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FINAL

Ref: **McC7267**

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: **26/09/08**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

2006 No 4550

BETWEEN:

ANDREW CONNOR

Plaintiff;

And

ROBERT JACKSON

Defendant;

And

MARK WILSON

Third Party.

McCLOSKEY J

I INTRODUCTION

[1] Andrew Connor, the Plaintiff in this action, who is now aged 22 years (having been born on 20 June 1986), claims damages for personal injuries and financial loss sustained by him arising out of a road traffic accident which occurred during the afternoon of 17 February 2005 at the Woodburn Road, Carrickfergus, County Antrim. The Plaintiff was aged 18 years on the accident date. His case against the Defendant, Robert Jackson, is that his personal injuries and financial losses were sustained exclusively by reason of

the Defendant's negligence in circumstances where the Defendant, driving a silver Volkswagen Passat, emerged from certain business premises and, in the course of attempting to cross the road in a right turning manoeuvre, collided with the Plaintiff's motorcycle, approaching from the Defendant's right.

[2] The Defendant denies that he was guilty of negligence and, in the alternative, asserts contributory negligence on the part of the Plaintiff. At the trial, the main thrust of the case in contributory negligence was the Plaintiff's alleged failure to see the Defendant's vehicle sooner. This, it was contended, betokened a failure by the Plaintiff to keep an adequate look out and to pay proper attention to road conditions.

[3] One further party, Mark Wilson, features in these proceedings at the behest of the Defendant, pursuant to a Third Party Notice dated 17 October 2006. The case made by the Defendant against the Third Party is neatly encapsulated in paragraph 4 of the Third Party Statement of Claim:

"On the date of the alleged accident giving rise to the Plaintiff's claim the Defendant was the driver of a motor vehicle emerging from a car wash on the Woodburn Road, Carrickfergus, intending to turn right. His view to the right was interfered with by the Third Party's vehicle which was parked on double yellow lines partially on the footpath and encroaching over the exit from which the Defendant was emerging. The Plaintiff's motor cycle was travelling from the Defendant's right. The Defendant says that the Plaintiff's personal injuries, loss and damage, if any, were caused by reason of the negligence of the Third Party in and about the parking, management, care and control of his motor vehicle".

This commendably clear pleading requires no elaboration.

[4] The Third Party at no time acquired the status of Defendant in these proceedings. The simple reason for this is that as explained in his evidence, the Plaintiff has no recollection of the Third Party's vehicle being parked as alleged by the Defendant. As a result, the Plaintiff was unable to make any case against the Third Party and, in the course of the trial, did not attempt to do so.

[5] The issues to be determined by the court may be summarised as follows:

- (a) Has the Plaintiff discharged the burden of establishing that the Defendant was guilty of negligence causing or contributing to the Plaintiff's personal injuries and other losses?

- (b) If so, was the Plaintiff guilty of contributory negligence?
- (c) If the answer to question (a) is affirmative, has the Defendant discharged the onus of establishing that the Third Party was guilty of negligence causing or contributing to the Plaintiff's injuries and other losses?
- (d) If the answer to question (c) is affirmative, is the Defendant entitled to a complete indemnity from the Third Party?
- (e) If the answer to question (c) is affirmative and that to question (d) is negative, how should liability for the Plaintiff's personal injuries and other losses be apportioned between the Defendant and the Third Party?

[6] As will become apparent in this judgment, having considered the evidence in its totality, I consider that the main issues to be determined by the court belong to the domain of the third party proceedings. In short, the Defendant asserts that the Third Party's vehicle, a black Volkswagen, occupied a parked position immediately to the Defendant's right from the moment the Defendant's manoeuvre began until some time after the collision, when the vehicle was driven away. The Third Party, for his part, accepts that his vehicle did indeed occupy substantially the position alleged by the Plaintiff and recalled by the investigating police officer (Constable Tyler) but did not do so until some little time after the occurrence of the collision, when he stopped and parked. The difference between these two competing accounts is stark and this acute conflict between the Defendant and the Third Party constitutes the main issue of fact to be resolved by the court.

