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*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

2006 No 51758

SH A MINOR BY HER FATHER AND NEXT FRIEND MH

v

BERNADETTE FARRELL

DEENY J

[1] The plaintiff in this action was born in 1991. At the time of the accident on Wednesday 22 May 2002 she was almost 11 years old and in her last year at primary school. She is now a pupil at Sacred Heart Grammar School, Newry. She lived with her family at Commons Hall Road outside Newry. At 4.00pm on the day in question she had finished her homework and watched television and was intending to go into town to buy football boots with a friend. She was a keen young footballer at the time. Her friend lived at Commons School Road. After making some arrangement with her father she left her house by a path which no longer exists. The family have since moved house and the new owners have remodelled the garden. However it was not disputed that the path ran along the back of the property up on to the Chapel Hill Road. The child had to cross this road to get to Commons School Road opposite. She came out on the road at a rather dead looking hedge visible on a number of the photographs. She did not cross immediately. She walked some distance to the right. She did this because her father had advised her to do it. If she had walked straight across she would have actually been still on the tarmacadam of Commons School Road. If she walked a little to the right along a small footpath toward a terrace of houses she was enabled to cross to a grass verge and relative safety on the far side of the road. Chapel Hill Road is a narrow country road varying from about 14 feet 9 inches at its junction with Commons School Road down to over 17 feet further along, where she seems to have crossed. At that junction was a white van. She was not sure whether it was parked or waiting to turn right. She crossed the road to about the middle looking both ways as she did. She then remembers a red flash

coming very fast from her left and being struck. She lay on the ground in pain. With regard to her crossing point Mr Wright, engineer for the defendant, acknowledged that he could understand the father's advice in the circumstances to cross at that point. As she lay there the pain was almost unbearable. I will return however to the issue of quantum subsequently. As opened by Mr Fee and proved from the evidence of the witnesses and an agreed police report the defendant Bernadette Farrell was driving her Peugeot 406 motor vehicle along the Chapel Hill Road from Newry. The physical characteristics of the staggered junction which existed at this location are important. However suffice to say that at this stage that it was she who had struck the plaintiff. To be precise the point of impact was the wing mirror of the defendant's car with a dent in the panel immediately in front of the door. The plaintiff was cross-examined by Mr Stuart Spence for the defendant. She reiterated that she had not crossed where the path joined the road but from the footpath as she had been advised to do by her father. She also said, and I believed her, that she did not want to come out behind the van. She seemed an intelligent young lady and I am satisfied that at the age of almost 11 she would have understood the danger of so doing. She was a credible witness, although perhaps sometimes too ready to agree with counsel. I believe her evidence that she walked down the footpath. It is right to say that she had agreed that four or five steps, at perhaps 2 feet a step, was her distance past the hedge. Later when asked about this in connection with the van she said that she was half to three-quarters of the way down the small footpath which would be some yards further on. Her father later said he found her half way or so down the footpath although Mr Wright pointed out that she might have been subject to some forward force by the car. The defendant gave no estimate as to the point of impact. Her son put it immediately behind the van but was very vague about where the child was after the accident or when he returned with the father. When Mr Spence put to her that she connected with the car at the wing mirror she accepted that. She denied that she was running and I accept her uncontradicted evidence, in that regard.

[2] The plaintiff then called Dr David Marrs, Ch.Eng BSc(Eng), MICE, PhD, a Consulting Engineer with TBM Consultants. He confirmed that the road was narrow where the plaintiff was trying to cross if you took it from footpath to verge as opposed to the painted line on the mouth of the junction. He drew attention to the sequence of factors that ought to have caused a driver approaching in the way that the defendant was on that occasion to exercise great caution. Firstly the word slow was painted in large capital letters on her side of the carriageway immediately before Chapel Hill Road. Then Chapel Hill Road itself was immediately on her right. Immediately after that (and level with the plaintiff's then home) was the brow of a hill. Furthermore the road was not straight at this point but swept or bent in and out. Immediately after the brow of the hill was a junction with the Chapel School Road on the left and immediately after this staggered junction there is a terrace of houses beginning residential development. On both his visits to

the scene cars were parked at these houses. The defendant admitted in her evidence that she knew the road fairly well and knew there was residential development there. He considered the national speed limit of 60 mph wholly inappropriate here and said that even 30 mph would have been too much in wet conditions or even raining as the police report records. Braking distance can be doubled in wet conditions. It is, of course, a matter for the court to consider what speed was safe in the circumstances.

