



AN ARD-CHÚIRT
THE HIGH COURT
CIRCUIT APPEAL

[2024] IEHC 266

[Record No. H.CA.2023/0000191]

BETWEEN

PAWEL GALAZKA

PLAINTIFF

AND

THE MINISTER FOR PUBLIC EXPENDITURE AND REFORM

DEFENDANT

JUDGMENT delivered electronically on 1 May 2024 by Mr. Justice Tony O'Connor

Introduction

1. Before the Court is a hearing *de novo* by way of appeal from the judgment and order of the Dublin Circuit Court given on 16 October 2023.

General

2. On 25 September 2018 the car of the plaintiff (then 50 years of age) collided with an Audi Q7 vehicle marked “garda armed support unit” as he approached the Walkinstown Roundabout on the Greenhills Road. The liability issue for the collision centres on whether Garda Walshe drove the three litre Audi Q7 with sufficient care and attention. The plaintiff

gave evidence of having been jolted forward which caused him to hit his knees off the plastic interior and the shock of the whole incident. A booklet of reports from three doctors was agreed to be admitted as evidence of the injuries sustained. The plaintiff took umbrage with the way he was treated by the Gardaí. The Court does not need to address the reasonableness of the parties in this regard.

Account of the plaintiff

3. The plaintiff did not see flashing lights on the Audi Q7 which came from behind. The plaintiff indicated how the Audi Q7 cut in on his path at the triangle marking before the bollard located in the front of the upcoming roundabout. He testified that the front right side of his car hit the left back wheel of the Audi Q7. At most there was a mark left on that back wheel of the Audi Q7, whilst the right-side front panel behind the headlight of the plaintiff's car was dented.

Account of Gardaí.

4. Garda Walshe of the Armed Support Unit explained the levels of training in driving for Gardaí: "Level 2 is response driving which means you can activate blue lights". Level 3 training which had been given to Garda Walsh, relates to the same activity in a high-powered vehicle such as the three litre Audi Q7. Garda Walshe described the difference between a "compliant stop" which he operated in this case and "a tactical stop" involving multiple garda armed units. Garda Walshe said that he crossed the white lines before the bollard with a view to going into the right lane in order to stop the plaintiff. There was no controversy about whether the garda lights were flashing at the time before the manoeuvre or that the plaintiff did not see the Audi Q7 more than two seconds before the collision. The dispute in the accounts of the witnesses relates to whether the plaintiff turned into the back of the Audi Q7 which was suggested by Garda Walshe. The plaintiff was certainly taken by surprise before

halting his car. It appears to the Court that ultimately nothing much turns on whether the plaintiff altered his course slightly in order to avoid the sudden appearance of the Audi Q7.

Lead up to the interception

5. Both Garda Walshe and Garda Lynn (who was the front passenger seat of the Audi Q7) outlined how a message came over their radio at about 10.10pm that there had been an aggravated burglary in a nearby industrial estate. The information was followed by a request for assistance to stop two vehicles suspected of having been involved and that an unmarked garda car was driving behind the two suspect vehicles. As these two gardaí were in a highly visible and marked vehicle close to the location of the unmarked garda car, Garda Walshe performed a “u” turn in the Audi Q7 in order to catch up with the unmarked car driven by the late Garda O’Mahony. Garda Lynn in the Audi Q7 communicated with Garda O’Mahony that they would overtake him in order to stop the two suspect vehicles just ahead of Garda O’Mahony. The lights as opposed to the siren were activated for the overtaking manoeuvre.

6. The two suspect vehicles had not been involved with the aggravate burglary. The plaintiff was bringing home his wife and his two teenage children from a surprise birthday outing at a climbing centre. The car immediately behind him was driven by his friend who was taking home other attendees from the outing. So, it was most unfortunate that any form of compliant stop had to be initiated.

Submissions

7. Mr. Fitzgibbon, Senior Counsel, for the plaintiff:-

1. Referred to s. 59 of the Civil Liability Act, 1961 which provides that the defendant is liable for damage resulting from a wrong committed during the use of a state vehicle;
2. Cited para. 35.39 (2) and (3) of the Garda Síochána Code (“**the Code**”) (as referred to by Kearns J. in *Hayes v. Minister for Finance* [2007] 3 IR 190 at

para. 18 (“*Hayes*”)) which renders the driver (here Garda Walshe) responsible for the decision to chase and stop the plaintiff;