II THE PLAINTIFF'S ACCOUNT

[7] I would summarise the main features of the Plaintiff's testimony as follows. He testified that the accident occurred at around 5.00 pm on 17 February 2005. He was familiar with the area, having been born and bred in Carrickfergus. He had owned his motor cycle, a Peugeot 50 cc model, for just over a year. His journey on the date in question was his daily route from work to home. Road conditions were dry and it was daylight. The motor cycle had its headlight displayed. He described the Woodburn Road as a busy one. While there were vehicles in front of him, these were a good distance ahead. He was unaware of any parked vehicles in the vicinity of the entrances to Pollock Lifts and a car wash, adjoining business premises located ahead to his left. He testified that when his motor cycle was adjacent to the middle of the entrance to Pollock Lifts, a silver Volkswagen Passat emerged from the car

wash (i.e. from his left) and a collision ensued. When he first saw this vehicle it was moving, pulling out to travel in the direction of Carrickfergus town centre. He first saw this vehicle when, in his words, it was "*roughly coming to the middle of my lane*". He braked slightly. The impact was between the front of his moped and the front off side wheel and wing of the Passat. It is common case that the Defendant was the driver of the latter vehicle.

[7] The Plaintiff accepted, in terms, that his attention was focused mainly on the road ahead. He was paying no particular attention to his left. He accepted as a possibility that a black Volkswagen could have been parked between the entrances to the two aforementioned premises. He first saw the Defendant's vehicle at a distance of some 20 metres. He was inclined to agree that if his view of the Defendant's vehicle had been unobstructed he should have seen it sooner. He disputed that oncoming vehicles had stopped to allow the Defendant's vehicle to pull out. His riposte was that on such hypothesis he too would have stopped as a common courtesy. The Defendant's vehicle was moving forward at the moment of impact.

[8] When questioned by counsel on behalf of the Third Party, the Plaintiff was adamant that as he approached the scene of the impact he did not alter his line of travel, as he had no reason to do so. In describing the immediate aftermath of the collision, he recounted attempting to remove his helmet and attempts by, or assistance from, others to like effect. He remembered a man shouting "*Don't move him – leave him as he is in case he has back or neck injuries*". The person who uttered the injunction regarding his helmet did so very quickly after the accident. To the same person the Plaintiff also attributed words to the effect "*Nobody touch him until the ambulance arrives*". He knew that someone then went to phone for an ambulance. He gave someone his mobile phone, for the purpose of contacting his father. Prior to the arrival of an ambulance, a nurse came to his aid. He recalled no loss of consciousness.

III THE POLICE EVIDENCE

[9] Constable Tyler, attached to Carrickfergus Police Station, was the investigating police officer. The salient aspects of his evidence may be summarised as follows. The point of impact was ascertained by the presence of debris on the road surface, consisting mainly of fragments originating from the Plaintiff's scooter, which was so extensively damaged that it had to be destroyed. He was accompanied by Constable Cathcart. The police vehicle approached from the direction of Carrickfergus town centre, as the Plaintiff had done. The police vehicle parked opposite the car wash premises, outside the houses at Fairview Terrace. Upon their arrival at the scene, a black Volkswagen was parked on the townward side of the car wash premises (i.e. to the right of the Defendant's vehicle as it emerged). It was evident that the Plaintiff had serious injuries and this occupied the witnesses' attentions accordingly.

[10] Constable Tyler recalled Constable Cathcart speaking to the driver of the black Volkswagen. Constable Cathcart then asked whether it would be in order to let this driver leave and, in doing so, confirmed that the Volkswagen driver had not been involved either in the accident itself or as a witness. This prompted Constable Tyler to give the approval sought. The Constable also attested to a verbal exchange with the Defendant, in which the latter stated *"There was a black Volkswagen parked at the entrance blocking my view"*. The Defendant's statement to the Constable about the black Volkswagen was probably made after the road had been cleared. The Constable duly made an entry in the Collision Report Form, which he was completing in manuscript, in these terms. He also made a similar entry in the (separate) police report. Further, in the Collision Report Form, he recorded, with reference to vehicle number two (the Defendant's vehicle), *"obscured by the parked vehicle and security fence to the right"*. This was a reference to the diagonal length of perimeter fencing located between the two entrances.

