

THE HIGH COURT

[2017 No. 799P]

BETWEEN

PAT DEEGAN

PLAINTIFF

AND

JENNIFER MCPARTLIN

DEFENDANT

JUDGMENT of Mr Justice David Keane delivered on the 13th December 2019

Introduction

1. At about 8.20 a.m. on the morning of 18 May 2015, an accident occurred at the Donnybrook end of Eglington Road in Dublin when a motor vehicle that was being driven by the defendant Jennifer McPartlin rolled over the left foot of the plaintiff Pat Deegan, who was on a bicycle.
2. When the accident occurred, Ms McPartlin, who had driven south along Brookvale Road (a side road, at the end of which there is a 'Yield' sign), was attempting to turn right on to the westbound carriage of Eglington Road (a main road) at the junction between those two roads, and Mr Deegan was cycling along the eastbound carriage of Eglington Road at that junction.

The quantum of the claim

3. In the accident, Mr Deegan suffered a comminuted (meaning fragmented) fracture of the junction of the middle and distal third of his left tibia and fibula, for which he underwent surgery on 19 May 2015. He was discharged from hospital the following day but remained out of work for three weeks. He required physiotherapy and rehabilitation, and the accident had some adverse effect upon his mental health. He is now largely recovered.
4. Very helpfully, the parties have agreed that the quantum of the appropriate damages should be €50,000, and special damages have been agreed in the sum of €1,600. The only issues to decide are whether the accident was caused by the negligence of Ms McPartlin and, if so, whether there was contributory negligence on the part of Mr Deegan.

The locus in quo

5. While the independent expert engineers retained on behalf of each of the parties differ in their assessment of the cause of the accident, they broadly agree on the following features of the locus in quo. There is a yield sign on Brookvale Road at its junction with Eglington Road. While there are no traffic lights at the junction, there is a pedestrian crossing on Eglington Road that is governed by a set of traffic lights approximately 21 metres to the west of the centre of the junction. On each side of Eglington Road there are marked cycle lanes. On the eastbound carriage of Eglington Road, slightly offset from the point where the southbound carriage of Brookvale Road intersects with it, there is a yellow box junction that is 10.4 metres in length and 3.6 metres in width (covering the entire width of the eastbound carriage, excluding the cycle lane).

The pleadings

6. In the personal injuries summons that issued on his behalf on 30 January 2017, Mr Deegan claims that his injury was caused by the negligence, breach of duty, or breach of statutory duty of Ms McPartlin, so that she is liable to him in damages for it.
7. More specifically, Mr Deegan pleads that, amongst other things, Ms McPartlin: drove without due care and attention; caused the collision; failed to notice Mr Deegan and his bicycle; failed to have regard to prevailing driving conditions; drove without reasonable consideration; failed to keep a proper lookout; failed to ensure that the main road was clear before emerging onto it; and failed to yield right of way to Mr Deegan.
8. In her personal injuries defence delivered on 1 June 2017, Ms McPartlin puts Mr Deegan on strict proof of every aspect of his claim, before specifically pleading that Mr Deegan's injuries were occasioned, in whole or in part, by his own acts, in that he: failed to take reasonable care for his own safety; failed to cycle with due care and attention; caused the collision; failed to stop at a red light; failed to have regard to the prevailing traffic conditions; cycled without reasonable consideration for other road users; entered a yellow box junction when his route through it was not clear; failed to cycle in the cycle lane provided; and was the author of his own misfortune.

