



Neutral Citation Number: [2024] EWHC 1393 (KB)

Case No: QB-2022-000583

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 June 2024

Before:

GERAINT WEBB KC
(sitting as a Deputy High Court Judge)

Between:

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|--------------------------|-------------------------|
| TREVOR DOUGHTY | <u>Claimant</u> |
| - and - | |
| LUKASZ KAZMIERSKI | <u>Defendant</u> |

Stephen Killalea KC (instructed by Carole Nash Legal Services) for the Claimant
Steven Snowden KC (instructed by Horwich Farrelly Ltd) for the Defendant

Hearing dates: 17 -19 April 2023

Draft judgment provided to the parties on 22 May 2024

Approved Judgment

This judgment was handed down remotely on 10 June 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Introduction

1. The Claimant, Mr Trevor Doughty, claims damages for serious personal injury sustained as a result of a road traffic collision. He has been rendered tetraplegic as a consequence of the spinal injuries he sustained. The trial was limited to the issue of liability.
2. The collision occurred at about 5.30pm on 25 February 2019 on the eastbound carriageway of the A40 near Hillingdon, Uxbridge, past Swakeleys Roundabout and at the start of the slip road exit to Hillingdon Circus. It was one of a series of collisions involving three other vehicles.
3. The relevant section of the A40 comprises three lanes and has a 70mph speed limit for the relevant classes of vehicle. It is reasonably straight for some distance leading up to the area in which the collisions took place and for some distance beyond; thereafter the road bends towards the left and climbs slightly uphill. The evidence relating to the conditions on the day of the accident was not in dispute: it was still daylight, there was good visibility and the road surface was dry.
4. Mr Doughty, who was aged 55 at the time, was driving a Suzuki motorcycle. The sequence of events are in issue, but it is common ground that Mr Doughty struck the rear of a Vauxhall Zafira (“**the Zafira**”) which was being driven by the Defendant, Mr Lukasz Kazmierski. The front of Mr Kazmierski’s Zafira struck a Volkswagen Polo (“**the Polo**”), driven by a Mr Iain Lee. There is a dispute as to whether this collision occurred before or after Mr Doughty hit the rear of the Zafira. Mr Lee’s Polo struck the central reservation and also caused some damage to a Volkswagen Passat (“**the Passat**”) driven by a Mr Rafal Pajak.
5. There was no CCTV evidence. I have seen a witness statement from Mr Doughty confirming that he has no recollection of the collision; he was not called to give evidence. I received witness statements and oral evidence from Mr Kazmierski and his passenger, Mr Szymon Muszynski, and from an independent witness Ms Michaela Azadi. I have also seen statements given by Mr Lee and Mr Pajak to the police.
6. Ms Azadi’s evidence is that the Zafira collided with the Polo and that she then saw Mr Doughty’s motorcycle braking hard, losing control and colliding with the rear of the Zafira. Conversely, the evidence of Mr Kazmierski is that he had brought his Zafira to a halt without colliding with the Polo, that the Zafira was then hit by Mr Doughty, and that the force of that impact propelled the Zafira into the rear of the Polo; Mr Muszynski’s evidence is to the same effect.
7. PC Seymour, a Police forensic collision investigator and vehicle examiner, attended the scene of the collisions at 18:53, approximate 80 minutes after the collisions. He carried out a detailed survey and recorded his findings in a log book; I have seen a statement and a plan which he prepared setting out his findings.
8. The major part of the trial concerned evidence from the two accident reconstruction experts, Dr Darren Walsh, instructed by the Claimant, and Mr Ric Ward, instructed by the Defendant. The accident reconstruction experts are agreed that the first collision was between the Zafira and the Polo; it follows that they are both of the opinion that the evidence of Mr Kazmierski and Mr Muszynski is incorrect in respect of the

sequence of the collisions. There were various points of agreement and disagreement between the experts on other issues.

The pleaded allegations

9. The Particulars of Claim allege that Mr Doughty's injuries were caused by the negligence of Mr Kazmierski. The particulars of negligence allege that Mr Kazmierski: (i) drove into the rear of the Polo; (ii) failed to brake properly or in time; (iii) failed to keep any proper lookout and heed the traffic conditions ahead; (iv) failed to slow down in order to avoid colliding with the rear of the Polo; (v) drove too fast in all the circumstances; (vi) failed to swerve, steer or otherwise avoid colliding with the Polo; (vii) drove in such a manner as to prevent the Claimant from having adequate time to be able to avoid colliding with the Defendant; (viii) drove in such a manner as to cause the Claimant to have to apply emergency braking, thereby losing control of his motorcycle; (ix) failed to exercise the care and skill of a reasonably prudent and experienced driver.
10. The Defence denies all of the allegations of negligence and sets out Mr Kazmierski's case that Mr Doughty struck his Zafira and that the Zafira then hit the Polo. It is claimed, further and in the alternative, that the accident was caused wholly or in part by the negligence of the Claimant. It is alleged that Mr Doughty: (i) drove at a speed which was excessive in all the circumstances; (ii) failed to ride within the limits of his visibility and of his ability to slow or to brake as necessary; (iii) rode into the Defendant's vehicle (whether or not it was stationary); (iv) failed to take any or any sufficient account of the prevailing traffic conditions, the road being busy and traffic was, and was likely to be, stationary ahead; (v) failed to apply the brakes properly or safely; (vi) failed to exert or maintain any or any sufficient control of his motorcycle; (vii) failed to keep any or any proper lookout; (viii) overtook or attempted to overtake the Defendant's vehicle; (ix) failed to stop, slow down or to control his motorcycle so as to avoid the accident which he could and should have done by the exercise of reasonable care and skill; (x) was entirely the author of his own misfortune.
11. The Defence did not expressly set out an alternative case in the event that Mr Kazmierski is found to be incorrect as to the sequence of the collisions. However, in circumstances in which the experts had agreed that Mr Kazmierski's account of the sequence of the collisions was incorrect, Mr Killalea KC for the Claimant, realistically, did not object to Mr Snowden KC, for the Defendant, advancing the Defendant's position on contributory negligence on the alternative factual basis that the Claimant was negligent even if the first collision occurred between Mr Kazmierski's Zafira and the Polo. Mr Snowden contended for a 50% reduction for contributory negligence.

The issues to be determined

12. The issues to be determined are:
 - (i) whether Mr Kazmierski was negligent as alleged and whether any such negligence caused or contributed to the injuries sustained by Mr Doughty as a result of his collision with the Zafira;

- (iii) if so, whether Mr Doughty was also negligent as alleged and whether any such negligence on Mr Doughty's part caused or contributed to his injuries and, if so, what, if any, reduction should be made in respect of contributory negligence.

The factual witness evidence

Mr Doughty

13. In circumstances in which Mr Doughty does not recall the day of the accident, his statement is largely limited to his experience as a motorcyclist. His interest in motorcycles was first sparked at a young age. His father, a motor vehicle enthusiast and amateur mechanic, rebuilt a moped when Mr Doughty was a child and Mr Doughty started riding this on private roads when he was 13 years old. He fell in love with motorbikes and motorcycle mechanics. He completed an RAC ACU course when he was 16 which ran for 10 weeks with two sessions a week. He had a motorbike in his early 20s and rebuilt a Ducati in his 30s. He became involved with a few motorbike clubs and raced on track. He did a couple of motorcycling refresher courses, one in his 40s and one in his early 50s, run by the police which took the form of "observation rides" with feedback to correct any bad habits.
14. By the time of the accident he had worked for 34 years as a nurse doing a combination of health visiting, intensive care work, and agency work in paediatrics. Motorcycling was a transport necessity for him. He explains that he always rode with his main headlights on for safety and had a race pipe fitted to his bike so that he could be heard. He says that his normal road position on a motorway would be just to the right of the white line separating lanes 2 and 3, understanding that to be the safest position.