[11] The police sketch, compiled by Constable Tyler, depicts, inter alia, the black Volkswagen, identifiable by the registration number X401RCP. It is located immediately to the right (i.e. on the townward side) of the car wash entrance, facing countrywards. It is illustrated as occupying a substantial portion of the pedestrian footway, with its offside wheels positioned on the carriageway, just beyond the double yellow lines marking this section of the roadway. Both engineers agreed that the country-bound carriageway was three metres wide, measured from the kerbstone to the point where the central white chevrons begin. When the Constable first compiled his rough sketch, it did not depict the black Volkswagen. However he added this later, after consulting his superiors. The registration number of the Third Party's vehicle was brought to his attention on the accident date. He ascertained the identity of the owner (i.e. the Third Party), probably within a week. When he added the depiction of the Third Party's vehicle, he did so based on his recollection of where it had been and the Defendant's statement about this matter.

[12] Finally, this witness dealt with his interview of the Defendant at Carrickfergus Police Station on 25 February 2005. This was an interview under caution and its transcript formed part of the evidence. The duration was recorded as being of 20 minutes. According to the transcript, the interview consisted of eight questions and eight answers. It is further recorded that the notes were read by the Defendant and each of the three pages was signed by him. The questions and answers were as follows:

Q Tell me what happened on the 17/02/05 at the Woodburn Road?

A I had been in washing my car. When it was finished I got in the car. I was coming out of the Woodburn Car Wash. There was a black Golf to my

right on double yellow lines blocking my vision. As I edged out watching to see if anything was coming. The next thing I felt was a thud. I got out of the car, then I phoned the ambulance. A motorcyclist had crashed into me.

Q Tell me when was the first time you saw the bike, at what distance?

A I never seen him at all. The first I knew he was into me.

Q Tell me how you would do things differently if you could do it again.

A I wouldn't be moving anyway until the parked car had moved. I wasn't going fast, I was just edging out and edging out and I never seen him at all.

Q What do you think caused the accident to happen?

A A mixture of me and the parked car. I've been thinking about this all week. I should have seen him. How did I not see him.

Q How long have you been driving?

A Nearly 11 years

Q Have you been involved in any other collisions?

A No

Q Is there anything else you wish to say?

A Basically all that happened was I edged out, and the next thing I had an accident.

Q Do you wish to make a written statement after caution?

A That's all I've got to say

[13] Constable Tyler testified that he "took" the Defendant's answers in interview as an admission. His superior officer agreed with him. A decision was made to administer an "informed warning" (formerly known as a caution) to the Defendant, thereby bringing the police investigation to a conclusion. The

evidence adduced included Form 63/2, which bears the title "Certificate of Informed Warning - Adult". This records that on 14 March 2005 at Carrickfergus Police Station, one Sergeant McConnell (who did not give evidence) administered an "informed warning" to the Defendant in respect of the offence "careless and inconsiderate driving", arising out of the accident. The Defendant appended his signature to the following:

"I admit the offence outlined above and understand the meaning of an informed warning. The consequences of my accepting this form of disposal have been explained to me, including the manner in which it will be recorded, mentioned in subsequent court proceedings, and any other consequences resulting from the nature of my offence. I consent to the matter being dealt with in this manner".

The Defendant, in evidence, confirmed his signature on the document and readily acknowledged (in terms) that he had signed it in an informed and voluntary manner.

[14] There were two further noteworthy aspects of Constable Tyler's evidence. Firstly, he acknowledged that he had not taken steps to interview a witness, whose name had been given to him. Secondly, no steps were taken to interview the Third Party.

IV THE DEFENDANT'S ACCOUNT

[15] The main features of the Defendant's evidence may be summarised as follows. He resides in Carrickfergus and has been working as a taxi driver for almost four years. On the date of the accident, he was washing his taxi at the premises in question. His intention was to drive towards the town afterwards and he proceeded to execute a manoeuvre accordingly. His line of approach to the roadway was from the right hand side of the car wash entrance (viewed from his perspective), which was dictated by the presence of vehicles for sale outside the café located inside the entrance. Outside the entrance, there was a black Volkswagen Golf parked immediately to his right, between the two entrances. It was parked mainly on the footway and slightly on the carriageway, with two of its wheels positioned on the double yellow lines. It was facing in a townwards direction. As the Defendant's vehicle passed the fence post (or gate post), the Black Volkswagen began to obscure his view to the right. He approached with caution, trying to edge his way out on to the road. As the front of his car passed the Volkswagen, he could not see to his right. He continued to edge out, whereupon a collision with the Plaintiff's motorcycle occurred. He had not seen the motorcycle previously. Prior to impact, he had been leaning as far forward as he could, attempting to see beyond the Volkswagen. Further, he noticed traffic on the other side of the road, i.e. proceeding in a townward direction, stopped. The lady driver of the

nearest vehicle was “ushering” him out. Everything happened quickly. He heard a yelp, then a thud and everything was then over. He had not been moving quickly at any stage. His vehicle was moving, though “hardly”, when impact occurred. In the immediate aftermath, his first positive action was to phone an ambulance.

