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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

QUEEN'S BENCH DIVISION

APPEAL FROM MASTER

BETWEEN:

MOHAN

(Plaintiff) Respondent

v

GRAHAM, GRAHAM & MCGRATH

(Defendants) Appellants

DEENY J

[1] This is an appeal by the first and second defendants in this action of Francis Mohan against Graham, Graham & McGrath. The Master refused the first and second defendants' application for a split trial under Order 33 rule 3 as sought by them. Mr Montague appeared for those defendants and Mr McHugh for the plaintiff. The third defendant was not represented.

[2] The plaintiff in this action was born on 10 May 1958. On 23 June 1999 he received serious injuries, which have indeed been described as catastrophic, in the course of his work. The defendants' contention is that the issue of liability in this action should be tried first and the issue of quantum only afterwards, if a case in liability has been made out.

[3] The leading authority in the case is one of our own Court of Appeal in *Millar (a minor) v Peeples & Anor* [1995] NI 5 at p 12. I have taken into account the various factors set out therein and have also been helpfully referred to the decision of the English Court of Appeal in *Coenen v Payne* [1974] 1WLR 984. It is important to note at the outset that the normal course of events in this jurisdiction is that the trial of both quantum and liability should be heard together by the same Tribunal. The principle remains intact whether the Tribunal of fact is a single judge or a judge sitting with a jury. Obviously the former prevails now save in a small number of cases. As has been said, for example, by Stephenson LJ in the *Coenen* case the court will not depart from the normal practice without good reason.

[4] I may say that it does not seem to me that it is the practice in the Queen's Bench Division that every paraplegic case where there are liability issues should be dealt with by way of a split trial merely because the quantum issues there may be complex and time consuming but the liability issues may be dealt with expeditiously. The courts are more ready today than perhaps they once were to acknowledge that the compromise of disputes is an important aspect of the fair and expeditious administration of civil justice. Now that juries hear few cases it is more natural and more normal for judges to speak more robustly about such matters than they once did. The compromise of actions allows all parties to reduce costs, it reduces court time, it reduces the possible stress the parties and witnesses sustain from litigation and it avoids the unnecessary using up of the time of various valuable medical, professional and managerial personnel as witnesses. It seems to me, and counsel did not dissent from this proposition, that it is often easier to resolve a personal injury action if the parties and their legal advisors are dealing with one trial with all the issues before them. At the commencement of such a trial they should have, and would normally have, a reasonably clear appreciation of the value of the case and of the strength or otherwise of their position on liability and therefore it is easier for them to resolve the action as a whole. It is clear that as a matter of fact in our courts most of the actions being listed in the Queen's Bench Division are listed to deal with both quantum and liability and are indeed resolved.

[5] While in theory parties can compromise cases on liability only, by the allocation of percentages and leave quantum to another day, experience would indicate that settlement is facilitated less by such a situation than where the parties can arrive at an actual monetary sum. One obvious reason for that is that the settlement of a final figure on damages leads to finality there and then and is therefore more attractive to all concerned.

[6] No doubt the learned Master was influenced by these considerations in arriving at his decision to reject the defendants' contention here. However, one must look at the particular facts of the particular case. It is common case here, and I share the view expressed, that the liability issue will be shorter than the quantum. The trial of the liability issues may only be two days, possibly a little longer. There was some difference between counsel as to the likely length of the trial on quantum as opposed to liability. Mr McHugh in his forceful submissions was inclined to the view that it might only be three to five days. Mr Montague seems to take the view that quantum was more likely to be two weeks or possibly even longer. He legitimately drew attention to several factors. The plaintiff will need a forensic accountant. He will need a care or nursing specialist as he is confined to a wheelchair arising from this tragic accident. It is at least possible, though hopefully not likely, that the defendants would have more than one such expert but there will certainly be one for the plaintiff and one for the defendants.

[7] The plaintiff's medical report has drawn attention to a number of unfortunate complications which the plaintiff suffers from and Mr Montague argues, I think persuasively, that it is likely that further medical evidence relating to his bladder and urinary condition, his bowel dysfunction, his radiological condition will all be

required in addition to the one existing medical report from Mr Adair FRCS. Therefore I am inclined to the view that the defendants' submission is correct that the decision here on quantum will certainly take a week but may well be longer than that.

[8] The first and second defendants are the owners and farmers of the land on which the accident happened. They had employed the third defendant as an independent fencing contractor. In a statement he described himself as a part-time fencing contractor but the first defendant has in a statement said that he had previous experience of his work and believed him to be a competent and experienced contractor. The first and second defendants were not present at the time of the accident. They contend that they had no right to control the plaintiff in the course of his work or any role in directing the nature of that work. The plaintiff was employed as a labourer by the third defendant. The first and second defendants are apprehensive that they will be placed at an unfair tactical disadvantage by being threatened with the costs of a long trial so as to lead them to compromise an action from which they may well walk away at the end of a trial if their contentions are accepted by the court.

[9] Their concerns are reinforced by several matters. The plaintiff is legally aided so that even if the first and second defendants succeeded they will not recover their costs from the plaintiff and may not recover them from the third defendant depending on all the circumstances. They also draw attention to the delay. It is now 5 ½ years from the accident but the plaintiff has served only one medical report, that to which I referred from Mr Adair. Counsel for the plaintiff acknowledges that that is the case and indicates there was difficulty with regard to legal aid but it does not strengthen the plaintiff's case that these defendants have already been waiting 5 ½ years for this case to be brought on and are now confronted with the possibility of a delay of clearly, at least, a year and quite possibly more before a quantum trial is ready. In contrast, statements are available with regard to liability because there was an investigation of this accident by the Health and Safety Authorities.

[10] A further factor to be borne in mind by the court in resolving this issue with regard to which I clearly, under the Rules and under the authorities have a discretion, is the possibility that the court would be assisted in resolving liability issues by hearing the issue of quantum (cf Carswell LJ in *Millar v Peeples* [1995] NI 5 at p12). For example, it is not uncommon for evidence to appear on the issue of quantum which points one way or another to the credibility of a plaintiff. One might have thought that that might have been relevant here as the third defendant in his statement bluntly says that he had told the plaintiff not to drive the vehicle described as a quad bike in the course of which he suffered his very serious injuries, which the plaintiff emphatically denies. He says that he had driven it before for the employer although he had never been given any instructions as to the proper driving of it.

[11] However, Mr McHugh in his submissions does not contend that the quantum evidence would be likely to assist here in liability. Importantly the third defendant who might well have chosen to argue that point has chosen not to be present at this application but to have written a letter through his solicitors describing themselves as effectively neutral with regard to it. Therefore, I have come to the conclusion in the exercise of my discretion that on the particular facts of this case and in the light of the authorities the proper thing is to grant the application of the first and second defendants in order that the issue of liability in the action be tried first under Order 33 rule 3 and I so rule.

[12] I order that the first and second defendants have their costs above and below but not to be enforced without further order of this court or the Court of Appeal.