Michaela Azadi

15. The Claimant called Ms Michaela Azadi, an independent witness, to give evidence. Although she explained that she was nervous about giving evidence, her evidence was given clearly and carefully and was largely consistent with her written statements. She was obviously doing her very best to provide a truthful and accurate account of what she had seen and what she did.
16. Ms Azadi had given a statement to the Police under section 9 of the Criminal Justice Act 1967, on 19 March 2019, approximately three weeks after the accident. In her s.9 statement she describes joining the A40 at the Swakleys Roundabout so had only been on the A40 for a short distance before the accident. She says this:

"I was in the slow lane or lane 1 of 3. I looked ahead and in the third lane (or fast lane) I saw that two cars had collided with each other. I didn't see the impact between these two cars. These two cars were stationary. I was concentrating on the traffic in my lane and so I can't really saw [sic, say] anything about the traffic flow up ahead of me. It was more or less at that point that I became aware of a motorcycle rider who was slightly ahead of me and also travelling in lane 3 or the fast lane. I was travelling at just under 50 miles per hour and I believe that the motorcycle was going slightly faster than me. He wasn't "zooming away". He was making a little more progress than me but it wasn't like he was really pulling away from me. My immediate thought was that the motorcycle rider was

travelling too close to the cars that had been involved in the collision ahead of him and would not be able to stop in time to avoid a collision. I am unable to say how far the motorcycle was behind the cars involved in the collision and I really don't [want] to guess but my impression was that he wasn't going to be able to stop in time to avoid colliding with these two cars. The motorcycle still had a distance to travel but I just knew that he wasn't going to be able to stop. I saw that the brake lights were illuminated on the motorcycle. As the motorcycle was slowing, the motorcycle started to swerve from left to right like it was "fishtailing". It appears to me that the motorcycle was out of control at this point. ... to the best of my recollection, I saw the back of the motorcycle rise up in the air. The rider remained on the motorcycle and then I saw the rider crash into the back of the rear car that had been involved in the collision. The rider collided with the rear windscreen. The rider was still on his motorcycle at the time of the impact. The motorcycle had reared up and to the best of my recollection, the motorcyclist hit the back of this car with his back first. It looked like the rider rebounded from the rear windscreen and then landed on the road behind the car. The rider dropped straight down onto the road. At that point the rider was completely separated from his motorcycle..."

17. Ms Azadi describes putting on her hazard lights and pulling over from lane 1 to lane 3 and stopping sideways in lane 3 behind Mr Doughty so as to protect him from oncoming vehicles. She called for an ambulance and then went to assist whilst speaking to the emergency call-handler. Mr Lee, the driver of the Polo, also tried to assist. Another motorcyclist, now known to be a Mr Erikas Grebelis, stopped to help. Mr Doughty's lips were turning blue. Under directions from the emergency call-handler, they moved Mr Doughty onto his back so that they could perform CPR. Ms Azadi, who had had some first aid training, started chest compressions and the motorcyclist gave rescue breaths. A policeman then arrived and took over chest compressions until an ambulance arrived.
18. Her oral evidence was very largely consistent with her s.9 statement. She described hearing Mr Doughty's motorbike go past her. She thought she was driving at about 45 mph, certainly under 50mph. She was not sure of the speed limit on joining the A40 and her father, a driving instructor, had told her to assume that a main road of that nature is 50 mph if unsure of whether it is a higher limit. She did not recall the traffic being "stop-start". She thought it was flowing. She was not aware of anything untoward ahead until she saw the Zafira and the Polo involved in a collision. She saw the motorbike braking, but braced herself in the realisation that it was not going to be able to stop. She described seeing him go over the handlebars of the bike, with the rear of the bike coming up behind him.
19. It is evident that Ms Azadi acted with considerable presence of mind in the split seconds after the accident and with complete selflessness thereafter. Her near-instantaneous actions in switching lanes to manoeuvre her vehicle to stop behind Mr Doughty to protect him, calling emergency services, and providing CPR in conjunction with Mr Grebelis, were not only commendable but undoubtedly helped to protect Mr Doughty and, very possibly, saved his life.

Lukasz Kazmierski

20. Mr Lukasz Kazmierski's witness statement, dated 23 May 2022, was written in Polish and then translated; he gave oral evidence in Polish with the assistance of an interpreter. I have seen an undated record of a police interview of Mr Kazmierski, in which he was assisted by an interpreter, and a translated copy of the interview transcript.
21. According to Mr Kazmierski's witness statement, he had a day off work on the day of the accident and he had picked Mr Muszynski, a work colleague, up from work and was driving him to Sudbury Hill. Mr Muszynski was on his mobile phone "I cannot remember if he was talking with someone or just checking something on his phone". The traffic on the A40 was very heavy. After joining at the Denham roundabout he says that he was driving at below 15mph, then the traffic slowed to a stop, approaching Swakeleys roundabout. Then it started moving again and he says he estimates that he was doing 20-25mph. He drove for a short distance and then noticed that the traffic was coming to a stop again, so he slowed down. He says that he was a good distance from the car in front, Mr Lee's Polo, when he noticed, in his mirrors, a motorcycle approaching at "quite a speed". He says it was positioned to the right-hand side of the lane, close to the central reservation. He says that he took his foot off the brake in readiness to move from lane 3 to the middle lane and turned the steering wheel slightly to do so when he "suddenly felt an almighty impact from behind". The rear windscreen smashed and "the force of the impact was such that it pushed my vehicle forward very violently. I had released the brake just before the impact so my car just flew forward at a slight angle and we were effectively pushed into the silver Polo in front, which by that time was stationary". The airbags did not activate. The Polo steered towards the central reservation "as we hit him".
22. He says that he is certain that had it not been for the motorcycle hitting his car then his car would not have collided with the Polo. He claims that at the time the motorcycle hit him he was approximately one and a half or two car lengths away from the Polo. He says that he was in shock after the accident. He does not think that he could have done anything differently to prevent the motorcyclist from hitting his car: "it seems that he was going too fast and did not react in time to traffic stopping ahead of him." He confirms that he has seen the report of Mr Ward and does not agree with his conclusions as to the sequence of the collisions.
23. The transcript of his police interview says this: "when I saw the motorbike approaching, I took my foot off the brake in order to drive round. Erm I wanted to avoid the car in front because when I took my foot off the brake I knew I wouldn't be able to brake in time so I went slightly to the left and that is when I was hit. When I hit the car in front of me it moved a little bit forward". In cross-examination it was put to him that this was different to the account in his witness statement in which he said that he could have stopped without hitting the Polo had the motorcycle not collided with him. He said that he did not recall having said what is recorded in the transcript on this point and was not sure if it had been properly translated. His oral evidence was that he started to steer left as a means of trying to avoid the motorcyclist behind him and denied that it was because he knew that he could not stop without hitting the Polo.
24. Mr Kazmierski says that he used to work with Rafal Pajak, the driver of the Passat, and that Mr Pajak drove him and Mr Muszynski home after the accident.

Mr Szymon Muszynski

25. Mr Szymon Muszynski's witness statement, dated 22 June 2022, was also initially written in Polish and he also gave evidence in Polish with the assistance of an interpreter. He had provided a s.9 statement dated 20 March 2019, which was also in Polish and translated by a police interpreter.
26. He says in his s.9 statement that he is a colleague and friend of Mr Kazmierski. In that statement he says that he was on the phone to his mum. He describes the motorcycle hitting the rear of the Zafira and says that the car moved forwards under the impact and collided with the car in front. He says "I can't remember whether Lukasz did an emergency stop before the first impact" and then says "he did do it [an emergency stop] during this collision." He also says "I can't remember whether Lukasz tried to steer the car to the left or right after the first impact. I can't remember what speed Lukasz was driving before the first impact, but it was a safe speed."
27. He also said in his s.9 statement: "I saw Volkswagen Passat in front of Volkswagen Polo. I have no clue how that car was involved in that accident and I don't know the driver". I read the reference to "that car" as referring to the Passat rather than the Polo. The Passat was, of course, driven by Mr Pajak. It is curious that Mr Muszynski appears, in his s.9 statement, to volunteer that he did not know Mr Pajak. In fact, as he explains in his witness statement for these proceedings, he did know Mr Pajak and Mr Pajak drove them home.
28. In his witness statement for these proceedings he says that he was "either on the phone talking to someone or texting", at the time of the accident and "I was not really looking at the road" and "not paying much attention to the traffic". He said in his statement that he thought the A40 was "gridlocked". He says:

"I remember the traffic ahead was slowing down and a gridlock was forming ahead. Lukasz started to brake. It was gradual braking, not an emergency braking. I felt as if Lukasz released the brake for a moment, and instantaneously I felt an enormous impact from the back.... I looked up and saw we were within our lane approximately 5 metres away from the Volkswagen Polo that was stationary in front of us. Within a second of the first impact our car collided with the Polo. It felt as if the force of the impact from behind pushed our car forward".
29. He also says in this written statement that it turned out that the vehicle in front of the Polo was driven by Mr Pajak "whom Lukasz and I both knew. It was a complete coincident that he was ahead of us at the time of this accident." He says that they were given a lift home by Mr Pajak.
30. In his oral evidence he said that he could not remember how close they were to the Polo immediately before the impact of the motorcycle from behind. He said it might have been 5 metres or 10 metres, he could not remember.