[16] The Defendant further testified that from the outset he was of the view that he had some responsibility for the accident. The Plaintiff, he said, enjoyed the right of way and, moreover, sustained serious injuries. The Defendant’s expectation was that he would be charged with a criminal offence. He signed the “Certificate of Informed Warning” because he knew what a caution was and understood that the matter would “go away” in consequence. During the interview by police on 25 February 2005, he identified two “factors of fault”, namely his driving and the parked vehicle. He at no time considered the Plaintiff to have been at fault in any way. He estimated that the stationary town bound vehicle “inviting” him to proceed was a matter of some 5 feet from the point of impact. It remained in this position after the impact. He did not mention this vehicle when interviewed because he did not consider it relevant. He accepted that, as his manoeuvre progressed, he had enjoyed some limited view through the perimeter railings and through the narrow gap between the fence post (or gatepost) and the black Volkswagen Golf. He also acknowledged the availability of a limited view through the Golf vehicle. He had been looking to both his left and right during the manoeuvre. He “imagined” that he had been looking to his right immediately before impact.

[17] As regards the aftermath, the Defendant testified that several people, including the car wash owner, noted the registration number of the Volkswagen Golf. He did not do so himself. He was in a state of shock, pacing up and down. He asked that someone record the Golf registration number. At this stage, the Golf was still in position. Following the arrival of the police, he informed them that the Golf had been responsible for the accident. He recalled the presence of two police officers. He was escorted into the rear of the police vehicle, on account of his shocked condition. At this stage, he implicated the Golf in the accident. He was breathalysed, still in the vehicle, some time afterwards. Both lanes of traffic remained stopped for almost half an hour. The main priority of the police officers was to attend to the Plaintiff.

[18] Testifying on behalf of the Defendant, Mr Wright BSC, a consulting engineer, emphasised four matters in particular. Firstly, given the positions and configuration of the two adjacent fences, coupled with the forward movement of the Defendant’s vehicle, the Defendant would not have seen anything meaningful during the initial phase of his manoeuvre. Secondly, while he enjoyed a “cone” of vision during the next phase, this was ever decreasing as the forward movement of the vehicle continued. Thirdly, the Defendant’s version of the accident was consistent with impact having occurred just after his eyes had cleared the main body of the parked vehicle.

Fourthly, the objective evidence was indicative of low speed on the part of the Defendant's vehicle. On the assumption that the Third Party's vehicle had been parked on – and not outside – the yellow lines, this would have reduced the width of the country bound carriageway to 2.4 metres.

V THE THIRD PARTY'S ACCOUNT

[19] I would summarise the Third Party's evidence in the following way. He is a police officer who has been living in Northern Ireland for just over 5 years. At the time, he was based in Musgrave Street Police Station, Belfast and lived in Carrickfergus. He left work at around 4.00 pm and, travelling via the motorway and the Shore Road, reached the Woodburn Road. There he proceeded in a countrywards direction. While the traffic was flowing initially, it slowed subsequently. He then observed country bound vehicles "snaking around" the accident scene. He realised that an accident had occurred and formed the opinion that attempts were being made to remove the motorcyclist's helmet. He had previously undergone first aid training and, hence, felt compelled to stop. He parked his vehicle and went over to the Plaintiff, with the intention of telling people not to remove the Plaintiff's helmet. The Plaintiff was lying on his back, with his eyes opened. In order to assess his injuries, he asked a couple of questions. Next, he ran off to the nearby off licence (on the Fairview Terrace side of the road), requested staff to dial 999, asked them to come and tell him that they had done so and then returned to scene. He did not possess a mobile phone. He did not ask anyone at the scene whether an ambulance had been called.

[20] He recalled that the police and the ambulance arrived without undue delay. He further recalled speaking to a police officer whom he identified as Constable Cathcart who, according to the Third Party, appeared to know him (but not vice versa). Following the elapse of an unspecified period of time, he asked the police whether it would be in order for him to move his Volkswagen Golf. He did so as this was a "potential crime scene" and his vehicle was "within the curtilage" and "in the vicinity". He proactively introduced himself to the police "by way of courtesy and introduction". His exchange with Constable Cathcart was of brief duration, consisting essentially of a request for permission to remove his vehicle and an affirmative response.

