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

Delivered: 02/05/2019

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

HELEN NEILL

Plaintiff

and

NORMAN MOORE

Defendant

MAGUIRE J

Introduction

[1] The plaintiff in this case is Helen Neill. She is a married woman now aged 47. She is married to Conal Neill. The couple have two children, a girl of 11 and a boy of 9. The family live in Killybegs, County Donegal.

[2] On 1 November 2013 they travelled for a day out in Belfast as part of their Halloween break. The attraction they visited was W5 which is situated within the Odyssey Complex. Having spent the morning there, at or about lunchtime, they made their way to the car park outside the Odyssey. To reach the car park, they had to negotiate a traffic light controlled crossing point which crossed a four lane road – two lanes in each direction – which runs in an east to west direction and is bounded on one side by the main Odyssey car park facility.

[3] Unfortunately, the plaintiff sustained a serious injury when she was in the course of crossing the road. As the family had approached the crossing point, Mr Neill and the couple's daughter had moved ahead of the plaintiff and her son who, at the time of the accident, was being carried by his mother. Mr Neill and his daughter crossed the crossing without incident but the plaintiff, still carrying her son, was between a quarter and half way over the crossing when she was in a collision with a van traveling in an easterly direction.

[4] In these proceedings the plaintiff seeks damages for personal injury, loss and damage which have arisen as a result of the accident. However, as a result of discussions which have occurred between the parties the court need only make a ruling on a single issue. There is agreement that the defendant – the driver of the van which collided with the plaintiff – had been guilty of negligence. Likewise, there is agreement as to the quantum of the case, assuming full liability on the part of the defendant. This has been in the sum of £150,000. The issue which the court has to determine is that of whether the plaintiff was guilty of contributory negligence. Mr McCollum QC and Mr Elliot BL appeared for the plaintiff and Mr O'Donoghue QC and Ms McKenna BL appeared for the defendant. The court is grateful to counsel for the considerable help they afforded to the court and for the efficient way in which they conducted the proceedings.

The Evidence

[5] The court in the course of a two day hearing heard evidence from the plaintiff; the plaintiff's husband; and the defendant. This evidence provides the perspective of each of the main witnesses in relation to how the accident occurred. But, in addition, the court has been shown CCTV evidence which shows what happened before and during the accident. This material has good definition and, within the limitations of such evidence, has provided the court with an objective history of what occurred.

[6] In these circumstances the court will concentrate in this judgment on the task of setting out the facts, as the court finds them to be, and then applying the law of contributory negligence to those facts.

The court's finding of fact

[7] In this case the court finds the following facts to have been established on the balance of probability:

- (a) The plaintiff, with her son in her arms, had become detached from her husband and daughter in the course of walking along a pedestrian thoroughfare which takes pedestrians to the traffic lights controlled crossing point.
- (b) By the time the plaintiff and her son reached the traffic lights controlled crossing her husband and daughter had reached a point close to the other side of the crossing.
- (c) While the plaintiff maintained in her evidence that the traffic lights were green when she entered onto the crossing, the court is satisfied that she was wrong about this. In fact, the court holds, the traffic lights were flashing green from a point before the plaintiff and her son reached the edge of the crossing. This is evident from the CCTV pictures.