3. Submitted that s. 89 of the Road Traffic Act, 2010 does not exempt gardaí from a duty of care owed to other road users;
4. Distinguished and replied upon *Hayes*.
5. Cited *Strick v Tracey* (unreported High Court judgment of O’Hanlon J. delivered on 10 June 1993) which is summarised at paras. 15.56 to 15.57 of McMahon and Binchy, *Law of Torts*, 4th Edition, as an example of emergency vehicles being held liable, albeit with contributing negligence of the plaintiff;
6. Relied upon *O’Keeffe v Ladola and Dublin Corporation* judgment of McMahon J. in Dublin Circuit Court on 12 January 2000 which is summarised in para. 15.58 of McMahon and Binchy 4th Edition for another example of imposing liability on an emergency vehicle.
7. Quoted from “Civil actions against the police” by Richard Clayton Q.C. and Hugh Tomlinson Q.C. to advocate the duty of the defendant’s driver is “to exercise to such care and skill as was reasonable in all the circumstances”.
8. Submitted that the gardaí in this case ought to have had no more than a low level of suspicion of the plaintiff and that they ignored the absence of any apparent attempt to avoid a compliant stop by the plaintiff.

8. Mr. Walker, Senior Counsel, for the defendant submitted that:-

1. The driver of the Audi Q7 had allowed himself adequate space to enter the lane across the white lines in front of the plaintiff;
2. The plaintiff had an obligation to be alert at intersections and to observe surroundings like emergency vehicles coming from behind;

3. The plaintiff had failed to check in his mirrors when going into the right lane before the roundabout which is a duty arising from pg. 53 of the rules of the road;
4. The plaintiff had failed to check the blind spot in his car when changing lanes;
5. The plaintiff caused the collision by hitting the wheel of the Audi Q7;
6. Section 87 of the Road Traffic Act, 2010 exempted Garda Walshe from requirements under the Road Traffic Act, 1961 – 2010 other than for specific sections and where his driving does not endanger the safety of road users.

Decision

9. The plaintiff acted in a reasonably quick manner to the unorthodox driving of the Audi Q7. The Court does not find any recklessness or negligence on the part of the plaintiff in his driving coming up to the roundabout given the direction in which he was intending to proceed.

10. The Court is further satisfied from the candid evidence of the plaintiff and the gardaí that it was understandable for the plaintiff not to have noticed the flashing lights on the Audi Q7 given the short time that it had been behind him and that it came from his right rear side.

11. Having posed questions about the alternatives open to the gardaí, the Court finds that no satisfactory explanation was offered about having to stop the plaintiff before the roundabout rather than allowing the plaintiff to proceed through the roundabout. In the context of the Code, it was not imperative to take the risk as was undertaken on the night of 25 September 2018.

12. In reviewing and applying the law relating to incidents with emergency vehicles, the Court has had specific regard to the judgment of Kearns J. in *Hayes*. There, the appeal was allowed and the plaintiffs claim was dismissed. The plaintiff had been a pillion passenger on a motorcycle which collided with a car during a pursuit by gardaí. Some arguments similar

to those advanced for the defendant in this appeal were accepted by the Supreme Court.

Paragraph [22] of that judgment is instructive:-

“In *Noel v Botkin* (1995) 9 B.C.L.R. (3d) 21 the same court summarised the question to be asked in assessing the conduct of police officers during pursuit is to enquire:- ‘[W] hether they, viewed objectively from the view point of a reasonable police officer, acted reasonably and within the statutory powers conferred upon them. In considering that question, the Court must take into account that officers will be expected to perform the duties imposed on them by statute and to comply with policies adopted by the force to which they belong. A failure to comply with policy will not necessarily constitute negligence, nor will an error in judgment. Officers are exempted from compliance with certain traffic rules, provided they meet the requirements of section 118 of the Motor Vehicle Act. There must be a recognition that officers are required to exercise judgement in balancing the competing interests of arresting wrongdoers and protecting citizens.’”

13. The principal issue in *Hayes* concerned causation and the distinction between *causa sine qua non* and a *causa causans* (see para. 45). In this appeal there is no such causation issue. There is no dispute that the gardaí owed a duty of care to the plaintiff. Ultimately the Court is tasked with reviewing competing interests and the application of paras. 35.39 (2) and (3) of the Code which provides:-

“Chasing escaping vehicles:

- (a) The responsibility for undertaking a chase rests with the driver of the garda vehicle, unless the order is given by a radio message. The driver is also responsible for deciding whether the pursued car is to be tailed or an attempt made to stop it. The whole responsibility is with the driver alone and he is not to be interfered with in any way or urged to a higher speed by

anyone. A chase at speed is only justified where it is really important to arrest the occupants of the pursued car. A minor crime, traffic offences, or even the sighting of a stolen car, does not justify a chase at speed.