The evidence

9. Mr Deegan gave evidence on his own behalf. It was broadly as follows. At the time of the accident, he was 44 years old and a director of the company through which he operated a bicycle shop in Sandymount. He has been a cyclist all his life. On the morning in question, he was commuting by bike from his home in Rathfarnham to his business in Sandymount, as he had been doing regularly for the previous four years. There was an uninterrupted line of stationary traffic on the eastbound carriage of Eglinton Road on either side of the pedestrian traffic lights. Those lights were amber when he cycled over the pedestrian crossing, which is located just prior to the junction with Brookvale Road. He was cycling in the bicycle lane. It was approximately 8.10 a.m.
10. At the Brookvale Road junction, Ms McPartlin's vehicle was blocking the cycle lane, so Mr Deegan stopped at the edge of the cycle lane in the yellow junction box and put his left foot down on the ground. Ms McPartlin's vehicle kept nudging forward onto Eglinton Road. Mr Deegan could see that the driver, Ms McPartlin, was looking in the other direction. The front offside wheel of the vehicle rolled onto his foot. He thumped the bonnet of the car as hard as he could. Other persons came to his aid. Ms McPartlin's vehicle reversed off his foot.
11. Under cross-examination, Mr Deegan confirmed that he was riding a bicycle with a carbon fibre frame and that he was wearing lycra cycling clothes, a cycle helmet, and cycling shoes with pedal clips. He had been cycling that route for several years. His commute was probably five miles and took approximately half an hour. As he cycled along Eglinton Road, he remained in the cycle lane until he got to the junction. There were one or two cyclists ahead of him and he did observe that one female cyclist had stopped at the pedestrian lights. He did not know why that cyclist had stopped.

12. It was put to Mr Deegan that the cyclist he had seen stopped at the pedestrian lights was a woman named Shona Darcy and that she would give evidence that she was stopped at those lights because they were red. Mr Deegan disagreed and denied that he had deliberately cycled through a red light to prevent having to brake and, thus, to preserve his forward momentum.
13. Mr Deegan said that he could not stop in the cycle lane because Ms McPartlin's vehicle was already nudging out across it, so he moved to his right into the yellow box junction and halted, placing his left foot on the ground. There was no good reason why Ms McPartlin didn't see him. He accepted that, when Ms McPartlin did realise what had happened, she reversed off his foot immediately. He could not remember whether he had shouted or cursed or Ms McPartlin. He could only remember being in excruciating pain.
14. Mr Deegan denied that he had moved into the yellow junction box because he was proposing to proceed up the right-hand side of the line of eastbound traffic, before taking a right turn onto Donnybrook Road and then a left turn onto Anglesea Road.
15. Mr Deegan denied that his bicycle had collided with Ms McPartlin's vehicle. There was no damage to his bicycle and he did not believe that there had been any damage to Ms McPartlin's vehicle. It was put to him that there was some damage to Ms McPartlin's vehicle in the form of a very slight mark over the offside front wheel arch cover. He was unaware of that.
16. Alex Foran, an independent expert engineer, was called to give evidence on behalf of Mr Deegan. In his report and in his sworn evidence, Mr Foran expressed the opinion that the pedestrian lights on Eglington Road, 20 metres to the west of the Brookvale Road junction do not control that junction. In approaching from Brookvale Road, Ms McPartlin's vehicle was obliged to yield to traffic on Eglington Road. Ms McPartlin should have seen, and yielded to, Mr Deegan's bicycle as he proceeded past the Brookvale Road junction on that road.
17. Under cross-examination, Mr Foran acknowledged that a red light at the pedestrian crossing would require all traffic, including cyclists, to stop.
18. Mr Deegan's case concluded with Mr Foran's evidence.
19. The first witness called on behalf of Ms McPartlin was Shona Darcy. Ms Darcy confirmed that, at the time of the accident, she was cycling eastwards along the cycle lane on Eglington Road. Ms Darcy was an experienced cyclist, who commuted to work daily on her single speed bicycle and was a very active mountain biker at the weekends. She could not remember whether Mr Deegan was cycling in front of or behind her, but she did remember that when she stopped at a red light at the pedestrian crossing, Mr Deegan continued through it. She saw Ms McPartlin's car come slowly out from Brookvale Road and there was a minor tip between Mr Deegan's bike and that vehicle. Mr Deegan put his left foot down on the ground; Ms McPartlin's car went forward a little bit and rolled over his foot. Ms Darcy went up to the driver's window and asked Ms McPartlin to reverse

because she did not think Ms McPartlin had seen what had happened. Ms McPartlin did so. Ms Darcy called an ambulance and later gave a statement to the guards.

