

THE HIGH COURT

[2022] IEHC 620

[Record No. 2017/2276P]

BETWEEN

LORRAINE MCGOWAN

PLAINTIFF

AND

ÁINE O'NEILL

DEFENDANT

Judgment of Ms. Justice Reynolds delivered on the 11th day of November, 2022

Introduction

1. This was a short case and the evidence was very concise. It concerned proceedings arising from a road traffic collision which occurred on 23rd October, 2015 in Athlone, County Westmeath. The parties are the drivers of the two vehicles involved.
2. There were no independent witnesses to the accident and the matter proceeded on the basis of evidence heard from the parties, their respective engineers and from Garda Tanner who attended the scene in the aftermath of the accident.
3. It is not disputed that Ms. McGowan sustained injuries arising from the collision. What is contested is who bears responsibility (in terms of negligent driving) for the accident.

The facts

4. The plaintiff is a healthcare assistant and resides at Coosan, Athlone, Co. Westmeath. Her claim is for compensation for personal injuries and out-of-pocket expenses agreed in the sum of €9,426.20.

5. The accident occurred on the N6 Athlone by-pass, beyond junction 9 where merging traffic from a slip road meets the main dual-carriageway. It is common case that it was a damp misty afternoon and that the collision occurred at approximately 3pm. The road surface was good, albeit that it may have been somewhat damp from showers earlier that day.

6. Both parties were travelling in the same direction; westbound between junction 9 (Garrycastle) and junction 10 (Ballymahon), although the precise accident location on the dual carriageway is a matter of some dispute. The plaintiff was driving a Renault Laguna and the defendant's vehicle was a Hyundai T30.

7. The prevailing speed limit was 100 kph; there is no suggestion that either party was travelling in excess of it. Both parties were familiar with the road in circumstances where they both lived and worked in the area.

8. It is common case that their vehicles were in good pre-accident working condition. Post-accident, the damage to the plaintiff's vehicle was to the front left-hand side whilst the damage to the defendant's car was to the rear driver side.

Liability issue

9. The first issue to be determined is which party bears responsibility for causing the accident.

10. In essence, the plaintiff claims that whilst performing an overtaking manoeuvre of the defendant's vehicle into the right-hand outer lane of the dual carriageway the defendant suddenly veered out into her path causing the collision.

11. Conversely, the defendant claims that she was after joining the left-hand lane of the dual carriageway from the slip road at Junction 9 when suddenly her car was impacted from behind by the plaintiff's vehicle.

12. I am satisfied on the balance of the probabilities (and having considered the totality of the evidence) that liability for the accident rests solely with the plaintiff for the reasons set out below.

The evidence:

13. The plaintiff's evidence was that she was travelling home from Athlone town centre on the afternoon in question and emerged from the slip road at Junction 9 onto the dual carriageway. As she did so, she noted a black vehicle (the defendant's Hyundai) in front of her going at a somewhat slower speed than her own speed (of approximately 80kph). She checked her wing mirrors and proceeded to overtake: -

"I overtook and I was over the white line and the next minute then, bang".

14. She stated that post-impact her vehicle ended up on the right lane going towards the centre barrier of the dual carriageway.

15. She was removed from the scene by ambulance to hospital in Ballinasloe, County Galway and was treated for soft tissue injuries. The medical reports in the case were agreed and handed into court without any necessity for the court to hear evidence *viva voce*.

Undoubtably, the plaintiff suffered injuries as a result of the accident for which she required medical treatment.

16. The plaintiff stated that she gave a statement to Garda Tanner the next day but couldn't account for the circumstances of the accident as she was still in shock.

17. However, she attended with her solicitor some weeks later and instructed him to bring a claim on her behalf. Thereafter, she gave an account to her engineer as to how the accident had happened. In that account, she stated that she had commenced her overtaking manoeuvre;

after she drew level with the defendant's vehicle its driver suddenly veered right and into the path of her vehicle, thereby causing the collision. She stood over that account on cross examination.

18. The plaintiff's engineer, Mr. O'Brien confirmed that he attended the scene on 11th November, 2015 (approximately 3 weeks post-accident) with Mrs. McGowan. He stated that he had checked his contemporaneous notes of the account given to him by the plaintiff and it accorded with the evidence given by her.