[3] Subsequently the point was made in cross-examination by Mr Brian Fee QC, who appeared with Mr Patrick Connolly for the plaintiff, that the defendant's caution ought to have been based not only on the permanent conditions and on the temporary condition of a wet road but also on the presence of the white van apparently waiting to turn right into Chapel School Road. This was a narrow country road in the engineer's phrase, with no central white line. At the relevant area he measured it as 15 feet 7 inches wide to 17 feet 3 inches wide at or about the likely point of impact. Mr Wright in fact measured it as even narrower at the junction ie 14 feet 9 inches but did not dispute the latter figure. Dr Marrs thought the road was classified neither b, c nor d but probably unclassified. From the corner of the white line markings at the mouth of Chapel School Road to the hedge was 10.5 metres. From the hedge to the layby along the footpath was 18.5 metres. At one stage it seemed to be suggested and indeed was suggested by the defence that the defendant driver would only have a view when she reached the back of the van. Later Mr Trevor Wright, the well known Consulting Engineer, performed an exercise for the court in which he acknowledged that the driver would have a view while overlapping with the van. He put the likely view at 30 mph at 44 feet which is pretty close to the minimum figure I deduced from Dr Marrs' calculations, of 13.5 metres, for the defendants view of the plaintiff.

[4] It is as well to deal with this point now. The outer estimate of Dr Marrs' figure would be something more like 19.5 metres. While I accept that Mr Wright had approached his task without unfairness, he accepted that it was based on a number of assumptions. For example the mouth of the road into which the white van was turning was actually quite wide. The half of the road into which he ought to have turned was 17.5 yards wide. In those circumstances the van driver may well have been past the dividing line which Mr Wright's exercise put him at. Furthermore we do not know if the van was exactly straight. It is entirely possible that there was some angle on it as it prepared to turn in which would also have increased the view. Thirdly and most importantly we do not know exactly where the plaintiff was crossing. I would not be persuaded that she was as far down as three-quarters of the way down the footpath but having heard her and heard all the evidence I would conclude that it was likely she was about half way down the footpath. In any of those circumstances a driver seeing her, as the defendant would have, when passing the white van would have had rather more than the one second which Mr Wright estimated would have made the accident inevitable.

While not accusing him of advocacy he was in effect putting this forward as a backup defence for the defendant. It does not stand muster on that basis either, it seems to me, for the reasons above and for the following reason. Dr Marrs said that thinking time was taken in the Highway Code to be 0.7 seconds. Mr Wright said some data, which he did not expressly cite, pointed to a longer thinking distance, particularly if the driver was not alert to a possible emergency. Firstly I am inclined to accept the standard calculation of 0.7 seconds which he did not dispute. But secondly I consider that any driver here ought to have been alert given the remarkable and unusual combination of facts with which such a driver was dealing on this narrow country road at this staggered junction on the brow of the hill near houses with the road wet. They absolutely should have been keeping a keen lookout and ought to have been alert for any emergency as they came over the brow of the hill with their view already obstructed by the white van. But even leaving that point aside and taking the 0.7 seconds it seems to me that on the probabilities a driver at 30 mph certainly did have time to react and then do something. I am inclined to accept Mr Wright's opinion that sounding a horn would have been ineffective because you would then have had to add the reaction time of the child to that of the driver. Braking on the wet road he said would make only a very small difference in speed. But it seems to me the obvious reaction of any careful driver presented with the circumstances would have been to move the steering wheel slightly to the left and thereby avoid the child, walking, as I find she was, to the middle of the road. As mentioned the road was a little over 17 feet. That leaves up to 2½/3 feet of carriageway on her own side for the defendant driver. That does not sound much but we know that the wing mirror struck the plaintiff. Even the slightest movement of the wheel to the left would, in all likelihood, have carried the car safely past the pedestrian. In any event there was a broad, almost level, grass verge to the left of the road. There was no kerb. There was nothing to stop an alert driver from swinging over further if they were driving at a safe speed. Indeed, although somewhat different, the defendant expressly says, as does her son, that she did pull on to the grass verge immediately after the accident and within a matter of yards. They were both emphatic on that, although MH thought they had remained on the road. Therefore I find that if the defendant had in truth been driving at 25-30 mph and keeping a proper lookout the accident could have been avoided by a very slight movement of the steering wheel to take the car past the plaintiff. There was no evidence against that view expressed by any witness at the trial.

