



Neutral Citation Number: [2023] EWHC 1651 (KB)

Case No: QB-2021-002393

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 June 2023

Before:

His Honour Judge Rajeev Shetty
(sitting as a Judge of the High Court)

Between:

MARTIN MOOR

Claimant

- and -

(1) AVIVA INSURANCE LIMITED
(2) MIDHURST ENGINEERING & MOTOR
CO LTD

Defendants

Robert Whittock (instructed by **Setfords Solicitors** for the **Claimant**)
Richard Whitehall KC (instructed by **Clyde and Co**) for the **Defendants**

Hearing dates: 27th 28th and 29th June 2023

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HHJ RAJEEV SHETTY SITTING AS A JUDGE OF THE HIGH COURT

HHJ SHETTY :

[references are made to the Core Bundle (CB) and Supplemental Bundle (SB)]

INTRODUCTION

1. The Claimant claims damages against the Defendants arising out of a road traffic accident that occurred on Wednesday 25th July 2018 at around 8.30pm on the A272 Winchester Road, Hampshire. Pursuant to the order of Master Stevens, this three day trial has concerned the preliminary issue of liability only.
2. I have heard evidence from the Claimant; evidence from the Second Defendant's employee and driver, Mr Boxall; evidence from two police officers who attended the accident after the event; evidence from Mr Mike Morgan who had a managerial role for the Second Defendant; evidence from Mr Emery who was a passing off-duty firefighter; and evidence from Mr Mutch, a collision investigator expert. I have also seen body worn footage at the scene concerning Mr Boxall and another man called Ethan Woodford-Sines who has not given evidence in this case.

THE ACCIDENT

3. The Claimant motorcyclist, along with his pillion passenger Mr Louth, were travelling in an eastbound direction along the A272 Winchester Road near Petersfield, Hampshire. This is a single carriageway road which has a speed limit of 50mph. The middle of the carriageway has two solid white lines thereby prohibiting any overtaking. The Second Defendant's employee, Mr Boxall was driving a pick-up/recovery flatbed lorry in the opposite direction. They collided offside to offside at a relatively straight passage of road that is situated between two bends. The motorcycle was flung to its nearside into a grass verge. The Claimant suffered injury as a consequence of the collision.

PRELIMINARY MATTERS

4. At the start of the trial the Claimant made an application to introduce a witness statement from Mr Jack Louth and call him as a witness. This witness statement had not been served in accordance with previous directions from Master Stevens concerning, inter alia, the exchange of witness statements. This application was made on the day before the trial almost at the close of business. No warning of it was given to the Defendants. I decided to hear the application despite there being less than 3 days service of the application but ultimately refused the application. My reasons were given in an oral judgment.

THE ALLEGATIONS OF NEGLIGENCE AND THE ISSUES

5. The particulars of negligence are at CB23. The claim is brought against the First Defendant in their capacity as insurers, and the Second Defendant in their capacity as employers of Mr Boxall. The particulars allege that the Defendants' driver failed to

notice the Claimant's motorcycle and adjust his speed and driving position accordingly to avoid collision; that he drove without due care and attention; that he failed to stop or otherwise control his vehicle to avoid the collision; that he failed to slow down when approaching the bend so that he could negotiate it at a safe speed; that he took the bend too wide such that the lorry was across the centre white line; that he strayed into the Claimant's carriageway; that he failed to stay in his carriageway, and he failed to warn the Claimant of his approach.

6. The Defendants aver that Mr Boxall was properly positioned in the westbound lane and it was the Claimant who travelled at an excessive speed around the preceding bend and was fully in the westbound carriageway when the accident occurred. He had taken the corner too wide at speed and that left him in the wrong carriageway. It is further averred that Mr Boxall braked and turned his vehicle to its nearside and onto the grass verge to avoid a collision. The Claimant struck the front offside of the recovery truck.
7. The issue is straightforward in that there are diametrically opposed versions of events. The main issue of fact to decide is whether the collision occurred as a result of the Claimant's positioning in the opposite carriageway or the Defendant's driver's positioning in the opposite carriageway.

