

THE HIGH COURT
PERSONAL INJURIES

[2017 No. 6057 P]

BETWEEN**EDDIE REILLY****PLAINTIFF****AND****MICHAEL MANGAN****DEFENDANT****JUDGMENT of Mr. Justice Twomey delivered on the 21st day of February, 2019****SUMMARY**

1. This case involves a claim for personal injuries by the plaintiff ("Mr. Reilly") of Dalton Park, Mullingar, County Westmeath against a taxi driver, the defendant ("Mr. Mangan"). The incident occurred when Mr. Reilly, who was accompanied by his partner, Elaine Farrell, and his niece, Ciara Maxwell, was in Mullingar late on a Saturday night/Sunday morning, the 14th/15th March, 2015.

2. At approximately 1 am on the Sunday morning Mr. Reilly was drunk and willingly engaged in reckless and unlawful behaviour, namely a fight with a group of men in the middle of a main street in Mullingar which was busy with traffic at the time.

3. During the melee he fell or was knocked to the ground in the middle of the busy street right beside the back wheel of a taxi which was momentarily stopped at a red light on that street.

4. Mr. Reilly ended up lying so close to the back wheel of the taxi that, when the light turned green and the taxi driver pulled away from the melee, the wheel rolled over Mr. Reilly's ankle. Mr. Reilly's ankle was fractured and he required surgery.

5. The question for this Court is whether Mr. Reilly, who was engaged in behaviour which put his own safety and the safety of others at risk, is to blame for the injury to his ankle that resulted from his activities on that night, or whether he can apportion some or all of the blame to the taxi driver, Mr. Mangan.

6. For the reasons set out below, this Court concludes that Mr. Reilly is wholly responsible for the fracture to his ankle and no legal liability attaches to Mr. Mangan for this injury.

Credibility of Mr. Reilly

7. The credibility of a plaintiff in a personal injuries claim is relevant because the Court first must be convinced that the accident happened as alleged and secondly, that the damage inflicted is as serious as alleged by the plaintiff. In this case, this Court has serious reservations about the credibility of the plaintiff for a number of reasons.

Previous statement to Gardai

8. In particular, Mr. Reilly made a statement to Gardai (the "Statement") on 23rd April, 2015 in which he stated that the accident occurred in a manner which is wholly inconsistent with his version of events to this Court now (which is, as previously set out, that he was involved in a fight in the middle of the street, at which his partner Elaine Hanley was present, and during that fight he ended up on the ground close to the back of the taxi).

9. In contrast to his evidence given to this Court, in his statement to the Gardai, he states:

"I noticed a taxi going by and Elaine [his partner] was in the back of it. She waved out at us. [...] I think I saw a taxi stopped outside John Daly's Pub [...] The taxi was in the inside lane at the lights to go straight down the town. I approached the taxi. I was on my own. I assume the lights were green. I presumed that I was talking to the taxi driver and when the lights went green I assume he clipped me. I think the back wheel of the taxi went over my leg"

10. However, after giving this statement, Mr. Reilly became aware of the fact that there was CCTV footage, which contradicted this version of events and which showed that he was involved in a fight in the middle of the street during which he ended up on the ground close to the back of the taxi. To quote Mr. Reilly's own engineer in his Expert Report on the incident, for which purpose he received the Statement:

"the account given by Mr. Reilly differs substantially from what can be seen on the CCTV footage."

11. After Mr. Reilly made the Statement and after he became aware of the existence of CCTV footage which completely contradicted the version of events in the Statement, Mr. Reilly changed his recollection of the events to the version of events which he gave to this Court in his oral evidence and which is consistent with the CCTV footage.

12. However, this Court cannot simply ignore the existence of the Statement, which is a complete fabrication. The Statement needs to be put in context. It begins with the following confirmation from Mr. Reilly:

"I hereby declare that this statement is true to the best of my knowledge and belief and that I make it knowing that if it is tendered in evidence I would be liable to prosecution if I state in it anything which I know to be false or do not believe to be true."

13. Despite this confirmation by Mr. Reilly that he would be liable to prosecution for any false statements, not only was the statement false, but in it, Mr. Reilly was making a very grave allegation against Mr. Mangan. This is because in it Mr. Reilly implies that he was innocently speaking to Mr. Mangan and then Mr. Mangan for no apparent reason drove off rolling over his leg, a very serious allegation against any person, let alone a person who earns his livelihood as a taxi driver, which, if true, could lead to Mr. Mangan being found guilty of a criminal offence, being imprisoned and/or the loss of his livelihood.

