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Judgment: approved by the Court for handing down

*(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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2009/85743

BETWEEN;

MARGARET JAYNE GLASS

Plaintiff;

-and-

PAUL DONNELLY

Defendant.

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MAGUIRE J

[1] In this civil action the plaintiff is Margaret Jayne Glass. She was born on 26 June 1975. She is now 40 years of age. The plaintiff seeks damages from the defendant who is Paul Donnelly. The defendant was born on 4 August 1968. He is now 47 years old.

[2] The plaintiff's claim arises out of road traffic accident which occurred on 15 September 2006. At or about 18.30 hours on that date the plaintiff as a pedestrian was in the process of crossing Ann Street, Ballycastle, when she was struck by Mazda sports car which was proceeding in a countrywards direction driven by the defendant.

[3] It is alleged by the plaintiff that the accident was caused by the defendant's negligence. In particular, the particulars of negligence alleged that the defendant:

(a) Was driving too fast in the circumstances.

(b) Was failing to keep a proper or any look-out.

(c) Failed to stop or slow down in time or at all.

(d) Failed to give any or adequate warning.

(e) Failed to so steer, drive or manage or control a motor vehicle so as to avoid striking the plaintiff.

(f) Failed to have any or adequate regard for the safety of the plaintiff.

[4] The background to the accident is not in dispute. It was a Friday evening. The plaintiff and her then partner (now her husband) had travelled into Ballycastle around 18.30 hours. The purpose of their journey was to go to a specialist shop in Ann Street in order to obtain fishing tackle for a proposed fishing expedition they had in mind. Mr Glass (the partner of the plaintiff at that time) drove their vehicle into the town and parked it on Ann Street on the left hand side of the road pointing in the direction of the sea. The plaintiff got out of the vehicle and proceeded to the shop – which the court will refer to as McAuley's – and obtained various supplies. She then took them back to the couple's vehicle without incident. However, when she arrived back at the vehicle, the plaintiff realised she needed to buy bait. In order to do so, she went back to the shop. The involved her crossing Ann Street to the right hand side as one looks towards the sea. The plaintiff, again without incident, covered this ground and got her bait from the shop. The accident happened on her way back to her vehicle and occurred as she was crossing the road.

[5] The defendant worked in a bakery which is located further towards the sea on the left hand side of Ann Street. He had left the shop to move his car from a car park behind the buildings on the right hand side of Ann Street (looking towards the sea). His plan was to make a short journey from the car park with the purpose of going down Ann Street countrywards, turning and then re-parking his car in or about the frontage of the bakery. This was a short journey. It did, however, involve him having to negotiate as he went countrywards on Ann Street a sharpish bend in the road to his left at the apex of which there was a controlled crossing for pedestrians. As Ann Street was the major thoroughfare in the centre of Ballycastle, this area is often busy with traffic and pedestrians, though it was less busy at this time of the evening.

[6] When the defendant left the off-street car park, he turned left. As he proceeded countrywards down Ann Street he had to stop because of traffic and, in particular, because a car was parked outside a Chinese restaurant to his left. Having waited for a moment, he was then able to pull out to his right and go round the parked car. At this point he was only a matter of 40-50 yards from the bend and the controlled crossing. Moments later the accident occurred when he struck the plaintiff as she crossed the road.

[7] Before considering the accounts of the accident given in evidence before the court, it is worth recording a little more about the relevant part of Ann Street. As the driver approaches the controlled crossing going countrywards he will be able to see that at or about the traffic lights ahead the road turned sharpishly to his left. As a protection for pedestrians on the driver's left hand side there are railings on the roadside of the footpath. There is one set of railings before the crossing; there is then the crossing; and as the driver proceeds in a leftward direction there is a second set of railings. The roadway is just over 32 feet wide.

[8] In the course of the proceedings the court heard from the plaintiff; from her then partner, now husband, Mr Glass; and from an engineer, Mr McGlinchey. The court then heard from the defendant; from a police officer, Constable Babington, and from an engineer, Mr Wright. The court will, in what follows, provide a concise summary of the evidence. Necessarily, this will be selective, but it should not be thought that the court has not considered the totality of each witness's evidence. It has done so.

[9] The court will later deal with the medical evidence in the case.

