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*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 15/02/2019

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

2017/49103

BETWEEN:

**BEN MULLIGAN, ACTING BY HIS FATHER AND NEXT FRIEND,
DECLAN MULLIGAN**

Plaintiff;

-and-

NATASHA WEST

Defendant.

MAGUIRE J

[1] The plaintiff in this case is Ben Mulligan who is a boy now aged 12. He sues by his father and next friend, Declan Mulligan. Currently the plaintiff is at secondary school.

[2] On 15 January 2014 when the plaintiff was aged 7 he was involved in a road traffic accident at St Patrick's Avenue, Downpatrick. On that day he was with his father and two brothers. They had been to a butcher's shop on the left hand side of St Patrick's Avenue as you go townward. Having left the shop, the family members travelled countryward on St Patrick's Avenue as far as a set of controlled traffic lights. Their intention had been to cross the road at this crossing.

[3] According to the plaintiff's father, the time was between 3.00-3.30 pm. The family group walked to approximately the centre of the kerb line at the crossing. The plaintiff was just slightly in front of his father, to his father's right.

[4] The plaintiff remembers pressing the button at the signal box on the traffic lights but is unable to remember anything else until after the accident. The plaintiff's father saw the plaintiff press the button. The father told the court that he assumed the traffic lights were green in favour of the traffic. However, the townward lane at the crossing point was not occupied by traffic as the traffic had stopped crossing it and was backed up to either side of it. Without any apparent warning, Mr Mulligan

saw the plaintiff run across the road from the centre of the crossing point. Unfortunately, having crossed the townward lane, the plaintiff was struck by a car – a Vauxhall Zafira – which was travelling countryward up St Patrick’s Avenue. The car was driven by Natasha West, the defendant in these proceedings.

[5] At the time of the accident the defendant was around 28 years of age. It appears that she had travelled countryward up St Patrick’s Avenue having come from the Market Street direction. The defendant’s mother was in the passenger seat at the front of the car and two young people were in the back of the car. Shortly after she entered St Patrick’s Avenue the defendant said she had to negotiate her way around a commercial vehicle to her left which she thought was delivering supplies to an off licence. She told the court she had reduced her speed to around 5 mph while driving past the delivery vehicle. As she proceeded in a countryward direction up St Patrick’s Avenue she said she gradually increased her speed. By the time she was approaching the traffic crossing her view was that she was travelling at between 10-15 mph, certainly no more than 15 mph. In her evidence she indicated that there was heavy traffic in both lanes on St Patrick’s Avenue. However, in the direction she was going, countryward, traffic was slow but not static. In contrast, the traffic in the townward direction was static though the crossing itself on the townward lane had been left vacant as any vehicle entering onto it going townward would not have been able to pass through the crossing due to the backup of traffic.

[6] The defendant was of the view that she could only see the full breadth of the crossing at a stage when she was close to it. In her evidence she was keeping a look out to both sides of the road. However, prior to the accident she did not see the plaintiff or members of the family. The first she knew of his presence was when he hit the side of her car. She thought this had occurred at the right off side front wing just in front of the right wing mirror. The defendant said that she braked upon the impact and was able to bring her vehicle to a halt. Once she had done so she found that her car’s back wheels were still within the crossing with the front wheels just off it. Later she said that she located a dent about a hands length away from the right wing mirror going towards the front of the car on the off side. She stayed in her car until the police arrived. She thought that the plaintiff had fallen backwards away from the car after the impact. His feet, she thought, may have been off the ground prior to him falling to the ground.

[7] It was the defendant’s case that she had been keeping a proper look out and was driving at an appropriate speed at the time of the accident. She believed she was in second gear and that she was keeping a proper look out to both the left and the right hand sides. In her view, the accident happened in a flash and she had no chance of stopping in time to avoid the impact.

[8] In the defendant’s account, the collision occurred within the perimeter of the crossing.

[9] While she saw the traffic lights change from amber to green as she was travelling along St Patrick's Avenue the defendant was clear in her evidence that as she approached the crossing the lights were green in her favour and that the car in front of her had passed through the lights without difficulty. It was a car or two cars length in front of her.

[10] The plaintiff's father in his evidence indicated to the court that the traffic going in the townward direction had stopped at least at the point when he and his family members reached the crossing. After the impact with the defendant's car, which he thought was to the bumper or headlight to the front of it, he says he saw the plaintiff being knocked backwards and into the air in a trajectory which took him towards and slightly to the right of where he was standing at the cusp at the crossing. He said that the plaintiff ended up under a yellow bus/coach. He thought the exact positioning was under the bumper at the front of the vehicle. After police and ambulance services were called he went with his son to the hospital. He accepted the suggestion that his son's movement running across the road happened so quickly that there was no time for him to catch or chase after him.