THE PRINCIPLES OF LAW

8. The burden of proof is on the Claimant to prove that on the balance of probabilities, Mr Boxall drove below the standard to be expected of a reasonable road user. It is not disputed that if Mr Boxall drove on the opposite side of the carriageway in the manner alleged, he would have been driving negligently. Similarly if the Claimant had drifted to the other side of the carriageway at the time of the collision, the claim would inevitably fail as the collision would have been caused solely by his negligence.

THE EVIDENCE

The Claimant's Evidence

9. The Claimant's evidence is that he was travelling in the correct carriageway and was not driving at excess speed. He was riding recreationally on the day in question. He had visited Loomies, which was a local motorcycle café located in Petersfield. He was making his way home with his pillion passenger Mr Louth. In his witness statement/evidence-in-chief, he states that he knew the speed limit on the A272 at the location of the accident was 50mph and he was driving at around 45-50mph as a maximum and slower for bends and traffic. He describes that he was riding in the offside set of car tracks closer to the centre of the road because tyre tracks create a groove of sorts and cause debris/gravel to be swept away. He approached a right to left bend and slowed. As he straightened out onto the straight bit, he accelerated slightly. The lorry coming towards him was partially over the double centre white line. In a split second he realised he wasn't moving back. He did not brake as this would be dangerous whilst manoeuvring. He tried to swerve but it was too late. Similarly the lorry tried to swerve at the last moment but it was too late.
10. His evidence was thoroughly cross examined by Mr Whitehall KC.

11. The first point made to him was that the Claimant's witness statement completely neglected to mention the fact that the trip involved riding with/behind Mr Ethan Woodford-Sines who was ahead of him on the road at the time of the accident. To this the Claimant said he was not asked about him despite describing the purpose of the journey.
12. The Claimant was inconsistent about the speed limit of the road. In his witness statement at para 12 (CB188), he correctly described the speed limit as 50mph but he conceded readily that he did not know what it was at the time of the accident. He was referred back to his evidence at the Crown Court appeal hearing in which he did not know the speed limit.
13. He was referred to the two 50mph speed limit signs in relatively close proximity to the accident location and said he did not remember seeing them. He was inconsistent about the speed he was travelling. In his witness statement at CB188, para 12 he said he had been driving at around 45-50mph as a maximum. In his evidence he said he had been driving at 30-35mph around the bend and yet at P128 SB he told the police in interview he was travelling at 55-60mph. His answer to that was that in the interview he was on a lot of medication and could not remember the speed he was doing. He was reminded that that there was no mention in the interview of having difficulty in remembering things.
14. The Claimant was also asked about the mechanics of the accident on his case. He confirmed that the lorry was not a great deal of distance across his carriageway. He said it was approximately 18 inches to 2 foot. In a carriageway that was 2.9 metres wide, the Claimant would still have 2.3 metres of room to avoid the accident. The Claimant's response to that was that the "lorry wasn't standing still- it happened so quick. I tried to avoid it but I couldn't. You can't just turn the handlebars on motorbike, you have done it properly". It was then put to him that the reason he could not steer away was that he was going too fast which was something he denied.
15. The Claimant was also asked about Mr Ethan Woodford-Sines and the latter's ability to see him. To this he said that "As I come round the bend, he disappeared around the bend where the lorry came from. He wouldn't be able to see me at all". He disputed that he had drifted. It was put to the Claimant that he had drifted and that is why Mr Woodford-Sines has been deleted from the Claimant's narrative. The Claimant denied that.
16. The Claimant was also cross examined about his conviction for dangerous driving in 2019. The paragraph in his witness statement dealing with this is at CB193, para 37 where he states:

"There was an incident involving a cyclist and my van in 2019 whereby I was convicted for dangerous driving arising from an incident on a private access road in graveyard. I have always considered myself to be a careful and courteous driver and have maintained a clean driving licence. Unfortunately on the day of the incident there was a loud bang which triggered my PTSD. I was overcome psychologically because of my disorder and pursued the cyclist which I should not have done. This does not mean that I am an inconsiderate road user, my PTSD just got the better of me that day and we ended up having an altercation."