19. In relation to the photographs of the accident scene taken by Garda Tanner, Mr. O'Brien stated that they were of considerable assistance in terms of identifying the point of impact, having regard to the scatter of debris from the vehicles which was primarily on the overtaking lane (where the plaintiff's vehicle was travelling).

20. In his view the collision occurred as the front of the plaintiff's vehicle drew level with the defendant's vehicle and the defendant suddenly and without warning veered to her right causing the impact with the other vehicle.

21. Garda Tanner gave evidence of having attended the accident location and noted that it was a dark wet afternoon with poor quality of light. He confirmed that it was past junction 9 heading west on the N6. His primary concern at the scene was for the welfare of the parties and to ensure they got appropriate medical assistance.

22. Thereafter, he took photographs and measurements for inclusion in the Garda Abstract report. He stated that the damage to the plaintiff's vehicle was to the front left side whilst the damage to the defendant's car was to the right back rear.

23. In terms of the debris found at the scene, he stated that it was very difficult to establish a point of impact as cars may move slightly post impact thereby causing the scattering of debris. He noted that most of the debris was in the overtaking lane with some

small amount in the slow lane. It was not possible for him to identify from which vehicle the majority of the debris had come from.

24. He confirmed that he took statements from both parties the following day. Mrs McGowan stated that she was in shock and didn't know what had happened: -

"...I just collided with the back of the black car in front of me...."

25. Mrs O'Neill stated that she hadn't seen the plaintiff's vehicle on the dual carriageway prior to the accident. Her account was that she was travelling at a normal speed in the inner lane when she was suddenly hit from behind.

26. The defendant confirmed that account in her evidence albeit that she deviated somewhat by stating that she believed the plaintiff's vehicle hadn't emerged from the slip road at junction 9 but was already on the dual carriageway prior to that. In her original statement to Garda Tanner she had stated: -

"I'll be honest I did not know what happened or what hit me I was looking ahead of me the whole time."

27. There was no mention at that stage that she had observed the plaintiff's vehicle on the dual carriageway at all prior to the collision.

28. Further, she stated that she had safely emerged from the slip road into the left-hand lane of the dual carriageway and had slowed down to accommodate a slower moving vehicle to merge in front of her when she was impacted from behind by the plaintiff's vehicle. This was consistent with her initial statement to Garda Tanner.

29. Post-impact, she advised that her car was initially pushed into the outer lane but she steered it towards the hard shoulder where she brought it to a halt.

30. The defendant's engineer, Mr. Duggan, gave evidence of inspecting the accident location and his findings having regard to the circumstances of the accident, the accounts given by the parties, the photographs of the accident scene and damage to the vehicles, and

The Rules of the Road. He was of the view that the damage to the vehicles was consistent with a rear end collision as the plaintiff was performing an overtaking manoeuvre from the left-hand lane.

Conclusion:

31. On any analysis it is clear that there were inconsistencies in the evidence of both the plaintiff and the defendant, the most pertinent of which are highlighted above.

32. I'm satisfied that neither party was being deliberately untruthful, nor sought to mislead the court. The accident occurred over seven years ago and undoubtedly time can play tricks on people's memory.

33. Having considered the evidence, I have concluded that the most reliable account given by each of the parties was to Garda Tanner on the day after the accident. The plaintiff at that stage readily accepted that she "*did not know what happened*". The defendant, on the other hand, stated that she "*was hit from behind.*".

34. Further, I am persuaded by the post-accident damage to the vehicles that the most likely scenario was that in attempting to overtake the defendant's vehicle, Ms. McGowan became distracted or simply miscalculated her manoeuvre resulting in her vehicle impacting the defendant's vehicle from behind.

35. Finally, I am dissuaded by the version of events as described by Ms. McGowan in her evidence as it simply fails to stack up in terms of the post- accident damage to the vehicles. In the scenario as described by her, one would have expected to see damage to the side of her vehicle and damage to the front driver's side of Ms. O'Neill's vehicle. That was not the case.

36. In the circumstances, I am satisfied that liability for the accident must rest with the plaintiff alone. The issue of assessment of damages therefore does not arise.

Order

37. I will dismiss the plaintiff's claim and it seems to me that costs must follow the event. However, I will grant liberty to the plaintiff's legal advisors to apply on notice to the defendant should they wish to be heard on the issue.

A handwritten signature in black ink, appearing to read "Louise Hayles". The signature is written in a cursive style with a vertical line extending downwards from the end.

Approved 10th Nov, 2022