- (d) Notwithstanding this, the plaintiff and her son left the safe haven of the footpath and entered onto the crossing while the lights were flashing green.
- (e) There is no reason the court can think of for the plaintiff not having seen the state of the traffic lights, as described, before entering onto the crossing.
- (f) A large lorry had come to a halt on the nearside of the two carriageways going east. The lorry was stationary at the point when the plaintiff went to cross. It had stopped at the lights. However, as the plaintiff approached, the lorry was preparing to move off and had fractionally moved just before the point when the plaintiff entered the crossing. However, the lorry driver had a clear view of the plaintiff entering the crossing and did not encroach upon the white line which delineated it. The plaintiff therefore was able to walk past the lorry without difficulty.
- (g) An effect of the lorry's presence was that because of its size and length it will have been difficult for the plaintiff to see beyond it and, in particular, to get a clear view of any traffic in the second lane travelling in an easterly direction.
- (h) In fact the defendant's van can be seen on the CCTV pictures coming along in the lane to the lorry driver's right. As it made its way towards the lorry and effectively alongside it the van driver will have been able to see the flashing amber colour at the lights. The van driver, however, did not slow appreciably even though the driver's view to his left will have been blocked by the presence of the lorry.
- (i) The plaintiff, in the court's estimation, was not running while on the crossing but rather she was, child in arms, moving quickly to cross it.
- (j) The van driver did not see the plaintiff (and son) before the accident and the plaintiff did not see the van.
- (k) As the plaintiff walked briskly past the lorry she did not slow down but advanced. As the van passed the lorry it also did not slow down.
- (l) The collision occurred in an instance. The probabilities suggest that the plaintiff may have walked into the side of the van. This is supported by the plaintiff's injuries which were principally to one of her ankles. If the plaintiff had been hit by the front of the van this would, more likely than not, have resulted in quite different injuries.
- (m) Fortunately, and notably, the plaintiff's son was not injured in the collision.

- (n) The van was not travelling at a high speed as is evidenced by the fact that it was possible for it to stop quickly after the collision. After it came to a halt, its back wheels were still within the area of the crossing.
- (o) The defendant driver was apologetic after the accident. He said he was not concentrating, which is likely to be true.
- (p) The driver of the van should have been keeping a better look out for the potential of a pedestrian or more than one pedestrian emerging from the front of the lorry to his left. In effect, by not slowing down he ran the risk that someone, as occurred, might appear and he would be unable to stop in time.
- (q) There was no damage to speak of to the van.

Contributory negligence of the plaintiff

[8] In a case of this nature the issue of contributory negligence is provided for by the terms of section 2 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948.

[9] This states that:

“(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.”

[10] 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.

[11] In a recent decision of the Supreme Court in *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, sometimes referred to as 'causative potency'.

The court's conclusion

[12] The court is satisfied that the plaintiff was guilty of contributory negligence on the facts of this case. There was, in the court's view, a not inconsiderable obligation on her to take care of herself when crossing the road at a crossing when the traffic lights were flashing green. The flashing ought to have alerted her to the risk of drivers of vehicles entering onto the crossing either during the period when the lights were flashing or at the end of that period. This was especially so when it was evident that she was going to have to cross four lanes of traffic to get to the safety of the other side of the road.

[13] On the facts which the court has found, there is nothing to suggest that the plaintiff was keeping a close eye on traffic coming from, or about to come from, the lane beyond the stationary lorry to her right. If the plaintiff was to continue her journey across the crossing she should have ensured that she did not place herself in the way of possible traffic passing the lorry going in an easterly direction. Even if this meant halting to ensure that it was safe to proceed, this step should have been taken.

[14] The most difficult issue which the court must determine is that of the extent to which the plaintiff should be held to be guilty of contributory negligence.

[15] In the court's opinion, the greater fault in respect of the accident which occurred lies on the defendant rather than the plaintiff. He was under an obligation, specified, *inter alia*, in the Highway Code to give way to any pedestrian who on the crossing when the amber was flashing¹. He failed to perform this obligation. In addition, the defendant should have been aware that the possible damage he could do to the plaintiff were he to collide with her was significantly greater than the plaintiff could do to him and his vehicle, as indeed turned out to be the case. Both parties, however, ought to have been alive to the hazards of their respective situations and have been more cautious than they in fact were.

[16] The court has concluded that in all the circumstances the plaintiff was 20% liable for the accident and the defendant 80%.

Conclusion

[17] In many ways the damage done in this accident could have been much greater than it turned out to be. The plaintiff's son could have been, but was not, injured. While the plaintiff received significant injuries it so easily could have been substantially worse.

¹ See paragraph 196. Counsel for the plaintiff also relied on paragraphs 146, 152, 165, 191 and 194 of the Code.

[18] It is the court's job to arrive at what it views as a just and equitable resolution of the case. This, it has endeavoured to do. The court will award the plaintiff the sum of £120,000 to be paid by the defendant.