The plaintiff's evidence

[10] Just before the accident, the plaintiff said she left the shop carrying a bag of bait. When she exited the shop she said she turned to her right which was in the direction of the crossing. This was the opposite direction to where she was going *viz* to her car. She said the road was quiet. She walked to the nearest end of the barrier or railing. She said she did this so that she could look in a seaward direction for traffic. However it is clear that because of the bend in the road at this point this position would only provide her with a limited view in this direction. She claimed she could see some 600 yards in a seawards direction. However this was plainly not the case. She said when she reached the nearest end of the barrier she leant out to get a better view to her right. As there was no traffic coming, she stepped out onto the road. This was so notwithstanding that she would only have needed to walk a few steps further on – in the direction of the sea – to have reached the crossing itself. Once on the road, she said she walked diagonally across the road towards her car. She was thus walking diagonally in a countrywards direction. She said she had nearly got to the white line in the middle of the road when she heard a thump. She then heard braking but this was after the thump. The car struck her from behind. She believed she had been on the road for some 9 seconds before the accident. This was based on a calculation she had made subsequently. Once she had set out onto the road she said she did not look back for oncoming traffic. She said she remembered going up the bonnet of the car and the back of her head coming into contact with the windscreen. In advance of the accident, the car had not sounded its horn. The car continued to move forward, though it braked. She came down from the bonnet to the ground. She remembered being treated thereafter by a nurse and police being at the scene. She did not recall saying anything to police at the scene though she says she heard the nurse telling the police not to breathalyse her.

[11] She said that in the course of accident she fractured her ankle but that, in fact, her knee was sorer than her ankle. This was on the right side. She had had a sore neck prior to the accident and, as she put it, "the accident didn't help it". She needed after the accident two staples to a wound on the back of her head. By the date of the trial, she said she had recovered from her injuries save for the injury to her right knee. She said she felt constant pain in it and was on anti-inflammatories. By taking painkillers, she could go one step forward and one back. While the knee was not pain free, it had improved. By reason of this injury, she claimed she was unable to continue work as a farmer and had to sell her farming business and the land since the accident. This left her with a substantial annual loss of earnings which she attributed to the accident. As a result of the accident she also claimed to have been suffering from depression, though she agreed that there were other factors than the accident which were relevant to this.

[12] In the course of her cross-examination, the plaintiff made clear that she had a clear recollection of events leading to the accident. She maintained she could from the end of the railing or barrier as she leant out see down to a mini-roundabout looking in a seaward direction. When it was suggested that this was impossible and that the view in that direction was around 50 yards and the mini-roundabout was some 600 yards away, she nonetheless held to her position. She denied that there was any chance that she was mistaken. It was suggested to the plaintiff that it would have been easier to have used the crossing. She said that as the road was clear of traffic there was no need to do so. She agreed with counsel for the defence that, in accordance with the police sketch of the location, where she came to rest after the accident was some 84 feet from the pedestrian crossing. She said in answer to a question that she didn't hear the car before it struck her. At the time of accident she maintained she was walking in a straight line but going diagonally to the car but she accepted that she would not have walked the whole way on the road. When questioned about how far into the road she had got at the time of the accident she said that one or two steps more would have taken her to the midline of the road. She accepted the suggestion that she should have looked back but she said to do so she would have had to turn around. She also accepted the suggestion that if she had looked back she would have seen the car before the accident. Notwithstanding these concessions, the witness did not accept the suggestion that she was in anyway at fault. It was put to the plaintiff that she had told Constable Babington at the scene that she had just stepped out. She denied saying this. A question arose as to whether in the past she had maintained that the driver had not been breathalysed but she denied knowledge of this. If the driver told the court this, she said, she would accept it.

[13] In the course of cross-examination the plaintiff was asked about her financial loss claim in the case. A particular focus was that it was alleged that notwithstanding that her farm business was on a demonstrably small scale she had asserted *via* an accountant that during the time she had been at work in her business she was achieving a profit of £55,000 *per annum*. She responded that these simply were figures and that she accepted that she had approved the claim. It was suggested to

her that in the light of discovery of information about her tax returns during this period the claim of £55,000 *per annum* was a dishonest one. She denied this. It was suggested that on the basis of her returns she could not properly claim an income much more than £7,500 *per annum*. She agreed with this. When the matter was further pursued, she admitted that she did think the figure of £55,000 *per annum* was high.

[14] Another issue which was the subject of cross-examination was why she gave up her farming business in 2009. It was suggested to her that this was to do with other factors, her getting married and having to look after young children and financial difficulties, rather than any injuries sustained in the accident. After a time she appeared to accept this.