Other witness statements

31. ***Iain Lee:*** I have seen a s.9 statement taken from Mr Iain Lee, the driver of the Polo, dated 6 March 2019. He says that he was driving between 60-70 mph and the traffic was heavy but free flowing when he saw stationary traffic ahead so he braked steadily

to come to a stop. He says that he saw in his mirror that the car behind was too close and was not going to be able to stop in time. The car hit the back of his Polo, pushing his car forward even though his foot was on the brake. He says that he noticed that the car in front of him was positioned to the left of the lane and so he steered his car to the right towards the central reservation barrier to try to avoid hitting the car in front. In the event, he scraped his offside along the barrier and his nearside along the side of the car in front (Mr Pajak's Passat) in his effort to squeeze between the barrier and the Passat.

32. Mr Lee got out of his car and, according to him, the driver of the Zafira said "the woman behind me hit me". By this time, Ms Azadi had already driven her car at an angle behind the Polo and Mr Lee assumed that she had crashed into Mr Kazmierski's Polo. It was only as Mr Lee and Mr Kazmierski walked back towards her that Mr Lee realised that a motorcyclist was involved in the accident and had collided with the Zafira.
33. **Rafal Pajak:** Mr Rafal Pajak, the driver of the Passat, also provided a s.9 statement, dated 13 March 2019. He says that he had been driving at about 20mph as the traffic was heavy, it eased a little as he passed one exit so he increased his speed to about 30mph. He saw that another traffic jam was forming in the distance and he had to come to a stop. The cars started pulling away and he moved off. He heard the sound of a car braking behind him and, at the same time, noticed a Polo drive between him and the barrier. He got out and saw the damage to the Zafira behind him and, moving closer, saw Mr Doughty on the floor. He then noticed that the driver of the Zafira was Mr Kazmierski, who he had known for about ten years and used to work with.
34. **Erikas Grebelis:** Mr Erikas Grebelis also provided a s.9 witness statement. In common with the other witnesses, he described the weather as sunny, no rain, and a dry road surface. He was travelling along the A40 when he noticed the stationary Zafira with damage to boot area and Ms Azadi's BMW parked "sideways" across the carriageway. He then saw Mr Doughty on the ground and he stopped to help as he has had first aid training. Mr Doughty was not breathing and his lips were blue. The emergency services operator on the phone told Ms Azadi that they needed to start CPR. He started mouth-to-mouth resuscitation and Ms Azadi gave chest compressions. He thinks that they did three rounds of chest compressions and mouth-to-mouth before the police arrived and took over; an ambulance arrived quickly after that. Again, it is clear that Mr Grebelis acted with commendable selflessness and quick thinking in pulling over and providing first aid to Mr Doughty with Ms Azadi.

PC Seymour's statement

35. I have seen a s.9 statement from PC Seymour, the police forensic collision investigator, who arrived at the scene at about 18.53. He describes the damage to each of the vehicles, including the deformation of the rear of the Zafira and "an imprint" on the rear of the Zafira which had "fibre marks that I would describe as similar to a "carbon fibre" pattern, consistent with the textile clothing worn by the rider of the motorcycle". He describes the limited damage to Mr Doughty's motorbike as follows:

"the black plastic of the screen was broken and missing pieces. There was a scuff to the offside crash protector bobbin as well as damage to the offside

foot peg and foot peg frame. There was a sizeable dent to the petrol tank. I noted the absence of any apparent damage to the front wheel, brake discs, or front fork. I also noted that the motorcycle did not have any significant scuffs or scratchings to the side fairings, which if present, would indicate the bike had slid along the road surface”.

36. He noted that it seemed that the motorcycle had not hit the Zafira as the front forks, brake disc and wheel of the motorcycle were almost entirely undamaged and “had the motorcycle simply driven into the rear of the Zafira, I do not believe that these relatively fragile components of the motorcycle would remain intact and undamaged.” He took a number of photographs and provided a helpful plan of the scene.
37. He placed police markers by the physical evidence which he noted at the scene and photographed the scene with the markers in place. His sketch plan records the position of each marker. The experts referred extensively to the markers and it is convenient to summarise them here as follows:
- i) Marker 1: the first mark from the direction of travel in lane 3, described by PC Seymour as “a tyre mark” and which was noticeably wider than the motorcycle tyres. In his contemporaneous collision investigation log PC Seymour said of this mark: “possibly unconnected to RTC – a tyre mark – fresh recently caused in lane 3 ... appears too wide to be caused by m.cycle. I am unable to link this directly to collision conclusively, however it cannot be ruled out as involved – mark has dark edges – indicative more of a front tyre than rear.”
 - ii) Marker 2: also in lane 3, which PC Seymour described as a black mark and said that it initially appeared to him to be a tyre mark, but on further examination he concluded that it was “more consistent with being a scuff caused by black plastic or similar, scuffing along the road surface. There was a deposit of tiny particles of black plastic like material on the road surface.”
 - iii) Marker 3: silver pieces of plastic, consistent with bodywork from the motorcycle.
 - iv) Marker 4: fragments of glass in the carriageway, in a cone shape.
 - v) Marker 5: a v-shaped mark on the road surface – the colour was consistent with the motorcycle body work.
 - vi) Marker 6: black plastic pieces, consistent with the windscreen of the motorcycle which was broken and missing pieces.
 - vii) Marker 7: a pool of fuel, the resting position of the motorcycle.
 - viii) Marker 8: scrapes to the central reservation barrier.
 - ix) Marker 9: quantity of red plastic, consistent with plastic from a red light cluster.
38. He says this: “At the scene my working hypothesis was that, the motorcycle struck the rear of the Zafira with the rider striking the rear of the car. The Zafira struck the rear nearside of the Polo...”. His notes also included the following: “Damage pattern

indicates that this was not a standard rear end collision. The front of the bike has not collided with the rear of the Zafira. The textile marks to rear of Safira indicate rider himself has impacted with rear of the car. Motorcycle was in 4th gear.”

39. PC Seymour noted that “nothing at the scene conclusively indicates the order of collision. At that time I did not have sufficient information to state which vehicle struck which of the other vehicles first”. It appears from his s.9 statement that his further enquiries did not assist him in trying to determine the sequence of the collisions.

The expert evidence

40. Dr Darren Walsh is a consultant with Dr J H Burgoyne & Partners LLP specialising in mechanical engineering investigations, including the reconstruction of road traffic collisions and vehicle-related investigations. He has a Ph.D. in mechanical engineering. He is an experienced expert witness. He had examined Mr Doughty’s motorcycle and Mr Kazmierski’s Zafira; he had not inspected the Polo or the Passat.
41. Mr Ward was a police officer for a total of 16 years, being a traffic officer for 10 years and an instructor in traffic law and collision investigation for 3 years. He says that he attended the scene of numerous road traffic collisions during his service with the police. After leaving the police force he set up his own consultancy and has been involved in the development of a BSc in road collision investigation run by De Montfort University. He holds a full motorcycle licence, having started riding at the age of 16. He had not inspected the vehicles involved in the collisions.
42. Both experts provided detailed written reports, a joint statement running to 42 pages, and both gave oral evidence.

