

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

CONOR PATRICK McALLISTER

-v-

JOHN GEORGE CAMPBELL

STEPHENS J

[1] The plaintiff, Conor Patrick McAllister, 25, date of birth 4 June 1988, was injured in a road traffic accident which occurred on Sunday 15 November 2009 on the Broughshane Road, Ballymena. The plaintiff a keen amateur cyclist was riding a racing bicycle and the defendant was driving a Renault Scenic motor vehicle.

[2] The amount of damages has been agreed in the sum of £70,000. The issues for my determination are liability and, if liability is established, contributory negligence.

[3] Before turning to the facts of the case I remind myself of what Mr Justice Gillen said in the case of *Sean Thornton v Northern Ireland Housing Executive* [2010] NIQB 4 in relation to the issue of credibility. At page 3 he said:

“[12] Credibility of a witness embraces not only the concept of his truthfulness i.e. whether the evidence of the witness is to be believed but also the objective reliability of the witness i.e. his ability to observe or remember facts and events about which the witness is giving evidence.

[13] In assessing credibility the court must pay attention to a number of factors which, inter alia, include the following;

- The inherent probability or improbability of representations of fact ,
- The presence of independent evidence tending to corroborate or undermine any given statement of fact,

- The presence of contemporaneous records,
- The demeanour of witnesses e.g. does he equivocate in cross examination,
- The frailty of the population at large in accurately recollecting and describing events in the distant past,
- Does the witness take refuge in wild speculation or uncorroborated allegations of fabrication,
- Does the witness have a motive for misleading the court,
- Weigh up one witness against another. ”

[4] I turn to the factual background. There are a number of matters which were not in dispute. The plaintiff was out with another cyclist on a training run. This took him from his home in Glenarm to Cloughmills, then to Broughshane. Both of them then rode towards Ballymena from Broughshane along a dual carriageway. They came to a roundabout, at which they parted, with the plaintiff going completely around the roundabout and back in the direction of Broughshane. As he exited the roundabout, now travelling back towards Broughshane, he was on a dual carriageway with a modest uphill incline.

[5] The defendant was driving his motor vehicle from Ballymena. He was accompanied by his wife Thelma, who was his front seat passenger. They were going to visit Thelma’s sister, Mrs Jane McGowan, who lives in Broughshane. Accordingly the defendant travelling from Ballymena came to the roundabout going straight ahead in the direction of Broughshane. As the defendant exited the roundabout there was on his left-hand side a slip road known as Fry’s Road. The defendant saw his sister-in-law Mrs McGowan, the person that he and his wife were going to visit, standing on the pavement at the point where Fry’s Road meets the main Broughshane Road. Mrs McGowan was talking to another pedestrian who it subsequently transpired was an individual known as Stephen. The defendant’s wife, his passenger, also saw her sister. For her part Mrs McGowan also saw the defendant and his wife as they passed where she was standing talking to Stephen. The defendant’s wife began to text her sister. Her sister began to text the defendant’s wife. There was a period during which the defendant considered what to do and within a short period he decided to stop having glanced in his mirror and noticed that his sister-in-law had started to walk towards Broughshane. He pulled the car into the side of the road, it being his intention to give Mrs Graham a lift.

[6] I will also describe the road layout in some greater detail. The road towards Broughshane from the roundabout is a dual carriageway. On the left-hand side of the dual carriageway is a strip of road marked off for cyclists. This is not a designated cycle lane in the sense that it would be illegal for a motor vehicle to enter it, but rather it is an informal arrangement for the benefit of cyclists. There is then further to the left-hand side a pavement for pedestrians.

[7] The plaintiff’s evidence was that he was not cycling in what I will term the cycle lane. He gave as his explanation for this, which I accept, that he knew from

previous experience that it contained gravel and glass and that this caused a risk of punctures. His evidence was that he was in the left-hand lane of the dual carriageway riding his bicycle from the roundabout in the direction of Broughshane.

