



Neutral Citation Number: [2022] EWHC 650 (QB)

Case No: F90MA346

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MANCHESTER DISTRICT REGISTRY

Manchester Civil Justice Centre,
1, Bridge Street West,
Manchester, M60 9DJ

Date: 22/03/2022

Before :

THE HON. MR JUSTICE TURNER

Between :

HRA
(By his Litigation Friend GGB)
- and -
KGC

Claimant

Defendant

Richard Hartley QC (instructed by **Irwin Mitchell LLP**) for the **Claimant**
Tim Horlock QC (instructed by **DWF LLP**) for the **Defendant**

Hearing dates: 14, 15, 16 and 17 March 2022

Approved Judgment

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

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THE HON. MR JUSTICE TURNER

The Hon Mr Justice Turner :

INTRODUCTION

1. This is a tragic case. It involves a claim brought by a son against his mother for damages arising out of the catastrophic injuries which he sustained in a road traffic accident when he was a passenger in the vehicle she was driving. The central issue before me is as to whether that accident was, at least in part, the defendant's fault.

BACKGROUND

2. On 5th December 2012, at about 4:25pm, the defendant was driving her Range Rover Sport west along the A69 in Northumbria. Darkness had fallen and wintry showers had made the road surface wet. Her passengers were the claimant, sitting in the rear, and her other son in the front. She was travelling in a line of traffic. In front of her was a Nissan Qashqai being driven by one Alan Ridings. Behind her was a car being driven by one Laura Van-Daal.
3. Approaching them on the other side of the road was a lorry leading a line of cars. There followed a depressingly familiar sequence of events. Some of the more impatient drivers behind the lorry took the risk of trying to overtake it. One such vehicle, whose driver has remained untraced, strayed out into the path of Mr Ridings's Qashqai and their respective driver's side wing mirrors made contact causing debris to scatter onto the road surface.
4. There can be no doubt that the untraced driver had taken a wholly unjustifiable risk and had thereby seriously jeopardised the safety of other road users in the vicinity. The central question before me, however, is whether or not the defendant's response to the developing situation in the road ahead of her fell below the standard of the reasonably competent driver.
5. The defendant did not, as one would have hoped, come to a halt safely behind the Qashqai which had pulled over to the left hand side of the road and onto the adjacent grass verge before coming to a halt. She drove across the opposite carriageway, though a gap in the line of traffic and then through a fence. Beyond that, her Range Rover collided with a freight train which had been traveling on the railway line which ran parallel to the road.
6. As is so often the case, there were a number of significant differences not only between the evidence given by the witnesses but also between the evidence given by some of the same witnesses at different times. Given the fast pace at which the events unfolded and the long passage of time since the accident occurred, this is hardly surprising. Some care is therefore required in determining which evidence to accept and which to reject. I have not, however, considered it necessary to resolve each and every issue of fact which has arisen in this case but only those the determination of which has been necessary to equip me to reach my central conclusions. Where,

therefore, I have made no, or only passing, reference to certain issues it is not because I have overlooked them but because I am satisfied that deciding them would have made no difference to the outcome.

THE EVIDENCE

7. The defendant's stance, in a nutshell, is that this is an "agony of the moment" case. The defendant was faced with a sudden emergency in the road ahead of her and it would be a counsel of perfection to criticise her actions in response.
8. The burden of proof lies on the claimant; this is not a *res ipsa loquitur* case.
9. The defendant's case was that her first reaction had been to steer to the left but that she thereafter went right and ended up crossing the opposite carriageway. The lane in which she had been travelling was bordered by an unbroken white line to the left the purpose of which was to delineate the edge of the carriageway. The asphalt surface of the road, however, stretched beyond this; thereby separating the carriageway, as defined, from a grass verge running parallel to it and on its left.
10. Much time was spent during the hearing addressing the question of whether or not the defendant moved to her left before moving to the right and off the road.
11. There was a body of evidence from witnesses called to give evidence at the trial suggesting that the defendant had not turned left at any stage:
 - (i) Malcom Smith went to speak to the defendant in the immediate aftermath of the accident. In a statement given to the police later that day, he recalled how the defendant "said she should have gone the other way" by which he took to mean she was referring to the grass verge to her left.
 - (ii) Laura Van-Daal had been driving behind the defendant's Range Rover over a considerable distance. In her police statement, made on the following day, she recalled that "my attention was suddenly drawn to the vehicle in front of me turning right sharply off the carriageway".
 - (iii) Susan Carver made a statement to the police on the day after the incident in which she said that she had been in the line of traffic travelling behind the lorry but, as a nervous driver, she had not attempted to overtake it. She went on to say that "all of a sudden a vehicle that was travelling towards us on the opposite side of the road...came straight across the road in front of my vehicle. I would say that it was travelling at about 50 mph and almost looked as though it was just making a right hand turn. It didn't seem to slow down at all and it also did not seem to be out of control i.e. it wasn't swerving about, it just smoothly turned directly in front to my vehicle".

