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2010/120095

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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Between:

JIRI RAKOSNIK

Plaintiff

-and-

TJ HOOD TRANSPORT LIMITED

Defendant

_____

MAGUIRE J

Introduction

[1] The plaintiff in this case is Jiri Rakosnik. The defendant is TJ Hood Transport Limited. At all material times for the purpose of these proceedings the plaintiff was employed by the defendant as a lorry driver.

[2] While travelling from Milan to the United Kingdom on his employer's business the plaintiff, on 22 September 2007, was involved in a traffic accident in France near to the city of Nancy. At that time the plaintiff was aged 42 years.

[3] As a result of the accident, the pla intiff sustained serious injuries which will be referred to in due course. These kept him away from his work as a lorry driver for several years. But in or about 2010 he resumed his career as a lorry driver though employed by another haulage firm.

[4] These proceedings were begun by writ on 20 September 2010, just two days before the expiry of the primary limitation period. The plaintiff's Statement of Claim was not served until 20 March 2014. A defence, on behalf of the defendant, was served on 28 August 2014. On the same date a Notice for Particulars was served by the defendant on the plaintiff. It was replied to by the plaintiff on 2 October 2015.

The action was set down for hearing on 16 January 2017. The trial began on 22 May 2018. It, therefore, started between 10 and 11 years from the date of the accident. The reasons for this long delay have not been fully explained.

The plaintiff's pleaded case

[5] As already noted, the defendant has been sued as the plaintiff's employer. The pleaded case is that while on his way to Fleetwood in England on route A31 near Nancy, France, the plaintiff's HGV lorry toppled over due to the negligence and breach of statutory duty of the defendant in or about the loading or the securing of the load on the lorry, causing personal injuries, loss and damage to the plaintiff. Interestingly, there is no mention of any collision in the Statement of Claim or of any other vehicle being involved.

[6] The particulars of negligence contain 12 allegations. These are:

> "(i) Failure to have any or due regard for the plaintiff's safety.
>
> (ii) Failing to ensure a load was properly stored or secured.
>
> (iii) Allowing or permitting the plaintiff to drive a HGV vehicle having been informed that the load in the vehicle was dangerous.
>
> (iv) Having been informed that the French police had initially turned the plaintiff back at the French border due to the unsafe nature of the load, failing to ensure the load was properly and securely stored.
>
> (v) Having been informed that French police had initially turned the plaintiff back at the French border due to the unsafe nature of the load, requiring the plaintiff to continue his journey.
>
> (vi) Allowing, permitting or directing the plaintiff to drive a vehicle which was at risk of toppling over.
>
> (vii) Failure to take all reasonable steps to ensure that the plaintiff was not driving a vehicle which was at risk of toppling over.
>
> (viii) Exposing the plaintiff to a risk of injury.

(ix) Failing to properly assess the situation or to apply any reasonable risk assessment that may have to be carried out.

(x) Failing to direct the plaintiff not to continue his journey until such time as it was safe to do so.

(xi) Causing or contributing to a vehicle toppling over.

(xii) Causing the plaintiff to sustain serious personal injuries, loss and damage."

[7] In addition, the Statement of Claim referred to a number of alleged breaches of statutory duty contrary to Article 4 of the Health and Safety at Work (Northern Ireland) Order 1978 and Regulations 5, 6 and 8 of the Provision and Use of Work Equipment Regulations (Northern Ireland) 1993. As regards the former, it was alleged that the defendant had failed to take all reasonable steps to ensure that the plaintiff was reasonably safe at work. In particular, the employer, it is alleged, had failed to enforce a safe system for ensuring the proper securing of an HGV load. As regards the latter, it was alleged that the vehicle in which he was travelling was dangerous due to the improper securing of the load and thus was not suitable for the task the plaintiff was being instructed to perform, notwithstanding that the defendant had been informed of the improper loading of the vehicle.