[11] There was an independent witness to the accident who gave evidence. A Mr McMordie, who had no association with either the plaintiff or defendant, had on that afternoon been driving a minibus townward and had stopped immediately countryward of the crossing as he did not wish to enter on to it as he simply would have obstructed it. He, therefore, was queued back at the crossing and he told the court he simply had to wait for the traffic ahead of him - further townward on St Patrick's Avenue - to clear. He had turned his engine off while he waited. However, as he was at the traffic lights, he had a good view forward.

[12] Mr McMordie told the court that before the accident he had seen the plaintiff's family coming towards the crossing to the footpath to the left of him. He saw the plaintiff run across the crossing and into the Zafira car. He thought the plaintiff's collision with the car was at the off-side of it near the front mudguard or wheel arch. In his view the plaintiff bounced off the car backwards and towards his vehicle. He said that the plaintiff ended up just below the front of his vehicle. Indeed he indicated that after the accident he had to reverse his vehicle back a bit to enable access to the plaintiff.

[13] Mr McMordie told the court that he also saw the approach of the defendant's car. He said that the traffic lights were in her favour and that she was coming up a slight incline. In his opinion the defendant's car was travelling well below the speed limit. There was a vehicle in front of it he said which passed through the crossing before the defendant's car reached that point.

[14] In his view he did not think there was anything the defendant could have done to avoid the collision. Because of the traffic which had backed up in front of him, including a transit like vehicle going townward on the other side of the crossing

from where he was parked, he thought that the defendant would not have had a good view of that side of the crossing until late on.

[15] He did not think that the use of a horn would have made any difference to the occurrence of the accident.

The police

[16] A police officer, Constable Law, gave evidence. He was one of a number of police who arrived at the scene after the accident. He drew a sketch of the scene after the accident which depicted, in particular, the crossing.

[17] From the sketch it appears clear that the width of the crossing – from kerb to kerb – was some 21 feet and 5 inches. The distance between the stop lines on each side of the crossing according to his sketch was 25 feet 9 inches. The sketch featured the minibus driven by Mr McMordie on the countryward side of the town lane just short of the stop line. This vehicle, as already noted, was intending to travel townwards but was stopped at the time of the accident.

[18] Somewhat strangely, the defendant's car according to the sketch, was to be found in the sketch parked in a layby countrywards of the crossing parallel to the countryward lane, pointing in the direction of the town. The defendant in her evidence did not agree with the fact that her vehicle was alleged to be pointing towards the town in the sketch. While she had not parked the car in the layby herself, she did drive her car from the scene and was positive it was parked pointing in a countryward direction. In her view, the sketch was wrong in this respect.

[19] In his evidence Constable Law was unable to say much of note and it seems clear that the police had tended to view the case as one in which little investigation was required as the plaintiff had simply run out from the safe haven of the footpath across the road. Accordingly, the police did not take statements from any of those involved. In its summary of the accident, the police report is somewhat sparse referring to the plaintiff running on to the crossing when the traffic lights were green in favour of the traffic. It is further stated that witnesses informed the author of the report that the Zafira was not travelling at an excessive speed. In a note, prepared on 10 April 2018, slightly more information was given. It refers to witnesses all making reference to the traffic lights being green at the time the plaintiff ran out. The author then concludes:

“It was my opinion that the driver ... was not at fault as she had been driving along the road when [the plaintiff] ran out on to the road causing the collision. [The defendant] had not been doing any significant speed at the time and was well within the speed limit of 30 mph. She would have had very little time to react to [the plaintiff's] running out on to the road.”

Denis Wood

[20] Denis Wood is a consulting engineer who gave evidence on behalf of the plaintiff.

[21] The main points put forward by him were that:

- The defendant should drive with care, be observant and alive to pedestrians crossing through the stationary traffic.
- The defendant's view to her right would be restricted on approach but the closer she got to the crossing the more her view would open up.
- By the time the defendant's car reached the stop line on the town side, provided the last car in the queue of traffic on the town side did not intrude onto the crossing itself, the defendant should have had a full view available across the width of the crossing.