17. The Claimant was reminded that he was actually convicted of dangerous driving as well as assault and criminal damage. He accepted he was wrong to pursue the cyclist. He denied that he drove into the cyclist but accepted he kicked him. However, he was reminded that in the course of the trial he denied that. He had given evidence on oath that the victim had slipped and that the Claimant never touched him.
18. I have seen the Go-Pro footage of the incident that was the subject of the conviction. The footage shows the Claimant's van cutting up the cyclist in an urban area and then following the cyclist to a churchyard where he seemingly rams the cyclist and then gets out of the car and proceeds to hit him. The Claimant was convicted of not just dangerous driving but also assault/battery. He accepted to me that he pled not guilty to the assault charges although he accepts now that he did assault the cyclist.

The Defence Evidence

19. Mr Boxall gave evidence for the Defendants.
20. Mr Boxall's witness statement/examination in chief confirms that he is a Class 1 HGV licence holder and he further holds a motorbike licence. He has never had any other motor claim or accidents whilst driving. He describes that he was on his way in his capacity as an on call employee to a road traffic accident at the Cheniton Crossroads. He knew the road well and knew that it was a popular road for motorbikes due to some long stretches and a motorbike café called Loomies. He describes that he had to manoeuvre a left hand bend which he did without issue when an orange motorcycle went past him in the opposite direction. A few seconds after that, a blue motorbike came flying out of the right hand bend in front of him and he saw that it was on his side of the road. Mr Boxall thought it was going faster than 70mph. He thought that he did not see that bike come from around the bend because of an obstructing oak tree but further said it was difficult to estimate the distance with any accuracy. Mr Boxall said that no part of the bike remained on the correct side of the road and it was drifting further and further on his side of the road. He said the bike was leaning to the left and the rider was leaning to the left to try and use his weight to pull the bike around the corner. The wheels "may have been around a metre across the white line". The pillion passenger was completely upright and Mr Boxall thought that this could have an effect on the driver's ability to turn because it would affect the weight distribution.
21. Mr Boxall said he reacted as quickly as he could and pressed the brakes and pulled majorly left to avoid a head-on collision. He ended up going onto the grass bank at the nearside of the road. There was a collision between the bike and front offside of the lorry at around the cab door. Mr Boxall remembers travelling further up the grass verge and remained in control. He eased off the brakes and allowed it to roll forward before coming to a controlled stop back in the carriageway. Mr Boxall activated the beacons on his vehicle and got to the Claimant and the pillion passenger. Other people were already assisting. He tried to use his phone to contact his boss, Mr Morgan. That was unsuccessful due to lack of signal and he tried to use his radio. He was then able to use somebody else's phone who had signal and got through to Mr Morgan.
22. Mr Boxall also remembered having a conversation with someone who he infers must be Mr Woodford-Sines. He was the rider of the orange motorcycle and he came up to

Mr Boxall and shook his hand. He said “your actions have just saved my friend’s life, thank you”. They had a short chat and Mr Woodford-Sines said that the Claimant had been on the wrong side of the road and going too fast. The Claimant had been delayed and was trying to catch him up.