[8] The plaintiff's replies to particulars add a little to the factual matrix. The plaintiff said in them that he left Milan at approximately 18:30 hrs local time on 21 September 2007. The accident he said occurred at 12:10 hrs local time on 22 September 2007. He said that the defendant, having been informed of the difficulties in respect of the loading of the vehicle, told him to continue to drive. This had, it was stated by the plaintiff, occurred during loading before leaving Milan by means of a phone call from the plaintiff to the defendant. The persons informed were Mark and Thomas (Jnr) Hood. The plaintiff also explained that the incorrect loading of the cargo affected the stability of the vehicle. As regards events at the French border, the plaintiff maintained that after he had been initially turned back at the border due to the unsafe nature of the load, the defendant was informed of this by telephone call from the plaintiff. This was at 22:00 hrs and either Mark or Thomas (Jnr) Hood was informed. The replies indicate that the plaintiff, in response to this call, was told to continue his journey. He was told this on the phone by either Mark or Thomas (Jnr) Hood. At a later point in the replies, the plaintiff stated that as a result of the improperly secured load the lorry and trailer he was driving were not suitable for driving.

[9] Nowhere in the replies to particulars is there any reference to any collision with another vehicle in the accident which occurred on 22 September 2007.

The plaintiff's case at trial

[10] The plaintiff's case at trial depended very substantially on the plaintiff's own evidence. In essence the case was as follows. The plaintiff's task had been to take a heavy goods vehicle and a covered trailer to Milan to pick up a load. At a depot in Milan, the trailer was loaded with a mixed load. Among the load were cases of wine, empty wooden boxes, religious artefacts and a generator. The Italian loaders were employed by a company called EUR, a company separate and independent of the defendant. The plaintiff watched the loaders load but was not happy with the way this task was being carried out as he felt the load was not being spread evenly. In particular, the heavier items were being placed at the back end of the trailer whereas the lighter items were being placed at the front. This led the plaintiff being of the view that the back part of the trailer was being weighed down whereas the front part rode higher.

[11] The plaintiff claims that he made representations to the loaders about the need to redo the loading but they apparently did not agree.

[12] At or about this point the plaintiff says he called his boss in Northern Ireland on the telephone and told him what was happening. However, his boss in respect of this call (Call 1) was unresponsive, telling him to stay calm and to drive slowly and carefully.

[13] The plaintiff was not happy about this but later that evening he said he had to leave and he did leave between 18:00 and 20:00 hrs local time.

[14] The route the plaintiff planned to take was to the Mont Blanc Tunnel and then into France and northwards along the A31 eventually to Calais and then to England.

[15] When he arrived at the French border the French police carried out a check of the trailer's load. This was a visual check. However, the police were not happy as they alleged the vehicle was dangerously loaded. Accordingly, the plaintiff was not allowed into France whereupon he contacted his boss by telephone (Call 2). He related the situation to his boss who responded by telling him to try again to gain entry as there was no help he could give. In the light of this advice, the plaintiff went back into Italy leaving the motorway at the first exit. He then waited for a while. After a time he drove his vehicle back to the French border where apparently he was able to pass through without being stopped or inspected.

[16] Once in France the plaintiff made his way north. He rested for a period and on the morning of 22 September 2007 he resumed his journey. Eventually, he was travelling on the A31. Around midday he stopped for a break and had a coffee and a snack. After 20 minutes the journey got underway again.

[17] It was after midday that the accident took place. The plaintiff said he had been driving for another 45 minutes when it occurred. What happened was that he

was traveling in the slow lane of a two lane dual carriageway, going north. He was on the right hand lane and was confronted with a slow vehicle in front of him in the lane. The plaintiff decided to overtake and checked his mirrors, signalled and looked to ensure that the left hand lane was free. He then moved out to his left and started to overtake the vehicle in front of him. He then realised that there was a vehicle to his left. While counsel opened the case on the basis that the plaintiff accepted that his lorry had contact with the vehicle to his left the plaintiff in his evidence was equivocal as to whether there had been contact. The plaintiff's reaction to the presence of the vehicle to his left was, he said, to swerve to the right to try to avoid it. However, while doing this, the plaintiff was catapulted from his cab and out of the vehicle breaking a window in the cab. The lorry toppled and then caught up with the plaintiff's body and fell on his back. At the time when the plaintiff moved out to overtake his vehicle, he said, was travelling at 90 kph and the road was straight. The weather conditions were bright.