20. Under cross-examination, Ms Darcy acknowledged that, in the broadly contemporaneous statement that she made to the guards, she had said that Mr Deegan was cycling ahead of her. However, she said that she clearly remembered Mr Deegan going through a red light at the pedestrian crossing because, as a cyclist around the city centre over many years, other cyclists breaking red lights was a bugbear of hers.
21. Ms Darcy could not recall whether, at the time of the accident, there were any motor vehicles in the stationary eastbound line of traffic between the pedestrian lights and the Brookvale Road junction or whether that short portion of the eastbound carriage was clear of traffic.
22. Ms McPartlin was the next witness to give evidence and did so broadly as follows. On the morning in question, she was driving her own vehicle with her husband and younger son as passengers. Having turned right onto Brookvale Road from Donnybrook Road, she proceeded to the junction with Eglinton Road. While waiting to turn right onto the westbound carriage of Eglinton Road, she saw a cyclist travelling eastward on Eglinton Road breaking a red light at the pedestrian crossing and continuing eastwards past her car at the junction. She saw a black car at the front of the line of eastbound traffic stopped at that pedestrian crossing. There were no vehicles on the twenty metre portion of the eastbound carriage between the pedestrian crossing and the Brookvale Road junction.
23. Having looked to the right and observed that the traffic lights at the pedestrian crossing were red, Ms McPartlin then looked to the left, while pulling out slowly into the yellow box junction to give herself a better view of any traffic on the westbound carriage. She saw a red car approaching and the woman who was driving it waived at her to come out. She was proceeding when she felt the impact of Mr Deegan's bike and then saw Mr Deegan banging on the bonnet of her car. Mr Deegan was cursing at her and she told him that he had run a red light. At the time of the accident, Ms McPartlin's vehicle had progressed fully across the cycle lane and had almost reached the centre of the road.
24. Under cross-examination, Ms McPartlin stated that she travelled the route approximately twice a week and, at the Brookvale Road junction, generally waited until the pedestrian lights on Eglinton Road went red before emerging because she felt it was safer to do so. She had stopped at the yield sign at the junction and then emerged slowly. She had been stopped in the yellow box junction for about three or four seconds before the driver of the oncoming red car in the westbound lane motioned her to come out. Just as she turned the wheel to proceed, Mr Deegan's bike struck her vehicle. She had looked to her right, but she hadn't seen anything coming from her right. The cycle lane to her right was by then behind her. The traffic lights at the pedestrian crossing were red. In her view, Mr Deegan had obviously tried to swerve around her car.