23. In cross examination there was some questioning about the amount of hours that Mr Boxall was doing. He could not remember his work pattern to the hour at that time but said his boss did not allow him to work consecutive long shifts. He refused to accept that he was tired at the time of the collision.
24. Mr Boxall was further cross examined about the dimensions of the lorry. He accepted that the lorry was a wide vehicle which took up most of the lane but said further that “I’m a competent HGV lorry driver and I’m not going to go over the white line...It’s not correct I went over the white line.”
25. It was suggested to Mr Boxall that his account in his witness statement about the bike drifting further onto the opposite carriageway (CB 279, para 40) was inconsistent with something he said to PC Fruin in the body worn footage where he was describing that the Claimant had started to come back on his side [of the road]. His answer to that was that “it looked like he was trying to go back to his side of the road, but he never did”.
26. It was put to him that he was wrong about the pillion sitting up. His answer to that was “Five years I have seen that pillion sitting upright”.
27. Mr Boxall was also asked about the distance he took to stop the lorry. He replied that you cannot slam on the brakes on grass.
28. There was a further serious allegation put to Mr Boxall that he took steps to remove the memory card from the dashcam. He denied that and had previously given an explanation about the memory cards on the dashcam having filled up too quickly.
29. Mr Mike Morgan gave evidence. He is the director of the First Defendant. He did not witness the accident but dealt with the qualities of the Defendants’ driver as an employee and the paperwork concerning the truck that was damaged. He also gave evidence about receiving a call from Mr Boxall. Mr Morgan’s evidence has not assisted me in relation to the circumstances of the accident. I do not say that critically. He was not there. Questions concerning phone calls made by Mr Boxall are in my view of no importance and furthermore the questions about a potential defect on the lorry have no bearing on the case as no such matter has been pleaded, and Mr Boxall has never sought to say that his driving was affected by any defect.
30. Police Constable Green gave evidence for the Defendants. He did not see the accident but was an attending emergency service worker after it occurred.
31. There was some cross examination about the fluorescent hub cap nut covers that PC Green believed had come from the rear offside of the truck. Whilst I agree he must have been mistaken, there is no significance to this as PC Green did not witness the accident and he was not giving evidence in the guise of an expert. He was also asked why he did not speak to Mr Moor and Mr Louth to get their account. His answer was that did he not speak to them about this because of their injuries. Even if there was

implied criticism of PC Green by this alleged failure and by forming a view that the Claimant was at fault, this would be of no assistance to the court. The Claimant has not been successfully convicted of a motoring offence and the court is not concerned with the view of others.

32. Police Constable Fruin gave evidence. He also attended the accident location. His body worn footage captured the conversation with Mr Woodford-Sines. It was put to him that Mr Emery was not present which was an averment not previously made in the trial or to Mr Emery himself.
33. Mr Emery was an off duty firefighter. He was travelling eastbound having returned from Cornwall and intending on going home. He did not see the accident but shortly before he came onto the scene where it occurred, he remembered 2-3 motorbikes overtaking him at speed on the wrong side of the road. He elaborated that they had gone into the other carriageway despite the presence of centre solid white lines prohibiting that. Mr Emery himself was driving at 50mph and the motorbikes were therefore going faster than that. His evidence that this was a maximum of 60 seconds before he himself got round the bend and came upon the scene of the accident.
34. When he came to the scene he stopped and attended upon the Claimant and his pillion passenger. He remembered the Claimant saying a number of times to his pillion passenger that "I [the Claimant] was going too fast, it was my fault, I was going too fast". Part of this is recorded in PC Green's notebook. Mr Emery's evidence was that the Claimant had not changed what he was saying during the time and up until Mr Emery left. He was still saying he was going too fast and apologising.
35. In cross examination he thought that the two motorcyclists who passed him were two car lengths apart maximum. He thought they were pretty much behind each other. Other cross examination was directed at his recollection of timing. I find nothing in this point as he clearly did attend the accident and his recollection of whether this was early or mid-late evening is of no moment. He denied that the words exchanged between the Claimant and Mr Louth was just an apology, i.e. an exclamation of responsibility rather than fault. Mr Emery replied that "He said it was my fault, I drove too fast" several times.
36. Mr Damien Mutch, an expert in accident reconstruction gave evidence.
37. In this case there are no skid marks or road damage that can precisely identify the location of the accident or the speeds of the respective vehicles. Mr Mutch had to work from the basis of known facts which were relatively limited in this case. He was able to estimate the final resting place of the motorbike from photos/video footage (CB425). Furthermore he was able to locate tyre tracks from the photos of the scene (CB427). Mr Boxall himself referred to tyre tracks and how he tried to preserve them before the police arrived. By reference to those, Mr Mutch was able to work out a 'window' in which the collision must have taken place but he could do no more than that.
38. Mr Mutch did provide some supplementary opinion in which he said that if the Claimant motorcyclist was going at 45mph (equating to 20 m/s), his sightline would be around 4.5 seconds before the collision. At around 5.5 seconds before the collision, each vehicle was around 110 metres from impact. In simple terms, research

suggests that a motorcycle can avoid a 1 metre block in 2.2-2.9 seconds. A lorry is likely to take significantly longer (around 3.5-4.8 seconds). In essence he concluded that if the court accepted the Claimant's version of events, there was time and distance to avoid the collision.