[18] It took a considerable time for the emergency services to release the plaintiff from where he had fallen and take him to a local hospital.

[19] It was maintained by the plaintiff that the toppling of the lorry was due not to a collision or impact with the vehicle to his left but to the uneven distribution of the load caused by the loaders at Milan, about which the plaintiff had complained on the phone to his boss in Northern Ireland.

[20] The plaintiff was cross-examined by Mr Chris Ringland BL for the defendant. It is right to say that this cross-examination was wide ranging. However, the principal matters of note were:

(a) He was asked vigorously about two interviews he had had with French police after the accident. One of these was 4 days later while the other was about 5 weeks afterwards. The court was directed to English translations of the interviews which were in the papers. The plaintiff plainly was reluctant to accept the correctness of the contents of these interviews. In respect of the first, in his testimony, he said he was in great pain and was in intensive care at the time. Though he had signed the notes of the interview, he claimed that at that time his understanding was incomplete, both because of his physical and mental state and because, while he had an interpreter, the interpreter was for the purpose of enabling him to conduct the interview in English and his English was not good. At the second interview while his physical and mental state had improved, the same linguistic problem remained. The plaintiff claimed that during these interviews he had asked for a Czech interpreter but that this had been refused. There is no reference to this in the interview notes (as translated for the court). Of importance for this case, the interviews contained omissions relevant to the issues before the court. For example, there is no reference in them to –

    (i) His disagreement with the loaders in Milan.

(ii) Call 1 above to his boss in Northern Ireland.

(iii) Call 2 above to Northern Ireland.

(iv) The detail of the errors made in respect of loading (light at the front/heavy at the back of trailer).

(v) The only references to the load during the interviews relate to descriptions of it being badly stowed or loose. Notably, however, his comment in relation to same refers to this occurring to him "after leaving Milan", notwithstanding that his case before the court encompassed many details about his complaints to the loaders when at the depot in Milan.

(b) The plaintiff was cross-examined about his pleadings including his replies to particulars. It was pointed out to him that these did not refer to the accident as involving another vehicle or give detail of the alleged incorrect loading of the vehicle.

(c) In the course of his cross-examination the plaintiff referred to detail not hitherto disclosed about events at the French border. In effect, he said a first policeman stopped him. He was unhappy about the load on the trailer. He sent the plaintiff to some sort of detention or holding area. The plaintiff said he was told that he should contact his boss and that he would not be allowed into France. In the holding area, the vehicle, he said, was again inspected visually by police with the same result. He said he did not himself try to do anything to rearrange the cargo as he was not "Hercules". He was in the holding area for some 40-60 minutes. At the end of this period he told the court that he left the holding area with the vehicle and went back into Italy. He agreed with a comment of the court that it was strange that if he had an unsafe load he would be allowed to do this. On leaving, he backtracked in to Italy and came off the motorway at the nearest motorway exit near Aosta and stayed there for an hour and a half or two hours. He then returned to the Border where he was able to travel into France without anyone looking at the load, indeed he was not stopped at all.

(d) He accepted during cross-examination that following the loading of his vehicle it was the driver's responsibility to ensure he was happy with the load before he left the depot. He indicated that if there was any danger emanating from the load the driver should not drive it.

Mr Havel

[21] The above gave evidence on behalf of the plaintiff. He had worked for the defendant between 2004 and 2008 and between 2010 and 2012 in a similar role to the

plaintiff. Like the plaintiff, he was and is a Czech national and he had picked up loads before in Milan. On previous occasions EUR had loaded his lorry. He claimed that often there were problems with how EUR performed their task especially where a mixed load was involved. He said that the driver did not participate in the loading exercise. The loaders, he thought, on occasions rushed and more than once he had to tell them to load the trailer properly.

