any significant long term problems with his shoulder and that he should be able to get back to his pre-accident work activities.

52. The Plaintiff was next reviewed by Mr. Hynes in June, 2016, at which stage he noted that the Plaintiff had commenced physiotherapy some two weeks prior to consultation. Clinical examination of the right shoulder revealed restriction of external rotation to approximately 30 degrees and elevation was to about 120 degrees. Mr. Hynes advised the Plaintiff to continue with his physiotherapy programme and booked the Plaintiff for further review after a further four months.

53. Insofar as the thumb injury is concerned, Mr. Hynes was of the opinion that the Plaintiff had sustained a sprain of the collateral ligaments at the metacarpophalangeal joint. With regard to the right shoulder he thought that the Plaintiff's soft tissue injuries would ultimately settle down. Unhelpfully, no detail was included in the report as to the specific nature of the soft tissue injuries.

54. The Plaintiff was reviewed on behalf of the Defendant in February, 2016 by Dr. John Ryan and, subsequently, by Mr. James

Colville, Consultant Orthopaedic Surgeon in April, 2016. Their reports were admitted into evidence. The Plaintiff told Mr. Colville that he had been taking some neurofen tablets but had ceased taking these by then. He was still suffering some back pain and pointed to the inter-scapular area. He had not regained full movement of his right shoulder and this was still painful. Surveillance evidence taken on the day of the medical examination suggests otherwise.

55. The Plaintiff was reported by Mr. Colville to have told him that he could not ride a bicycle anymore. When this was put to him under cross examination he rejected the suggestion that the information came from him. He could not say where that information had come from since he had returned to riding a bicycle in 2015, though, having done so, he was nervous in traffic and only rode a bicycle occasionally.

56. On clinical examination of the Plaintiff's right wrist and thumb, Mr. Colville considered there to be some laxity of the ulnar collateral ligament on stressing the metacarpophalangeal joint. He thought that the complaints of pain in the upper thoracic spinal area were referred. In an addendum to his report, dated 26th April, 2016, Mr. Colville referred to the non-specific opinion of Mr. Hynes concerning the Plaintiff's shoulder. He commented on that but gave no opinion of his own, which is also unhelpful.

57. The Plaintiff was placed under surveillance on 4th April, 2016 and video footage of this surveillance was shown to the Court. This disclosed that the Plaintiff had a full range of motion of his shoulder. He was seen to reach up, fully elevating his right arm to pick a twig off a tree which he then seemed to use as a tooth pick. This evidence also showed the Plaintiff's capacity to ride a bike vigorously in busy traffic. This presentation was not consistent with his direct evidence to the Court, and nor is the surveillance evidence consistent with the presentation to Mr. Hynes in June, 2016. Although he accepted that the physiotherapy had benefitted him in terms of recovery of his shoulder symptoms and that he was now able to elevate his arm fully, it is clear that physiotherapy had been delayed due to a shortage of funds and had only commenced in May, 2016 – a month after the surveillance evidence was recorded. Nevertheless, Plaintiff's evidence was that he still had some ongoing problems in the form of discomfort and shoulder pain, while accepting that it had now improved significantly.

Decision on quantum
58. X-rays of the Plaintiff's right shoulder and right thumb were reported as normal. The Plaintiff made a speedy recovery in respect of the haematoma over his left shin. The injuries to his right thumb were of a soft tissue nature in the form of a sprain of the collateral ligaments at the metacarpophalangeal joint. No mention of any ongoing difficulties in relation to these injuries were recorded in the report of Mr. Hynes, dated 7th June, 2016, which was two months after the examination by Mr. Colville. Had any ongoing complaints in relation to his thumb been made by the Plaintiff to Mr. Hynes, I would have expected such to appear in his report. Accordingly, I am satisfied that the Plaintiff has recovered from this injury.

59. As far as the Plaintiff's shoulder injury is concerned, this too was of a soft tissue nature, though the specifics of the injury are unclear. However, prognosis was for an uneventful recovery. Consistent with that prognosis and having regard to the surveillance evidence, I am satisfied that there is no functional impairment in the use of his right shoulder and that the Plaintiff has substantially recovered from that injury which includes the complaint of referred pain into his upper back.

60. Having regard to the content of the medical reports of Mr. Hynes and Mr. Colville in particular, and to the surveillance evidence of the Plaintiff's abilities as of April, 2016, I consider it appropriate to observe that my distinct impression is that the Plaintiff has certainly made the most of the injuries which he undoubtedly sustained.

Conclusion
61. Having had regard to the book of quantum, which is now hopelessly out of date and is of little assistance, and applying the well settled principals of Tort law to the assessment of general damages, the Court considers that a fair and reasonable sum to compensate the Plaintiff commensurate with his objectively supported injuries is €30,000.

Special damages
62. The Plaintiff brought a claim for loss of earnings in the amount of €375 per week from the date of the accident until the end of June, 2015. Whilst the Court accepts that the Plaintiff was out of work until he obtained alternative employment at the beginning of July, 2015, his G.P. considered him fit for work on 21st May. This is a significant assessment by the GP and is consistent with the Plaintiff's attempt to return to work on 17th April.

63. Although he gave evidence that he had taken the bike to a number of bike shops with a view to having it repaired, and that he had been advised that special welding would be required to repair a fracture to the frame, no evidence from a bicycle repairer or engineer was led concerning that damage or the damage to the wheel. Moreover, it is difficult to envisage how the Plaintiff intended to undertake his occupation as a bicycle courier when he attempted to return to work on 17th April without having the means to do so.

64. No evidence was called on behalf of the Plaintiff from his former employer to support his claim that he would have been paid €375 a week on an ongoing basis as a subcontracted self employed courier. His subcontract was terminated on 17th April with immediate effect. The Plaintiff's evidence was that when he attempted to return to work he was told that, as he had had an accident, his contract was being terminated for his own safety.

Conclusion on special damages.
65. The Court is not satisfied that the Plaintiff has discharged the onus of proof in respect of either of these claims. However, the Court will allow such other items of special damage which have been properly vouched and agreed.

66. Having regard to this judgment, I will discuss with counsel the form of the final orders to be made.