[5] To return to the evidence of Dr Marrs he pointed out that the defendant driver may well have seen or had the opportunity of seeing the plaintiff coming out of her garden onto the road before turning right and then crossing the road. While doing the first part of that at least she would be on the right of the van.

[6] I think that is correct. But having considered the evidence, including that of Mr Wright, the situation to me seems to be that she may have had that opportunity. I do not find on the balance of probabilities that she ought to have seen the child and therefore I do not make a finding against the defendant because of her failure to see the child while the defendant was approaching up to the brow of the hill. It is true that if you count back the number of seconds comparing the walking space pace of the child to the driving pace of the car it does seem not unlikely that the child could be seen. In any event the defendant did not see her it would appear at all.

[7] Dr Marrs was cross-examined by Mr Spence. It was suggested to him that if there were hazards here one would have expected hazard lines rather than the word slow on the road but Dr Marrs said and this was not subsequently disputed, that they would not be found on a narrow country road such as this which had no central white line at all. Dr Marrs said that as a highway engineer himself he would be of the opinion that the slow did not refer to Chapel Hall Road which was immediately after the slow sign ie before it could take effect, but was a reference to the staggered junction with or without the brow of the hill. He had met MH at the scene of the locus but MH had not been with him when he took his photographs. The fact that he took a photograph of the hedge did not mean and it was not the case that he had been told that is where the plaintiff had crossed the road. The plaintiff was not present on either occasion, which is perhaps regrettable. Various matters were put regarding time and distances which it is not necessary for me to set out but which I have taken into account arriving at my conclusions in this matter. He thought that the defendant should have seen the child crossing somewhere between photograph 5 of his booklet and photograph 4 of Mr Wright although closer to the former. This would be a significantly greater distance than that subsequently estimated by Mr Wright but Mr Wright's calculation was not put to him. This is not a criticism of counsel. Mr Wright had arrived at his calculation between the first and second days of the case. I found Dr Marrs persuasive on this point.

[8] His opinion was that from some 75 yards back the defendant would be able to see the far end of the garden of the plaintiff's home. There were no trees or fence in those days. She could then see the child coming out of the path and walking along preparatory to crossing the road. The last stretch for the plaintiff would be visible the white van would not obstruct the side of the road when the defendant was back. If the defendant had been travelling at 30 mph she would have had a 5 second view.

[9] He pointed out that under paragraph 132 of the Highway Code (1999 edition) country roads were dealt with. "Take extra care on country roads and reduce your speed at approaches to bends, which can be sharper than they appear, and at minor junctions and turnings, which may be partially hidden. Be prepared for pedestrians, horse riders and cyclists walking or

riding on the road. You should also reduce your speed where country road enter villages". While not binding upon the court I consider this a statement of the reasonable care needed in such circumstances. It can be seen that a number of aspects of that paragraph are relevant to the issues here.

[10] The plaintiff's father, MH gave evidence on Thursday 10 May. A man, the defendant's son it would appear, came and told him of the accident to his child. They both hurried from the back door of the house up the path to the Chapel Hill Road. He could not see the child from the path but had to turn right to where she was lying in the middle of the road. It was approximately half way along the path. He could tell she had a significant injury, partly because she was complaining bitterly of pain and partly because he was a retired nurse. He took appropriate steps and subsequently left with her in an ambulance to go to Daisyhill Hospital. I observe, without placing any great weight on it, that neither Colin Farrell, nor the defendant, who was to some degree shocked, claimed that the child had run out from behind the van. In fact there was no conversation relative to liability issues. Interestingly the driver of the white van was there having moved his van into Chapel School Road but nobody seems to have obtained his view of the matter. No witness is identified in the police report. MH said in cross-examination that the defendant's car was past where the child was and was past a white car visible on photograph E. He would guess it was 6 or 7 yards. Clearly for a variety of reasons that estimate of yardage is wrong but his visual memory of where the car was parked in relation to the terrace of houses was persuasive. I also thought him an honest witness. This would put the defendant's car 10-15 metres past where the child was found.