Hugh Carson Glass

[15] Hugh Carson Glass by the date of the trial had become the plaintiff's husband but had been her partner at the time of accident: indeed, at that time, they were engaged. Mr Glass had been with her on the evening of the accident. He had driven her into Ballycastle that evening in his Ranger Jeep. As indicated earlier in this judgment, the Jeep was parked on the left hand side of Ann Street looking in the direction of the sea. When the plaintiff went to McAuley's shop Mr Glass remained with the vehicle. When asked about when he knew of the accident he said he saw the plaintiff coming off the defendant's car. He said she had been thrown and had landed behind the Jeep. He thought she ended up where the white line was. He said he was in shock and did not get out of his vehicle until the police arrived. He said he saw a nurse tending the plaintiff. He saw the defendant near his car after it had been moved. He said he saw the police moving him on. The witness indicated that he did not speak to the police about the accident.

[16] During cross-examination counsel for the defendant put to Mr Glass that Constable Babington had spoken to him at the scene. He appeared to accept this. The contents of the officer's notebook were put to him. These indicated the following exchange:

> "Spoke with I/Ps boyfriend Hugh Glass of 21 Castle? Road, Bushmills. He stated that his girlfriend had just stepped straight in front of the car which struck her and that ? was not the driver's fault."

[17] It was put to him that this is what occurred. The officer who made the notebook entry stood up in court and identified himself as Constable Babington. Mr Glass's response was to deny that the exchange noted in the officer's notebook occurred. When asked if he could give any reason for the officer claiming improperly that he, Mr Glass, had said this, he said he did not know of any reason. It was also suggested to the witness that he had spoken to the defendant before the police arrived. He accepted he had spoken to the defendant but after the police

arrived. He accepted that he asked the defendant was he okay. However he denied introducing himself to the defendant and denied explaining to him who he was. In particular, it was put to him that he told the defendant he was Jayne's boyfriend. He denied this. Counsel for the defendant suggested that he told the defendant that he was sorry and that she was not looking where she was going. Mr Glass denied that this occurred.

John McGlinchey, Consultant Engineer

[18] Mr McGlinchey was called as an expert witness in support of the plaintiff's case. He indicated in evidence that he had visited the site on 4 February 2015. He took a series of photographs. In an unusual development, Mr McGlinchey said that the idea that the plaintiff, on leaving the shop, would have gone right to the end of the barrier and leant out to look for on-coming traffic was, in his view, not credible. He thought this is not what occurred. In his view, when a person came out of the shop he or she would, most likely, proceed to cross the road at that point. It would make no sense to go to the end of the barrier. If a pedestrian was going to do this, in his view, he or she would have gone on the small further distance and used the crossing itself. Mr McGlinchey went on to say that he considered the plaintiff's estimate of her walking across the road for 9 seconds before the accident as one he could not accept. In his view, it was far more likely that she had left the shop and crossed the road at this point. In the light of the police sketch and bearing in mind the mechanics of the accident *i.e.* that she went up onto the bonnet of the car and was carried along by the car for a distance before being deposited on the ground, in his view, the plaintiff would only have been on the road for in the region of 3 seconds prior to the accident. He could not identify a particular point of impact. But assuming the defendant was driving at 30 mph Mr McGlinchey said the defendant could have stopped as there was sufficient time for him to react and bring the vehicle to a halt. In his view, the driver's reaction time would be 0.7 of a second. In his view, the railing itself presented no impediment to the defendant's view. In his view the accident therefore was avoidable. The speed at which the defendant was travelling – of 30 mph – in his view was much too fast in the circumstances of a sharp left hand bend. A speed of 20 mph, he thought, was appropriate. If the defendant had been travelling at this speed he would have stopped in time. Mr McGlinchey conceded that on his scenario the plaintiff would still have been at fault in that she had stepped off the kerb when the car would have been coming into view and then walked at an angle countrywards without looking back.

The defendant's case

Mr Donnelly's evidence

[19] The defendant said when his car was approaching the pedestrian crossing it was clear. He then engaged in rounding the leftward bend in the road. He indicated that the bend was quite a tight one. He said that he became aware of the plaintiff. She was on the left hand side as he went countrywards at the edge of the footpath.