[22] Mr Wood gave evidence about how the impact may have affected the plaintiff. He posited two scenarios, one in which the plaintiff had run into the side of the defendant's car and one in which he had run into the front of it. As regards the former, in his view the child would be caused to spin or rotate and then fall back away from the car. In contrast, in respect of the latter, the child would be given the same speed as the vehicle moving forward and would have been projected airborne before landing. In this event the pedestrian would be directed in a diagonal direction back towards where he had come from. Overall, he considered that Mr Mulligan's description was of an impact to the front corner area of the defendant's car with his son being in contact with the front of the car. He did not think that the plaintiff would have ended up at the front of Mr McMordie's minibus if the defendant's version was correct. Rather, if that version was correct, he thought the child would end up on the crossing itself – on the townbound side.

[23] Mr Wood gave evidence that the traffic lights, due to their height, would have been easily seen by the defendant. While the point seemed to be marginal, he was of the opinion that the Zafira would, due to its height, be able to give the driver a better view to see to her right over the rear of cars in the townward lane. According to his evidence, the Zafira was 2-4 inches higher than an ordinary saloon car.

[24] Mr Wood in cross-examination accepted that the driver of the Zafira would not have been likely to sound its horn in an anticipatory way.

[25] As regards reaction time, this could be within a wide range from two thirds of a second to two seconds. He accepted, however, that if the defendant's vehicle stopped just clear of the crossing after the accident this would suggest the driver was travelling at a low speed and had reacted swiftly. The driver's view was dependent on the extent of the traffic backed up on the townward lane.

[26] Mr Wood accepted that a speed of 10 to 15 mph was appropriate in the circumstances. At a speed of 10 mph it would take 15 feet to stop whereas at a speed of 15 mph it would take 26 feet.

[27] As regards the time it would take the plaintiff to have run out across the road to the point of impact, Mr Wood thought the plaintiff might take 1.2 seconds to cover that distance.

[28] Mr Wood acknowledged that for the defendant to stop her thinking time at a minimum would have been .7 of a second. The braking time at a minimum, he thought, would be .5 of a second.

Trevor Wright

[29] Trevor Wright is a consulting engineer who gave evidence on behalf of the defendant.

[30] Mr Wright accepted that a speed of 10-15 mph would have been an appropriate speed range for the defendant when approaching the traffic lights.

[31] As there had been evidence of a commercial vehicle close to the crossing on the town side he considered that its presence would have made it difficult for the defendant to see the full width of the crossing until a late stage.

[32] Mr Wright acknowledged that it is easier for a driver to stop where the trigger for stopping is in front of him or her as against to one side or another. Where the trigger emanated from the side, it may appear when your attention is to the front or the other side.

[33] In his view driving at 15 mph it would take the driver in the region of 33 feet to stop.

Assessment of witnesses

[34] Leaving aside the professional witnesses in this case, the court formed a favourable impression of all of those who gave evidence in this case.

[35] The court is satisfied that the plaintiff genuinely could not recall what had happened after he pressed the button at the crossing and is satisfied that his father has recounted the incident as best he could in the circumstances.

[36] The defendant, in the court's view, was a witness who impressed the court. She gave her evidence with spontaneity and carefully. The court did not form any negative view about the substance of what she said and is of the opinion that she gave her evidence without exaggeration or dishonesty. This witness was subjected to extensive cross-examination but in the court's estimation her account remained

coherent and consistent. In the court's judgment the defendant appeared to be genuinely upset by the event and the impression the court formed in respect of the witness was that if she felt she had been responsible for the accident in any way, she would have said so.

[37] Mr McMordie appeared to the court as a trustworthy and straightforward witness and the court could identify no reason why it should not accept the evidence which he gave.

The professional witnesses

[38] It has to be said that the police witness called, in the court's assessment, was not an impressive witness. His decision not to take statements from the witnesses who he had spoken to is not easy to understand given that in the accident a young person has been injured. The investigation carried out appears to have been perfunctory which troubles the court. It is likely that the police sketch, in the court's judgment, depicts the defendant's car in the place in which it was parked after the accident, but facing in the wrong direction, though nothing much turns on this.

[39] The consulting engineers who gave evidence both gave careful consideration to the circumstances of the case and the court notes that there were significant areas of agreement.

Findings of fact

[40] The court makes the following findings of fact in this case:

- (i) The defendant was driving at a suitable speed of between 10-15 mph as she was travelling countryward along St Patrick's Avenue at the time the accident occurred.
- (ii) After she had turned into St Patrick's Avenue the defendant had had to drive slowly as she negotiated her way past a delivery lorry on her left. She accelerated after she had passed the lorry probably from a speed of not much more than 5 mph.
- (iii) As the defendant approached the crossing the court is satisfied that the traffic lights were in her favour and accepts her account that the car in front of her went through the lights ahead of her when they were at green. This car was one or two car lengths ahead of her.
- (iv) The plaintiff ran out and across the crossing without warning at a time when the traffic lights were green against him.
- (v) The defendant did not see the plaintiff before the accident itself.