[11] There was some cross-examination about the movements of the ambulance at the scene. I think that Mr Spence did establish that the ambulance did not park right beside the child on the ground but perhaps 20 feet back from where the plaintiff's father says she was. However I think that is much too frail a foundation to call into question his evidence. It may well be that an ambulance would choose to park what is little more than one ambulance length back from the body on the ground particularly if, as appears from the case there were half a dozen people standing around. I also observe that by parking in the mouth of Chapel School Road it would be taking the benefit of a partial lay-by to some extent.

[12] The police report was submitted by agreement on the second day of hearing as part of the plaintiff's case avoiding the necessity of calling the officer who composed it, a Constable G Jackson, although I was told he had been there the day before. He recalled road conditions as being wet and road repair as fair. He has marked an X opposite rain on the weather section. It may be that this was just before or after the accident as none of the actual witnesses expressly mentions it. The vehicle had been moved to prevent

blockage of the road before the arrival of the police at 17.12. He says of the driver's view:

> "View to driver's right obstructed by another vehicle sitting stationary. Clear and unobstructed to front 100 metres."

He took statements from the plaintiff, the defendant and the defendant's son Colin Farrell. The plaintiff's statement was consistent with her evidence. I will return to the defendant's statements in a moment.

[13] The defendant Mrs Bernadette Farrell gave evidence. She was a 58 year old cook according to the police report. She was driving her son to an interview at Ballyholland Primary School. She averred in evidence that 30 mph was the height of her driving and she did not drive fast. She had seen a white van with its indicator going to turn right. The van was stationary. She said she was just at the back of the van when she heard an awful bang between the wing and door of her car and her son Colin, beside her, told her to pull the car over and she did so and he looked in the mirror and jumped out. She claimed she was not near the houses on the right from which a lady came to speak to her. She said that she had heard an unmerciful thump. "I didn't see anything". It was while she was at "the actual back of the van". The impact had left a big dent in her car. She had made a statement to the police four days later but claimed to be totally in shock at that time. The policeman took her over matters and she agreed with him and he wrote it down. She was definitely not able to see the plaintiff before the impact.

[14] She repeated this account to Mr Fee QC in cross-examination. He then put to her that she had included in her police statement the following:

> "As I passed the white van I suddenly saw a young girl aged about 10 years run from the right hand side of the road and from behind the white van straight into the driver's door of my vehicle."

She said that actually the policeman had said that but she definitely did not see the girl. That was wrong. The policeman had written down what she had said but he had worded it wrong. She agreed that he had read the statement over to her and agreed that she probably did sign it. She was asked why did she not point out this remarkable error. She did not know why but said she was in total shock, in some state and it was not done deliberately. But she had not seen the girl until she had got out of the car after the accident. Mr Fee wanted to know why this flaw had not been pointed out the previous day when Constable Jackson was present but Mr Spence said there was no flaw. She accepted that this was in the statement but it was not her evidence. She again claimed that she normally drove around 30 mph but had no express

memory of this event. Colin always said "go a bit faster mummy" but he did not say it on that day. The interview at Ballyholland School was at 5.00pm. The police report said the accident was at 4.50pm. Mr Fee said that the school was some 10 minutes from the scene of the accident but she would have said it was 5 minutes. Even if it was only 5 minutes Mr Fee put it to her that she was cutting it fine and that she was hurrying as a result. She disputed that saying that she drove at around 30 mph normally, not on motorways or carriageways but on roads around the town. She agreed that one would not normally keep at 30 mph if there was no 30 mph limit on it. She knew the road fairly well she was up and down it. There was no traffic or other obstruction to slow her down. She could not honestly say that she was driving at 30 mph. It may have been 40 mph. She had not looked at her speedometer. Although she would slow at a hill she did not remember slowing down at this hill on this occasion. It was pointed out that she had not suggested to the police either that she was driving at 30 mph or that she had slowed down when approaching this junction, which clearly required extra care at the very least on the part of the driver in my view. She knew there was a residential development there. She was aware of the brow of the hill and the staggered junction. She did not remember slow being written on the road. She agreed the road was wet. She would be aware that there would be children about normally or might be because of the houses but nothing on this occasion made her slow down.