She stepped onto the road from the kerb. By this stage, his car had rounded the bend. His car was positioned centrally within the lane for countryward traffic. When she stepped off the kerb it was a shock to him. She went right in front of the car. He was too close to take evasive action by moving into the on-coming lane. He said he could see the plaintiff from the back. He could not say if he immediately braked. There was, he thought, some reaction time first. At the point of impact, he could not see the plaintiff's face but he could see her long hair at the back of head. The front of the car collided with her and her back came onto the bonnet. The back of her head hit the base of the windscreen. In his view, the locus of the hit to the windscreen was central and to his left. He brought the vehicle to a halt. He was clear that she was walking away from the car when the accident occurred. He believed that he braked at or about the point of impact. He said his car maintained its line and did not straddle the white line. When the car came to a halt the plaintiff slid off the bonnet onto the road. He said impact took place just a couple of strides into the road. After the accident he switched off the car and sat for a moment. He then got out to see how the plaintiff was. By this stage other people were around her and she was sitting up. She was looking for a bag of bait. He went into a bar on the right hand side of the road going countrywards in order to summon help. He said the barman told him someone else had already phoned for an ambulance. At this point he came out of the bar and informed people that an ambulance was on its way. At this stage he could see an off-duty nurse helping the plaintiff. For a time he stood and watched from the footpath outside the bar he had gone into. The traffic by this stage had built up and both lanes were blocked. A man came to him and introduced himself as the boyfriend of the plaintiff. He was genial and apologetic. He told him that he was sorry and that the plaintiff had not been looking where she was going. He said she had been shopping in McAuley's. Before the police arrived, he said people urged him to move his car. There was some debate about this. He decided to do so and reversed his car up the carriageway in the direction from which he had come. He was then able to park it near to the bakery where he worked. Later, the police spoke to him as the driver involved in the accident. He was breathalysed (with negative result) and the police checked his car for damage. He agreed to call with the police the next day which he did. He answered the questions of Constable Babington about the accident on the following day. He told the constable that while it was difficult to say he had been travelling at about 30 mph. In the witness box, however, he said he thought that he had over-estimated his speed, given that he had been faced with a tight bend in the road. On reflection, he considered that he may have been travelling between 25-30 mph. He told Constable Babington during the interview the next day that his car was a Mazda MX5. In the course of the accident the front windscreen had cracked and there was also damage to the front number plate. Some minor damage was also done to the bonnet.

[20] The defendant was cross-examined by counsel for the plaintiff. When asked about his view as he approached the crossing he acknowledged that as he had just moved out past the parked vehicle he had an improved view of the crossing. He denied that he had been in a rush that evening. He accepted that he had travelled

along this portion of the road many times before. Counsel put to him that a speed of 30 mph at this position on the road was too great. However to this he said he thought he had been travelling 25 mph and that he had negotiated the corner successfully. He accepted he had not seen the plaintiff before the point at which she stepped off the kerb. At this stage he had passed the railing to his left. She, the plaintiff, had entered onto the road beyond where the railing ended. He could offer no explanation as to why he had not seen the plaintiff before this point but he saw her when she was entering onto the road from the kerb line. The defendant denied the suggestion that he had not been paying attention. The defendant was prepared to accept that the sequence may have been that he hit the plaintiff first before he had time to brake. He said he was unable to slow the car by the time he hit the plaintiff such was the emergency. He told counsel for the defendant that from what Mr Glass had said to him he thought he, Mr Glass, had seen the accident. It was put to the witness that Mr Glass had denied that the conversation the defendant had relayed to the court had occurred and that he was mistaken about this. However the witness disagreed with this and was adamant that the conversation occurred as he had told the court.

Constable Babington

[21] At the time of the accident Constable Babington said he had been stationed in Ballycastle when he received a radio message to go to scene. He had been patrolling with another officer in a police vehicle at the time. When he arrived he told the court he could see a female lying in the middle of the road. By this stage the Mazda had been moved to facilitate traffic flow. The officer indicated that he understood that the plaintiff had told his colleague that she had just stepped out. He said he had spoken to Mr Glass at the scene and that he had told him that the plaintiff walked out and did not look and that the accident had not been the driver's fault. He referred for the exact terms of what he was told to his notebook. He had, he said, made an entry about it that evening. He told the court that he had interviewed the driver the following day and that he was the officer who had prepared a sketch of the locus of the accident.

[22] During the cross-examination, the officer told the court he had been stationed in Ballycastle at that time for just over a year. In answer to questions, he told the court that the parties were complete strangers to him. His fellow officer at the scene had been Constable Paton and it was him who had had the exchange to which he had referred with the plaintiff. He was clear that the removal of the plaintiff's vehicle had not been a step requested by the police. In respect of his interview with the defendant the following day, he confirmed that the speed limit on Ann Street was 30 mph. When the defendant referred to this speed he thought that it was in the nature of a standard reply. He told the court he did not view a prosecution of the defendant to be appropriate. When he inspected the defendant's car it had a dent in the bonnet, a cracked windscreen and he recalled that there were hairs from the plaintiff on or at the windscreen.