25. The next witness called on behalf of Ms McPartlin was her husband, Sean McPartlin. He was in the front passenger seat in Ms McPartlin's vehicle when the accident occurred. He saw a few cyclists break the lights at the pedestrian crossing on Eglinton Road while their vehicle was waiting on Brookvale Road at the junction with Eglinton Road. The yellow box junction was empty. Their vehicle proceeded across the yellow box junction. He saw the driver of a red vehicle that was approaching the junction on the westbound carriage of Eglinton Road make eye contact with wife and gesture that their vehicle could come out. He noticed his wife acknowledge that gesture and, just as she started to proceed, there was a collision. Mr McPartlin looked at Mr Deegan to the right of their vehicle and observed that behind him the pedestrian lights were red. Mr Deegan began banging the bonnet of their car and Ms McPartlin reversed about one full revolution of her car wheels. Before the collision, Mr McPartlin was not aware of Mr Deegan's presence on the road.
26. While Mr Deegan was receiving medical treatment at the scene of the accident, Mr McPartlin got out of the car and took some photographs that were admitted into evidence at the trial.
27. Under cross-examination, Mr McPartlin stated that there were no vehicles on the portion of the eastbound carriage of Eglinton Road between the pedestrian lights and the yellow box junction through which Ms McPartlin was proceeding. Ms McPartlin had looked to the right and to the left before doing so. The driver on her left in the westbound carriage of Eglinton Road had signalled Ms McPartlin to come out. There was a collision between Mr Deegan's bicycle and their vehicle, evidenced by a bicycle tyre mark on the side of their vehicle.
28. Elaine O'Neill was called as the next witness on behalf of Ms McPartlin. Ms O'Neill confirmed that she was the driver of the red vehicle present on the westbound carriage of Eglinton Road when the accident occurred. She was driving towards the junction slowly, as she could see that the traffic lights were red at the pedestrian crossing just beyond it. She could see Ms McPartlin's vehicle coming out of Brookvale Road and looking to turn right onto Eglinton Road. She stopped and acknowledged to Ms McPartlin that she was letting her vehicle come out. Ms McPartlin's vehicle was proceeding and had just reached the end of the yellow box junction at the centre of Eglinton Road when Ms O'Neill heard shouting and saw Mr Deegan banging on its bonnet. Ms O'Neill pulled in by turning left onto that portion of Brookvale Road south of Eglinton Road and stopped her vehicle. It was the first road traffic accident she had ever seen and she was shocked by it. She gave Mr McPartlin her name.
29. Under cross-examination, she reiterated that the traffic lights at the pedestrian crossing were red but acknowledged that, in the statement that she made to the guards shortly after the accident, she said that she saw Ms McPartlin's vehicle 'looking to come out of Brookvale Road' when she stopped her car to let it come out.
30. The final witness called to give evidence on behalf of Ms McPartlin was Kevin Roche, an independent expert engineer. In his report and evidence to the court, Mr Roche

expressed the opinion that, if the traffic lights at the pedestrian crossing were red when Ms McPartlin looked right onto Eglington Road from her position at the yield sign on Brookvale Road, and if the portion of Eglington Road between the pedestrian crossing and the junction was clear of cyclists, then Ms McPartlin's vehicle was entitled to cross the cycle lane and enter the yellow box junction on Eglington Road. If that was so, the accident was caused by Mr Deegan's failure to obey the red light at the pedestrian crossing on Eglington Road just west of that junction.

31. Mr Roche expressed the view that, at the yield sign on Brookvale Road, a driver should look to the right and left and should not proceed unless the way is clear or the traffic lights at the pedestrian crossing to the right of the junction are red. In his report, Mr Roche recorded that Ms McPartlin understood that the pedestrian crossing red lights acted as a temporary 'dam' on traffic approaching the junction on the westbound carriage of Eglington Road, creating a 'control zone absent of any traffic' between the pedestrian crossing and the junction.
32. Mr Roche expressed that view that, under the rules of the road, while road users intending to turn right are entitled to stop in a yellow box junction, road users proceeding straight ahead are not. Thus, Ms McPartlin's motor vehicle was entitled to stop in the yellow box junction but Mr Deegan's bicycle was not.
33. Under cross-examination, Mr Roche accepted that, in the account of the accident that Ms McPartlin had given him, recorded in his report, there was no suggestion that her vehicle had stopped in the yellow box junction prior to the accident.

Analysis

34. As with almost every running down action, the resolution of this case turns on the appropriate application of the relevant requirements and advice contained in the *Rules of the Road* ('the Rules'), now published by the Road Safety Authority. As Hogan J explained in *Carr v O'Las & Anor* [2012] IEHC 59, (Unreported, High Court, 15 March 2012) (at para. 49):

'The Rules are not a legal instrument but are rather an administrative document which in places endeavours to summarise in non-legal language the requirements of the Road Traffic Acts while also giving practical advice and exhortation to drivers as how best to drive safely.'