39. In respect of the generality of his evidence, Mr Mutch worked through a number of scenarios from the Claimant and Defence versions. His conclusions at CB334-335 are set out below:

“8.1 There is little physical evidence that assists with reconstructing this collision. To assist the Court I have considered the physical limitations of the location and the witness accounts.

8.2 The Yamaha R1 motorcycle ridden by Mr Moor was travelling east bound and had just travelled around a left hand bend when it collided with the Mercedes recovery lorry which was travelling in the opposite direction and had also just travelled around a left hand bend. There is no recorded physical evidence that assists with determining, with any precision, the point of collision.

8.3 The damage to the vehicles indicates the motorcycle initially contacted the offside of the lorry on its offside front wheel and that there was contact along the rest of the length of the lorry as the vehicles moved past each other. Thus, the angle between the two vehicles was small. For the initial contact to have been rearward of the front of the lorry, the motorcycle was almost certainly travelling towards the offside of the lorry at the point of collision, and/or the lorry was directed away from the motorcycle.

8.4 I have been provided with photographs and BWV recordings taken at the scene by the Police. They show rolling tyre tracks in the grass of the verge adjacent to the west bound lane. One of the tracks passed over a drainage ditch. Whilst strictly a matter for the Court, these appear to correspond with Mr Boxall's account that he swerved onto the nearside grass verge before manoeuvring back onto the carriageway and stopping. The drainage ditches were between about 20 and 30 cm deep and thus if the tyre marks had been made by a car I would expect the car to be damaged. There is no sign of debris from a car at the scene. On that basis they were likely made by a large vehicle, such as the recovery lorry. Thus, I consider it likely that the tracks were produced by the lorry as it passed onto the grass verge.

8.5 The orientation of the vehicles at the point of impact, suggests that either the lorry was moving to its left, nearside, at the point of collision or that the motorcycle turned right into the side of the lorry, or a combination of the two. If the lorry was partially in the eastbound lane at the point of collision and returning to the westbound lane, it was necessarily further into the eastbound lane before it started the left turn manoeuvre to return to the 'correct' side of the road. This would appear to be inconsistent with the accounts of Mr Moor and Mr Woodford-Sines in that they could see each other and Mr Woodford-Sines' account that he had passed the lorry without incident and then saw the motorcycle ridden by Mr Moor "go wide".

8.6 There is no physical basis from which the speed of either vehicle can be calculated. For my analysis I have considered the lorry was travelling at a speed in the range 45 to 50 mph in line with Mr Boxall's account (the only description given of his

speed that I have seen). I have considered the speed of the motorcycle was in the range about 30 to 70 mph in line with the descriptions given in the various witness accounts and I am of the opinion the motorcycle's speed was towards the upper end of the range. Based on Mr Moor's account of the collision location and his estimates of his own speed, there would appear to have been ample opportunity for him to have avoided the collision had he manoeuvred a little to his nearside

40. There were a number of cross examination topics but perhaps the most significant one in the context of the supplemental evidence was that the new diagram and findings does not use a collision window as opposed to a presumed point of contact.
41. Although no other evidence was called, the court has had the opportunity of viewing body worn footage. One of those clips involves the remarks which Mr Boxall makes at the scene. The other is a conversation that the police have with Mr Woodford-Sines. That conversation goes as follows:

“Mr Woodford-Sines: [inaudible] where I checked my mirrors, ‘cause I normally do when I slow down to take corners.

PC Fruin: Yes.

Mr Woodford-Sines: And as a I checked the corner I saw them go wide...

PC Fruin: Yep.

Mr Woodford-Sines: ...I went round the corner and as I got up to the top of the corner, well just halfway up the road, I kept on looking and they weren't there. PC Fruin: Okay.

Mr Woodford-Sines: So I turned around quickly came back here and this. PC Green: But you saw ‘em on the wrong side of the road?