John Trevor Wright

[23] Mr Wright told the court that he was a consulting engineer who had been retained by the defendant. He attended the scene on 14 May 2014. He prepared a map of the relevant area and had taken a range of photographs. The defendant's vehicle was, he said, low set. He felt that the railings either side of the crossing might have made the driver's view a little difficult but after the railings finished, as he drove countrywards, the driver would have had a clear view. When Mr McGlinchey's views were put to him he said he also was of the opinion that it was unlikely that the plaintiff would have walked for 9 seconds on the road prior to the accident. In particular, Mr McGlinchey's theory that the plaintiff may have been on the road for 3 seconds prior to the accident was rehearsed to him. He was not sure that this was correct as he felt that the fact that the plaintiff had been struck by the left centre of the front of car suggested to him that she had not walked far across the road when the accident occurred. He also disagreed with Mr McGlinchey's views that the driver's reaction time was 0.7 of a second (as per the Highway Code) and that 2 to 3 seconds was a sufficient time in which the defendant's car could be halted before hitting the plaintiff. In his view, the response time in an emergency of this nature was in the region of 1.5-2.0 seconds, certainly not much less than 1.7 seconds. This was because the driver would not have been expecting an event like this to occur. In his view, the most likely scenario was that the plaintiff was only on the road for 2 seconds prior to the accident and that the driver simply would have had insufficient time to bring the vehicle to a halt without hitting the plaintiff, as occurred. This was his view if the driver had been travelling at 30 or 20 mph. In either case, there would have been impact, albeit at a lesser speed if the 20 mph scenario was correct. Mr Wright considered, moreover, that it was unlikely that the plaintiff would have been walking at a 45 degree angle and felt it was more likely that she would have been proceeding in a straighter line, albeit while walking at an angle. Overall in his view the emergency was such that impact with the plaintiff was unavoidable as the warning to the driver was too short.

[24] When cross-examined by counsel for the plaintiff, Mr Wright was challenged principally on the issue of the reaction time appropriate in a case like this. Counsel suggested that the Highway Code figure of 0.7 seconds as argued for by Mr McGlinchey was the correct approach where one was dealing with an alert non-expectant driver. Mr Wright however maintained his view. When asked why the driver had not seen the plaintiff prior to her stepping onto the road – as he had claimed – Mr Wright felt that there may be a distinction between the driver seeing and noticing her. Mr Wright did not accept that 30 mph was necessarily too fast for the bend in this case and felt that the critical speed for this purpose was 30-35 mph. In respect of individuals who were drivers involved in accidents, Mr Wright was prepared to accept that the assessment that they may make of speed would often be self-serving.

Court's assessment in respect of liability

[25] The court listened carefully to the plaintiff's evidence and to her cross-examination by the defendant's counsel. She was not, in the court's estimation, a reliable witness. Her account of leaving the shop and then walking to her right to the edge of nearest point of the railing to lean out and look to see if there was traffic coming up the road from a seaward direction seems to the court to be an unlikely one. If she had done this, the court would find it surprising that she had not simply crossed at what would then have been the adjacent controlled crossing. The court also considered that the witness's account of walking on the road for 9 seconds before the accident did not have the ring of truth. If true, the court would have expected that this would have taken the plaintiff a considerably greater distance into the road and away from McAuley's than the place where the accident appears on the evidence to have occurred. The plaintiff's account of what she could see from the railing looking towards the sea was also incredible and was contradicted by the engineering evidence. The court thinks it is more likely that the plaintiff left the shop and walked out onto the road with scant, if any, regard to her own safety. Once on the road, the court accepts that it was likely that she walked with her back to the oncoming traffic in a broadly diagonal direction. She did not look back to see if there was any oncoming traffic. The court has no doubt that the plaintiff did in fact tell Constable Paton that she had just stepped out. In the court's view, the plaintiff's account of sustaining an annual loss of £55,000 was fanciful and had no foundation and her willingness to sign a document saying that she had reflected negatively on her credibility.

[26] Mr Glass also, in the court's estimation, was not an impressive witness. He appeared to tailor his evidence in order to promote the plaintiff's case. The court has no hesitation in accepting Constable Babington's evidence about what Mr Glass said to him at the scene of the accident in respect of his girlfriend stepping straight out in front of the car which struck her. It seems to the court that, rightly or wrongly, Mr Glass did tell Constable Babington that his view was that the driver was not at fault. In evidence, Constable Babington seemed to the court to be a straightforward witness. His notebook entry, it appears, was made contemporaneously and there is no evidence that he knew either the injured party or her boyfriend or the driver before the accident. In respect of the conflict evidence between Mr Glass and the defendant over whether the former had told him that the plaintiff had not been looking where she was going, the court prefers the evidence of the defendant who the court judges to be a more credible witness than Mr Glass. In addition, given that the court has already formed the view that Mr Glass was not correct in denying the conversation which the court is satisfied occurred between Constable Babington and himself, this makes it more likely that the defendant's version on this point is right.