Summary of the matters agreed between the experts

43. In addition to the joint statement, a further summary of the matters agreed was produced during trial and agreed between counsel. The key points of agreement between the experts as to the likely sequence of events included the following:
- i) The Passat driven by Mr Pajak came to halt (or very nearly to a halt) in lane 3.
 - ii) The first collision involved the front offside corner of Mr Kazmierski’s Zafira colliding with the rear nearside corner of Mr Lee’s Polo in lane 3. Dr Walsh’s opinion is that the Polo was moving forward at the time of the collision, Mr Ward’s opinion was that it may have been stationary or moving slowly.
 - iii) It was agreed that the result of the impact between the Zafira and the Polo was that the Zafira came to a halt in a shorter distance that could have been achieved by braking. This meant that the stopping distance between Mr Doughty and the Zafira was reduced in comparison with the stopping distance that would have been available had the Zafira come to a halt by braking.
 - iv) Mr Doughty came off his motorcycle and hit the rear of the Zafira. In summary, in the course of braking heavily, the rear wheel of Mr Doughty’s motorcycle lifted from the ground and Mr Doughty was propelled forward, over the handlebars of the bike. Dr Walsh’s view was that Mr Doughty had

ceased to be in contact with his motorcycle at the time of the collision and that the motorcycle did not hit the Zafira or Mr Doughty; Mr Ward's view was that the motorcycle may have collided with Mr Doughty as Mr Doughty collided with the rear of the Zafira.

- v) After being hit by the Zafira, Mr Lee's Polo collided with Mr Pajak's Passat and with the central reservation barrier. It was not agreed between the experts whether the Polo hit the barrier/the Passat before, after, or at the same time as Mr Doughty collided with the Zafira. Again, it is unlikely that anything turns on the precise sequence

Beyond the matters of agreement set out above there were a number of issues of disagreement between the experts as to the likely details of the various collisions.

44. As noted, at [43], above, Dr Walsh and Mr Ward were in agreement that the first impact was between Mr Kazmierski's Zafira and Mr Lee's Polo. Dr Walsh's assessment was that the type of forces required to propel the Zafira forward in the manner described by Mr Kazmierski would require Mr Doughty to have been travelling at wholly unrealistic speeds. Mr Ward was also of the opinion that the first collision was between the Zafira and the Polo and that the physical evidence recorded at the scene was not consistent with Mr Kazmierski's account of the sequence of the collisions. Both experts also agreed that the Zafira and Polo moved forward some distance following impact and before Mr Doughty collided with the Zafira.

The impact between the Zafira and the Polo

45. Two of the main areas of disagreement between the experts concerned how far back from the point of collision between Mr Doughty and the Zafira the impact between the Zafira and the Polo had occurred. This disagreement involved a considerable amount of discussion as to the likely causes of the tyre mark at marker 1 and the long scuff mark at marker 2. These areas of disagreement related primarily to the issue of alleged contributory negligence.
46. **Marker 1:** Dr Walsh was of the opinion that Mr Kazmierski's Zafira first collided with the rear of the Polo approximately 25 metres from where the Polo ended up next to the central reservation and that this collision was responsible for the tyre mark at marker 1. That was a wide tyre mark characterised by two parallel dark rubber lines which, in Dr Walsh's view, was consistent with a mark being left by either a grossly underinflated tyre (of which there was no evidence) or by an overloaded tyre. In his view, that tyre mark was left by the rear nearside tyre of the Polo as it was overloaded as a result of the Zafira front bumper crossmember overriding the rear nearside corner of the Polo, placing the rear nearside tyre of the Polo under heavy contact loading. That mechanism was consistent, in Dr Walsh's view, with a tyre mark on the rear nearside corner of the Polo caused, be believed, by contact with the front offside tyre of the Zafira.
47. Dr Walsh also considered that the orientation of the tyre mark at marker 1, angled towards the central reservation, was consistent with the Polo being angled towards the central reservation. In addition, he considered that it aligned with marks noted on the concrete base of the central reservation which, he opined, were likely to have been

caused by the Polo as it mounted the concrete base of the central reservation before it came to stop, partly on the concrete base of the central reservation.

48. Mr Ward, conversely, did not consider that marker 1 was the site of the initial impact between the Zafira and the Polo. This was primarily because there was an absence of debris in this area and Mr Ward would have expected debris at the point of the impact. Mr Ward's view was the tyre mark at marker 1 was not directly related to the accident, a possibility also noted by PC Seymour. He said that from his extensive experience of skidding on courses that he has run, he agreed with PC Seymour's note that the mark at marker 1 had the appearance of a front wheel mark under emergency braking, not a rear wheel mark. Further, from his experience, he did not consider that a front wheel tyre needed to be grossly underinflated to cause such a mark. He considered that the location of impact between the Zafira and the Polo was probably at marker 2.
49. **Marker 2:** Dr Walsh's initial report did not set out detail as to his position in respect of the long mark at marker 2, identified by PC Seymour as a black scuff mark caused by black plastic. In the joint statement, however, he opined that he believed that it was probably caused by the black plastic trim on the visor area of the motorcycle, above the front wheel of the motorcycle. On this theory, the rear of the motorcycle had flipped up, off the ground, and the mark was caused by the front visor section as the motorcycle travelled along the ground in a near vertical position. He considered that this was consistent with the damage to the black plastic trim on the motorcycle and consistent with the fact that marker 2 ended with pieces of silver plastic, consistent with fragments from the motorcycle. He also considered that the trajectory of the mark starting at marker 2 lead directly to where the motorcycle came to rest, in accordance with Newton's First Law of Motion.
50. Mr Ward disagreed. He was of opinion was that the long black mark at marker 2 was more likely to have been caused by the displaced bumper cover trim of the Zafira as it was dislodged on impact with the Polo. He notes from the police photographs that there appears to be missing black plastic trim from the bottom of the valance in front of the front offside tyre of the Zafira, which trim may have been the cause of the mark. The police photograph shows the front valance of the Zafira having become detached from the bumper beam and the offside section of it resting on the ground. Mr Ward did not consider that the photographs of the undoubted abrasive damage to the front fairing and visor of the motorcycle were consistent with such a long period of contact with the road. Mr Ward said that, on Dr Walsh's theory, the motorcycle would have to have "travelled some 3 metres balanced on its nose and riderless" and he considered that to be improbable. Mr Ward believed that the physical evidence was consistent with the impact between the Zafira and the Polo occurring at marker 2 and not at marker 1.
51. In response, Dr Walsh used a software program (PC Crash) to attempt to simulate Mr Ward's theory and concluded that it was not possible to reproduce the movements of the vehicles if, as Mr Ward suggested, the scuff mark at mark 2 was the location of the impact between the Zafira and the Polo, such as to achieve the final resting positions of the vehicles. This was because of the extreme steering manoeuvre required for the Polo to move in the necessary manner, which he believed would not be possible at the likely speeds in question. Mr Ward agreed that PC Crash simulations did not replicate what he believed happened, but considered that to be a

result of limitations in respect of the software package. He maintained that he had carried out testing using his own vehicle (not a Zafira) which showed that the necessary manoeuvre was physically possible with an emergency steer manoeuvre; Dr Walsh noted that he had not seen the testing evidence referred to by Mr Ward

The impact between Mr Doughty and the Zafira

52. Dr Walsh considered that the impact between the Claimant and the Zafira was marked by the beginning of (or immediately before) the glass debris field, at marker 4. Dr Walsh was of the view, having regard to the marks and debris on the carriageway, the position of fluid pool from the motorcycle and the absence of any impact damage to the bike, that the motorcycle did not hit either Mr Doughty or the Zafira; Mr Doughty and the bike were travelling on different trajectories in the moments before Mr Doughty hit the rear of the Zafira.
53. Mr Ward considered the point of impact between Mr Doughty and the rear of the Zafira to be some distance forward of the commencement of the debris field, but acknowledged that the impact may have occurred a little further back. Dr Walsh considered that the glass would travel forward, not backwards, from the point of impact.
54. Mr Ward, for his part, considered that Mr Doughty had remained in contact with his motorcycle until just before he collided with the Zafira and that it was likely that Mr Doughty had been hit by his motorcycle as he hit the rear of the Zafira. He also considered that this was more consistent with Ms Azadi's witness evidence than the version of events described by Dr Walsh, which, he thought, involved Mr Doughty parting company with his motorcycle at an earlier point in time than described by Ms Azadi.

