Neutral Citation Number: [2021] EWHC 2707 (QB)

Appeal No: PR/01/2021
Claim No D18YY795

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
Liverpool District Registry
On appeal from the County Court at Preston
HHJ Jacqueline Beech

Liverpool Civil Justice Centre

Date: 11 October 2021

Before :

THE HON MR JUSTICE ROBIN KNOWLES CBE

- -

Between :

MARTIN SAVIGAR	**Claimant/ Appellant**
- and -	
AINSCOUGH CRANE HIRE LIMITED	**Defendant/ Respondent**

- -
- -

Richard A Hartley QC and Lee Philip Nowland (instructed by **Express Solicitors Ltd**) for the **Claimant/Appellant**
Doug R Cooper (instructed by **DWF LLP**) for the **Defendant/Respondent**

Hearing dates: 21 May 2021

- -

Approved Judgment

I direct that pursuant to CPR PD39A 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

MR JUSTICE ROBIN KNOWLES CBE

Robin Knowles J, CBE:

Introduction

1. Mr Martin Savigar ("Mr Savigar") was employed by Ainscough Crane Hire Limited ("Ainscough"). On 29 November 2014 he suffered serious head injuries at his place of work.

2. There was expert evidence to the effect that there were two different points of impact on his head. He was found unconscious. No-one saw what caused the head injuries and Mr Savigar had no knowledge or memory.

3. Mr Savigar sued Ainscough alleging negligence. His case at trial was that the injuries had been caused by a "hook block" that was attached to a nearby crane, moving and striking his head. Mr Savigar's case had to be that the hook block was moving because, it was acknowledged, only then would there have been sufficient force to cause the injuries sustained.

4. Mr Savigar's case was denied by Ainscough. His claim was not successful at the trial. The trial judge, HHJ Jacqueline Beech, handed down a reserved 34-page written judgment. This is my decision on the appeal by Mr Savigar against that judgment. The appeal is brought with the permission of Turner J.

The background and surrounding facts

5. The Judge found as summarised below. Mr Savigar was employed by Ainscough as an HGV ballast driver. On 28 November 2014 in the evening he drove a tractor unit to return a trailer to a depot operated by Ainscough.

6. The depot had a vehicle washbay area. A crane was parked in or in the vicinity of the washbay area. A hook block, weighing about three quarters of a tonne, was attached to the crane.

7. The next morning after 1100 Mr Savigar drove his tractor unit into the washbay area. Mr Jim Moore had parked a tractor unit in the washbay area. Mr Savigar parked some distance behind Mr Moore's tractor unit and a little distance behind the crane.

8. Mr Derrick Whyte drove another tractor unit to the vicinity of the washbay area. He approached Mr Savigar on foot to ask if could borrow a vehicle brush when Mr Savigar had finished with it. Mr Savigar suggested that Mr Whyte drive his tractor unit into the area so that they could share the equipment or wash their vehicles together. Mr. Whyte walked back to his tractor to move it.

9. Mr Savigar started cleaning his tractor unit in the washbay area. He used a high pressure hose and lance for this purpose. He was wearing a safety helmet.

10. Shortly thereafter Mr Savigar was found unconscious in the washbay area by Mr Adam Willis. Mr Willis called an ambulance. Mr Savigar's hard hat was on the ground in the near vicinity. There were no marks or dents on the hard hat.

11. No witness had seen the crane move.

12. Although CCTV was installed in the relevant part of the depot it was not working. This was on the evidence of Mr Peter Anthony, which was accepted by the Judge.

13. On the face of available records from Ainscough, the crane's engine was started that day from 0918 hours to 0921 hours in the morning and then not again until 1827 hours in the evening.

14. There is much to criticise in what was and was not done by Ainscough after the accident to enable what had happened to be established. Ainscough did not report the incident to the Health & Safety Executive.

15. An Accident and Investigation Report was completed. A non-forensic examination of the hook block by Mr Anthony did not reveal any disturbance of a layer of dust and dirt that had previously accumulated.

16. At trial the Court did not hear evidence from the crane's preferred driver (a Mr Lewin), or the likely last person to have seen Mr Savigar (a Mr Craven), or from those who were responsible for the Accident and Investigation Report (a Mr Dixon and a Mr Watts).