[27] As regards the defendant's evidence the court did not form an adverse view. However his attempt in the witness box to revise in a downward direction the speed he was travelling at the time from the speed of 30 mph he had estimated to police on the day following the accident did not do him any credit.

[28] The views of the experts in this case were clearly in conflict. Mr McGlinchey considered that if the defendant had been travelling at a lesser speed and had been paying proper attention he could have stopped in time whereas Mr Wright was of the view that faced with this emergency even the most careful of drivers could not have stopped in time. The court has carefully considered each's evidence. Each's evidence was based on an element of assumption and speculation and the margins which divided the experts were generally small. The court, while having regard to what each expert has said, must, however, apply its own analysis of what happened on the evening in question. Insofar as the court is required to favour the evidence of one expert over another, in this case it favours the evidence of Mr McGlinchey.

[29] The court's view of liability in this case is formed on the basis of the following:

(a) First, the court is satisfied that the plaintiff left the footpath and stepped onto the road without looking for on-coming traffic. She probably did this because she was rushing to get back to her and Mr Glass's vehicle, this having been her second visit to the shop. She probably left the footpath and entered the road at a point just outside the front door to McAuley's shop. When she entered the roadway the court finds she walked diagonally away from the on-coming traffic in a countrywards direction. She clearly did not at any stage look back to see if there was any on-coming traffic. The court concludes that she was struck while on the driver's side of the road and it was unlikely that the defendant's vehicle went over the white line. The estimate of the plaintiff being on the road for 3 seconds prior to the accident seems credible.

(b) Secondly, the court is satisfied that the driver was travelling at 30 mph as he approached and rounded the bend in the road, as his statement to the police on the following day recorded. In the court's view, this speed was too fast for the road and for the bend in question. Any speed in excess of 20 mph, in the court's view, would be too great given the circumstances prevailing at the time of the accident, the configuration of the road and its location in the very centre of the town. The court has asked itself whether the defendant ought to have seen the plaintiff earlier than at the point when she stepped off the kerb, for example, at the point when she entered or was crossing the footpath going in the direction of the road. On balance, the court finds it difficult to accept the defendant's account that he only saw her at the very last moment when she stepped off the kerb. If the defendant had been keeping a proper lookout, the court believes the driver could and should have seen the plaintiff when she was crossing the footpath. If the defendant had done so, and if he had been travelling below or at 20 mph the court, taking account of the engineering evidence, is of the

view that the car could have been brought to a stop without colliding with the plaintiff.

[30] In any event, therefore, the court is of the view that the plaintiff and defendant both were responsible for the accident. The defendant was at fault in the way described but the plaintiff contributed substantially and was guilty of contributory negligence.

[31] The court has asked itself how it should divide up responsibility for the accident as between the plaintiff and defendant. The statutory provision of relevance is that found in section 2 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948. It states that –

> "2(1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage."

[32] In considering this issue, the court bears in mind that section 2(1) does not specify how responsibility is to be apportioned beyond requiring the damages to be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage (not, it is to be noted, responsibility for the accident).

[33] In the recent decision of the Supreme Court in case of Jackson v Murray and Another [2015] UKSC 5 there is an extensive discussion of the issue of apportionment which the court has found instructive. It is noted that regard should be had, in particular, to the issue of blameworthiness of each party and the relative importance of his/her acts in causing the damage apart from blameworthiness.

[34] Doing the best the court can, in this case the court is of the view that the plaintiff's contribution to the accident both in terms of blameworthiness and causation was greater than the defendant's. If she had been paying sufficient attention both at the point she left the footpath and subsequently, the driver probably would not have been placed in the position of having to react to what, in effect, was the need to execute an emergency stop. The criticism the court has made of the driver arises because of the plaintiff's initial disregard for her own safety. The court, however, does not leave out of account the obvious fact that a car can do much more damage to a person than a person could usually do to a car. This places a significant onus on the driver.

[35] Overall in the court's view the plaintiff's share of responsibility for the damage she received should be set at the level of two thirds.

Quantum

[36] The court has considered a substantial volume of documentation concerning the plaintiff's injuries in the aftermath of the accident, together with a substantial volume of medical records.