[22] In particular this witness described an incident after the date of the plaintiff's accident when he refused to drive a load loaded by EUR. On that occasion he said he contacted Mark Hood who, the witness thought, had then been able to resolve the matter. In his view if there were problems the driver should contact the defendant's staff.

[23] In cross-examination he accepted that he was able to get something done before he left Milan on the occasion of the particular complaint referred to above. On that occasion he made his own visual checks before he left and he confirmed that he would never leave without thinking all was ok.

Declan Paul Cosgrove

[24] Mr Cosgrove is a consulting engineer. He told the court that in loading a trailer with a mixed load the loader would have to monitor the gross weight and the distribution of the weight across the various axles. In his view the distribution of the load was important. A second aspect of the load which was important was its height.

[25] In the course of his evidence he referred to a Department of Transport publication on "Safety of loads and vehicles". The portions of it he placed emphasis on dealt with –

- Not exceeding axle and gross weight limits.
- Methods of securing the load (lashings etc).
- Achieving maximum vehicle stability – the load should be placed so that the centre of gravity is kept as low as practicable and near to the vehicle's "longitudinal centre line".

The publication also noted that when a load is stacked the larger and heavier items should be placed at the bottom.

[26] There is also reference in this document to the need to check the load frequently.

[27] There is a specific discussion of maximum stability. Items comprising the total load are required to be evenly spread to achieve minimum height and to be

arranged as to form a unified whole so that no excessive stress is applied to whatever restraining devices are used.

[28] The witness was unable to comment about the particular load at issue in this case as he had not had the opportunity to inspect it.

Mark Hood

[29] Mr Mark Hood is a Director of the defendant company. Ten years ago he was a partner. He accepted that from time to time there had been problems with EUR at Milan. He knew this because drivers had been in contact with him. He said that where a problem emerged he would not speak himself to EUR but would contact Cargo Forwarding to take the matter up with them. In such a situation he accepted that the driver had to ensure that the loader takes care.

[30] He asserted that the company told the drivers never to drive if unhappy.

[31] Communication with drivers was by text primarily and he was adamant that there had been no contact from the plaintiff when he was in Milan complaining about the load (Call 1).

[32] He also denied that Call 2 had been made. In relation to both calls he said he was 100% certain they had not been made.

[33] In the course of cross-examination he accepted that if a lorry was not properly loaded this could create risks and might be dangerous. This would be well known to drivers and he claimed that drivers had been instructed not to drive in such situations. In particular he said that the instructions had been given in writing. He also claimed that the company had carried out a risk assessment in respect of driving a load which was not properly distributed. The company had less than 25 employees but he could not say what enquiries he had made after the accident. He did say that he had not checked phone records. Nor had he visited the plaintiff in hospital subsequent to the accident.

[34] The court afforded this witness the opportunity to carry out a search overnight in order to produce any relevant documents about health and safety including in respect of loading of the vehicles.

[35] On the following day the witness produced some documents but it is clear that these did not demonstrate that the issue of loading and complaints about it were to be dealt with in any particular way. The documents he produced on the second day of the hearing were not therefore of great value.

[36] The witness indicated that nowadays each driver was personally spoken to and provided with guidance but he accepted that was not the position in 2007. He

said that at that time documents were left in the cab for them. He was unable to specify what these documents in fact said.

Thomas Hood (Jnr)

[37] This witness was working for the defendant at the time of the plaintiff's accident. He said he had no recollection of any call from the plaintiff from Milan or any call from the plaintiff while he was at the French border.

[38] The witness said that if he had got any call he would have passed the matter on to Mark Hood.

[39] In cross-examination he accepted that sometimes telephone calls were made by drivers rather than sending texts.

The French Police Report

[40] The French police appear to have carried out a substantial investigation into the accident which had occurred on the A31. This investigation occurred over a period of months. In the course of it, as already noted, the plaintiff was interviewed on two occasions.

[41] According to the report the accident happened at around 12:30 hrs on 22 September 2007. There were two vehicles involved: the plaintiff's heavy goods vehicle and a VW Passat car. The accident is described as "a personal injury road traffic accident involving cars and a truck (lorry)".