17. The Court did hear expert evidence at the trial. The Judge considered two of the experts to be "most qualified to give an opinion" on the cause of the injuries. Of these, one, said the Judge, appeared "to have greater expertise on the issue".

18. That expert was Mr Stuart, a Consultant and Honorary Senior Lecturer in Accident and Emergency Medicine called by Mr Savigar. The Judge summarised his evidence as that the injuries "were consistent with a very severe blow to the back or right side of the head by a hard, flat object with a less severe blow to the front of the head consistent with being struck by a hard, flat, blunt object".

19. The second of the two experts was Dr Mumford, a Consultant Neurologist called by Ainscough. Although the ultimate question of cause was of course for the Judge, both experts accepted that the Claimant's case was possible, but another possibility was an assault on Mr Savigar with a weapon.

The conclusions reached by the Judge

20. After reviewing the evidence and indicating her findings, the Judge recorded two main conclusions at paragraph 61 of her judgment. First that there was "one possible alternative explanation" for the injuries, as identified by the experts, namely assault. Second "that the crane and/or hook block did not move".

21. The argument made for Mr Savigar on the appeal has assumed that in the first of these main conclusions the Judge was saying that there was only one alternative explanation (to Mr Savigar's case), rather than that the alternative explanation suggested was one possibility but there might be others not yet suggested. The assumption made in the argument was not, in my view, correct.

22. The second of the main conclusions recorded by the Judge is ultimately fundamental. This is because it is essential to Mr Savigar's case that the hook block moved, and not just that it came into contact with Mr Savigar.

23. After recording these two main conclusions, the Judge went on to state her overall conclusion at paragraph 62:

> "… Mr Savigar has failed to satisfy me on the balance of probabilities that he was struck by the hook block."

24. The Judge added the following:

> "In the normal course of events, the Court should be able to find that there is, on the balance of probabilities an alternative cause for something taking place. Unfortunately, the Court is unable to do so in this case.
>
> …
>
> I am satisfied that this is an appropriate case for a determination that [Mr Savigar] has simply failed to prove the cause of his injuries without going further to determine the probable cause."

The Grounds of Appeal

25. A total of 17 Grounds of Appeal were advanced in writing by Mr Richard Hartley QC (who did not appear at the trial) and Mr Lee Philip Nowland (who did) on behalf of Mr Savigar, with some sub grounds. It is possible to group some of the Grounds together.

Did the hook block move? Grounds of Appeal 1, 13, 17

> **"Ground 1. The Judge was plainly wrong on the evidence before her (a) to find that the crane and hook block did not move (b) not to find that the likely cause of injury was the moving hook block."**
>
> **"Ground 13. The Judge was wrong in law and in fact to find that the Claimant had not raised a *prima facie* case that he had been struck by the moving hook block.**
>
> **Ground 17. The Judge wrongly understood or wrongly applied the law in relation to the evidential burden upon the Claimant and the Defendant –**

particularly relating to the Defendant's duty to establish the accuracy of records they wished to rely upon."

26. The second main conclusion by the Judge at paragraph 61 was supported by her accepting two pieces of evidence. First the evidence of Mr Anthony that a non-forensic examination of the hook block did not reveal any disturbance of the layer of dust and dirt that had accumulated. Second that the available stop/start records for the crane could be relied upon.

27. These matters were for the trial judge and her acceptance of them is not ordinarily open to appellate challenge.

28. The first piece of evidence is not challenged on the appeal. Ground 17 of the appeal attempts to challenge the second piece of evidence. The point is developed in these terms: "Instead, and wrongly, the judge criticised the Claimant for failing to make a Part 18 Request or an application for further disclosure or expert evidence upon the relevance and reliability of the Defendant's Stop/Start records or the system. This was particularly wrong when it was the Defendants' burden to establish the relevance and reliability of the records/systems, if the Defendants were to seek to persuade the Court to attach weight to the same."

29. The short answer is that there was evidence of reliability of records, namely that from Mr Anthony, and the Judge was persuaded by that evidence. This included evidence of tolerances.

Was there the possibility of an assault? Ground of Appeal 14

"Ground 14. The Judge was wrong in law and in fact to find that there was a possible alternative cause for the Claimant's accident (presumably an assault) when there was no evidence whatsoever in support of the same and even the Defendants' witness evidence was such as to rule the same out as a possibility."

30. In relation to the possibility of an assault, on behalf of Mr Savigar it was and is emphasised that there was no evidence of defensive injury and no weapon was found.