[37] As regards physical injuries attributable to the accident there is no significant dispute that the following injuries were received:

(i) An undisplaced fracture of the right distal fibula. This required treatment by way of being placed in a plaster of paris. After a period of some 14 months, post injury, Mr Matthews, general surgeon, noted that the injury was giving very little trouble. It seems that later reports all suggested the injury settled down well and that the plaintiff had recovered. This injury did not involve any joint and there was no significant risk that as a result of it there would be degenerative change.

(ii) In the course of the accident, the plaintiff struck the back of her head against the windscreen of the car. This caused a laceration which required the application of two staples. At the time, there may have been a transient loss of consciousness. As a result of this injury, the plaintiff suffered headaches for a short time but these resolved by the time she saw Mr Matthews some 14 months after the accident. There is nothing to suggest that this was a serious injury.

(iii) It would appear that the plaintiff had a pre-existing neck injury at the time of accident. This had resulted from a previous road traffic accident in which she had been involved some time in 2003-2004. Mr Matthews described the plaintiff's neck symptoms as having settled by the date he saw her some 14 months after the injury. He notes that at that time the neck did not bother her. He thought one might allow a further number of months before final resolution from the date of his examination. When he later saw the plaintiff – some 7 years and 3 months from the date of the injury – there was a reference in his report to the plaintiff having some discomfort at the neck. However when Mr Wallace saw her some 7 years after the accident he was of the view that any suffering in the neck had returned to its pre-accident condition. Both Mr Matthews and Mr Wallace identify the neck injury as being in the nature of an exacerbation of a pre-existing condition. The period of exacerbation will have been substantially less than seven years. Erring on the side of generosity, in the court's view,

the exacerbation maybe placed in the region of 2 to 3 years on a tapering basis.

[38] An area of contention in the case as between the medical experts related to an injury which the plaintiff says she sustained to her right knee as a result of accident. Indeed she told a number of doctors that she had been in agony as a result of this injury at the time of accident.

[39] Different views were expressed by the medical experts who gave evidence in court about this injury. On the one hand, Mr Matthews, who is a consultant surgeon and who examined her on 16 November 2007 (14 months after the accident) and 12 December 2014 (over 7 years from the date of the accident), considered that a substantial injury had occurred while, on the other hand, Mr Wallace, a consultant orthopaedic surgeon, who examined the plaintiff on 28 June 2011 (around 4 years and 9 months after the accident), and on 30 July 2013 (some 6 years and 10 months after the accident) viewed any injury at this site to be in the nature and a bruising and straining injury without any significant structural damage.

[40] In his first report, Mr Matthews' notes that the plaintiff complained to him of not being able kneel comfortably. On examination he records that she had obvious infrapatellar tendonitis on the right side. However, there was no mention of any wasting. She was also tender over the medial head of the gastrocnemius behind the knee which would make straightening of the knee uncomfortable especially on rough ground. In his view this condition would probably gradually settle and might get better a lot quicker if she had judicious use of steroids. He thought the prognosis was quite good but hard to estimate.

[41] In Mr Matthews' second report, much later on, he notes that the plaintiff was complaining of her right knee being sore every day. On examination, while he noted that the right collateral ligament seemed slightly lax as compared with the left, there was no evidence of instability. With forced dorsi-flexion of her right ankle she complained of pain behind her right knee. In his opinion he notes that the obvious infrapatellar tendonitis noted previously was now not present. At the time of examination, her muscle bulk was normal. He thought the plaintiff had sustained a serious injury which had improved considerably but he agreed with Mr Wallace that there was little evidence of any structural damage.

[42] Mr Wallace's first report notes in its history section that the plaintiff had told him that at the time of the accident she had pain in her right knee which was "excruciating" and worse than her other injuries, which included a fracture. By the time he saw her she was complaining that she could not kneel on her right knee because of pain. On examination Mr Wallace found no effusion and there was a full range of movement, though with soreness at the limit of flexion. He found the knee to be stable with no joint line tenderness. There was tenderness over the lower pole of the patella and over the patellar tendon. On his review of the hospital records made at the time of the accident, there was, however, no note of any knee

symptoms. In his comment Mr Wallace, notwithstanding his acceptance that the plaintiff's complaints about the knee at the time were "inconsistent with the notes reviewed", was of the view that he could accept that she could have suffered a bruising or straining injury to the knee. However, "if there had been any significant structural damage to her knee it was highly likely that this would have been recorded in the hospital notes". Later in the same section he went on to say: "the high level of complaint and disability which she now describes would be very difficult to explain on the basis of such an injury". He felt that a period off farming work for up to six months was not unreasonable.

