

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**MCKENZIE A MINOR**

**-v-**

**STEWART**

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**MORGAN J**

[1] The plaintiff was born in 16 March 1992. He claims damages as a result of a road traffic accident on 27 September 2002 when he suffered a nasty fracture to the left ankle.

[2] On the afternoon of 27 September 2002 the plaintiff got out of Cookstown Primary School at approximately 3 p.m. He and two friends made their way slowly to the junction of Moneymore Road, Milburn Street and Lissan Street which was governed by a mini roundabout. His two friends left him at the junction in order to travel up Moneymore Road. He intended to cross Moneymore Road in order to get to Lissan Street and then to his home. When he arrived at the junction there was a queue of traffic stretching back from the corner consisting of cars intending to turn left at Moneymore Road. The road at that point was wide enough to accommodate a second lane of traffic consisting of cars intending to turn right at the roundabout into Lissan Street. The plaintiff decided to cross at a point behind the first two stationary cars intending to turn left. He says there were about four or five cars to his right in the queue. There was no traffic in the outer lane. He says that traffic was generally busy. He looked to his right but could not see any moving cars although his vision was blocked by the stationary vehicles. He did not see any moving vehicles. He said that he stepped between two stationary vehicles, came to a stop just beyond them, became aware of the defendant's car and tried to step back but was hit by the car. The forces threw him back so that he hit one of the stationary cars behind him and fell. He said that the stationary cars were quite close together. He said that he was a step or two beyond the outside of the stationary cars when he saw the defendant's

vehicle. He had intended to step out of its way and might have been turning a little at the time of impact. He said that the car struck him somewhere on the legs. After the accident he realised that he had broken his leg and made his way back to the footpath. The driver of the car came over to help him and took him back to his own house as he did not want to get an ambulance. The plaintiff's mother then took the boy to hospital.

[3] In cross-examination the plaintiff said that when he looked to his right and saw the car he knew he was going to be hit. He tried to step out of the way but was unable to do so. He agreed that there was damage to the side of the car. He said that he had taken one or two steps beyond the stationary cars. He agreed that the position described by him put him in front of the passenger side of the oncoming vehicle. He said that he was turning slightly at the time of the accident so that might explain why he apparently collided with the side of the vehicle. He denied that he was running. He denied that he had walked into the side of the car and said that he stopped. He agreed that he must have gone too far beyond the stationary vehicles before looking to his right. He said that he could not remember the police officer giving him advice as a result of this accident. He said that he went to the hospital with his mother. He did not know why the hospital note suggested that he had run out between two cars.

[4] The plaintiff's mother recalled the defendant bringing the plaintiff home on the day of the accident. She said that the defendant told her that the plaintiff had just run out in front of him. The defendant had stayed for a while and contacted the police. She said that the plaintiff was shocked as a result of the accident and she had not discussed the circumstances with him. She had simply recounted the claim made by the defendant to the authorities at the hospital.

[5] Constable McGarrity investigated the accident. It was reported by the defendant who subsequently called at the police station. He said that the accident happened about half a mile to threequarters of a mile from the school. It was reported at 4.01 p.m. The traffic was generally busy at that time. The defendant had pointed out to him a dent to the front passenger wing just at the point where it met the front passenger door. He said that there could be quite a lot of children in the area but there was no evidence of any children in the area at the time of the accident. He said that the dent that was pointed out to him by the defendant would have required quite an impact if it had resulted in contact between a person and a vehicle. He formed the view that the boy had come out onto the road without looking and spoke to him and his father a few weeks later at his home. He gave him advice about road safety.

[6] Mr McKeown proved his engineering report. He described a number of schools in the area but was unable to say anything about the likelihood of

schoolchildren in the area at this particular time of the day. He described the width of the road and said that there should be a space between the 2 lanes of approximately 3 feet 4 inches if the cars were central in their lanes. The child would have been entirely visible beyond the offside of the stationary cars and there would have been a view across the bonnet if the stationary vehicles were cars. The driver's statement suggested a speed of 10MPH. Mr McKeown accepted that a speed of up to 15 mph would have been acceptable. If the plaintiff was walking an ordinary walking pace Mr McKeown estimated that the plaintiff would have been 4 feet back from the edge of the stationary cars when he would first have been visible across the bonnet. In those circumstances he suggested that the defendant would just about have been able to get his car stationary. He said that the dent to the front passenger wing meant that a high part of the body had come into contact with the car and he suggested that the injury to the ankle might have been caused as a result of contact with the passenger wheel.