[8] The defendant's case is that having passed his sister-in-law he pulled his car into the side of the road. That his car was stationary for some 30 seconds before the collision occurred. That he had indicated before bringing his car to a stop and that his indicator remained on whilst his car was stationary. His case is that the plaintiff just rode his cycle straight into the back of the defendant's motor vehicle. That as the defendant had been stationary for some 30 seconds; the plaintiff must have been approaching the defendant's stationary motor vehicle over that period of time with his head down not looking where he was going and that he just rode into the back of his vehicle.

[9] The plaintiff's case is that he was riding on the left-hand lane of the dual carriage way and that there were no vehicles in front of him in the left-hand lane. That he was aware of cars overtaking him in the right-hand lane. That he glanced down to look at his heart rate monitor and then when he looked up the defendant's car was straight in front of him. That accordingly the inference is that the defendant must have pulled across in front of him from the right-hand lane bringing his car to a stop, disregarding his presence on the roadway.

[10] I should also say something about the marks on the road and the marks on the back of the defendant's motor vehicle together with the damage that was caused to the plaintiff's cycle. The investigating police officer found marks on the back of the defendant's vehicle, one of which was consistent with the handlebars of the defendant's cycle striking the back of the motor vehicle and the other was consistent with the plaintiff's teeth striking the back of the defendant's motor vehicle. From the police sketch map, and I find that, these marks were approximately in the middle of the back of the defendant's motor vehicle. Again from the police sketch map and the evidence of the police officer I find that leading up to and immediately below those marks on the back of the defendant's motor vehicle there were two parallel scrape marks on the road surface. The police sketch indicates that these parallel scrape marks stopped some distance back from the vehicle, but the oral evidence of the police officer, which was not challenged and which I accept, is that the marks went right up to the back of the defendant's vehicle. I find as a fact that these marks were caused in the following way. The front wheel of the plaintiff's cycle broke off in this accident. The front forks of the cycle without the wheel would have travelled forwards and also would have fallen down to the ground. When the front forks hit the ground they then moved forwards creating two parallel scrape marks on the ground about 3 feet long. The length of the scrape marks is important because if the defendant's vehicle was stationary before the accident and remained stationary despite being struck from behind by the plaintiff's cycle then the length of the scrape marks should only have been less than half the diameter of the front wheel of the cycle, that is less than one foot two inches long. The engineering evidence which I accept was that if the handbrake was on the defendant's vehicle

then it would not have moved forward in this accident given the respective weights of the bicycle and the motor vehicle. The scrape marks indicate that it did move forward after the impact and that could only be because it was not stationary, or alternatively because the footbrake was applied, but only gently. Again the uncontradicted engineering evidence was that the distance of 3 feet could not be accounted for on the basis of the footbrake being applied. Rather all that gentle application of the footbrake could account for was a distance of the car moving forward a few inches. So whether the handbrake was applied or whether it was only the footbrake that was applied the distance of the scrape marks was only consistent with the defendant's vehicle still moving before this collision occurred. That in fact the defendant's vehicle was not stationary and that he had not brought his car to a stop.

[11] I further observe that the defendant said in his police statement that he had applied his handbrake before this collision occurred. I find that just cannot be correct. Quite simply the car could not have moved forward if the handbrake had been applied and the scrape mark would have been less than half the diameter of the wheel of the bicycle. The conclusion I come to is that the defendant's vehicle was not stationary before the accident for any period of time, let alone stationary for the period of some 30 seconds.

[12] On the basis of the marks on the road and the marks on the back of the defendant's vehicle I reject the defendant's evidence and the evidence of the witnesses called on behalf of the defendant, that the defendant's vehicle was stationary before this accident occurred. I also reject that evidence for a number of other reasons. I make it clear that I would reject the defendant's evidence for these additional reasons quite irrespective of my conclusions from the marks on the road.

[13] First I was impressed by the demeanour of the plaintiff. I accept his evidence that he saw that the left hand lane was clear of traffic.