31. Neither of these points can be conclusive to rule out the possibility. The Judge drew attention to the point made by Dr Mumford that defensive injury might not be present if an assault "were rapid, forceful and unexpected". As regards the use of a weapon, self-evidently a weapon might have been taken away by an assailant, or a search for a weapon might simply have been imperfect.

32. The argument on the appeal put by Mr Hartley QC and Mr Nowland included the submission that "for the reasons set out at" paragraphs 11 to 13 of the Opening/Skeleton on behalf of Mr Savigar at trial "the Court was able to exclude" assault as a possibility. These paragraphs of the Opening/Skeleton at trial were as follows:

"11. Again, the said experts agree that the injuries could be consistent with an assault …. However, they also agree that such assault could not have been minor in nature. Rather, it would have needed to have "involved the use of a weapon/weapons to import severe blunt force to [the Claimant's] head".

12. No weapon was found and there was no other evidence to indicate an assault of [sic] any sort. Indeed [Ainscough] (and Mr Anthony in particular) concluded from the outset that this was not the case and, according to Mr Anthony, the Police confirmed this with the medical team before downgrading "the call from a crime scene to an industrial accident".

13. Further, within the said joint report (of Mr Stuart and Dr Mumford]:

13.1 the experts both noted that there were no wounds to [Mr Savigar]'s head, which Mr Stuart considered made an assault less likely;

13.2 the experts both noted that [Mr Savigar] did not suffer any defence injuries (such as to his upper limbs/hands), which Mr Stuart also considered made an assault less likely.

It is submitted that, although the absence of head wounds and defence injuries would not of itself rule out an assault as a possibility, Mr Stuart must be correct in concluding that it at least makes an assault less likely and the Court will be invited to draw the same conclusion."

33. These paragraphs do not support the proposition that "the Court was able to exclude the possibility" of assault, and in my view do not advance that proposition. Rather they accept the possibility but argue about likelihood. That some (including police) did not consider or treat this as an assault in their early assessment does not conclude the matter, for the question remains whether they were right to do so. And the final judgment is that of the Judge rather than the witnesses of fact or expert witnesses.

34. At paragraph 2.6 of the joint expert statement Mr Stuart and Dr Mumford, Mr Stuart writes:

"… the injuries present in this case would be consistent with Mr Savigar's head being struck by a moving winch/hook block, the initial impact resulting in the injury to the back and side of his head. This would then have catapulted him forward, resulting him falling with significant force and striking the front of his head on the hard ground, resulting in injury to the front of his head".

35. Although this passage receives emphasis from Mr Hartley QC and Mr Nowland, it explains why the Claimant's case (that the hook block moved) is a possibility where there are (as here) injuries to the front and back of the head. It does not rule out a second possibility, of assault.

36. Graves v Brouwer [2015] EWCA Civ 595 was referred to by the Judge as an instance where a Court had limited itself to the conclusion that a Claimant had not satisfied the Court as to what had happened. In their written argument Mr Hartley QC and Mr Nowland say this reference "misses the point in this case –

namely that there were only two possibilities" (before one was, on their argument, ruled out)

37. Respectfully, I do not agree. In the present case the Judge did not decide there were only two possibilities. True, from a longer list, the suggested possibilities had been reduced to two, but it would be another step to say that those were the only two and there was no, not yet identified, third possibility.

38. The burden on Mr Savigar as Claimant was to prove his case, to the standard of a balance of probabilities. Where his case is possible, it has a probability, albeit that probability may be low rather than high. If there is another possibility then that too will have a probability and that probability may be lower or higher than, or equal to, the probability that Mr Savigar's case has. There may be more than one other possibility, and not all the possibilities may be known.

39. The present case is one in which there were, by the trial, two known possibilities. Some further sequences of events had been ruled out by the parties by then, at least on what was known. But the important thing is that much was unknown.

40. But moreover in the present case the possibility that the Judge had in fact ruled out, as a result of evidence at the trial, was the possibility of the moving crane block, which was the possibility advanced by Mr Savigar. That left an assault as the remaining known possibility and the Judge was entitled to decline to express a view on that possibility when it was no longer material to the outcome of the case and was not the case Mr Savigar was asking the Court to accept and there might be other unknown possibilities.