Mr Woodford-Sines: Yes.

PC Green : okay

Mr Woodford-Sines: I saw them past out [?] for a second

PC Fruin: How.. for the.. right, for this... to help them for their injuries

Mr Woodford-Sines: I'm not [inaudible]

PC Fruin: How fast were they going? How fast were you going?

Mr Woodford-Sines: I was doing seventy.

PC Fruin: Because the truck driver said that bike came hooning round that bend

Mr Woodford-Sines: I do seventy

PC Fruin: Yeah?

Mr Woodford-Sines: Because I don't like this corner

PC Fruin: Okay. You know its 60 miles an hour maximum permissible speed limit don't you?

Mr Woodford-Sines: Yep, yep. I'm not gonna lie ..."

42. There has been no notice under the Civil Evidence Act 1995 to rely on this evidence which is undoubtedly hearsay. However, under section 1 and section 2(4) of the Act, that failure does not affect the admissibility of evidence but may be taken into account by the court in considering the exercise of its powers with respect to the course of proceedings and costs; and as a matter adversely affecting the weight to be given to the evidence.

CONCLUSIONS AND FINDINGS OF FACT

43. This case is to a certain extent one person's word against another's. However, as has been stressed in previous authorities, the court should endeavour to make positive findings of fact rather than seek shelter behind the burden and standard of proof.
44. I have come to the factual conclusion that the accident was the Claimant's fault, and that it was he rather than Mr Boxall who was in the incorrect lane at the time of the collision. My reasons for saying that are as follows:
- I found the Claimant to be an unimpressive witness in some respects. He was shaky about the issue of speed and in my view had adopted a speed to hover close to the speed limit of the road where in fact he had previously not been able to identify the correct speed limit for the road despite the presence of speed signs in close proximity to the accident.
 - The Claimant's omission of Mr Woodford-Sines in his narrative was surprising and telling. I infer he had tried to erase him from the narrative because he knew that was an unhelpful part of his case.
 - The Claimant's involvement in a matter concerning a dangerous driving and assault conviction does not mean that he is incapable of telling the truth or that he is more likely to have driven carelessly on this occasion. I emphasise that his overturned conviction relating to this matter has no bearing on me at all. However, what was noteworthy is that insofar as his conviction is concerned, he admitted that he had previously lied on oath when denying that he had not struck the victim. Any post-traumatic stress disorder that he was or is suffering from would not affect his ability to tell the truth about the dangerous driving and assault matters at the Crown Court. That is a matter that relates to his credibility as a witness of truth. It demonstrates a willingness to tell lies on oath.

- I find that Mr Boxall was a credible witness. He has been consistent from his first interactions with the police until now. I do not find that his evidence about the bike trying to correct itself was inconsistent with what he was trying to articulate as recorded in the body worn footage. It is furthermore important that when one stands back from the evidence, there is no apparent reason for Mr Boxall to be over the other side of the road. He had completed his earlier turn through the bend and was proceeding down a relatively straight bit of the road in the vicinity of the accident before he came to another bend. Whilst he was driving a sizeable vehicle, the road dimensions could adequately cater for his vehicle.
- The Claimant was undoubtedly on a recreational jaunt at the time of the accident. There is nothing unlawful or unusual about that. However, I have concluded that he was enjoying his high powered motorbike on this popular rural road and was exceeding the speed limit in convoy with Mr Woodford-Sines. That is consistent with the evidence of Mr Emery who was overtaken undoubtedly by Mr Woodford-Sines and the Claimant only moments before the accident. Mr Emery was an independent witness and he was driving at 50mph. He described that the motorcycles overtook him at speed and on the wrong side of the road in contravention of the double solid white lines.
- Mr Woodford-Sines's evidence about his own speed and what he saw behind him in his mirrors is important and supportive of the Defendants' case. Although his evidence is hearsay, it is admissible. It was contemporaneously given at the scene and was recorded. Whilst he made a witness statement later (SB126) in which he said he did not see the Claimant cross the line, he said something contrary to that at the scene. His recollection at the scene is likely to be better. Mr Woodford Sines described that he was riding at 70mph. He said he was able to see the Claimant in his mirrors and was able to see his motorbike go around the corner wide and on the wrong side of the road. That evidence has not been tested in court. However, it is evidence that comes from a party who is less likely to favour the defence version of events by virtue of him being a friend/riding companion of the Claimant. It is also significant that Mr Woodford-Sines makes no complaint about Mr Boxall's driving. He would have passed him only a few moments before the collision. There was no issue or problem between them at all. One would have expected Mr Woodford-Sines to be angry or eager to criticise Mr Boxall's driving if there was something to criticise. Instead he softly criticises the driving of someone he was driving in convoy with.
- In my judgment, by far the most likely reason for the accident is the Claimant not properly navigating the preceding bend before the location of the accident. He wanted to take the bend at significant speed, and was driving at significant speed in excess of the speed limit at the bend and at the time of collision. The Claimant was most likely trying to use the outer apex of his lane to take the bend as wide as he could. He was as described by Mr Woodford-Sines 'going wide'. In doing so, as Mr Boxall described, and as Mr Woodford-Sines described, he did not manage to successfully turn so that he got himself back onto his own lane. Mr Boxall saw what was happening and had a very short time to react and did so by pulling his vehicle into the nearside verge. In