[42] The circumstances of the accident are portrayed as follows:

> "Between 208 and 209 kms (mileage markers) [the driver of the Passat] began overtaking a heavy duty lorry which [consisted] of a Volvo … and semi-trailer … For an unknown reason, the lorry and the car collide, the Volkswagen car stopped on the hard shoulder situated to the right relative to its direction of travel… The lorry over balanced and ended up on the hard shoulder on the emergency stop barrier. At the moment of the crash, the tarpaulin partly covered the semi-trailer … Mr Jiri Rakosnik is ejected from the cabin through the right window (the driver's side). The driver was found lying on the ground between the cabin of the lorry and the semi-trailer."

[43] It is noted in the report that the plaintiff sustained serious injuries in the accident and that the driver of the Passat car had minor injuries.

[44] In respect of the plaintiff the report notes:

> "[He] told us he was making a delivery on behalf of … TJ Hood to Fleetwood … He had to load up in Milan on Friday evening and unload in Manchester on Sunday afternoon.

[45] The report went on to say that during his trip, the plaintiff found that the load on the semi-trailer was badly secured. According to the plaintiff, the overtaking vehicle came up against his left front wheel. Due to bad loading, the plaintiff alleged that he lost control of the lorry which began to tip and fall towards the road. He admits that he was not wearing a seat belt at the time of the accident. The plaintiff also admitted that he drove with the tachograph reader open twice and failed to comply with the rest periods required by regulations. He specified that the more he drives the more he gets paid (earns). Mr Gilles Schocknel [driver of the Passat] stated that "he had overtaken a truck and construction workers and during this time he felt a hit at the rear on the right. Following the bang, he lost control of the vehicle, which stopped on the right hard shoulder perpendicular to its direction of travel".

[46] It is clear from the report which was prepared by the French police that in the view of the author the plaintiff had committed a number of offences under the European Social Regulations (daily driving, insufficient daily rest) and other tachograph offences as well as failure to wear a seat belt.

[47] In the view of the author of the report the plaintiff "was probably increasingly tired during the week of intense travelling and he cheated with the discs in order to get to Calais (knowing that the time that he was given to get there was not enough)".

Assessment of witnesses

[48] In the course of the hearing the court had the opportunity to assess the evidence of those witnesses who gave evidence, whose account is summarised above. In reaching an assessment of the witness the court has had regard to the witness's demeanour and body language as well as the manner in which he gave his account.

[49] In the case of the plaintiff he was in the witness box for a full day. While his evidence was given *via* the agency of a Czech interpreter it appeared to the court he did have some English which might be expected as he had been living in England for some time. However it appeared to the court that there were circumstances where the plaintiff tended to hide behind the fact that he was speaking through an interpreter as a way of distancing himself from having to answer some of the questions asked of him. Certainly when confronted with facts which appeared not to be in his favour he was not slow to assert that either he had not understood the question giving rise to the answer in question or his response had been misinterpreted. A good example of this was when he was being questioned about his

interviews with the French police when his response, more than once, was that if there were omissions in his account this was because he had not been asked the relevant questions at issue or must have, because of language difficulties, not understood the questions which had been asked. The court did not find repeated resort to such mantras convincing.

[50] The plaintiff also appeared to the court to have given inconsistent accounts. It is helpful to refer to some examples. In respect of the issue of whether he had been wearing a seat belt at the time of the accident, it is plain that he gave different answers to this at different times, notwithstanding that on his own description of the accident he was catapulted through a window in the cab, which strongly suggests he was not wearing a seat belt. He had, for example, told Mr Mannion (who prepared a report on his behalf in relation to his injuries) that he was wearing a seat belt at the time of the accident but that this did not stop him being catapulted through the front windscreen of his vehicle.

[51] A similar level of confusion also permeated the issue of whether there had in fact been a collision or impact between the plaintiff's lorry and the car involved in the incident which has already been described. In short, the plaintiff was loathe to accept this even though it seems plain that there was an impact as the police report contained evidence of a collision. On this issue also, the plaintiff's counsel had opened the case on the basis that indeed there had been an impact.