Detective work of Garda Murphy

14. Were it not for the excellent and painstaking detective work of Garda Eileen Murphy in searching for and analysing CCTV footage, this is where the matter might have rested. As is clear from the CCTV footage, it was a complete fabrication by Mr. Reilly to say that he ever talked to the taxi driver.

15. Most significantly of all, there is no reference in the Statement to the fight or the fact that Mr. Reilly was prone on the ground at the back of the taxi, which is his evidence now to this Court. Clearly there is a significant difference between a claim for personal injuries by a plaintiff where he was talking to the taxi driver and the taxi driver drove away and 'he clipped' the plaintiff, and a claim where a plaintiff was lying prone on the ground drunk after participating in a melee near the back wheel of the taxi.

16. Not only that, but the CCTV footage shows that Elaine Farrell was with Mr. Reilly for the entire incident. Therefore, the reference in Mr. Reilly's Statement to Elaine Farrell getting a taxi and waving to him in advance of the incident is not simply a case of Mr. Reilly forgetting that Ms. Farrell was with him. Rather it is the creation by Mr. Reilly of a completely false set of facts, presumably to add authenticity to his false claim against Mr. Mangan, which could have led to the prosecution of Mr. Mangan for a criminal offence.

17. All of these false statements by Mr. Reilly, which suggested that Mr. Mangan was guilty of a criminal offence, strengthened Mr. Reilly's claim for damages for personal injuries for in excess of €60,000, (which includes a claim of €8,567 for out of pocket expenses, but not for loss of earnings as it seems Mr. Reilly was not working at the time of the incident).

Mr. Reilly's evidence to this Court

18. Even when giving evidence to the Court, Mr. Reilly was an uncooperative witness. Details of his alleged social welfare fraud and his alleged use of a gun in a domestic incident were put to him in cross-examination. Although Mr. Reilly's own counsel had not objected to the relevance of this line of questioning, rather than answering the question, Mr. Reilly objected to its relevance.

19. Furthermore, when he gave his evidence to the Court he stated that he was pushed onto the middle of the street by five or six men. However, it is clear from the CCTV footage he went onto the middle of the street willingly with his female companion as part of the fight.

20. Similarly, when questioned about the fight in Court, he claimed that he only acted in self-defence. However, the CCTV footage shows not only had he several opportunities to walk away from the fight, but that he was the aggressor who returned to engage in the fight.

21. For all of these reasons, this Court regards Mr. Reilly as an unreliable witness and this Court's assessment of any evidence presented by him takes account of this fact.

Mr. Mangan's evidence to this Court

22. As regards Mr. Mangan, unlike Mr. Reilly, he was a very truthful and frank witness who, in complete contrast to Mr. Reilly, sometimes gave evidence which was not necessarily in his interests, since in answer to his own counsel, he wondered if there was anything that he could have done to avoid the accident.

Amendments to Medical Reports at behest of plaintiff

23. Another unusual aspect to this case is that Mr. Reilly attended Mr. Muir Kennedy, a Consultant Orthopaedic Surgeon on 9th January, 2019 and in his Report following that examination, Mr. Kennedy states that:

- "Mr. Reilly has no functional deficit with regard to any activities at home."
- "Mr. Reilly continues to work as a scaffolder and is able to do the same workload as his colleagues"
- "Hobbies: Mr. Reilly continues to walk approximately 2kms recreationally twice a week."
- "He had no evidence of osteoarthritis 22 months post this fracture and given his ongoing excellent range of motion in the absence of crepitus, has no clinical signs of degenerative changes at this time point."

24. However, on 24th January, 2019 on receipt of this Medical Report, the solicitor for Mr. Reilly wrote to Mr. Kennedy and stated that:

"The client has reviewed the medical report and I have made a number of suggested amendments on foot of my client's instructions. [.....] I would be very much obliged if you would please urgently amend the enclosed report as per the clients instructions and return same to me."