VI FINDINGS AND CONCLUSIONS

[21] Having regard to the central issues to be determined, my findings focus predominantly on the matters in dispute between the Defendant and the Third Party. It is convenient to deal firstly with the Third Party. I found his evidence unsatisfactory in a number of respects. In particular:

- (a) In evidence, in his detailed description of the events and state of affairs both immediately prior to and following his

arrival at the scene of the accident, he made no mention whatsoever of the presence or terminal position of the Defendant's vehicle. If the Third Party's account is to be believed, I would have expected these matters to feature spontaneously and prominently in his evidence. However, they did not do so.

- (b) The Third Party testified that the decision to park his vehicle and his actions in doing so were influenced, in part, by a desire to ensure his own safety. I find this inconsistent with his description of the oncoming line of traffic as stopped, while vehicles ahead of him were "snaking around" the accident scene. It is also inconsistent with his description of the traffic in his carriageway proceeding at a speed of 5 miles per hour.
- (c) The Third Party claimed that he parked his vehicle to the side of the carriageway and did not park it more centrally, thereby affording greater protection to the Plaintiff, in order to secure his own safety. I found this unconvincing.
- (d) There was no evidence from any other source, either direct or inferential, that country bound vehicles continued to move past the accident scene, as the Third Party claimed. Rather, the flavour and thrust of all the other evidence were that both lines of traffic were stopped for some time and the Defendant expressly testified to this effect. I prefer this evidence to that of the Third Party.
- (e) The Third Party was repeatedly invited to estimate the distance between his vehicle and the Plaintiff at the moment when he first became aware of the attempted or apprehended removal of the Plaintiff's helmet. For reasons which he did not attempt to explain, he consistently declined to do so. This refusal is more readily reconciled with his vehicle having been parked at all material times than his conflicting account of its movements.
- (f) At a later stage of his evidence, the Third Party was disposed to agree that any attempted removal of the Plaintiff's helmet might have been undertaken by the Plaintiff himself. If the Third Party's account of his vehicle movements were correct, and having regard to the weather conditions, his clear view and the very short distance involved, I would have expected his testimony regarding this discrete issue to have been considerably more positive

and confident. Furthermore, his evidence about this matter took the form of a surprisingly willing and swift concession, when it was put to him that the Plaintiff had testified that he (the Plaintiff) had attempted to remove the helmet.

- (g) When pressed, the Third Party conceded that there was no real reason to explain his departure from the immediate scene of the accident to the off licence.
- (h) At a late stage of his evidence, having conceded that there was no real reason for going to the off licence, the Third Party added that he believed that the person in the off licence had come back out and had confirmed the making of an emergency call. I considered this an embellishment by the Third Party and I do not believe it.
- (i) The Third Party's explanation for seeking the approval of the police officers to leave the scene was unpersuasive. On the basis of his account, he had nothing whatsoever to do with the accident. His act of requesting permission, or approval, is manifestly more consistent with his vehicle having been parked where the Defendant claims at all material times and, hence, implicated in the accident.
- (j) The Third Party's evidence about requesting the permission of police to leave the scene was not fully corroborated by Constable Tyler. In the circumstances of this case, this is not some trivial point of detail. In his evidence, the Third Party was quite clear that the relevant interaction was between Constable Cathcart and him only and was of brief duration. This does not tally with Constable Tyler's evidence that he observed Constable Cathcart speaking to the driver of the black Volkswagen and that Constable Cathcart then spoke to him about the matter, before approval was given by Constable Tyler to the Third Party's departure from the scene. I accept Constable Tyler's evidence about this matter.

[22] In general, I found the Third Party a less than forthright and convincing witness. His presentation and demeanour were unimpressive. His account of events is unreliable and suspect by virtue of the matters highlighted above. I find the essence of his account unworthy of belief and I reject it accordingly. In contrast, I find the Defendant's account genuine and persuasive, in all material respects. The central factual issue to be determined by me is whether the Third Party's vehicle was parked, as alleged by the Defendant, throughout his

manoeuvre. I find that it was. I so find because the Defendant's evidence on this key issue is credible and reliable, whereas the evidence of the Third Party is not. The Defendant was a convincing witness, whereas the Third Party was not. The only issues of significance on which the Defendant's evidence appeared potentially unreliable concerned, firstly, the timing of his initial intimation to the attending police that the Third Party's vehicle had been involved in the accident. However, I find that this does not undermine the essential core of the Defendant's version and it is readily attributable to his unchallenged and understandable state of shock in the aftermath of the accident. Similarly, the key aspects of the Defendant's account are unshaken by my finding that, contrary to his suggestion, the Third Party's vehicle was pointing countrywards. In summary, I accept the central core of the Defendant's version of events.

