

Neutral Citation No: [2018] NIQB 69

Ref: MAG10694

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

Delivered: 30/08/2018

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

16/95966/A01

ON APPEAL FROM DISTRICT JUDGE'S COURT FOR THE
DIVISION OF LONDONDERRY

BETWEEN:

AINE McFADDEN

Plaintiff/Respondent;

-and-

PETER MATTHEW MORAN

Defendant/Appellant;

-and-

AXA INSURANCE LIMITED

Defendant/Respondent.

MAGUIRE J

Introduction

[1] The appeal arises out of a road traffic accident which occurred on 26 November 2014 involving two cars. The accident occurred on the Caw roundabout close to Londonderry.

[2] The plaintiff is Aine McFadden. She was driving a Toyota car. The defendant is Peter Matthew Moran. He was driving a Renault car.

[3] In the court below, the judge held that the defendant was responsible for the accident and it is defendant who, accordingly, has appealed the outcome to this court.

[4] While Axa Insurance Limited was represented at the appeal it is unnecessary to say more about their involvement in the matter.

[5] The court had the benefit of hearing evidence from both the plaintiff and defendant. Both, moreover, were cross-examined. The court has to say that it found neither of these witnesses compelling in the account each gave but that, as between the two witnesses, the account given by the defendant appeared to the court to be the more credible. The court has also considered the materials contained in the trial bundle which, regrettably, was only provided to it on the morning of the hearing. The court will also indicate that, as it indicated at the end of the hearing, it was minded to inspect the locus of the accident itself. No party objected to this course and the court has duly done so.

[6] The court does not need to deal with the issue of quantum which was agreed.

The plaintiff's account

[7] The plaintiff is a woman living at the time on the city side of Londonderry. At around 15.30 hours on 26 November 2014 she was travelling from the Limavady direction towards the Foyle Bridge. To access the Foyle Bridge a driver must negotiate a roundabout – the Caw roundabout. Coming from the Limavady direction the access is along a dual carriageway. As the driver approaches the roundabout the road is divided into three lanes. The left lane is for traffic travelling in the direction of Belfast/Omagh whereas the middle and right lanes are for traffic seeking to go on to the Foyle Bridge or back in the Limavady direction. The plaintiff maintains that she approached the roundabout in the middle lane. Her evidence was that she stopped at the cusp of the roundabout, then entered it, still staying in the middle lane. She then went round the roundabout. As she travelled around it, three lanes developed. Traffic to the Foyle Bridge occupied (going left to right) the left and middle lanes whereas the third lane was for traffic not going to the Foyle Bridge (principally traffic heading in the Limavady/Coleraine direction).

[8] It was the plaintiff's case that as she rounded the roundabout she remained at all times in the middle lane. The defendant's vehicle was, she said, at all material times behind her vehicle. When driving in that lane she says she felt an impact to the back of her car behind her on the driver's side. This, she said, caused the car to spin to the left. She then brought her car to a halt. In cross-examination, she said that she intended to go into the right hand lane of the access onto the Foyle Bridge.

[9] The other vehicle (the defendant's car), she said, stopped as a result of the collision. At first, she did not get out of her car nor did the defendant. But there was

some conversation through the windows of the cars. The plaintiff said that the defendant called her “a silly fucker”. To this she said she replied “what did he want her to do about it”, to which the defendant said “phone the police”. The plaintiff told the court that she then did phone the police. The operator enquired of her as to whether the defendant was injured. As a result of this enquiry, the plaintiff said she got out of her car and spoke to the defendant who was still in his car. She enquired as to how he was. The defendant said that he had an injury from a previous accident and pointed to strapping at his midriff area. He said he wanted an ambulance.

[10] The plaintiff then told the operator this information and shortly afterwards the police, an ambulance and the fire brigade arrived.

[11] When asked about the damage to her vehicle, the plaintiff said it was damaged at the back right hand side. She did not know what damage had resulted to the defendant’s vehicle.

The defendant’s evidence

[12] The defendant’s evidence was that he also had approached the roundabout from the Limavady direction. He also was intending to go round the roundabout and exit on to the Foyle Bridge. He approached the roundabout in the right lane and proceeded onward around it. He said that the right lane merged into two lanes as you go round the roundabout. The effect of this was that the configuration as you approach the exit for the Foyle Bridge was that the left and middle lanes were for access to the Foyle Bridge whereas the third lane (i.e. the right lane of the three) proceeded further around the roundabout heading in the Limavady/Coleraine direction.