- (vi) The probabilities are that the defendant's view to the right (towards the side of the crossing from which the plaintiff ran out) was obscured by the build-up of traffic going townward along St Patrick's Avenue. The court accepts the evidence of Mr McMordie that a commercial vehicle, just to the townward side of the crossing, will likely have obstructed the defendant's view until very shortly before the accident.
- (vii) The court accepts that the defendant was probably in second gear and that she was approaching the crossing maintaining a proper look-out and was alert to the conditions of traffic at the time.
- (viii) The accident happened very quickly and it is likely that the plaintiff crossed into the defendant's path from the point of leaving the kerb in something like 1.2 seconds.
- (ix) The defendant in the above circumstances had very little time in which to see, perceive and understand what was happening when the plaintiff ran out or to take any effective action.
- (x) Any thinking or reaction time of the defendant will be bound to have been delayed by a period, probably in excess of .7 of a second.
- (xi) To bring her car to a halt in the circumstances, such as would have avoided the collision, would not have been a course open to the defendant. There simply was not time to do this.
- (xii) While the court cannot be absolute on the question of whereabouts on the car the plaintiff came into contact with, it prefers the defendant's account on this point and accepts that it was more likely that the impact was with the front wing of it.
- (xiii) The accident occurred on the crossing itself within the area delineated by the stop lines.

The court's conclusions

[41] Fortunately in this case the injuries received by the plaintiff in this accident could have been a lot worse than those which he did receive. In respect of his injuries, it is clear that his main injury was a laceration to the right side of his head. From this he made a good recovery but he has been left with a scar to his forehead, which the court had the opportunity to inspect.

[42] The standard the court has to apply to the defendant in this accident is that of what can be expected of a reasonable driver in the circumstances. In doing so it must have regard to the realities of the situation and should avoid acting on the basis of a

counsel of perfection. As Burnett J put it in *Richardson v Tracy* [2010] EWHC 214 (QB) at paragraph 3:

“...it must be recognised that it takes time to react to developing dangers...drivers cannot reasonably be expected to be “all seeing” of everything at all times. A reasonable driver will necessarily take his eyes off the road from time to time to look in his rear or wing mirrors. He can be forgiven whilst reasonably paying particular attention to one potential hazard if he is slow to appreciate the development of another”.

[43] In the present case much of the above quotation has purchase. The driver’s eyes cannot be on everywhere at one. In particular her view across the full width of the crossing will have emerged only when she was very close to it. The plaintiff unfortunately ran out and would have been in the path of the defendant’s car in shortly over one second. The defendant was driving at an appropriate and moderate speed in the circumstances. She was keeping a look out but the plaintiff came from the side across the road at pace. She brought her car to a halt speedily and she stopped with her back wheels still within the crossing. However, she simply did not have the time, when the matter is viewed realistically, to avoid the impact which occurred. To hold otherwise would be to impose on the defendant a counsel of perfection. It is for these reasons that the court accepts the defendant’s evidence as correct.

[44] It is also the court’s opinion that its conclusion above is consistent with the gravamen of the consulting engineers’ evidence in this case. The court does not know the precise speed the defendant’s car was travelling at. A range has been identified of 10-15 mph. Both engineers were agreed that this range was an appropriate one in the circumstances prevailing that afternoon. No doubt the exact speed will have gone up and down. For example, it is known that the defendant slowed to something like 5 mph just a short time before the accident when she had to pass a delivery vehicle on her left shortly after she entered St Patrick’s Avenue. It would be reasonable, for present purposes, to place her speed just before the accident at 12.5 mph. This would mean that her stopping distance would be around 20 ft. But it only would take the plaintiff 1.2 seconds to go from the footpath to the point of impact. From the white line to the mid-point of the crossing seems to have been in the region of 13 ft. This suggests to the court that when thinking and braking time is taken into account, it is unlikely that the defendant could have stopped in sufficient time to avoid the collision.

[45] Unfortunately, therefore, the court considers that it must dismiss the plaintiff’s claim on the basis that no negligence on the part of the defendant has been established.

[46] The court is of the opinion, that if liability had been established in this case, the figure it would have awarded is £37,500. This is based on the court's consideration of the report prepared by Mr Fogarty some 3 years and 5 months after the accident and the court's own viewing of the scar at the plaintiff's forehead.

[47] The court is grateful to Mr Lyttle QC and Mr O'Connor BL, who appeared for the plaintiff, and Mr Michael Maxwell BL, who appeared for the defendant, for their considerable assistance during the hearing of this case.