Speeds and avoidance

55. Neither expert considered that it was possible to calculate the pre-accident speeds of the vehicles with precision. Dr Walsh estimated that Mr Kazmierski's Zafira collided with the rear of the Polo at a speed which was in the mid to high 40s (ie 45-49 mph). He thought that the Polo was probably travelling in the mid-20s when it was struck and so was not stationary at the time of the impact (contrary to Mr Lee's evidence). Thereafter, the two vehicles would initially have moved forwards at the same speed, in the mid 30s.
56. Dr Walsh estimated that Mr Doughty was travelling at a speed of about 18mph when he hit the back of the Zafira. This estimate was based, in large part, on calculations concerning the distance travelled by the motorcycle as it slid along the ground after impact based on an assumption that the bike had not hit Mr Doughty or the Zafira.
57. Dr Walsh was also highly critical of Mr Ward's use of rates of deceleration in his report which were markedly different from the rates that would be produced based on the coefficients of friction achieved in police skid tests at the scene and measured by PC Seymour. Dr Walsh set out a detailed critique of the rates of deceleration used by Mr Ward. He also tried to calculate the forces involved in the collision between Mr Doughty and the Zafira. He emphasised that his calculations of speeds were only indicative.

58. Having considered Dr Walsh's analysis, Mr Ward accepted that his own calculations of estimated speeds had been incorrect and he concluded that he was not able to provide any reliable estimates. Mr Ward accepted that he could not say that Dr Walsh's estimates of speed were wrong and agreed that they seemed reasonable estimates on the assumptions that Dr Walsh had made. For his part, however, he considered that the Polo may have been stationary, or nearly stationary, at the point it was struck. He did not disagree that Mr Doughty probably hit the Zafira at a speed which was above 15mph, but said that it was not possible to calculate the speed accurately given the number of variables, including the fact that it was not known whether the motorcycle hit Mr Doughty first, before sliding along the ground; he thought it was likely that the bike may have hit Mr Doughty, but accepted that this was an unknown.
59. The joint statement between the experts included confirmation that Mr Ward agreed with Dr Walsh that (a) if Mr Kazmierski's Zafira had stopped without hitting the Polo (i.e. if there had been a bigger gap between the Zafira and the Polo); and (b) if Mr Doughty was observing the "two second rule" (i.e. travelling at the same speed as the Zafira but two seconds behind, see Rule 126 of the Highway Code, at [66], below); then (c) Mr Doughty would have been able to stop without hitting Mr Kazmierski's Zafira, assuming that Mr Doughty's reaction time was within the normal range.
60. In oral evidence, however, Mr Ward emphasised that the safe stopping distance of Mr Doughty's bike may have been a little longer than that of Mr Kazmierski's Zafira for two reasons: (a) the Zafira had anti-lock braking systems (ABS) whereas the motorcycle did not; (b) hard emergency braking on a motorcycle runs the risk of locking up the rear wheel, which can cause "fishtailing", leading, as in this case, to a loss of control, or a locking up of the front wheel, which can similarly cause a loss of control.
61. Mr Ward did concede (at paragraph 158 of the joint statement), that if the court accepts Dr Walsh's scenario (which includes an assumption that the motorcycle did not hit Mr Doughty) then, as the motorcycle came to rest only a short distance past the back of the Zafira, it is likely that Mr Doughty would have been able to stop without colliding had the Zafira travelled only a little further before stopping (i.e. had it come to a stop by braking rather than after being slowed down over a shorter distance as a result of the collision with the Polo).
62. The joint statement concluded with two statements. First, that it was agreed that the stopping distance of the Zafira was shortened by its impact with the Polo. Second, that whether or not the subsequent collision between Mr Doughty and the Zafira would still have occurred without the collision between the Zafira and the Polo depends on several factors, including the location of the motorcycle behind the Zafira before Mr Kazmierski started braking, the speed of the motorcycle, Mr Doughty's response time and the extent of Mr Doughty's braking.

Relevant law

The duty of care and the standard of care

63. A driver owes a duty to use reasonable care to avoid causing injury to persons or damage to property; reasonable care means the care which an ordinarily skilful driver

would have exercised, under all the circumstances (Charlesworth & Percy on Negligence 15th Ed at 11-202). The reasonably careful driver is deemed to be armed with common sense and experience of the way other road users are likely to behave. The standard of proof is proof on the balance of probabilities.

64. A helpful summary of relevant legal principles was set out by HHJ Stephen Davies, acting as a Deputy High Court Judge, in *AB v Main* [2015] EWHC 3183 (QB), at paragraphs 8-14, quoted and adopted by Cavanagh J in *Chan v Paula Peters and Advantage Insurance Company Limited* [2021] EWHC 2004 (QB) at [16] – [17], both cases concerning road traffic accident involving pedestrians:

“8. First, and stating the obvious, it is for the claimant to establish on the balance of probabilities that the defendant was negligent. The standard of care is that of the reasonably careful driver, armed with common sense and experience of the way pedestrians, particularly (in this case) children, are likely to behave: *Moore v Pointer* [1975] RTR, per Buckley LJ. If a real risk of a danger emerging would have been reasonably apparent to such a driver, then reasonable precautions must be taken; if the danger was no more than a mere possibility, which would not have occurred to such a driver, then there is no obligation to take extraordinary precautions: *Foskett v Mistry* [1984] 1 RTR 1, per May LJ. The defendant is not to be judged by the standards of an ideal driver, nor with the benefit of "20/20 hindsight": *Stewart v Glaze* [2009] EWHC 704, per Coulson J at [5].

9. Second, however, drivers must always bear in mind that a motorcar is potentially a dangerous weapon: *Lunt v Khelifa* [2002] EWCA Civ 801, per Latham LJ at [20].

10. Third, drivers are taken to know the principles of the Highway Code...

....

13. Fifth, in another decision of the Court of Appeal, *Lambert v Clayton* [2009] EWCA Civ 237, [Smith LJ] also cautioned trial judges against making findings of fact of unwarranted precision when that was not justified by the evidence, on the basis that treating what could in truth be no more than "guesstimates" as if they were secure findings of fact could easily lead to an unjust result either way [35-38]. At [39] she said this:

"If there are inherent uncertainties about the facts, as there were here, it is dangerous to make precise findings. This may well mean that the party who bears the burden of proof is in difficulties. But that is one of the purposes behind a burden of

proof; that if the case cannot be demonstrated on the balance of probabilities, it will fail."

14. Sixth, trial judges should also exercise caution in relation to the evidence of accident reconstruction experts. *Lambert* itself was a case in which the trial judge had relied heavily on the evidence of accident reconstruction experts and the calculations which they had produced. In *Stewart v Glaze* (ante) Coulson J, in §2.2 of his judgment at [8-10], warned of the danger of: (i) such experts giving opinions on matters beyond their expertise and acting as advocates seeking to usurp the role of the judge; (ii) elevating their admissible evidence about reaction times, stopping distances and the like into a "fixed framework or formula, against which the defendant's actions are then to be rigidly judged with a mathematical precision". These are dangers of which I should remind myself in this case, where both parties have relied upon such evidence.

15. Seventh, the other danger of which I should remind myself is that of placing undue weight on the current recollections of witnesses about the precise circumstances of an accident which occurred many years ago...

16. Eighth, a further danger of which Mr Kennedy reminded me is that of approaching the question of whether or not the defendant's driving fell below the requisite standard in a vacuum, without reference to the actual circumstances of the actual collision against which the standard is to be judged: per May LJ in *Sam v Atkins* [2005] EWCA Civ 1452."