Stopping escaping vehicles:

- (a) Stopping should only be adopted as a last resort. Usually it is better to tail the suspect in the hope that he will be held up by traffic, run out of petrol or make a mistake, which will enable an arrest to be made. It is preferable to let a criminal escape rather than risk death or injury to innocent people.
- (b) Stopping obviously involves risk to both vehicles and their occupants. If real need arises this risk must be accepted, but it is essential that the right place and moment should be chosen so that no one else is endangered. Here again, it is a question of the skill and discretion of the driver.
- (c) Where a member of the Garda Síochána is pursuing a vehicle and he suspects with reasonable cause that an offence under s. 8 of the Criminal Law Act 1976 or any offence under the said Act has been, or is being or is about to be committed, he may require the driver to stop, and may use reasonable force in order to compel him to comply with such requirement, and such force may include the placing of a barrier or other device in the path of the vehicle. This paragraph (c) does not affect the generality of the sub section and is not to be construed as giving a blanket permission to deal similarly with all offences or crimes.”

Conclusion

14. The Court recognises that hindsight was not available to the occupants of the Audi Q7 and this Court seeks to place itself in their position without the benefit of hindsight.

Ultimately the Court concludes that the trust of the driver on the information given never wavered despite the absence of evidence that the plaintiff was attempting to flee or to avoid detection. No adequate regard was had to the advice and the guide that “it is better to tail the suspect....” and to the conditions presenting before the roundabout at which the collision occurred. In the circumstances the defendant is liable for the collision.

Contributing negligence

15. The defendant maintained that the plaintiff ought to have observed and accommodated the Audi Q7. It is common case that the plaintiff did not observe the emergency lights of the Audi Q7 until the last moment. Moreover, witnesses for the plaintiff and the defendant acknowledged that eventuality given the short duration and presenting circumstances including the speed and direction of the vehicles at the time. It was reasonable for the plaintiff to be startled and confused. There is a blind spot which the Audi Q7 occupied on the balance of probabilities. Therefore, the Court does not find any contributing negligence on the part of the plaintiff.

Quantum

16. The award of damages to be awarded relates to the personal injuries suffered rather than the umbrage taken by the plaintiff with the Gardaí immediately after the collision and afterwards. The plaintiff explained that he had torn his anterior cruciate ligament (“ACL”) when playing football when he was around 20 years of age. Dr. Zimny, General Practitioner, saw the plaintiff on the day after the collision. In her report dated 30 November 2018 she referred to the MRI that revealed a chronic tear of the ACL and significant degenerative changes. Dr. Zimny found on clinical examination “no swelling, no tenderness and limited left knee flexion”. She reported that the injuries described were consistent with the accident on 25 September 2018. Dr. Zimny described the injury as “soft tissue” which is supported by Mr. Hogan and Mr. McCarthy.

17. Mr. McCarthy, Consultant Orthopaedic Surgeon in his report dated 16 October 2021 under the heading “are the injuries consistent with the accident” inserted “no”. However, the report of Mr. Thomas McCarthy, Orthopaedic Surgeon who completed a medical assessment Form B on 25 September 2020 opposite the question “aggravation of preexisting condition” under “relevant medical history” replied yes. Taking account of the details given by all of the doctors, the Court determines that the plaintiff suffered a low impact injury which aggravated his knee condition. The plaintiff acknowledged that his right knee was better than his left knee and that he only took three sick days from work. The plaintiff has failed to satisfy the Court that his ongoing complaints are attributable to the low impact collision. The agreed special damages do not suggest any long-term suffering which may be attributed to the low impact collision. The following answer in the plaintiff’s direct examination was quite revealing:-

“So, first I got three days of sick leave and they asked me whether I want more time off and they actually asked me, you know to actually stay home. So, as I was still in shock... I prefer to be around people so I wanted to go back to work and they moved me to another building which was a kind of quieter and easier job.”

18. Page 59 of the “General Guidelines as to the amounts that may be awarded or assessed in personal injury claims” refers to soft tissue injuries to the knee. The plaintiff’s injuries fall within the minor band which refers to damages up to €14,800. The Court has not been satisfied that the ongoing difficulties which the plaintiff mentions, are attributable to the soft tissue injury suffered in the low impact collision on 25 September 2018. The award from the Court must be proportionate and reasonable. In those circumstances the Court awards €9,000 for general damages to date plus agreed special damages of €1,070.

Costs

19. The Court proposes to hear the parties about the terms of the final order in these proceedings at 10.30am on Wednesday 15 May 2024.

Solicitors for the plaintiff: Anderson & Gallagher LLP

Solicitors for the defendant: Corrigan & Corrigan

Counsel for the plaintiff: Niall Fitzgibbon S.C. and Paul Gallagher B.L.

Counsel for the defendant: Andrew Walker S.C. and Aoife Farrelly B.L.