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Judgment: approved by the Court for handing down | *Delivered:* **2/9/08**

*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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BETWEEN:

AVEEN McDAID

PLAINTIFF;

-and-

ROBERTA SNODGRASS

DEFENDANT.

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MORGAN J

[1] This is a claim for her damages for personal injuries, loss and damage sustained by the plaintiff as a result of witnessing a road traffic accident on 26 November 1999 in which a two-year-old child was struck by a vehicle driven by the defendant. The defendant does not dispute that she was guilty of negligence causing or contributing to the collision.

The accident and its effect on the plaintiff

[2] On 26 November 1999 the plaintiff and her friend Marian Elliott decided to go on a shopping trip to a superstore in Derry. The store was within walking distance of the street on which both of them lived. The plaintiff brought her four month old daughter, K, in a buggy and Marian brought her son, C, who was almost 3 and her daughter, M, who was only two months old and also travelled in a buggy. As they returned from the shopping trip C ran up an embankment and then ran down. His speed was such that it carried him onto the road and he was struck by the defendant's motor vehicle. The plaintiff saw the collision and described how C was thrown up in the air and slammed onto the road. Both ladies ran onto the road to tend to him and Marian accompanied the child to hospital where he was treated for serious spinal injuries. The plaintiff enlisted the help of a

passer-by to assist in bringing Marian's younger child home to her grandmother's house.

[3] The plaintiff explained that she was upset and crying at home after the incident. When she closed her eyes she could see it all happening again. Her mother apparently had some prescription tablets which she made available to her in order to relieve her upset. Her mother also provided her with herbal remedies to address her upset and anxiety. Although there was some improvement in her condition after the first few days she found it difficult when people asked about the boy or she saw him, which happened virtually every day. The child remains paralysed at waist level.

[4] The plaintiff did not seek help immediately from her general practitioner although she had visited a number of occasions in January 2000 and early August 2000 in relation to other conditions. On 25 August 2000 she is recorded as attending at her general practitioner complaining of poor sleep, early morning awakening and flashbacks in relation to the accident at night-time over the last two weeks. She denied that the symptoms had only come on in August 2000 but said that after she left her parents home in May 2000 to live in separate accommodation with her daughter she found that she tended to ruminate rather more on the accident. She was initially advised to try herbal remedies in August 2000 and in November 2000 was prescribed antidepressant medication for low mood. She was examined by Dr Harbinson, consultant psychiatrist, in June 2001, May 2004 and September 2005. She concluded that the plaintiff had sustained a depressive illness characterised by insomnia, flashbacks, loss of appetite and weight and depression of mood which had largely recovered two years after the accident. She sustained a psychotic episode in 2003 as a result of which she was admitted to hospital as a detained patient but this was not related to the accident. Dr Harbinson did not accept that the delay in obtaining medical assistance or the move out of her mother's house in May 2000 were indicative of any other cause for her illness.

The plaintiff's relationship with the primary victim

[5] The plaintiff and Marian Elliott lived 5 or 6 doors away from each other. Their mothers were close friends and as a result they also became very friendly. They were the same age and attended primary school and secondary school together. They were very close as children and this continued into their teenage years when they socialised at discos and other entertainments. When each of them fell pregnant they remained in their family homes and continued their close relationship. They would regularly call in with each other during the day and usually went on shopping trips together. I accept that they were extremely close friends.

[6] After the birth of C when Marian returned home the plaintiff continued to visit or meet with Marian every day. On occasions she would have changed C's nappy, dressed him and fed him. As he got older she would have accompanied Marian and C to the park to play football or on trips into town. Marian's mother was usually present when the plaintiff visited and the plaintiff could not remember if there were occasions when C was left with his grandmother when the plaintiff and Marian went out. When Marian was giving birth to M she was in hospital for two days and during that period the plaintiff looked after C for a couple of hours. For the remainder of the period C was looked after by his grandmother. The plaintiff could remember no other occasion when C was left with her because Marian and her grandmother were not available and there was no occasion on which C had stayed overnight with the plaintiff.

The law in relation to secondary victims

[7] The liability of a defendant for the infliction of psychiatric harm has been considered relatively recently in a trilogy of cases by the House of Lords, Alcock v Chief Constable [1992] 1 AC 310, Page v Smith [1996] 1 AC 155 and White v Chief Constable [1999] 2 AC. Each of these cases has traced the rather tortuous history of the development of the law in this area. It is now clear that the first question is to determine whether the plaintiff is a primary or secondary victim. Although there is considerable debate about the appropriate test for the identification of a primary victim as a result of Page v Smith and the various criticisms of it, in the course of the hearing it was accepted by the plaintiff that she pursues her case as a secondary victim and in my view that concession is clearly correct. The plaintiff was not on the evidence involved as a participant in the accident and in my view cannot become a participant as a result of a feeling on her part that the accident would not have happened if she had not been there. It is clear from White v Chief Constable that the principles of liability would not be affected if she was deemed a rescuer in the particular circumstances of this case.

[8] As a result of Alcock a secondary victim such as the plaintiff must satisfy the control mechanisms which the House established in that case. In particular it is for the plaintiff to establish that she had a close tie of love and affection with the person injured. One would readily expect such a tie to be established in cases involving spouses or parents and children. In McCarthy v Chief Constable of South Yorkshire Police such a tie was established in relation to the particular circumstances of a half-brother of a deceased. In that case there was clear evidence that the plaintiff and the deceased were part of a close-knit family group and that there was a particularly close relationship between them. The plaintiff also relied on Burdett v Dahill (2002) an English county court decision in which an application to strike out a claim was dismissed where the plaintiff's case was that he had developed PTSD as a result of a car striking his friend and killing him while they were both

walking along a dark country road in the early hours of the morning. The latter cases are examples of the fact that the test does not focus on the formal relationship between the plaintiff and the deceased but on the nature of the evidence that there existed a close tie of love and affection. It seems clear from the case law, however, that the court will look for close ties of love and affection of the depth and importance that one might expect to find in a parent/child or spousal relationship. The policy hurdle is a substantial barrier to success in claims of this sort and is intended to limit significantly the range of claimants who can succeed.

Conclusion

[9] Applying the test in Alcock I do not consider that the plaintiff can succeed in this case. I entirely accept that the plaintiff and Marian Elliott were close friends and that the plaintiff thereby came into regular contact with the victim. I am also satisfied that the plaintiff assisted in carrying out everyday tasks for the boy when requested by his mother and I have no doubt that the plaintiff was also fond of the victim. It is clear, however, that C was extremely close to his mother who was his primary carer and that his grandmother also played a significant role in his life. By contrast the plaintiff engaged with him to the extent that one would expect from a close friend of the mother. That did not in my view give rise to the close tie of love and affection which is required in order to establish liability. I consider, therefore, that the plaintiff has been unable to establish the existence of a duty of care and that the claim must be dismissed.