41. Later in their written submissions Mr Hartley QC and Mr Nowland put things in these terms:

> "If the only possible alternative was not suggested by either party, and there was no evidence of it, and it was expressly found by the Judge to be the less likely of the two alternative possibilities it must follow that on the balance of those two possibilities the Claimant has established that which he contends for."

This forceful attack on assault as a possibility does not answer the point that was fatal for Mr Savigar's case, which was that the Judge had held that the hook block had not moved.

What of *res ipsa loquitur*? Ground of Appeal 2

> **"Ground 2. The Judge was wrong in law in failing to draw an inference of carelessness on the part of the Defendants in circumstances in which the nature of the incident suggests negligence and the Defendants' responsibility (*res ipsa loquitur*)."**

42. Mr Hartley QC and Mr Nowland describe Mr Savigar's case at trial in these terms: "[Mr Savigar's] case was put on the common sense basis that if the Court

were to find that [Mr Savigar's] injuries were caused by the moving hook block then the facts must of themselves speak of [Ainscough's] negligence, or … *res ipsa loquitur*".

43. It is however to note that the first part of this summary description in terms depends on the Court finding that the injuries "were caused by the moving hook block".

44. The Judge's first main conclusion at paragraph 61 of her judgment that assault was "one possible alternative explanation" for the injuries must also be the end to the argument based on "res ipsa loquitur" because it reveals a plausible explanation that is not that of negligence on the part of Ainscough.

45. In their written grounds Mr Hartley QC and Mr Nowland argued that "once a finding had been made that the hook block had moved it should have been inescapable that the same was prima facie evidence of the Defendant's negligence by operation of res ipsa loquitur or as the only reasonable inference to be drawn from the facts as they should have been found".

46. Again this assumes Mr Savigar proved, which he did not, that the hook block had moved. If Mr Savigar did not prove that the hook block had moved, his case could not succeed because only with movement would there have been sufficient force to cause the injuries sustained.

47. If Mr Savigar had proved that the hook block had moved then a quite separate argument might have been available to the effect that, against the background and surrounding facts, the fact of the hook block moving spoke itself of negligence on the part of Ainscough. But that is not this case.

Drawing adverse inferences: Grounds of Appeal 3, 5 and 12

"Ground 3. The Judge erred in law in that she failed to draw an adverse inference against the Defendant for failing to deal with CCTV footage properly - and instead wrongly and unfairly criticised the Claimant for failing to make a specific disclosure application in relation to the absence of CCTV evidence."

48. It is argued that the Judge ought "to have drawn adverse inferences against" Ainscough for "at first indicating that CCTV footage was available and then much later alleging that the CCTV was not working, without producing any evidence in support".

49. Mr Anthony's evidence that the CCTV was not working on the day of the injuries was accepted by the Judge as credible and truthful. That is an end of any argument that the Judge should have concluded that there was CCTV footage showing anything relevant. It is simply incorrect to say on behalf of Mr Savigar that no evidence was produced in support of the position that the CCTV was not working on the day.

50. The Judge separately, and rightly, criticised Ainscough for several failings in its procedural handling of this issue, but that is a separate matter. If the CCTV was not working then it is impossible on any realistic basis to seek an inference that it included frames supporting Mr Savigar's case.

51. It is also the case that Mr Savigar could have taken further procedural steps to establish the position with the CCTV, as the Judge observed.

"Ground 5. The Judge erred in law in that she failed to draw an adverse inference against the Defendant for failing to deal with disclosure properly. Instead she wrongly and unfairly criticised the Claimant for failing to make a specific disclosure application for Mr. Craven's interview.

"Ground 12. The Judge was wrong in law for determining that (a) this was not an appropriate case to draw adverse inferences against the Defendant and (b) for then failing to draw such adverse inferences against the Defendant."

52. Mr Hartley QC and Mr Nowland acknowledge that the Judge fairly referred to the submissions on behalf of Mr Savigar on adverse inferences. Nonetheless they submit that "her conclusions were simply and plainly wrong" and that she ought to have found that "serious adverse inferences" ought to have been drawn "relating to some or all of" 7 matters.

53. These 7 matters include the absence of CCTV footage, not calling evidence from Mr Craven, tendering Mr Anthony as a witness rather than Mr Dixon and Mr Watts, the failure to report to HSE and deficiencies in disclosure and witness statements. It is again alleged, inaccurately, that there was an "absence of any evidence as to the accuracy, sensitivity/tolerances and reliability of the Start/Stop records".