65. As also noted by Cavanagh J in *Chan v Paula Peters*, at [19], in *Stewart v Glaze*, at [7], Coulson J, as he then was, also emphasised that "compliance with speed limits and proper awareness of potential hazards can often be critical in such situations." At paragraph 10, Coulson J said:

"In my judgment, it is the primary factual evidence which is of the greatest importance in a case of this kind. The expert evidence comprises a useful way in which that factual evidence, and the inferences to be drawn from it, can be tested."

The Highway Code

66. Pursuant to s.38(7) of the Road Traffic Act 1988, a party may rely on the failure of a person to observe a provision of the Highway Code as tending to establish or negative any liability. Mr Snowden drew my attention to Rules 126, 146 and 254:

Rule 126:

“Stopping distances. Drive at a speed that will allow you to stop well within the distance you can see to be clear.

You should

- leave enough space between you and the vehicle in front so that you can pull up safely if it suddenly slows down or stops. The safe rule is never to get closer than the overall stopping distance (see Typical Stopping Distances diagram)
- allow at least a two-second gap between you and the vehicle in front on roads carrying faster-moving traffic ...
- remember, large vehicles and motorcycles need a greater distance to stop”

The “typical stopping distances diagram” contains the following:

“The distances shown are a general guide. The distance will depend on your attention (thinking distance), the road surface, the weather conditions and the condition of your vehicle at the time.”

The following information can be extracted from the diagram:

| Speed | Thinking distance | Braking distance | Total |
|--------|-------------------|------------------|-------|
| 20 mph | 6m | 6m | 12m |
| 30 mph | 9m | 14m | 23m |
| 40 mph | 12m | 24m | 36m |
| 50 mph | 15m | 38m | 53m |

Rule 146:

“Adapt your driving to the appropriate type and condition of road you are on. In particular

- do not treat speed limits as a target ...
- take the road and traffic conditions into account. Be prepared for unexpected or difficult situations, for example, the road being blocked beyond a blind bend. Be prepared to adjust your speed as a precaution ...”

Rule 254:

“Traffic on motorways usually travels faster than on other roads, so you have less time to react. It is especially important to use your mirrors earlier and look much further ahead than you would on other roads.”

Contributory negligence

67. The issue of contributory negligence only arises if negligence on the part of the Defendant is found to have caused or contributed to the Claimant's injuries. The burden of proving contributory negligence rests on the Defendant.
68. Section 1(1) of the Law Reform (Contributory Negligence) Act 1945 provides:
- “Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.”
69. I was referred, in particular, to *Baker v Willoughby* [1970] AC 467, *Eagle v Chambers* [2003] EWCA Civ 1007 and *Jackson v Murray* [2015] UKSC 5. The court should consider two issues: the claimant's relative blameworthiness and the causative potency of what the claimant did wrong.
70. In *Jackson v Murray*, a case concerning a child stepping out from behind a minibus into the path of a car, Lord Reed with whom Lady Hale and Lord Carnwath agreed (Lords Wilson and Hodge dissenting), provided a summary of relevant authorities, at [20] to [26], including:
20. Section 1(1) does not specify how responsibility is to be apportioned, beyond requiring the damages to be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage (not, it is to be noted, responsibility for the accident). Further guidance can however be found in the decided cases. In particular, in *Stapley v Gypsum Mines Ltd* [1953] AC 663, 682, Lord Reid stated:
- “A court must deal broadly with the problem of apportionment and in considering what is just and equitable must have regard to the blameworthiness of each party, but ‘the claimant's share in the responsibility for the damage’ cannot, I think, be assessed without considering the relative importance of his acts in causing the damage apart from his blameworthiness.”
25. A similar approach to the assessment of blameworthiness, in cases concerning motorists who drive negligently and hit careless pedestrians, can be seen in the judgment of the Court of Appeal, delivered by Hale LJ, in *Eagle v Chambers* [2003] EWCA Civ 1107; [2004] RTR 115. The claimant had been walking down the middle of a well-lit road, late at night, while in an emotional state. The defendant motorist would have seen and avoided her if he had been driving with reasonable care. He had however failed to see her. His ability to drive safely was impaired by alcohol. The trial judge reduced the claimant's damages by 60%. On appeal, that apportionment was reduced to 40%.

26. Hale LJ noted that there were two aspects to apportioning liability between claimant and defendant, namely the respective causative potency of what they had done, and their respective blameworthiness. In relation to the former, it was accepted that the defendant's causative potency was much greater than the claimant's on the facts of the case. In relation to blameworthiness, the defendant was equally if not more blameworthy. In that regard, Hale LJ noted that a car could do much more damage to a person than a person could usually do to a car, and that the potential “destructive disparity” between the parties could be taken into account as an aspect of blameworthiness. The court had consistently imposed a high burden upon the drivers of cars, to reflect the potentially dangerous nature of driving. In the circumstances of the case, the judge's apportionment had been plainly wrong.
71. Lord Reed JSC said, at [28], that:
- “...the apportionment of responsibility is inevitably a somewhat rough and ready exercise (a feature reflected in the judicial preference for round figures), and ... a variety of possible answers can legitimately be given. That is consistent with the requirement under section 1(1) to arrive at a result which the court considers “just and equitable”. Since different judges may legitimately take different views of what would be just and equitable in particular circumstances, it follows that those differing views should be respected, within the limits of reasonable disagreement.”
72. Mr Snowden KC relied upon *Thompson v Spedding* [1973] RTR 312, a case in which the defendant had braked suddenly on a busy road to turn right off the road. The car behind was able to brake sharply enough to avoid an impact, but the claimant on a motor scooter behind that car was unable to stop and went into the back of the middle car. The trial judge found the defendant liable to the claimant, but no contributory negligence against the claimant. The Court of Appeal upheld the defendant's appeal and found contributory negligence of 50% against the claimant scooter rider on the basis that it was the duty of a driver in a line of traffic to drive at such a distance behind the car in front as to be “prepared for foreseeable emergencies which arise”.
73. Mr Snowden also drew my attention to *Laws v Williams & Aviva Insurance* [2018] EWHC 1871. In that case the defendant driver had brought her car to a halt on a slip road joining a main road because she did not think it was safe to proceed because of the oncoming traffic. The claimant motorcyclist was behind the defendant's car and checked over his shoulder to see if it was safe to join, thought that it was, and accelerated; he then realised that the car in front had stopped and he was unable to avoid colliding into the rear of the car. The judge, Sir Robert Francis QC sitting as a High Court Judge, concluded that the claimant was not negligent, but that had he had to consider contributory negligence then he would have found the claimant to have the major part of the responsibility and would have reduce his entitlement to damages by 75%. Mr Snowden relied upon the analysis as an illustration that even where a claimant is successful, damages may be reduced by over 50% for contributory negligence.

Analysis and findings

74. As noted at [3] above, it is apparent from the evidence which I have heard that the conditions were fine, it was still light, and the road was not wet. From the photographs of the scene and from the evidence I have heard it is apparent that the relevant stretch of the road afforded good visibility of the road in front, not least as the road climbed slightly towards the horizon.
75. The s.9 statements of Mr Kazmierski, Mr Lee and Mr Pajak are generally consistent in describing the nature of the traffic conditions on the A40. It is apparent from those statements, and I find, that the traffic on the relevant stretch of the A40 was generally heavy and can be described as “stop-start”. The traffic slowed rapidly to a halt, or nearly to a halt, before the exit for Swakeleys Roundabout. The congestion then eased sufficiently to allow drivers to attain speeds of up to at least 50mph. I accept Ms Azadi’s evidence that she was travelling in the 40s after joining at Swakeleys Roundabout and that Mr Doughty passed her at a slightly higher speed. It is apparent, and I find, that the traffic slowed rapidly to a halt, or nearly to a halt, just before the Hillingdon Circus exit. As he approached the Hillingdon Circus exit, Mr Pajak says in his s.9 statement that he could see the “traffic jam” forming around 300 metres ahead of him on his estimation. I find that there was good visibility, in advance, of the build up of traffic forming near the Hillingdon Circus exit.