- (iv) Susan Carver's son, Harry, who was the front seat passenger in his mother's car, described how "the vehicle passed the rear of the lorry and then swerved across from the oncoming carriageway in between our vehicle and the car ahead. It continued diagonally across our side of the road and it looked as though it was heading down a side track".
12. On behalf of the defendant it is argued that she would have been distraught at the time she spoke to Mr Smith and that the eye witnesses may have missed the fact that she first turned to her left because the incident occurred out of the blue and their attention may well not have been concentrated on the Range Rover at the beginning of its manoeuvre.
 13. In addition, reliance is placed upon the evidence of the claimant's brother who told the police in interview that "my mum swerved to the left to get out of the way of the car so it didn't hit us 'cos at that place it was going to hit us, there was no way it was going to get out of the way in time unless we moved, so we moved to the left which went up the grassy hill but it was very steep and I think the grass might have been wet which is why we came back down again 'cos if we'd carried on going up that way we would have lost control and gone down backwards 'cos it was too steep to go up. So we headed back down again off the grassy hill. We couldn't just come down off the hill. We had some speed at this point. We went straight across the road..."
 14. It has, however, realistically been conceded on behalf of the defendant that this account cannot be entirely accurate. The accident reconstruction experts, Mr Sorton called by the claimant and Mr White by the defendant, were agreed that this description is wholly inconsistent with their respective findings. The defendant, however, contends that, even though the description of the Range Rover going up the grassy bank cannot be right, it may provide some evidence that the vehicle turned left before turning right.
 15. I have to say that I was unable to give the claimant's brother's evidence any significant weight. His account was so much at variance with what must have occurred that, on this issue, it retained little of value.
 16. A police officer, PC Luther, gave evidence to the effect that he had inspected the verge on the left hand side on two occasions after the accident and found no sign that the Range Rover had been on the grass verge. It was argued on behalf of the defendant that this evidence was undermined by a number of factors. The initial examination must have been done under time pressure because a senior officer had given orders that the road should be opened to traffic sooner than PC Luther considered to be appropriate. Other vehicles may well have been parked up on the verge in the aftermath of the accident as evidenced by footage proved by a film crew which, by chance, had been in attendance with Cumbria Police. There is no mention in PC Luther's report of the suggestion that he had positively excluded the possibility that

the defendant had encroached up the verge as a result of his examinations. He simply did not allude to it.

17. Notwithstanding these points, and having had the advantage of hearing PC Luther give oral evidence, I am satisfied that it is more likely than not that he was correctly recalling the searches which he carried out and that, if the Range Rover had travelled left and over the grass before turning right back onto the asphalt, there would have been at least some physical evidence of this.
18. Mr White, the expert called by the defence, used an accident reconstruction programme by the name of PC-Crash. He fed into the programme certain information, such as the relevant coefficients of friction and the speeds of the vehicles. There was a margin of error in the values attributed to these variables and the accuracy of the output was, necessarily, dependant on the reliability of the data input. However, even assuming, which I am prepared to do, that the input values chosen by Mr White were sufficiently close to the actual values at the time of the accident, the upshot of his results did not suggest that the Range Rover would have to have encroached on the grass verge before the defendant steered to the right.
19. Against this background, it is necessary to consider the defendant's first account to the police on 15th January 2013. She said:

“As we continued along the A69 I remember suddenly seeing the car in front” disappear”. I think it suddenly moved to the left but I then remember seeing two separate sets of vehicle headlights coming towards my location. One set was in the correct lane heading east. The other was also heading east but was in my lane on the west bound carriageway. I can only describe the road as being “full” as the headlights from the car in my lane were such that it was obvious it was not just a little way across the carriageway but was well into my lane. I knew I had to do something to try to take avoiding action. I went the only way I thought was safe. I went one way and then the other. I remember steering to the left and then went across the carriageway to the right.”

20. Under cross examination, she was unable to recall how far the car in front of her had been. She said that she did not remember saying in her conversation with Mr Smith that she should have gone the other way.
21. There are a number of salient features of the defendant's account:
 - (i) Her description of the car in front “disappearing” is not without significance. Had she been paying attention to the road ahead of her, one might reasonably assume that she would have seen the Qashqai move to the left. I do not accept the suggestion that her view of the Qashqai's rear lights may have been impaired by the headlights of the vehicles approaching from the opposite direction. There is no evidence

that any such headlights were on full beam and the defendant does not say that they were. I conclude that, at the time when the Qashqai began to react to the approaching vehicle, the defendant did not have her eyes on the road ahead and, by the time she looked back, she was struggling to make sense of what had happened in the interim.