[14] Next I find it highly improbable that a plaintiff could have cycled for some 30 seconds up this hill towards a stationary car with its indicator showing without at any stage looking and seeing the defendant's vehicle.

[15] The defendant's statement refers to him passing a cyclist as he drove "*towards*" the roundabout. The plaintiff was never on the Ballymena side of the roundabout. He had approached from Broughshane not from Ballymena. The defendant when giving oral evidence stated that he had passed the cyclist before he left the roundabout as opposed to as he drove "*towards*" the roundabout. I find that inconsistency undermines the credibility of the defendant's evidence.

[16] I reject the defendant's evidence on the basis of his account of checking behind him in his rear view mirror for his sister-in-law but not seeing the plaintiff's cycle. If the defendant was stationary looking in his rear view mirror he could not

have failed to see the cyclist as he approached up the hill. I consider that his account is just not correct.

[17] I also reject the defendant's account on the basis of a number of other inconsistencies. I will not list all of them but will only give examples. He stated that he did not decide to stop until he glanced in his rear view mirror and saw that his sister-in-law had started to walk towards Broughshane. His sister-in-law had said that when she came into view he had already stopped his vehicle which was stationary. So there is an inconsistency there between the evidence of the defendant and the evidence of the defendant's sister-in-law. Another inconsistency was the amount of time that it took for the sister-in-law to walk or walk fast or run depending on whether one accepts her oral evidence or her statement and the amount of time it would have taken for the plaintiff to ride at 15 to 20 mph from the roundabout. I just cannot accept that the defendant passed the plaintiff's cycle on the roundabout given the distances involved and the evidence of the defendant's sister-in-law.

[18] I reject the evidence of the defendant on the basis of his demeanour. I have no doubt that this road traffic accident all came as a terrible shock to him. My assessment is that he has not maliciously or malevolently tried to rationalise the events but that there has been a rationalisation to make them acceptable to him. That he has concentrated on the visibility of his own car and rejected any possibility that he missed seeing a cyclist before he brought his car towards the side of the road. I make it absolutely clear that I do not consider that that was maliciously done or malevolently done but that it has been something that has occurred. My assessment of him is that without any ulterior motive he has rationalised after the event as to how the accident occurred. That he has ignored that he was flustered and disorientated by seeing his sister-in-law and by making a decision as to what to do and when to do it in order to pick her up.

[19] I find that the evidence of Mrs McGowan was unconvincing. She unfortunately was prepared to make an accusation against an investigating police officer that he had been unfair to her in failing to record her as a witness without any rational ground for doing so. I accept the police officer's evidence that he asked for witnesses at the scene. She was at the scene. She appears to have blamed him during the course of this trial for not recording that she was a witness when she made no effort to tell him at the scene a single thing about what she saw. I also find that she was asked by the police officer at the time and did not respond.

[20] So I conclude that the defendant was flustered by seeing his sister-in-law, there was a period of indecision and that he was in fact in the right hand lane of this dual carriageway. That he was there either because he had seen at an earlier stage the cyclist or he was just in the right hand lane following a line of traffic. If he had seen the cyclist then he forgot about him in his confusion. That he pulled into the left hand lane with a view to stopping at a time when the plaintiff was in fact in the left hand lane some small distance behind him. That he did not have regard to the

plaintiff's presence on this road and that this failure was both negligent and was a cause of the road traffic accident. I reject the defendant's evidence that he was indicating. So I find in favour of the plaintiff in relation to the issue of liability. That is not however an end to this case.

[21] The plaintiff was not looking where he was going. He was looking down at a heart rate monitor. He should have been looking where he was going. I consider that if he had been he could have braked or taken evasive action though I do not find that the accident could have been entirely prevented. The plaintiff was guilty of contributory negligence, cyclists are extremely vulnerable. I consider that the appropriate reduction for contributory negligence is one of 25%.

[22] Judgment will be entered for the plaintiff in the amount of £52,500.