The alleged negligence of Mr Kazmierski

76. The factual evidence of Ms Azadi as to the sequence of the collision was, in my view, clear and cogent. She was a reliable and independent witness and she had a good view as the collisions occurred in front of her. She was clear in her s.9 statement, and in her oral evidence, that the sequence of events was that the Zafira had already collided with the Polo when she saw the motorcyclist (Mr Doughty) driving towards the two vehicles. Her evidence that she could tell that the motorcyclist was not going to be able to stop in time to avoid the Zafira, after it had collided with the Polo, was clear and graphic.
77. The evidence of the two accident reconstruction experts has also been of assistance in confirming that, in their expert opinion, the accounts given by Mr Kazmierski and Mr Muszynski are incorrect in respect of the sequence of the collisions. Dr Walsh was adamant that their evidence that the Zafira was propelled into the Polo by the force of the impact of Mr Doughty hitting the rear of the Zafira was not plausible having regard to the forces involved. Mr Ward agreed from his review of the physical evidence at the scene that the first collision was between the Zafira and the Polo. The issues of primary liability do not require me to determine whether the collision between the Zafira and the Polo occurred at marker 1, as Dr Walsh believes, or at marker 2, as Mr Ward believes, nor to resolve the other areas of disagreement between the experts.
78. I accept Ms Azadi’s evidence that the first collision was the Zafira hitting the Polo and that the second collision was Mr Doughty colliding with the Zafira. Having seen the photographs of the damage caused by the collision between the Zafira and the Polo and heard the expert evidence on this point, I have no hesitation in rejecting the evidence of Mr Kazmierski and Mr Muszynski as to the sequence of the collisions and as to their contention that the collision with the Polo was caused as a result of Mr

Doughty striking the rear of the Zafira. I do not need to determine whether Mr Kazmierski and/or Mr Muszynski were deliberately attempting to give misleading evidence in their s.9 statements and in their evidence to the court or whether, as a result of the shock and trauma of the accident they had both, somehow, formed an incorrect impression of the sequence of events. Either way, I am satisfied that their evidence was not correct in relation to the sequence of the collisions.

79. As noted at [55] above, Dr Walsh put the pre-impact speed of Mr Kazmierski's Zafira in the mid to high 40s immediately prior to colliding with the Polo. Mr Ward did not consider that sort of estimate to be unreasonable, albeit that he disavowed his own attempts to calculate likely pre-impact speeds. Whilst I do not consider that the evidence is robust enough to enable me to make precise findings as to the pre-impact speed of the Zafira, I am satisfied from the totality of the evidence, including the photographic evidence of the damage, that this was not a low-speed collision. Allowing for the possibility that Dr Walsh's estimate may be slightly on the high side, I am nevertheless satisfied that the pre-impact speed of the Zafira is likely to have been in excess of at least 35 mph. It is clear, in my judgment, that Mr Kazmierski had been driving too quickly for the stop-start conditions and/or far too close to the Polo.
80. As noted, at [75], above, Mr Pajak says in his s.9 statement that he could see the traffic jam forming some way ahead of him. I am satisfied that Mr Kazmierski would also have been able to see the traffic jam forming well in advance and should have been able to slow and stop. From the evidence before me, it is apparent that Mr Kazmierski fell below the requisite standard of care by failing to drive in such a manner as to be able to bring his Zafira to a halt without colliding with Mr Lee's Polo. He failed to comply with the guidance provided by Rule 126 of the Highway Code in that he was unable to stop well within the distance he could see to be clear because he was driving too close to the car in front and/or too quickly. He failed to comply with Rule 146 as he failed to adapt his driving appropriately to take account of the stop-start nature of the traffic conditions by slowing down and leaving a large enough gap between him and the car in front.
81. In summary, I find that Mr Kazmierski fell below the requisite standard of care by driving too close to the car in front and/or too fast for the stop-start traffic conditions. As a result of his negligence, he was unable to stop without colliding, at some speed, with the car in front.

Causation

82. The experts disagreed as to whether the Polo was stationary (as Mr Lee claimed in his s.9 statement and as Mr Ward believed) or still travelling forward (as Dr Walsh believed) immediately before being struck by the Zafira. In any event, the experts agreed, and I find, that the effect of the Zafira colliding with the Polo was materially to reduce the stopping distance which Mr Doughty would have had, but for that collision (paragraph 18 of their joint report). Mr Doughty was unable to bring his motorcycle to a safe stop within that reduced stopping distance. As a result, he collided with the rear of the Zafira.
83. On the evidence before me, I am satisfied, and I find, that the negligence of Mr Kazmierski in driving in such a manner as to collide with the Polo resulted in marked reduction in the speed of the Zafira and a reduced stopping distance for Mr Doughty

and thereby caused or contributed to the life-changing injuries which Mr Doughty sustained when he collided with the rear of the Zafira.

Alleged contributory negligence

84. Much of the detail of the expert evidence was addressed to the issue of contributory negligence. Both experts were clearly very experienced in the field of accident reconstruction and I have no doubt that both were trying to assist the court and that both genuinely believed that their own analysis of the sequence of events should be preferred. In general terms, I found Dr Walsh's overall analysis somewhat more coherent and persuasive than Mr Ward's analysis, but in my judgment, the detailed evidence of the two experts as to the areas on which they disagreed does not take the matters which I have to determine much further forward. Furthermore, I do not consider that the limited physical evidence available enables firm conclusions to be drawn as to whether either of the scenarios presented by the two experts correctly describes the precise details of the collisions.
85. Mr Ward's main objection to Dr Walsh's assessment that the Zafira collided with the Polo at marker 1 was the absence of any debris in the vicinity of marker 1. That strikes me as a reasonable point to make given the extent of the damage to both vehicles evident from the photographs. However, a similar criticism can be levelled in respect of Mr Ward's hypothesis as, on his analysis, the collision occurred at marker 2 and yet the photographs do not appear to show significant amounts of debris in the vicinity of marker 2. Mr Ward suggested that he thought he could see evidence of some debris on the photographs near marker 2. If such debris exists on the photographs, then I struggle to see it and it was certainly not extensive; nor was the presence of any such debris separately marked up and noted by PC Seymour.
86. Mr Ward expressed scepticism as to Dr Walsh's theory that the long rubber/plastic mark at marker 2 was caused by contact between the front of Mr Doughty's motorcycle and the road. Mr Ward's queried whether the limited nature of the damage to the front of the motorcycle seen in the photographs is consistent with the long black mark at marker 2. Mr Ward also considered it to be improbable that the motorcycle remained balanced, nearly vertical, on its front wheel and windshield for such a distance (Mr Ward considers that it is a distance of about 3 metres). In addition, Mr Ward noted that Ms Azadi, whilst describing the fishtailing of the bike and the rearing up of the back wheel of the bike in some detail, does not describe the bike being nearly vertical and sliding along the road balanced solely on its front wheel and windshield in the manner which, on Dr Walsh's theory, is required to have caused the black mark at marker 2.
87. Similarly, Dr Walsh, for his part, makes a number of criticisms about Mr Ward's analysis. In my view, it is not necessary, nor appropriate, to try to resolve these various competing contentions. The limited physical evidence available permits at least two (if not more) different theories to be put forward as to the details of the collision between Mr Doughty and the Zafira, including as to the precise location of the collision between the Zafira and the Polo, but the evidence does not permit reliable determinations to be made, on the balance of probabilities, as to which of those theories, if either, is correct.