[23] Furthermore, the Plaintiff's failure to see the Defendant's vehicle before impact is consistent with the Defendant's evidence about the parked position of the Third Party's vehicle and fortifies my findings in this respect. I find that the Plaintiff's view of the Defendant's vehicle was blocked by the Third Party's parked vehicle. I further find that the Plaintiff was paying reasonable attention to traffic conditions and keeping an adequate look out at all material times.

[24] In answer to the questions posed in paragraph [5] above:

- (a) I find the Defendant guilty of negligence causing or contributing to the Plaintiff's personal injuries and other losses. The Defendant's actions are to be measured by the yardstick of the hypothetical reasonably prudent driver. In my opinion, the hypothetical reasonably prudent driver would not have driven on to the carriageway in the circumstances prevailing. This was a patently unsafe manoeuvre. While I accept that the Defendant edged forward slowly, this does not exonerate him from blame. I take into account the topography of the accident scene, the time of day, the various road markings and the volume of traffic. All of these factors combined to increase the onus which rested on the Defendant in attempting to emerge from a side entrance on to a busy main road. I hold that he could not have done so in reasonable safety. To attempt to cross the road in the circumstances prevailing was probably the most dangerous manoeuvre he could have undertaken. It was an acutely risky exercise. I hold that his obligation was to stop and to wait until the obstruction of his view had been removed or, possibly, until a "traffic marshall" had been engaged to supervise, direct and control his manoeuvre and, as far as necessary, the movements of

traffic on the carriageway. The Defendant was clearly guilty of negligence.

- (b) A finding of contributory negligence against the Plaintiff would be appropriate only if the Defendant discharges the burden of establishing that the Plaintiff failed to take reasonable care for his safety in the circumstances. The only case of substance made against the Plaintiff was an asserted failure to keep a lookout – or better lookout – to his left. In this regard, I refer to my findings in paragraph [23] above. Having regard to my further finding about the parked position of the Third Party's vehicle and in the absence of any other suggested lack of care on the part of the Plaintiff, I find that he was not guilty of contributory negligence.
- (c) Consequential upon my findings of fact above, I find that the Third Party was guilty of negligence causing or contributing to the Plaintiff's injuries and other losses.
- (d) and (e) I conclude that liability should be apportioned between the Defendant and the Third Party. Apportionment of liability in a case of this nature is a matter of judgment, rather than an application of science. I consider that reported cases in this sphere are of no real assistance, each being acutely fact sensitive. Consequential on my finding about the parked position of the Third Party's vehicle, the evidence clearly establishes that it constituted a serious obstruction of the Defendant's view to his right. This was no minor or partial obstruction. On the other hand, it did not obstruct the Defendant's view completely throughout his manoeuvre. Furthermore, the Defendant had the option of simply waiting until the obstruction had been removed or seeking the kind of assistance I have mooted above. The onus on the Defendant was a heavy one. To reflect this, he must bear the greater share of responsibility. In the result, I apportion liability three fifths/two fifths, as between the Defendant and the Third Party.

[25] Damages have been agreed in the amount of £63,498.54. I assume that this is inclusive of interest. There will be judgment for the Plaintiff against the Defendant in that amount. There will also be judgment for the Defendant against the Third Party to the extent of a 40% contribution. In principle, applying the general rule that costs follow the event, the Plaintiff should

recover his costs in full against the Defendant. The parties will be at liberty to address me on all costs issues following delivery of this judgment.

[26] I commend the parties for their efforts in agreeing quantum in this case. It goes virtually without saying that, in the present litigation era, the parties have a duty to conscientiously attempt to agree quantum in every case where damages are claimed. This should be done timeously and proactively, without encouragement or direction from the court. The parties required no such encouragement or direction in the present case and it is clear from reading the Statement of Claim that the expense and inconvenience of a third day of trial were avoided in consequence.