- (ii) Nowhere does she suggest that she lost control of her vehicle. The course which she took was as a result of her deliberate choice.
 - (iii) She does not contend that she had applied her brakes at any stage. This would normally be the instinctive reaction of anyone who had seen and processed the events unfolding in front of them from the outset.
22. These factors, taken together, lead me to the conclusion that the defendant was not paying adequate attention to the road ahead in the moments leading up to the incident. She first became aware of what was unfolding only after the Qashqai had already moved significantly over to the left. The suddenness of her delayed perception of what was happening explains the lack of braking and the unusual course she took across the opposite carriageway.
23. I further conclude that even if the defendant did, in fact, steer to her left this manoeuvre was not such as to take her onto the grass verge. She remained on the asphalt surface of the road even if she may have strayed beyond the white line delineating the boundary of the carriageway. The fact that the Range Rover went on to cross to the right and over the opposite carriageway was as a result of her deliberate but disastrously wrong decision. There was no loss of control caused either by driving on the verge or otherwise.
24. The above analysis is sufficient, of itself, to lead to the conclusion that the claimant must succeed. The reasonable observer may, however, be tempted to ask the question as to how the defendant, as a competent driver of a familiar vehicle on a familiar road, could have made such a serious error. In my view, the explanation was found in a cavity to the right and beneath the level of the steering wheel of the Range Rover. It was the defendant's mobile telephone.
25. This a conclusion which I reach without enthusiasm but the evidence is compelling.
26. Firstly the call sequence table with respect to activity on the phone reveals a series of no fewer than four text exchanges between the defendant's phone and that of her boss at work; all within the period of about eleven minutes immediately preceding the accident. To every text received from her boss, the defendant responds within a minute. The last text to the defendant was sent at 16:24:11. Ms Van-Daal telephoned 999 at between 16:24:00 and 16:24:59. The timing thus coincides compellingly with the period during which the defendant would have been likely to be either reading or preparing to respond to the last text she had received.
27. Of course, on this evidence alone, it might have been possible to conclude that the regularity of text exchanges had, by coincidence, stopped very

shortly before the accident. However, I reject this explanation mainly because of the defendant's lack of candour during the police investigation. The following features are relevant:

- (i) In her first statement to the police dated 15th January 2013, the defendant gave a detailed description of how her mobile phone connected through Bluetooth in the car for the purpose of making and taking calls during the course of the journey. She conspicuously made no reference to sending or receiving texts;
 - (ii) In her subsequent police interview, she was twice invited to recall anything that had occurred specifically in the last the minutes before the accident which she had not previously mentioned. This provided the defendant with a clear and obvious opportunity to volunteer the information that she had been texting. She did not take this opportunity;
 - (iii) When later confronted with the sequence table, she asserted, wrongly, that she had previously said that she had "had texts" when, in fact, she had made no earlier mention of any texts whatsoever;
 - (iv) She went on to claim that she had sent only one text to her boss comprising two words. In fact, the table shows that she sent no fewer than four texts in the period of about eleven minutes prior to the accident;
 - (v) The claimant asserted that she would only have sent a text when her vehicle was stationary whether at traffic lights or for some other reason. This was not true; as Ms Van-Daal was able to confirm. The defendant had been driving in front of her without stopping throughout the entirety of the period over which the exchange of texts was taking place.
 - (vi) In his second witness statement of 1st December 2020, the claimant's brother referred to the fact that if he were in the car with his mother when she received a text, she would normally ask him to read out the text to her and dictate a response. This, however, was a red herring because the defendant had earlier and unequivocally denied to the police that the claimant's brother had used the phone on the journey in question.
28. Of course, the possibility that the text exchanges may coincidentally have concluded before the collision could readily have been explored simply by accessing the defendant's phone and reading them. However, the defendant, without plausible explanation, was unable to disclose her PIN number to the police. I am driven to the conclusion that she deliberately frustrated their enquiries because she knew that the contents of the text messages would reveal that, at the time of the crash, her boss was awaiting a response from her and that the defendant was distracted.

CONCLUSION

29. In summary, I have concluded, on the balance of probabilities, that:
 - (i) A reasonably careful driver would and should have seen and reacted to the events unfolding before her in such a way as to steer to the left and apply her brakes so as to avoid any collision or loss of control;
 - (ii) The likeliest explanation as to why the defendant was not keeping a proper look out or paying proper attention to the traffic ahead of her was because, at the crucial time, she was using or about to use her mobile phone.
30. The issue of liability now having been resolved, the case will proceed, in due course, to the assessment of quantum.