88. Given the limited nature of the physical evidence available and the different interpretations of that evidence which are possible, this is a case, in my judgment, in which the independent factual witness evidence provided by Ms Azadi generally provides the most reliable evidence. The expert accident reconstruction evidence provides a helpful “check” to flag up if any particular aspect of that factual evidence is unlikely to be correct. Whilst the expert evidence strongly supports the conclusion that the evidence provided by Mr Kazmierski as to the sequence of the collisions is not plausible, it gives me no cause to doubt the general accuracy of Ms Azadi’s evidence as to the manner in which the accident between Mr Doughty and the Zafira occurred.
89. As noted at [83] above, I am satisfied that the effect of the collision between the Zafira and the Polo was to reduce the stopping distance available for Mr Doughty. I accept, as Mr Killalea submits, that the effect of this shortening of the stopping distance might mean that Mr Doughty would not have been able to avoid colliding with the Zafira even if he was complying with the so-called “two second” rule (see Rule 126 of the Highway Code at [66] above). I also accept that the evidence before me does not enable me to determine whether Mr Doughty was or was not complying with “the two second rule”.
90. Nevertheless, I consider that Mr Snowden is correct in his submission that the difficulty for the Claimant in relation to contributory negligence is that where, as I have found, the traffic was heavy and “stop-start” then it was entirely foreseeable that (a) the traffic might slow or come to a halt unexpectedly and (b) erratic traffic flow of this nature increased the risk of a collision between vehicles ahead. A reasonably competent and careful driver has a duty to guard against precisely such risks in stop-start traffic conditions of this nature.
91. Rule 126 of the Highway Code refers to allowing “at least” a two-second gap, but also reminds drivers that motorcycles may need a greater distance to stop than cars. I accept Mr Ward’s evidence (at [60] above) that Mr Doughty’s motorcycle was not equipped with ABS brakes, unlike many modern cars, and, further, that very hard emergency braking on a motorcycle is more likely to result in a loss of control of a motorcycle than a car. Rule 146 emphasises the need to adapt to the conditions and to be prepared for unexpected or difficult situations; that includes, in my judgment, the possibility of accidents occurring ahead in heavy traffic subject to erratic, stop-start, traffic flow. The traffic conditions were such that, in my judgment, there was an increased risk of what the Court of Appeal described in *Thompson v Spedding* as “foreseeable emergencies” occurring and there was a corresponding duty on Mr Doughty to take appropriate mitigating measures. Appropriate mitigating measures in such traffic conditions, particularly for a motorcyclist, include reducing speed and increasing the gap before the vehicle in front.
92. Ms Azadi’s evidence, summarised at [17-18] above, was that she was travelling in the 40s, under 50mph, and that Mr Doughty was going slightly faster than her and overtook her. She says in her s.9 statement, a few weeks after the accident, that “my immediate thought was that the motorcycle rider was travelling too close to the cars that had been involved in the collision ahead of him and would not be able to stop in time and avoid a collision... The motorcycle still had a distance to travel but I just knew that he wasn’t going to be able to stop”. In her oral evidence she described

vividly how she saw the bike braking but knew instinctively that he was not going to be able to stop and braced herself for the collision.

93. The inescapable conclusion which I draw from the totality of the evidence before me, and placing particular weight on the independent witness evidence of Ms Azadi, is that Mr Doughty was travelling too close to the vehicle in front of him for safety having regard to the “stop-start” conditions of the traffic and/or was driving too quickly having regard to the gap that he had left, the two issues being closely interrelated as explained in the typical stopping distances diagram set out in Rule 126. In driving in such a manner Mr Doughty fell below the requisite standard of care.
94. As set out at [56] above, Dr Walsh’s put Mr Doughty speed immediately before impact with the Zafira at about 18mph. Mr Ward did not consider that sort of estimates to be unreasonable, albeit making clear that he was not able to offer his own calculation. Again, I do not consider that the evidence is robust enough to enable a precise speed to be ascertained, but I accept that Dr Walsh is correct in his assessment that Mr Doughty had managed, through emergency braking, to reduce his pre-impact speed to a relatively modest level, and I find that it is likely that his pre-impact speed was below about 25mph.
95. Stepping back, and considering the entirety of the evidence, I am satisfied that it is more likely than not that Mr Doughty’s negligence contributed, at least in some part, to his injuries. Had he taken appropriate mitigating measures in light of the stop-start nature of the traffic conditions (see [91] above) by driving more slowly and/or keeping a greater distance between himself and the Zafira, then it is likely that, at the very least, the pre-impact speed in the event of a collision would have been reduced and that he may have suffered less serious injuries notwithstanding the reduced stopping distance available as a result of the collision between the Zafira and the Polo.

Apportionment

96. As a result of the findings made above, I am satisfied that this is case which falls within [Section 1\(1\) of the Law Reform \(Contributory Negligence\) Act 1945](#), that is, that Mr Doughty has suffered damage as the result partly of his own fault and partly of the fault of Mr Kazmierski. Accordingly, the damages recoverable by Mr Doughty fall to be reduced “to such extent as the court thinks just and equitable having regard to the claimant’s share in the responsibility of the damage”. As set out at [69] above, it is therefore necessary to consider the claimant’s relative blameworthiness and the causative potency of what the claimant did wrong.
97. As Lord Reed noted in *Jackson v Murray*, at [28], the apportionment of responsibility is inevitably a somewhat rough and ready exercise. This is not a case which permits scientific precision. I have also not heard evidence from medical experts as to the potential injuries which might have been likely at different speeds and on different scenarios and I doubt that reliable opinion evidence could be given on such issues given the number of variables, including as to angles of impact.
98. Nevertheless, as to causative potency, I consider that the overwhelming cause of the life-changing injuries sustained by Mr Doughty was Mr Kazmierski’s negligence in colliding with Mr Lee’s Polo. That collision resulted in an abrupt deceleration of the Zarifa which materially reduced the braking distance which would otherwise have

been available to Mr Doughty. This placed Mr Doughty in an extremely difficult and dangerous position. Mr Doughty's injuries were caused by his collision with the Zafira which, in turn, was caused by the degree of emergency braking which he deployed and which resulted in his loss of control of the motorcycle. It is by no means clear to me, from the evidence available, that a reasonably competent motorcyclist driving with appropriate skill and care ought to have been able to avoid any form of collision in such circumstances, even if, with all appropriate care, the immediate pre-impact speed could certainly have been reduced.

99. As to relative blameworthiness, I consider that Mr Kazmierski and Mr Doughty both made a similar type of error of judgment in driving too fast and too close to the vehicle in front having regard to the stop-start nature of the traffic. However, that does not mean that they were equally blameworthy. As set out at [55] and [94] above, Dr Walsh estimated the pre-impact speed of the Zafira to be in the mid to high 40s and the pre-impact speed of Mr Doughty to be about 18mph. Whilst I do not consider that such accurate assessments can be made on the available evidence, and indeed, Dr Walsh himself emphasised that his estimates were only indicative, I am satisfied, and have found, that the pre-impact speed Mr Kazmierski's Zafira, before hitting the Polo, was likely to have been at least 35 mph (see [79] above), whereas it is likely that Mr Doughty was able to reduce his pre-impact speed to below about 25 mph (see [99] above). This was in circumstances in which Mr Kazmierski only had to respond to normal traffic flow in front of him, whereas Mr Doughty had to attempt to cope with the dangerous and difficult situation caused by Mr Kazmierski's negligence in foreshortening Mr Doughty's braking distance as a result of the collision with the Polo. Again, therefore, I am satisfied that Mr Kazmierski bears significantly greater responsibility than Mr Doughty in terms of blameworthiness.
100. For the sake of completeness, I note that some reliance was placed on the fact that Mr Kazmierski steered to the left in an attempt to avoid colliding with the Polo and it was suggested that this may have reduced the scope for Mr Doughty to steer to the left, into lane 2. I have heard no evidence as to the traffic in lane 2 at the time and I cannot conclude, on the evidence before me, that Mr Kazmierski's attempted avoidance played any material role in the accident.
101. Mr Snowden contended for contributory negligence of 50% in the event of a finding of negligence against the Defendant. For the reasons I have given, I do not agree. In my judgment, the causative potency of Mr Doughty's negligence was considerably less than the causative potency of Mr Kazmierski's negligence. Mr Kazmierski also bears greater responsibility in terms of blameworthiness having regard, in particular, to the likely difference in pre-impact speeds. I consider that the appropriate reduction to take account of such factors is for Mr Doughty's contributory negligence to be assessed at 25%.

Conclusions

102. For the reasons set out above, there will be judgment for the Claimant on the issue of liability with damages reduced by 25% in respect of contributory negligence.
103. I am very grateful to both counsel for their helpful written and oral submissions and for the constructive and cooperative way in which they both approached the trial.