[43] In his second report, Mr Wallace again records the plaintiff as complaining of pain in the right knee, worse when sitting or driving. The site was the right knee below the patella. On examination, his findings were similar to those recorded in his first report. In particular, there was no measureable wasting of the muscles of the right thigh as compared with the left. There was some general anterior tenderness, mainly over the tibia tubercle and also over the patella to relatively light touch. He held to the views he had expressed in his first report. He added: "I remain satisfied that she did not suffer structural damage to her knee in this accident likely to cause long term problems. A bruising to the knee could of course have occurred but, on the basis of the information currently available, there would not appear to have been structural damage and I would have difficulty explaining the current symptoms on the basis of the subject injury".

[44] The court has considered the plaintiff's medical records as they relate to this injury. These do not show any complaint at hospital at the time of the injury in relation to a knee injury. There is a record dated 18 September 2006 (3 days after the accident) in her GP notes which refers to her right knee being swollen and stiff with a reduced range of movement. On 3 October 2006 Mr Simpson, an orthopaedic surgeon who was checking her plaster cast noted that the plaintiff was complaining of some pain over her hamstring muscles at the back of her knee. There is no mention of the knee in succeeding similar entries.

[45] There is also a short report from Mr Nicholas in the papers. This is dated 7 August 2012, just less than 6 years from the date of the accident. In the history the plaintiff told Mr Nicholas that she was complaining of injury to the knee at the date of the accident when taken to hospital. At this stage her complaint was of the knee being sore all the time at the front of the knee. On examination, Mr Nicholas found a reduction of muscle bulk in comparison to the other side. He found no effusion in the right knee joint. He considered that the symptoms were suggestive of patella tendinopathy.

[46] In reviewing all of the above, the court is prepared to accept that the plaintiff did sustain an injury to the right knee at the time of the accident. However, the court is not satisfied that the injury was of a structural nature or that the complaints made by the applicant about her right knee can all be attributed to the accident. In this area the court accepts the evidence of Mr Wallace which confines the effects of any

injury to the right knee for a limited period on the basis that the injury was in the nature of a bruising and straining injury. In arriving at this view the court takes account of a number of factors. Firstly the court is of the view that the plaintiff has exaggerated the effect of this injury. If she had been in excruciating pain at the hospital as alleged the court is of the view that this surely would have been recorded. Secondly, the court is struck by the evidence in relation to the subject of muscle wasting in connection with this injury. What is, in the court's view, very telling is that when the plaintiff was examined by Mr Matthews some 14 months after the accident he did not find any muscle wasting. Given the elapse of time since the accident one would have expected such a symptom, if the injury to the right knee was significant, to have developed. The only finding of muscle wasting on examination in this case was made by Mr Nicholas but this was not until 6 years after the accident. This suggests to the court that that particular finding arose or is connected with a cause other than the accident. Thirdly, the court has already reached the view that the plaintiff is not a reliable witness. In the present context the court is unable to accept her evidence of a high level of complaint in respect of the right knee over a substantial period which she attributes to the accident. The court will accept a duration for her complaint in respect of her right knee in line with Mr Wallace's evidence.

[47] The final injury which the court will consider is psychiatric injury. In respect of this the plaintiff maintains that she has suffered psychiatrically as a result of the accident. Two reports about this were before the court – one from Dr Browne and one from Dr Fleming, both consultant psychiatrists. The court has considered these. In the court's view neither supports the case the plaintiff has sought to make and the court finds no psychiatric upset of any substance. Insofar as the plaintiff has sustained symptoms of upset since the accident, the court is of the view that on the balance of probability this has been sustained by reason of the plaintiff's life circumstances, including post-natal depression and financial difficulties.

[48] Having considered the ambit and duration of the plaintiff's injuries attributable to the accident the court values the plaintiff's claim in the sum of £32,000.

Loss of Earnings

[49] The court has referred already to the substantial loss of earnings claim which the plaintiff has made in this case: see paragraphs [13] and [14] above. The claim in the court's view was grossly inflated and untenable in the form it which it was made. That is not, however, to say that no proper claim could be made by her. In the court's view the suggestion that the plaintiff lost her farm and her land as a result of this accident is unsustainable but the court is prepared to accept that for a limited period she probably was unable to work. The court will set that period at one year and will allow the agreed figure of £7228 as the loss attributable to that period.

Conclusion

[50] In accordance with the court's consideration above the court on full liability would have awarded a figure of £39,228 to the plaintiff. This however must be reduced by two thirds in accordance with the court's assessment of the respective parties' contributions to the accident.

[51] The court therefore awards to the plaintiff the sum of £13,076.