doing so, he avoided a front on collision and that explains why the motorcycle had a more glancing impact with the offside of the Defendants' lorry.

- Mr Boxall drove appropriately and did all he could in the moment of trying to avoid a collision when the closure rate of the vehicles was no doubt very short. The fact that he was driving a heavy vehicle meant that he could not turn more rapidly into the grass verge. The Claimant on the other hand, if his version of events was correct, would have had sufficient time to miss a slightly protruding vehicle on his carriageway. The reason why he did not avoid a collision was because he was struggling to control his motorbike having gone through the corner at excessive speed 'wide'. If he had not gone through the corner 'wide' and had driven at a reasonable speed in his own carriageway, he would be well placed to avoid a 1 metre obstruction in the road. He did not do this because his version of events do not sit with the facts as I find them.
- The Claimant's excessive speed both prior to the turn and through the turn is corroborated by the evidence of Mr Emery not just as a witness of the pre-bend speed, but also with Mr Emery's recollection of the repeated apology between the Claimant and Mr Louth. Whilst I accept as a proposition that motorists can often be apologetic generally to people they injure regardless of fault, the fact that I accept here is that the Claimant specifically apologised because he was driving too fast and because the accident was in his perception, his own fault.
- The accident reconstruction expert evidence has not been hugely helpful in me reaching this conclusion. I do not say that critically in light of what Mr Mutch had to go on.
- I am mindful that I must be wary about being overly analytical and scientific when trying to reconstruct the facts of the accident (see *Clayton v Lambert* [2009] EWCA Civ 237 per Smith LK at paras 35-39).
- I do accept the positioning of the vehicles as described by Mr Mutch at the time of collision. Namely Mr Boxall's truck pointing to its nearside which therefore aligns with a shallow collision with the Claimant's motorbike. However, the angle of this could, in my judgment, have occurred even if the Claimant was correct about Mr Boxall's positioning in the other side of the road. In fact the key evidence from Mr Mutch about which carriageway the accident took place in is in reality a common sense point. That is to say that Mr Woodford-Sines could not have seen the Claimant 'go wide' around the bend if in fact Mr Boxall was driving in the wrong lane and thereby obstructing the view of Mr Woodford-Sines. Whilst there have not been exact sight line tests of this proposition it seems like common sense. Further, as I have mentioned, Mr Woodford-Sines never mentioned seeing Mr Boxall intruding into the other lane and never complained about his driving having passed Mr Boxall only moments before the collision.

45. In the circumstances, I reject the Claimant's account of events and accept Mr Boxall's account of events. It follows that the Claimant has failed to persuade me on the

balance of probabilities that the Defendants' driver was negligent. As I have said, my findings of fact point in the other direction and I find that this accident was purely the fault of the Claimant and the claim is therefore dismissed.

His Honour Judge Rajeev Shetty

29th June 2023