[52] In similar vein, in cross examination about Call 1 he appeared to change his account. Initially the court was told that while he was the depot in Milan he had contacted the defendant company in Northern Ireland by telephone but later when questioned he referred to his boss contacting him and to the loaders contacting his boss.

[53] Overall, the court did not find the plaintiff, even taking into account the question of linguistic handicap, to be an impressive witness. The practical effect of this was to cause the court to look earnestly for corroboration of the plaintiff's account to give it the confidence that his account could be relied on.

[54] The defendant's principal witness was Mark Hood, whose evidence is summarised above. In respect of important contentions advanced by him as to the defendant's instructions to drivers his evidence fell well below the standard the court would expect. While he claimed that drivers were instructed not to drive if they had concerns about the safety of their vehicles and that these instructions were evidenced by documents provided to them at the time, even when given the opportunity to bring such documents to court, he was unable to make good his contention. Likewise he told the court that the company had carried out risk assessments in respect of the scenario where there was an issue about the stability of a load but when asked to produce same he was unable to do so.

[55] What worried the court was that this witness conveyed the impression of having great confidence in what he said yet when put to produce confirmatory documentation he failed to do so and could offer little explanation for his failure. Needless to say, this detracted considerably from the weight which should, in the court's eyes, be given to his evidence.

[56] The other witnesses who gave evidence – Mr Havel, Mr Cosgrove and Mr Thomas Hood (Jnr) – all provided testimony which the court considers it could and should accept.

[57] Finally the court has no significant hesitation in broadly accepting the thrust of the French police investigation, though the translation it has before it makes it read less fluently than would be the case if the language of the investigator had been English.

Findings of Fact

[58] Standing back and considering all the evidence and bearing in mind the impressions the court has formed in respect of those who gave oral evidence, the court makes the following findings on the civil standard of proof:

(i) The loading of the plaintiff's vehicle was carried out at Milan by EUR. The plaintiff was not personally involved in this, though he was present.

(ii) After loading the plaintiff began his journey on the Friday evening (the 21st) back to the United Kingdom.

(iii) The plaintiff did not telephone any representative of the defendant while he was at the place of loading in Milan in order to complain about the way the vehicle had been loaded or to seek instruction as to what to do in the light of the way the vehicle was loaded. Nor did the plaintiff send any text message to this effect, which was a standard method of communicating with his employer while travelling.

(iv) The plaintiff drove his vehicle from Milan that night without any complaint having been made to his employer. The court infers that the plaintiff must have been satisfied that the vehicle could be safely driven.

(v) The plaintiff's intention had been to travel north with a view to getting the 22:00 hrs sailing from Calais to Dover on the 22nd September. This is clear from his interviews with the French authorities after the accident.

(vi) This could not be achieved lawfully in that the only way it could occur would be if the plaintiff, as he in fact did, sought to falsify his compliance with the regulations governing such a journey. The falsification involved abusing the tachograph and not taking the rests he was required to take.

(vii) In fact there had been a build-up in the plaintiff's non-compliance with the regulations over some days. As a result he will have been driving without sufficient rest and placing himself under pressure, such as that involved in trying to arrive at Calais in time for the sailing referred to above.

(viii) There probably was some looseness in the load as it was being driven northward but the plaintiff was aware of it and chose to drive on.

(ix) When the plaintiff reached the French border there probably was an encounter with the French police in respect of the looseness of the load.

(x) Based on his interviews with the French police, and contrary to what he said orally in evidence before the court, the plaintiff did try to attend to this problem and did leave and go back into Italy and, having attended to the problem as best he could, he returned to the border which he was able to go through without challenge and thereby enter France.

(xi) The plaintiff during the above period did not contact the defendant, by phone or text, or seek instruction as to what he should do. Rather he chose to press on because of his desire to make the ferry port at Calais.

(xii) The plaintiff continued to act in non-compliance with the relevant regulations which applied to him and which governed the issue of his periods of driving and periods of rest.