[15] I stop there to say that it seems to me that that is an admission of negligence by the defendant unless she had been approaching the junction and the first slow sign at a speed of 25-30 mph. In the light of all the facts no one could possibly find that that was the case. It did not occur to her to let the van turn up into Chapel School Road. She definitely did not see any girl either to the right of the van or at all until after the accident. She could vaguely remember the child lying on the road but could not give her an exact location.

[16] I did not find the defendant a convincing witness, although I think she was struggling to tell the truth. I was given a definite impression of somebody who had sailed into this potential accident situation without keeping a proper lookout or without reducing her speed to a safe and proper speed. Her credibility is gravely damaged by the conflicts between her evidence and the police statement. But credibility apart she was certainly not a witness upon whom the court could rely.

[17] The next witness was her son Colin Farrell who proved an even more unreliable and unsatisfactory witness. He saw the white van from the front passenger seat of his mother's car. He supposed it to be a Hiace sort of van with a short wheel base at about 6 feet high. He said the front nose was level with the central marking and Chapel School Road "I suppose". This is relevant to my earlier view that it might have been past that. He said that his

mother was obviously not very sure of her speed but she was travelling at 30 mph because he had looked across at the speedometer and taken note of that and he saw a residential area was approaching and glanced over and it was showing 30 mph. I observe that you do not see the residential area approaching until you are at the brow of the hill. That makes this unconvincing, although he may have been aware from previous use that there was housing there. As he approached the van he said there was no reason to be wary of children. If there was he would have told his mother to slow down further, even from 30 mph. As they drew up and passed the van with the driver's door of their car parallel with the rear of the van he became aware of a thud to the right of the car and, like his mother, a flash of light. He immediately told her to pull over to the side of the road as she did. This was, of course, entirely proper and responsible.

[18] I am entirely satisfied that this accident did not happen in this way ie. with the driver's door right at the back of the van. This was an intelligent child of almost eleven. I do not believe that she would have walked out right behind a van into the mouth of Chapel Hill Road. I accept her evidence as to where she crossed the road, consistent with the advice she had been given from the father, which the defendant's engineer accepted as reasonable. However the unreliability of Mr Colin Farrell did not end there. He was sure that his mother had parked on the verge as he stepped out on to grass and came round the back of the car. That might be a reasonable supposition but later on when cross-examined he claimed that he had stepped out into undergrowth. No other witness and no photograph suggested that there would be undergrowth that he would have stepped into. He claimed that the plaintiff was just a few steps behind their car in the other lane ie. just over the non-existent central line. He asked here where she lived and she pointed "nearly where the terrace houses begin, she pointed towards her home." I found that a puzzling statement. When asked to look at photograph D he was vague about where she was but reiterated that she had pointed "back to her own house" but he said not to the terraced houses. If, as he claims, the accident had taken place right behind the van, even if she was thrown forward to some extent she would not have been pointing back towards her home but sideways to her home. He, very properly, went and fetched her father. He did not claim that he had told the father that she had run or walked out from just behind the van. It was then put to him in cross-examination that he had also made a police statement. In that he said:

> "As we passed the road junction on our left I saw a little girl run out from the opposite side of the road and collide with our vehicle on the driver's side wing mirror. The child was wearing blue jeans and a white coloured sweat top."