[7] In cross-examination he agreed that if the plaintiff had stopped at the end of the stationary cars he would have seen the defendant's car approaching. He accepted that the defendant's car had to be in his view before the accident. He could not rule out the possibility that the injury was caused by a twist or a fall. He accepted that the dent to the defendant's car suggested that the child hit the car rather than the car hitting the child. He said that the view of the defendant across the bonnet would depend on the height of the bonnet and the type of car. He accepted that there was perception time as well as thinking time before action was taken to stop a vehicle. He accepted that research had suggested that overall thinking time might be greater than that set out in the Highway code upon which he had based his calculations. He said that the forensic science laboratory allowed thinking time of somewhere between 0.7 seconds and 1.5 seconds. The lower figure was that used in the Highway code. He said that the driver's state of alertness was relevant. He accepted that if there was any variation in the plaintiff's walking speed or an increase in the estimated speed of the defendant's vehicle that might well suggest that the accident was unavoidable.

[8] The defendant described driving towards the roundabout on the afternoon of the accident. He said that the traffic was very congested. The inner lane had built up with a tail of 8 to 10 cars. He was in the right lane. He was travelling at approximately 10 mph. He did not see any children in the general vicinity. He did not see the plaintiff before the impact. He said that he was travelling carefully and heard a thud at the passenger side of the car. He immediately looked round as he braked and saw the plaintiff's face. He said that if the plaintiff had walked out one or two steps in front of him he would certainly have seen him. He stopped his car and went to assist the plaintiff. He suggested calling an ambulance but the plaintiff wanted to get home. He told the plaintiff's mother what had happened and contacted

police. He called home to get his driving documentation and believes that it was at that point that he noted the dent in the passenger side wing.

[9] He said that there was a vehicle in front of him in the right-hand lane. He was a good bit behind it and the vehicle had proceeded out onto the roundabout. He was concentrating on the road ahead. He was not sure what kind of vehicles were on the inside lane or how far out they were. He said that he showed the dent to the police officer and had photos taken for the purpose of his insurance company shortly thereafter. He said that he did not see the child before the collision but heard the thud to the side. He had not noticed movement of any type before the thud to the left-hand side of the vehicle. He stopped when he heard the thud. He assumed that someone had run into the car. As soon as he heard the thud he looked round and saw the plaintiff's face. He could not say what happened to the stationary cars on the inside lane but all drove on. He agreed that the dent seemed minimal. He assumed that the child had run out but had not seen him at all. If the child had stepped in front of his car at any stage he said that he could not have missed him.

[10] I am satisfied that at the time of the accident when the plaintiff was crossing between the stationary vehicles he was not looking to his right. If he had been so looking he would have stopped before he emerged beyond the side of those vehicles. If he was not looking to his right as he emerged it seems to me unlikely that he would have chosen to step materially beyond the side of the stationary vehicles, stop and then complete a right looking manoeuvre. Secondly I accept that the evidence of the dent is supportive of the proposition that the plaintiff walked into the side of the car. Thirdly I accept that if the plaintiff had stepped in front of the car in the manner described by him the defendant would have seen him. I conclude, therefore, that the plaintiff made his way between the stationary cars without looking and went straight into the side of the defendant's vehicle.

[11] The defendant says that he was driving at around 10 mph and the engineer says that would have been acceptable to drive at up to 15 mph in the circumstances. It seems to me unlikely that the defendant would have been driving at below 10 mph as he approached this roundabout and I consider it probable that his speed was somewhere between 10 mph and 15 mph.

[12] I consider that in looking at the thinking time available to the defendant it is necessary to take into account his perception time. The plaintiff was coming from the left-hand side and any possible view of the defendant was marred by the stationary vehicles. At no point do I find that the plaintiff was ever in front of the vehicle and it is likely that he collided at a point just in front of the front passenger door. There is no evidence of the nature of the stationary vehicles and it is impossible to know whether the defendant had any appreciable opportunity to see the plaintiff before he

emerged beyond them but even if he had, taking into account perception time for this peripheral activity, I consider that a reasonable and prudent driver could not have been criticised for failing to stop before the collision even on the basis of the calculation by Mr McKeown that the plaintiff may have been in view for up to 1.4 seconds.

[13] Although I have not accepted the plaintiff's account of the accident I want to make it clear that I consider that he was trying to do his best to give an account of circumstances which had occurred many years ago. I am sure that his recollection accords with his evidence but in my view it is faulty.

[14] It is for the plaintiff to establish lack of reasonable care on the part of the defendant which caused or contributed to the accident. I am not satisfied that the plaintiff has established any lack of reasonable care on the defendant's part and even if it can be said that the defendant ought to have identified the plaintiff in his peripheral vision I do not consider that it has been established that the defendant could have done anything to prevent the accident. Accordingly I must dismiss the plaintiff's claim.