35. It seems that the iteration of the Rules applicable at the material time was *Revision No. 5* of March 2015. The following passages are apposite.
36. Under the heading 'Stop and Yield signs', the Rules state (at p. 67):

'If you see a Yield sign on the road, usually near a junction or roundabout, you must give way to any traffic on a major road ahead and you must not proceed onto the main road until it is safe to do so. Make sure you allow enough time to complete your manoeuvre. It is better to be safe than sorry.'

37. In a section headed 'Traffic lights', the Rules provide (at pp. 102-3):

'A red light means 'Stop'. If the light is red as you approach it, you must not go beyond the stop line at that light or, if there is no stop line, you must not go beyond the light. A green light means you may go on if the way is clear. Take special care if you intend to turn left or right and give way to pedestrians who are crossing. A green light is not a right of way – it is an indication that you can proceed with caution.

An amber light means that you must not go beyond the stop line or, if there is no stop line, you must not go beyond the light. However, you may go on if you are so close to the line or the light when the amber light first appears that stopping would be dangerous.'

38. Under the heading 'Yellow box junctions', the Rules recite (at p. 126):

'These junctions consist of patterns of criss-cross yellow lines. Remember, you must not enter the yellow box junction unless you can clear it without stopping. An exception is when you want to turn right. In this case, you may enter the yellow box junction while waiting for a gap in traffic coming from the opposite direction. However, don't enter the box if to do so would block other traffic that has the right of way.'

39. Considering the evidence that I have summarised through the prism of those Rules, I have come to the following conclusions.

40. First, I cannot accept Mr Roche's view that a driver at the yield sign on Brookvale Road looking right onto Eglinton Road has the option of proceeding if the way is clear or if the traffic lights at the pedestrian crossing there are red. The Rules oblige a driver at a yield sign to give way to any traffic on a major road ahead and not to proceed onto the main road until it is safe to do so. Ms McPartlin's assumption that, if the traffic lights at the pedestrian crossing on the main road were red, there would not be any traffic between those lights and the junction, while understandable, was incorrect and could not properly operate as an alternative to the strict requirement upon a motorist at the yield sign to keep a proper lookout for traffic, including bicycles, on the main road. The purpose of keeping a proper lookout is to identify the unexpected as well as the predictable.

41. Second, I am satisfied that Mr Deegan broke the lights at the pedestrian crossing on Eglinton Road. I prefer the evidence of Ms Darcy, a disinterested witness, to that of Mr Deegan on that point.

42. On the balance of probabilities, I find that what happened was this. Mr Deegan, having recklessly broken the lights at the pedestrian crossing on Eglinton Road, then continued toward the adjacent junction with Brookvale Road across which he had the right of way. Ms McPartlin, who had looked to her right at the yield sign on Brookvale Road, wrongly assumed that it was no longer necessary to keep a proper lookout to her right because

the traffic lights at the pedestrian crossing were red for traffic and, thus, she failed to maintain a proper lookout in that direction, which was negligent. Mr Deegan belatedly realised that Ms McPartlin had not seen him and that her vehicle was moving across his path into the yellow box junction. To avoid a collision with Ms McPartlin's vehicle, Mr Deegan swerved to his right, out of the cycle lane and into the yellow box junction, hoping to alert her to his presence and to cycle around the front of her vehicle. Unable to perform that manoeuvre, he was forced to stop instead. Whether, he was able to do so before his front tyre contacted the offside front of Ms McPartlin's vehicle, I cannot say. But nothing turns on that. Having stopped, Mr Deegan put his left foot on the ground and, before Ms McPartlin became aware of his presence on the roadway, her vehicle had rolled onto his left foot.

Conclusion

43. Thus, I find that Ms McPartlin's negligence in failing to maintain a proper lookout when entering the junction and Mr Deegan's recklessness in cycling through a red light at the pedestrian crossing immediately adjacent to it were each a proximate cause of the accident that occurred there.
44. I apportion liability in negligence for Mr Deegan's injuries 40% to Ms McPartlin and 60% to Mr Deegan.
45. I will hear the parties on the appropriate ancillary orders.