His explanation of this in conflict with his evidence was that the statement was made shortly after his interview for the teaching post. It was very difficult to compose himself. But the police officer was waiting for him and invited him into the back of the police car to make a statement. He said that the police officer conveyed that there was no fault on his mother's behalf. If he had thought it was otherwise he would have made the statement a week later and he would have taken legal advice before doing so. He gave every evidence of uneasiness in this passage of his evidence as at other times in his examination-in-chief. When the details of the matter were put to him he said he did not see the girl at all. When asked why he had not corrected the word run etc when asked to sign the statement he said that he had not pinpointed the phrase as "of utmost significance. I was in a state of distress." He did not say in the police statement that his mother was driving at 30 mph let alone that he had seen the speedometer himself. Although the police said the accident had taken place at 1650 he claimed that he had been able to leave the accident and be driven by a neighbour to the school and still arrive five minutes before the due interview at 5.00 pm with time to explain himself to the chairwoman of the Trust and to the Principal of the school. I find all this most unlikely. In the course of Mr Fee's skilful but courteous cross-examination he went on to claim that his mother tended to drive in the wrong gear. He therefore looked over at the rev counter as they approached this junction to ensure that the car would go over the brow of the hill. He did not just listen to the noise of the engine but conscious of the brow of the hill and the houses on the right he wanted to be sure that she had the correct speed and she changed gear. It was put to him that this was a completely new addition to his evidence. He then went on to say that as they were coming up to the hill she was in third gear and dropped into second gear reducing her speed dramatically. Mr Fee then pointed out that he claimed that he had seen the speedometer reading 30 mph. He agreed that was correct but when it was put to him that that was unlikely if she was driving in second gear he then claimed that once the car was over the brow of the hill she changed back into third gear as she adjusted her speed to 30 mph. He then had looked again at the speedometer. This is all, of course, completely preposterous. It was not said to the police or in evidence-in-chief and is frankly impossible in the course of the very short space of time involved just before this accident. I found him a witness on whom no reliance could be placed.

[19] The defence called Mr Trevor Wright Ch. Eng., MICE, Consulting Engineer as already said. I have dealt with his calculations and the postulation which he put forward. As indicated I do not accept that postulation. If a careful driver had been driving at 25-30 mph and keeping a proper lookout as they ought to have been I believe there would have been enough time to make the very small alteration to the steering which would have been sufficient to avoid this collision. To suggest that a motorist driving at 30 mph could do nothing to avoid striking a child walking out from her

right hand side 44 feet away seems a novel and surprising proposition, even when referring to a narrow country road.

[20] With regard to whether the defendant should have seen the plaintiff on the right before she got level with the van he helpfully pointed out that the plaintiff would have been about 4 feet 6 inches while the young lady assisting him for his photographs was 5 feet 10 inches. But he accepted that the approaching driver would have had a view back for some distance before the van obscured the view. He did not accept that she would have seen the child but said that the defendant may have had the opportunity to see the child. In cross-examination he accepted that the slow sign was to warn of potential dangers ahead for which one should slow down. The potential danger was added to by the wet road and the presence of the van ie. he accepted, that there were temporary factors in addition to the permanent factors earlier identified.

[21] In cross-examination he spoke of the child running across the road but that is not, of course, the case being made by the defendant or her son, nor was there indeed any evidence of it at all before the court. Mr Spence did not submit at any point that there was such evidence. He did, tentatively, put it to the plaintiff but she rejected it. Mr Wright was emphatic that the collision would have had an impact on the child, which is clearly right. He accepted my suggestion that it would tend to have a rotating effect on the child but he also thought it would have pushed her in the same direction as the car although of course it was impossible to say to what extent. He accepted that even in his estimate there was time to begin braking but ineffectively he said. He accepted there was time to sound a horn but as indicated I accept his view that, on his estimate, that would not have included time for the pedestrian to react.

[22] As indicated above I find against the defendant on two separate bases. I find that on the balance of probabilities she was driving at significantly more than 30 mph at the time she encountered the child. The speed may have seemed reasonable immediately before this staggered junction. I note that she had not left a lot of time to get her son to the interview at the school and that would tend to make her go quicker rather than slower. The damning thing against her is that it is clear that, contrary to the, frankly absurd, evidence in cross-examination of her son, she did not slow down when advised to do so on the road or in the presence of the staggered junction, the brow of the hill, the van turning right, the existence of houses known to her and the wetness of the road. That was careless in the circumstances. Once one concludes that she was driving in all likelihood something more like 40 mph than 30 mph the accounts of the three witnesses become entirely consistent. The plaintiff says that there was a red flash coming fast from her left. In all likelihood she would only have had a very short time in which she might have seen the defendant as it came from

behind the white van and met her in the middle of the road especially if she was keeping an eye out in two other directions. It also largely explains the evidence of the two Farrells that they did not see the child before the wing mirror of the car hit the child. Again the time would have been very short at 40 mph even if the plaintiff was crossing from where she said she was. Furthermore I am satisfied that the defendant was not keeping a proper lookout ie. she had not deduced, as a reasonably careful driver ought to have, that she should be taking extra care, in the light of all the circumstances. No doubt her mind was on the coming interview for her son but this does not excuse her actions in law. Indeed the fact that on her own admission she did not see the girl, even in this brief time at the speed she was going reinforces the conclusion that she was not keeping a proper look-out, and I so find.