25. Attached to the letter was a series of proposed amendments, (highlighted below in bold), to the foregoing four statements and medical opinion of Mr. Kennedy:

- "Mr. Reilly has no functional deficit with regard to any activities at home." *Client states it affects his ability to climb stairs*
- "Mr. Reilly continues to work as a scaffolder and is able to do the same workload as his colleagues (*only when aided by pain killers*) but does report that the medial side of his right ankle can have discomfort some evenings after a long day's work."
- "Hobbies: Mr. Reilly *has ceased* [to walking approximately 2kms recreationally twice a week."
- He had no evidence of osteoarthritis 22 months post this fracture and given his ongoing excellent range of motion in the absence of crepitus, has no clinical signs of degenerative changes at this time point. *Client states that he does not have 'excellent range of motion'.*

26. The effect of some of the amendments demanded by Mr. Reilly of Mr. Kennedy is to completely reverse the meaning of the original medical report. He goes from being able to walk 2 kilometres twice a week to being unable to walk 2 kilometres twice a week. He goes from having an excellent range of motion to not having an excellent range of motion. He goes from having no functional deficit at home to not being able to climb stairs.

27. The effect of this demand by Mr. Reilly of Mr. Kennedy is to lead to a significant change in the Medical Report in relation to each of the changes demanded, as the Amended Report reads as follows (with the changes indicated by bold print or strikethrough type):

- “Mr. Reilly has no functional deficit with regard to any activities at home *except with regard to the fluency with which he uses the stairs.*”
- “Mr. Reilly continues to work as a scaffolder and but does report that the medial side of his right ankle can have discomfort some evenings after a long day’s work.”
- He had no evidence of osteoarthritis 22 months post this fracture and given his ongoing range of motion in the absence of crepitus, has no clinical signs of degenerative changes at this time point.

28. It should be noted that the solicitor for Mr. Reilly provided both reports to the solicitor for Mr. Mangan, so the existence of the changes were not concealed from Mr. Mangan’s solicitor or the Court. Equally, the solicitor for Mr. Reilly was very open in the documentation provided to the Court, since when requested for the correspondence around the amendment of the report, she provided not only the correspondence but also the phone attendances to the Court in relation to the changing of the report.

However, it is nonetheless relevant to note the number and effect of the changes demanded by Mr. Reilly and the actual changes made to the Report by Mr. Kennedy.

FACTUAL CIRCUMSTANCES

29. Against this background, it is relevant to now refer to the relevant facts regarding the incident.

30. According to Mr. Reilly’s own evidence he was drunk as he had approximately nine pints of beer and ended up in a fight with approximately eight other people. It is clear from the CCTV footage that he was unsteady on his feet at the time of the incident. In Court, he claimed that he had this amount of drink over a period of time from 3 pm to 1 am, despite his Statement to the effect that he started drinking at 8 pm and a statement from one of his friends that he had only joined them close to 11 pm.

31. In any case, this Court concludes that Mr. Reilly drunk at least eight pints of beer in a short space of time and was so drunk at the time of the incident that he was unsteady on his feet.

32. It is evident from the CCTV footage that he was a willing participant in a fight which ended up in the middle of a busy main street in Mullingar with cars driving by.

33. It is clear from the CCTV evidence, and the oral evidence provided to the Court, that Mr. Reilly, when he fell or was knocked to the ground, was very close to the back wheel of Mr. Mangan’s car towards the rear of the vehicle. It is also clear from that evidence that Mr. Reilly, when he was on the ground near the back of the taxi, was outside the vision of Mr. Mangan, since neither the rear-view mirror nor the side view mirrors would give sight of the road beside the back wheels of the car.

34. Mr. Mangan confirmed that he looked in his mirrors before taking off. There was no suggestion that Mr. Mangan reversed the car. When the car moved away from the melee, and based on the CCTV evidence, it is probable that the wheel of the car went over Mr. Reilly’s ankle, leading to his admission to hospital that evening and subsequent surgery on his ankle.

35. Mr. Mangan had a paying female passenger in his taxi at the time of the incident and while stationary at the lights, men who were part of the melee fell against his taxi on two or three occasions. This caused Mr. Mangan to fear for his safety and the safety of his passenger and he centrally locked all the doors when this occurred.

LEGAL ISSUES

36. As regards the law applicable to this claim, it is clear that Mr. Mangan has a duty to exercise reasonable care for the safety of members of the public when he is operating his taxi.

