

THE HIGH COURT

[2023] IEHC 704

[Record No. 2021/2033P]

BETWEEN

KEITH HOGAN

PLAINTIFF

AND

EADAOIN McLOUGHLIN

DEFENDANT

**EX TEMPORE JUDGMENT of Ms Justice Reynolds delivered on the 7th
December, 2023**

1. The facts of this case are relatively straightforward. The plaintiff, Mr. Hogan, a well experienced motor cyclist, was travelling on his motor cycle in early morning traffic (approximately 8.30 am) on the Phibsboro Road towards Glasnevin when he was involved in a collision with the defendant's vehicle, and consequently sustained injuries.
2. It is common case that traffic was heavy that morning but that driving conditions were otherwise good.
3. In evidence, the plaintiff stated that as he proceeded along the Phibsboro Road he saw a small red car travelling from the opposite direction, turning right at the junction of Leinster Street North, and crossing into his lane. The plaintiff stated that he expected the car to continue with its manoeuvre but it stopped. He applied his brakes and was able to bring his bike to a standstill but the momentum was such that he was thrown forward and struck his right side off the car, thereby causing the

injuries complained of. The plaintiff stated that after the impact he recalled hearing a female voice saying “*It’s my fault*” a number of times.

4. The defendant, Ms. McLoughlin, stated she was travelling in the opposite direction on the Phibsboro Road and had stopped in the right hand filter lane, with the intention of turning right into Leinster Street. She was stationary when a gap emerged in the traffic, allowing her to commence her manoeuvre. She stated she drove the nose of her car into the bus lane, whilst trying to ensure that the bus lane was clear as she looked out of her passenger window. She stated she observed the plaintiff’s motor cycle some distance back near the bus stop, tucked in on the right hand side beside the traffic. Her evidence was that once she observed the motor cycle, she brought her vehicle to a halt. She denied that her vehicle was blocking the bus lane as suggested by the plaintiff. Further, she stated she had no recollection of saying “*it’s my fault*” as also suggested by the plaintiff, and that she was in shock after the impact.

5. Ms. Crennan, an independent witness, gave evidence that she saw the defendant’s vehicle stationary in the right hand filter lane. She was travelling in the opposite direction to her and left a gap to allow Ms. McLoughlin to commence her right hand turn. She stated Ms. McLoughlin pulled out perpendicular to her vehicle but couldn’t recall how far across the roadway she was when she brought her vehicle to a stop. She stated that when she checked her left wing mirror, she saw a motorcycle travelling fast towards them and felt that there was going to be a collision.

6. That concluded the evidence in the case, other than that from Mr. Culleton (engineer for the plaintiff) whose evidence was uncontentious and nothing turned on it.

Liability

7. There are a number of issues that the court must consider in determining the issue of liability:

1. First and foremost, the plaintiff was travelling in a bus lane when he was not entitled to so do.
2. Secondly, I am satisfied that if he was travelling at an appropriate speed and was as far back on the roadway as he stated in his evidence, he should have been able to stop safely.
3. Thirdly, in taking up his position close to the traffic on his right, he made it extremely difficult for the defendant to see him as he was obscured by other traffic that was at a standstill.
4. Fourthly, in approaching the junction and observing the gap created by Ms. Crennan's vehicle, he ought to have anticipated the manoeuvre by Ms. McLoughlin and taken appropriate action.
5. Conversely, I have to also consider that the defendant was crossing a main road to drive into a minor junction and there was an onus on her to ensure that it was at all times safe to so do.

8. Taking all these factors into account, I am satisfied on balance that the plaintiff was primarily responsible for the accident and will apportion liability as follows: 75% as against the plaintiff and 25% as against the defendant.

Quantum

9. This is a case to which the Book of Quantum applies.

10. It is common case the plaintiff's principal injury was a comminuted fracture to his right clavicle. This was initially treated conservatively with a sling (for approximately six weeks) and intensive physiotherapy thereafter. However, the plaintiff remained symptomatic and sought a second opinion from Mr. Lunn,

consultant orthopaedic surgeon. X-rays revealed that the fracture had failed to unite. The plaintiff underwent surgery involving open reduction and the insertion of seven screws and a plate, which remain in situ. Post-operatively, the plaintiff required further physiotherapy treatment.

11. Fortunately, the surgery was successful and Mr. Lunn has opined that no long term problems are anticipated. The plaintiff has however some minor residual symptoms around the site of the fracture.

12. In addition, the plaintiff has suffered some numbness in the median nerve distribution, resulting also in paraesthesia and intermittent pain in a number of fingers. Mr. Lunn has stated that he is unable to explain the symptoms in circumstances where investigations have ruled out carpal tunnel syndrome and brachial plexus injury. An MRI has revealed some evidence of right sided C6 nerve root symptoms and Mr. Nagaria, consultant neurosurgeon, has suggested that the plaintiff may benefit from injection treatment such as rhizolysis. Notably, the plaintiff made no complaint to Mr. Colville, consultant surgeon (the defendant's medical expert), about these symptoms and therefore he had no opportunity to comment on same.

13. Further injuries were sustained by the plaintiff to his ribs, on the right chest wall. Undoubtedly, these fractures were extremely painful and debilitating at the time but all symptoms resolved within a period of six months.

14. In respect of quantum, counsel for the plaintiff submitted that the injury to the clavicle ought to attract damages at the upper end of the scale (€22,200 to €44,000), as provided for in the Book of Quantum, with an uplift thereafter for the rib fractures and the median nerve symptoms in the region of an additional €30,000.

15. Counsel for the defendant contended that the principal injury was a moderate injury to be considered mid-range of the scale, and suggested that an appropriate

figure (inclusive of an uplift for the additional injuries), would be in the region of €50/55k.

Conclusion

16. I am not satisfied on the balance of probabilities that the C6 nerve root problem (as diagnosed by Mr. Nagara) is directly associated with the injuries sustained in the accident, in circumstances where the medical evidence in my view falls short of making a causal link.

17. In determining the appropriate level of quantum, I am conscious of the debilitating effect of the plaintiff's injuries on his domestic, social, occupational and recreational activities as outlined in the evidence.

18. Undoubtedly, the injury to the clavicle is the principal injury and in that context I must consider that the recovery was complicated by non-union of the fracture after conservative treatment. Invasive surgery was required and a further period of prolonged rehabilitation. In the circumstances, I'm satisfied that the injury falls to be considered at the upper end of the scale. Thereafter, I'm satisfied that an uplift has to be provided for the additional fractures to the ribs and the diminution in the quality of the plaintiff's enjoyment of life during his recuperation.

19. In all the circumstances, I assess general damages at €60,000, and in applying the appropriate apportionment, the plaintiff award is the sum of €15,000.

20. Special damages are agreed in the sum of €11,000, and again in applying the appropriate apportionment, the plaintiff is entitled recover a sum of €2,750. The total award therefore is €17,750.