[23] Mr Spence addressed me on the issue of contributory negligence at my request. I did not find this made out insofar as any criticism could have been made of the child crossing the road. She repeatedly said that she was looking both ways. It would be unrealistic to expect a ten year old to have both noticed that the van was indicating to the right and then deduced that she could and should wait for it to turn right before crossing the road. I think that is too much to ask. Indeed the plaintiff could not remember if there was any indicator which I think was an honest answer in the circumstances. However I think he was on sounder ground in saying that she did know and was old enough to appreciate that the van was obstructing her vision to the left. Therefore having started to cross the road she should have paused to look up to the left when she was able to see the other side of the Chapel Hill Road upon which the defendant was in fact approaching. However I accept the submission of Mr Fee that any deduction for this contributory negligence on her part should be modest in the circumstances. She was not yet eleven years old. She was a pedestrian and not in the position of somebody driving a potentially lethal motor vehicle. I have concluded that I should reduce her damages by 15%. I was not addressed by counsel with any authorities on this point, but I consider this a reasonable estimate which I trust is not unfair to either party.

Quantum

[23] A booklet of medical reports was submitted in the case. In addition Mr McClelland FRCS Ed, consultant orthopaedic surgeon gave evidence before me. The child had a fracture of the left distal tibia involving the growth plate. There was a minimal displacement. She was as we heard in great pain initially. She was in Daisyhill Hospital for two days and then was removed to the Royal Belfast Hospital for Sick Children. Surgery was considered necessary and was carried out on 27 May. There was an open reduction with internal fixation and the application of a cast for nine weeks. This was removed in early August and she underwent a second operation to remove

the screws which had been used to reduce the bones into their normal position. She then had physiotherapy.

[24] What is the aftermath of the injury? She has, happily, made a very good recovery but not a complete one. She had been keen on football and other sports before the accident but was put off them afterwards. I found her evidence on this convincing. She was able to do PE at school and indeed still does, but does not play contact games such as football, camogie or netball. In the circumstances I think that reasonable and her evidence honest on the point. The ankle would be aching when the weather is cold and sometimes stiff if she went for a long walk or a run. She goes over on the ankle more easily. She does not wear boots because she cannot get a zip up over the ankle. She was cross-examined thoroughly by Mr Spence on this and other aspects of the matter. However Mr McClelland demonstrated her scar to me and indeed to Mr Spence. The scar was visibly noticeable. It was on the medial side of the ankle. It was some 10 cms long ie longer than in the reports as it had grown as she had grown. It was pale but the reports on the plaintiff both make the point that in the summer it would become more noticeable as the rest of the leg tanned. Mr McClelland pointed out that there was a slight valgus deformity of the left ankle ie. that when viewed from behind without shoes or socks one could see that the left foot was pushed out in a different way from the right foot. He could also palpate and one could just about see that there was some flattening of the arch in the foot in contrast to the other foot and that the contour of the medial left ankle did seem larger than the other ankle and did justify a complaint about boots. She also had difficulty with strapping of shoes. There is no suggestion that she is going to suffer osteoarthritis in the future. She has however suffered the loss of amenity described just now. The various complaints are likely to be permanent. She had a bad time initially but happily it did not obstruct her academic career as she had the summer to help her recover from the injuries. I have consulted the guidelines for personal injury cases and I have heard the submissions of counsel. I have concluded that the proper sum would be £25,000. If one deducts 15% that would leave a figure of £21,250. I award interest at 2% for nine months which comes to £322. The judgment will therefore be in the sum of £21,572. This reflects the youth of the plaintiff and the reality that her gender is likely to make her more conscious of the effects of her scar than a young man might be.