37. The Supreme Court decision in *McEleney v. McCarron* [1993] 2 I.R. 132 concerned a case where two women were helping a drunken man get home, but he ended up with his torso and head on the road when a passing car hit him. While the High Court held that the driver had not kept a proper look out since he saw the women but not the man on the ground, the Supreme Court reversed this decision, Finlay CJ stating at p. 136:

“It seems to me that the manner in which the conclusion of the learned trial judge is stated would appear to assume that the mere fact that the defendant failed to see, in the very short space which was available and in the short space of time which was available, the torso of the plaintiff lying on the road, of itself, must establish a negligent failure to keep a proper lookout.

I do not think that this is so, and I am satisfied that it would be placing upon the defendant an absolute duty and not what is required by law, namely a duty to take reasonable care.”

38. The issue for this Court therefore is to decide if Mr. Mangan exercised reasonable care when he hit Mr. Reilly, since it is clear from *McEleney v. McCarron* that there is not an absolute duty on a driver such as Mr. Mangan to avoid hitting someone who is lying on the road.

39. It is clear to this Court that it was reasonable for Mr. Mangan to be fearful for his own safety and for the safety of the female passenger he had picked up when a melee developed towards the back of his taxi. This is because these were undoubtedly frightening times for the taxi driver, when approximately eight people are involved in a drunken fight literally right beside him. It was no surprise that he centrally locked the doors of his taxi for the safety of himself and his passenger.

40. The evidence of Mr. Mangan, which is accepted, is that when the traffic lights turned green, he checked in his mirrors before moving away from the melee. It is also accepted that he would not have seen Mr. Reilly lying on the ground in those mirrors, since the range of normal vision of such mirrors would not include the ground beside the rear wheel of the car. It was suggested by Mr. Reilly’s engineer that Mr. Mangan should have turned around before taking off, as well as looking in his three mirrors. However, since Mr. Reilly was lying on the street, it is this Court’s view, based on the engineering evidence before the Court, that even if Mr. Mangan had turned his head that he would not have seen Mr. Reilly on the ground as he would have been out of his field of vision on the ground beside the back wheel of the car. Indeed, it was not suggested with any great conviction by Mr. Reilly’s engineer that Mr. Mangan would have seen Mr. Reilly if he had turned around.

41. Having checked in his mirrors and not having not seen anything preventing his safe departure, it was reasonable for Mr. Mangan to move forwards and away from the melee – indeed, it seems to this Court that any reasonable person would seek to remove themselves from the melee as soon as possible. In doing so, there is no suggestion that his taxi moved backwards or that he moved off at a dangerous speed.

42. When moving off, Mr. Mangan had a duty to concentrate on the road ahead, rather than on what was behind him, as he had to scan the road ahead as he had a duty of care to pedestrians who might walk out on the pedestrian crossing immediately in front of his taxi as he drove away, as well as a duty of care to oncoming cars and of course a duty of care to his female passenger.

43. In all of these circumstances, this Court concludes that Mr. Mangan discharged his duty of care to the plaintiff, who clearly was reckless as to his own safety, by looking in the mirrors before driving himself and his passenger away from a very volatile and stressful situation.

44. The fact that Mr. Mangan ended up rolling over the ankle of Mr. Reilly (who was lying drunk after being hit or having fallen during a fight immediately beside his rear wheel in the middle of the street), is not due to a lack of reasonable care on the part of Mr. Mangan, but is wholly the fault of Mr. Reilly and/or the people with whom he was fighting.

CONCLUSION

45. It is often times the knee-jerk reaction of persons who are injured in accidents to seek to blame someone else for the accident, when in many cases the accident would not have occurred were it not for the actions of the person himself, as distinct from the alleged acts or omissions of some third party.

46. This is such a case, since the real cause of this accident was Mr. Reilly's decision to drink to excess and then to engage in a fight in the middle of a busy main street in Mullingar.

47. There is no one else to blame for Mr. Reilly's fractured ankle, other than himself. This Court does not believe that car drivers owe some kind of enhanced or special duty of care to persons, such as Mr. Reilly, who engage in unlawful conduct and are not only a danger to themselves but are also a danger to law abiding members of the public. When that danger ends up being visited upon themselves, they have only themselves to blame and cannot seek to shift the blame to, in this case, a taxi driver going about his business on a Saturday night earning a living and providing a public service.