[13] While in the second lane heading for the Foyle Bridge the defendant said that he was intending to use the right hand lane of the bridge. To do so he need only remain in the lane in which he was. His evidence was that the plaintiff appeared from his left and cut across him resulting in a collision. In his view she just came out of nowhere. He had not seen her prior to the accident. The contact of her car was with his front left wing. After contact her car spun around.

Assessment

[14] It seems to the court that this a case about lane discipline. Each car began in a lane and each lane – one alongside the other – could without undue difficulty lead on to the Foyle Bridge, which was the common destination. The plaintiff was in the middle lane originally (as she approached the roundabout) but the court notes that this, as the vehicle enters onto and round the roundabout, eventually becomes the left lane. The left lane provides access to the left lane on the bridge. On the other hand, the defendant originally was in the right lane as he came on to the Caw roundabout and as he rounded the roundabout this lane becomes the right of the

two lanes leading to and on to the Foyle Bridge. If each driver drives carefully and maintains lane discipline there ought to be no question of a collision.

[15] As it is clear that there was in fact a collision one or other or both of the drivers must have lost lane discipline.

[16] Apart from the accounts given by each driver, summarised above, there is little material before the court which objectively bears on the issue of causality. The court knows where the damage was done to the plaintiff's vehicle *viz* to the quarter panel rear off-side door, but it is unclear what damage was caused to the defendant's vehicle.

[17] There is a police report within the papers. The following points from it appear relevant:

- (a) It places the point of impact as being in the middle lane (of the three lanes) as you approach the bridge.
- (b) Two weeks after the accident Mr Moran, the defendant, said the plaintiff's vehicle came from his left. He said he was unable to do more than "hold the wheel" as he did not know whether there was a vehicle to his right. She (the plaintiff) came across his bonnet before he could do anything. He said he was travelling at 30 to 40 mph and that the traffic was busy. He added that there was no damage to his car. though he did say the impact was to the front left of it i.e. the front nearside of his vehicle.
- (c) The plaintiff in her statement made some three months or so after the accident said she was coming round the roundabout past the exit to the Waterfoot Hotel (which the court notes is immediately to the left of a driver driving in the left lane) when she felt a sudden impact to the rear of her vehicle on the driver's side. She thought the accident was a "rear end shunt".

[18] The court has not found the cause of the accident easy to determine. It must keep in mind that for the purpose of these proceedings the onus of proof is on the plaintiff to satisfy the court to the civil standard of proof that the defendant was responsible in whole or in part for the accident. The court does not consider that she has done so. The court has found the plaintiff's reference to travelling in the middle lane as she rounded the roundabout troubling as it seems to it that the more obvious path for her to have taken would have been, having come from the middle lane as

she approached the roundabout from the Limavady direction, to have then used the left hand lane as she rounded the roundabout with the purpose of accessing the bridge. The left lane of the roundabout becomes the left (of two lanes) on the bridge. The police sketch tends to show that the accident occurred within the middle lane of the three lanes on the roundabout as it approaches the exit to the bridge - which suggests to the court that the plaintiff may have lost lane discipline with the consequent that she may, perhaps not even consciously, have moved or drifted into that lane, in which the defendant had been travelling. This fits with what would seem to be the obvious path for the defendant to have taken given that he says that he started in the right hand lane when he reached the roundabout (coming from the Limavady direction) and he was intending to go round the roundabout with a view to using the right hand lane of the bridge. His natural course would therefore place him in the middle of the three lanes at the time of the accident. Another possibility is that at some point the plaintiff decided to move from the left lane as she rounded the roundabout with a view to using the right lane on the access to be bridge. She, therefore, may simply have failed to see the defendant's vehicle while executing this manoeuvre. All the court can usefully say is that, on the totality of the evidence before it, it is not satisfied that the accident happened in the way described by the plaintiff or that it has been shown that the defendant was at fault. In the court's view, the less likely of the possibilities is that the plaintiff, as she claimed, entered the Caw roundabout and used the middle lane of the roundabout and that she simply stayed in that lane throughout.

Conclusion

[19] In the above circumstances the court allows the defendant's appeal and dismisses the civil bill issued by the plaintiff.

[20] If the parties are unable to resolve the issue of costs, in the light of this short judgment, the court will arrange to hear submissions on this issue.