54. The Judge found in relation to the invitation on behalf of Mr Savigar to draw adverse inferences: "In this case, the issue is whether Mr Savigar was struck by a moving hook block. In this regard, I am not satisfied that the medical evidence is such that it does amount to a prima facie case irrespective of Mr Savigar's close proximity to the hook block when there is one possible alternative explanation identified by the experts for Mr Savigar's injuries and when there is credible evidence which the Court has accepted that the crane and/or hook block did not move."

55. The underlining is by Mr Hartley QC and Mr Nowland. Their submission is that a prima facie case is not defeated by a Defendant or an expert suggesting an alternative. However the Judge did not leave things there. She continues in the passage that is not underlined that there is credible evidence "which the Court has accepted" that the crane and/or hook block did not move.

56. In any event it is crucial to be clear what the inference would be. The inference that Mr Savigar needed was an inference that the reason for the failure was because the document or witness supported Mr Savigar's case that the hook

block moved. At minimum it was properly open to a judge to decline to draw that inference. In the present case in my judgment there was not enough for any other outcome.

Further conclusions of fact: Grounds of Appeal 4, 6, 10, 11, 16

CCTV

"Ground 4. The Judge was plainly wrong to find that Mr. Anthony's evidence that the CCTV was not working on the day was *"credible and truthful".*"

57. The Judge's finding in this regard is said to be one that cannot be reasonably justified or explained and was perverse in light of what is said to have been Mr. Anthony's "patently unsatisfactory evidence in relation to a range of other matters" and the Defendants' failure to provide evidence, documentary or otherwise, in support of their final position - that the CCTV was not working.

58. These contentions are barely developed, in writing or orally, and are, with respect, hopeless. The Judge dealt carefully with Mr Antony's evidence over a number of paragraphs in her Judgment. She was fully entitled to accept his evidence.

Movement of the crane

"Ground 6 - The Judge was wrong in law to conclude that it was the Claimant's case that and/or that for the Claimant to succeed she must be satisfied that *"[t]he crane was then returned to its parked position"* after the impact."

59. Mr Hartley QC and Mr Nowland here accept in their written argument that the burden on Mr Savigar as Claimant was to show on all the evidence that the block moved and struck the Claimant. They explain this Ground by saying that the Judge "wrongly set up an extra hurdle for the Claimant to clear, (namely the movement of the crane vehicle backwards as well as forwards)".

60. In the event the Judge's decision did not turn on whether the crane moved backwards as well as forwards or returned to its parked position. With respect, this ground does not lead anywhere.

"Ground 7 - The Judge wrongly concluded on the evidence before her that, as Mr. Whyte did not see the crane move, it did not move."

61. The Judge concluded that Mr Whyte did not see the crane move. Mr Hartley QC and Mr Nowland point out that that does not mean the crane did not move. Other evidence may support a conclusion that it did.

62. In fact what the Judge did was to examine whether, because of his location, it is likely that had the crane moved Mr Whyte would have seen it move. But the essential point is that the evidence of undisturbed surface condition of the hook block and of the records supported the conclusion that the crane did not move.

"Ground 15 - The Judge was wrong to conclude that there was *"witness evidence that the crane did not move at the time that Mr. Savigar suffered his injuries"*."

63. The point made by Hartley QC and Mr Nowland is that the correct position is that no one from whom the court heard saw the crane move and that does not mean it did not happen. Mr Hartley QC and Mr Nowland suggest that the inference is that the crane was moved by someone the Court did not hear from.

64. In fact the Judge was clear in her judgment that no one from whom the court heard saw the crane move. She plainly appreciated that that did not mean it did not happen. But it did mean that Mr Savigar's case did not have the support of a witness who saw the crane move.

Position of the Claimant's body

"Ground 10 - The Judge failed properly and fairly to balance the limited and inconsistent evidence as to the position and orientation of the Claimant's body when found and then erroneously concluded that the orientation was not consistent with the expert evidence and that such orientation could be regarded as a feature of inconsistency with the Claimant's case. And

Ground 11 - The Judge erred in law or engaged in a serious procedural irregularity in that she unfairly speculated as to how the Claimant would have fallen and landed if struck by the hook block and wrongly concluded that his orientation when found did not fit with the same."