(xiii) The plaintiff was involved in a road traffic accident near Nancy at around 12.30 hrs. This involved a collision with a VW Passat car. As a result to the coming together of the cars, the plaintiff swerved to his right and toppled over. At the time of the accident the plaintiff was travelling at a not insubstantial speed on a straight stretch of road but was not wearing a seat belt. The court is unable to say which driver or whether both drivers were responsible for the accident. The court does not consider that the plaintiff has proved to the civil standard of proof that his vehicle toppled over because of any deficiency in the way it was loaded as opposed to other possibilities brought about by a collision with another vehicle which produced an emergency reaction on the plaintiff's part in swerving to his right. Of note, the French investigation arrived at no conclusion on the above issues.

(xiv) As a result of the accident the plaintiff was seriously injured as he was thrown from the cab of his vehicle. This was because he was not wearing a seatbelt.

Overall assessment

[59] In the light of the above findings of fact the court has reviewed the particulars of negligence which have been pleaded in this case and which are set out above. The court has reached the opinion that none of these has been established to the requisite standard of proof.

[60] In particular, there is no satisfactory evidence that what the court has described as calls 1 and 2 (or either of them) was or were made by the plaintiff to his employer. Nor is there any evidence that some other form of communication was used either in the context of events at Milan or subsequently. All the court has before it in this regard is the plaintiff's assertions for which there is no corroboration. The court notes that there is no reference to such calls or communications in the course of the interviews conducted with the plaintiff by the French police, notwithstanding that the plaintiff had the opportunity to put forward his case on two separate occasions and notwithstanding that the subject of his contact with his employer did arise and was discussed, albeit in the context of the question of bookings being made by the employer for the ferry at Calais.

[61] In the court's view, the particulars of negligence depend on a positive finding that the defendant had knowledge of the alleged failure on the part of the loaders to load the plaintiff's vehicle properly and safely and of the danger which, it is claimed, resulted from this. While the court agrees that if the defendant had knowledge of these matters and acted with indifference or encouraged or required the plaintiff to drive on, when to do so would be unsafe, as is effectively the plaintiff's case, this would amount to negligence, on the evidence before it, there is insufficient to enable it to hold that this was in fact the position in this case. In the court's opinion, the reality of this case was that the defendant did not have knowledge that the plaintiff's vehicle had been loaded improperly; or that it thereby was rendered unsafe or likely to topple over; or that the load was wrongly stored or secured; or that the vehicle was rendered dangerous to drive; or that the vehicle, due to loading defects had been refused entry to France. The plaintiff's account alone simply has not convinced the court that what he claims is correct and should be accepted on the balance of probabilities, in the presence of the denials of receipt of such calls by the witnesses for the defendant. The court also bears in mind that at all times while away from base the plaintiff had the facility of sending text messages to his employer but, despite discovery of these having been made in these proceedings, there is no reference in them to the matters allegedly contained in the two Calls.

[62] In the court's estimation, the plaintiff did not contact his employer about the matters above. Rather it appears to the court that the plaintiff's priority as the driver

in charge of the vehicle was to drive on to the United Kingdom as speedily as he could. In the course of giving evidence, the plaintiff acknowledged in unequivocal terms that it was the driver's responsibility following loading to drive the vehicle only if he was content that to do so would be safe. Given this statement, the court has no hesitation in inferring that this must have been the plaintiff's state of mind when he left the depot in Milan. At all material times the court is satisfied that the plaintiff knew and was fully aware that if his vehicle should due to its loading (or another reason) be or become unsafe to drive or dangerous, he should not drive it. On this matter any judgment call was his and he appears to have had no qualms about setting out to drive the distance between Milan and the United Kingdom. Indeed, such was his desire to make progress he appears to have been content to run roughshod over the requirements for use of the tachograph and the taking of rest periods, not to mention the need to comply with the laws governing seat belts or, driving with a load which, if his version of events was correct, was in some way loose.