65. Mr Hartley QC and Mr Nowland argue that the Judge here speculated as to whether the precise position in which Mr Savigar was found was inconsistent with Mr Savigar's case – because he was found close to the hook block with his head towards rather than away from the block. In my view the Judge was simply testing the facts that were available to her.

Blows to the Claimant's body

"Ground 16 - The Judge was plainly wrong in her interpretation of the medical evidence – in that [it] was wrong to conclude that:

16.1 the medical evidence amounted to the blow to the front of the head being very much less than the blow to the back or right side of the head. In fact,

16.2 Mr. Stuart was of the opinion that the Claimant would have had to have been impacted first at the back/right side of his head and thereafter at the front in order for the pleaded case of being struck by the moving hook block to be consistent with the injuries."

66. The point made by Mr Hartley QC and Mr Nowland is that Mr. Stuart indicated that the blow to the front of the head was less severe than the blow to the back or right side of the head. They suggest "the judicial finding was not accurate".

67. In fact the Judge quoted directly from Mr Stuart's expert evidence at paragraph 6 of her judgment, and in these terms: "… the initial impact resulting in the injury to the back and side of Mr Savigar's head. This would then have catapulted Mr Savigar forward, resulting in him falling with significant force and striking the front of his head on the hard ground, resulting in an injury to the front of his head." No fair complaint can be made here.

Weight given to facts and evidence: Grounds of Appeal 8 and 9

"Ground 8. The Judge failed to attach any or any adequate weight to other matters"

68. Mr Hartley QC and Mr Nowland argue the Judge ought to have attached importance to the following:

"(a) her own determination that the witness statements served in the names of Mr. Whyte and Mr. Boland by the Defendants *"had been drafted with more of an eye to the [Defendants'] defence case rather than with an eye to accurately reflect"* their actual evidence/account;

(b) the numerous inaccuracies and untruths contained within the witness statements served on behalf of the Defendants, which were verified with signed statements of truth;

(c) the fact that those responsible for the accident investigation on behalf of the Defendants – Mr. Gary Dixon and Mr. Ian Watts – were not called as witnesses by the Defendants and instead an unqualified and inexperienced (in terms of accident investigation and health and safety) representative, Mr. Anthony, was inexplicably put forward to give evidence on their behalf;

(d) the absence of any appropriate lay or expert evidence as to the reliability of the 'stop/start' records upon which the Defendants belatedly sought to rely."

69. There is, in my respectful view, nothing in any of these points. In dealing with them below I should not be taken as agreeing with the language in which they are put.

70. Each of (a) and (b) was referenced in the Judgment, and it is quite clear that the Judge had them in mind.

71. As for (c), she also dealt with the position as regards each of Mr Dixon, Mr Watts and Mr. Anthony, and it is quite clear that she had in mind what experience Mr Anthony brought.

72. As to (d) in fact there was lay evidence as to the reliability of the records. This came, as already noted, from Mr Anthony and the Judge accepted it ("about the purpose of the records, how they are used and their limitations … [and] their tolerances"). And as to expert evidence, as the Judge observed there was no application on behalf of Mr Savigar for expert evidence "upon the … reliability of the records and/or the system".

"Ground 9. The Judge erred in fact and in law by unfairly and inconsistently attaching weighting to different aspects of the evidence – seemingly depending on whether the same supported or contradicted her eventual decision."

73. Mr Hartley QC and Mr Nowland argue that disproportionate weight was attached to aspects of Ainscough's evidence (including Mr. Anthony's *"non-forensic examination of the hook block"* and the *"Stop/Start records"*) that supported her eventual conclusion, while she "inexplicably attach[ed] little or no weight to evidence that did not, not least the proximity of the hook block to where the Claimant was found and the complete absence of any viable alternative explanation for the accident".

74. The Ground is not further developed, independently of the remainder of the appeal. In my judgment it adds nothing. In fact it is obvious why the Judge should have attached the weight she did to what Mr Anthony could say about the hook block, and to the stop/start records. It is also clear that she in fact attached appreciable weight to the proximity of the hook block. The submission that there was a "complete absence of any viable alternative explanation for the accident" is not accurate.

Conclusion on the Appeal

75. I appreciate the serious consequences for Mr Savigar of the injuries he suffered on 29 September 2014. However, the judgment reached by HHJ Beech at trial is sound and the appeal against that judgment must be dismissed.