[63] Whoever was responsible from the collision near Nancy, the accident took place at a time when the plaintiff was driving at at least 90 kph on a straight stretch of road and did involve a coming together of two vehicles, necessitating the plaintiff taking emergency action by swerving to the right. While the court accepts that the plaintiff's vehicle reacted violently to this situation, as already indicated, it does not consider that it has evidence before it which establishes on the balance of probability that, in fact, the vehicle toppled over because of the way it had been loaded. While that may be a possibility, the court is unprepared to hold, in the absence of detailed evidence on this point, that it was a probability. In particular, the court does not view the consulting engineer's view that a vehicle if improperly loaded would be more likely to topple as sufficient to establish this as the cause of the accident.

[64] While at the same time being unimpressed with the defendant's performance in meeting this case, especially in connection with the proven level of its instructions for drivers at that time, the court rejects the plaintiff's case in negligence.

[65] This leaves for the court's consideration the issue of whether in this case it can be said that there has been a breach of statutory duty which is causative of the plaintiff's injuries.

[66] On this issue the court accepts that the defendant's evidential attempt to demonstrate that it had in place systems of work which would discharge its duty to provide for the health, safety and welfare of its employees lamentably failed. The consequence is that, as conceded by Mr Ringland for the defendant, there has been shown to be a failure on the part of the employer in this case to demonstrate that it has performed the duties to take reasonable care to provide a safe system of work and to carry out an appropriate risk assessment of the tasks to be undertaken. This is enough to enable the court to conclude that on the face of things there have been breaches of the regulations referred to in the Statement of Claim.

[67] This is not, however, the end of the matter. Mr Ringland made the following submission:

> "It is…submitted that breaches of duty must be causative of the damage for which compensation is being sought or else they are merely technical and irrelevant to the issue of liability"

[68] Counsel's argument was that in this case the plaintiff was fully aware of the need not to drive a mis-loaded or otherwise dangerous trailer. He knew (as also did Mr Havel, another heavy goods vehicle driver) that a driver should cease to drive if presented with a situation where safety is endangered. Consequently, any failure to comply with these standards in this case was not based on an absence of knowledge or instruction as to what to do but was based on the plaintiff's own decisions made in full knowledge of what he should or should not do. In these circumstances, any damage arising thereafter was causally linked not to the failure to instruct or warn or have in position a safe system but to the driver's own predilection, him knowing full well what he should not do.

[69] On this issue the plaintiff's response was that the plaintiff's knowledge sounded only in contributory negligence.

[70] In the court's opinion the issue of causality is a live one in this case. The court has already, when dealing with the issue of negligence adverted to it as part of the factual matrix in this case. It is the court's view that it was not the failure of the health and safety regime which caused the plaintiff to depart Milan and set out to drive to the United Kingdom. Rather it was his own desire to try to get home as speedily as he could, even if that might involve taking chances or the use of shortcuts. Accordingly, the court does not view the failures of the defendant in respect of the health and safety regime, as causative of the accident which later befell the plaintiff. Equally, the court is not satisfied that any failure to secure the load was the cause of the plaintiff's accident as has been claimed.

[71] The court therefore holds that there has been no breach of statutory duty in this case which has been causative of the injuries to the plaintiff.

Conclusion

[72] The parties very helpfully agreed quantum at £300,000 if full liability had been established. It is right to record that the plaintiff's main injuries consisted of:

- Loss of several teeth.
- Fracture of the pelvis which required external fixation.
- Injury to right lower limb which required traction.
- Laceration to right ear which required operative treatment.
- Skin grafting to right leg.

- Hospitalisation in France for over 2 months.
- Hospitalisation in United Kingdom for 6 weeks.
- Three operations in the Czech Republic in respect of his pelvis and aspects of external fixation.
- Profound left foot drop requiring surgery.
- Need to use a single elbow crutch.
- Continuing pain in posterior aspect of the pelvis and lower back and shoulders.
- Significant scarring at various sites.
- Restrictions in respect of his walking ability.

[73] The court finds against the plaintiff for the reasons it has given. Accordingly, the court will dismiss the proceedings. The court wishes to record its gratitude for the considerable assistance afforded to it by Mr Brian Fee QC and Mr Fletcher BL for the plaintiff and Mr Ringland BL for the defendant.