

**Neutral Citation No: [2026] NIKB 31**

**Ref: OHA13032**

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

**ICOS No: 2024/109266**

**Delivered: 24/04/2026**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**KING'S BENCH DIVISION**

**BETWEEN:**

**MATTHEW COALTER**

**Plaintiff/Appellant**

**and**

**STEWART MULLIGAN**

**Defendant/Respondent**

**Mr F O'Donoghue KC with Mr R Donaghy (instructed by P R Hanna Solicitors) on behalf  
of the Plaintiff**

**Mr C Ringland (instructed by Murphy O'Rawe Solicitors) on behalf of the Defendant**

**O'Hara J**

***Introduction***

[1] The plaintiff was very seriously injured in a road traffic accident on 14 April 2024. He was riding his motorbike on the Sligo Road, Letterbreen, Co Fermanagh when there was a collision with a car driven by the defendant at a junction with the Moybane Road. The defendant's car was turning right and across the path of the oncoming plaintiff when the collision occurred. There is no dispute that the full value of the plaintiff's claim will be at least £1.2m. Mr O'Donoghue suggested this figure is a conservative estimate.

[2] The plaintiff has applied for an interim payment of £400,000 to assist him in respect of the cost of care, housing adaptations and other rehabilitation needs which flow directly from his injuries. The rules providing for such interim payments are found in Order 29 of the Rules of the Court of Judicature. The master refused the application on 19 December 2025. The plaintiff has appealed against the master's decision.

[3] For the defendant Mr Ringland did not challenge the proposition that the plaintiff's needs are such that an interim payment is justified. Nor did he challenge, for the purposes of this application at least, the valuation of the claim at £1.2m. He contended, however, that the master's original decision was correct, the master not being satisfied on the evidence before him that the plaintiff will succeed in obtaining judgment against the defendant. In his decision the master highlighted the fact that the burden of proof in this application lies with the plaintiff and he concluded that the application was premature because of the absence of supporting documentary evidence.

### ***Order 29***

[4] The relevant part of Order 29 reads as follows:

"11. In this part of this Order -

'interim payment', in relation to a defendant, means a payment on account of any damages, debt or other sum (excluding costs) which he may be held liable to pay to or for the benefit of the plaintiff; ...

#### **Application for interim payment**

12.-(1) The plaintiff may, at any time after the writ has been served on a defendant and the time limited for him to enter an appearance has expired, apply to the Court for an order requiring that defendant to make an interim payment.

(2) ...

(3) An application under this rule shall be supported by an affidavit which shall -

(a) verify the amount of the damages, debt or other sum to which the application relates and the grounds of the application;

(b) exhibit any documentary evidence relied on by the plaintiff in support of the application; ...

#### **Order for interim payment in respect of damages**

13.-(1) If, on the hearing of an application under rule 12 in an action for damages, the Court is satisfied -

- (a) that the defendant against whom the order is sought (in this paragraph referred to as 'the respondent') has admitted liability for the plaintiff's damages; or
- (b) that the plaintiff has obtained judgment against the respondent for damages to be assessed; or
- (c) that, if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages against the respondent; or

the Court may if it thinks fit, subject to paragraphs (2) and (3), order the respondent, to make an interim payment of such amount as it thinks just, not exceeding a reasonable proportion of the damages which in the opinion of the Court are likely to be recovered by the plaintiff ..."

#### *Developments since the master's decision*

[5] When the master considered this application, the only real evidence which he had before him was CCTV footage lasting five seconds taken from a house on a hill overlooking the scene of the accident. That CCTV footage captured the collision. He did not have the police report nor did he have any expert evidence before him in relation to liability. It was for this reason that he dismissed the application which he concluded was premature.

[6] Since the appeal was lodged, the plaintiff has been able to put before me documentary evidence which was not before the master in the form of the police report. In addition I have, but the master did not have, a report from Mr Damian Coll, a highly experienced investigator into accidents such as this whose work with Forensic Science NI started in 1984.

[7] On the basis of this new documentary evidence Mr O'Donoghue, who did not appear before the master, contends that I can now be satisfied that the plaintiff will probably recover substantial damages. His submission rests on two main planks:

- (a) When the defendant was interviewed under caution in the presence of his solicitor on 20 May 2024, he stated (or admitted) that he had noticed the plaintiff coming towards him before he started his turn, that he observed the plaintiff look over his shoulder and that he did not see any other motorbikes behind the plaintiff. He continued that apart from the bike he also saw a

white vehicle. As the defendant approached the junction, he checked his mirror, indicated to turn right and braked. At this point, as he told the police, he thought that the oncoming vehicles were 30-40 metres away from the junction that he was turning into. That junction was clear of vehicles or pedestrians. He then said to the police:

“As I was part of the way across the road I seen the motorbike out of the passenger side window and it was coming towards me very quickly, that’s when I heard the bang and the car spun round.”

He then added:

“For me, the road was clear between the junction and the cars so I felt I had more than sufficient time.”

- (b) In Mr Coll’s report he expressed the opinion at paragraph 24 of his conclusions that:

“In my opinion the defendant should have remained in the Sligo bound lane until he could ensure that the Enniskillen bound lane was clear of traffic for a sufficient time to allow him to turn right onto Moybane Road.”

[8] As Mr Ringland emphasised, and as Mr Donoghue conceded, there is however rather more to the accident. It is not in dispute that the plaintiff was travelling at an excessive speed, possibly well above the speed limit for that area which was 50mph. The evidence suggesting this comes from two sources. One is a lady, an independent witness, who heard and saw the plaintiff go past her as she waited to emerge from a filling station close to the junction where the accident occurred. In her statement she describes how, in very graphic terms, she pointed out to her son the speed which the plaintiff was going at, a speed she estimated at 80-90mph, seconds before the collision.

[9] The second source is the CCTV evidence combined with Mr Coll’s report in which he analysed timings. Mr Ringland emphasised that the conclusions of Mr Coll were rather more nuanced than the opinion expressed at para [24], already cited above. He referred me to paras [12]-[15] which are in the following terms:

“12. In my opinion, the plaintiff would have come into a position to be seen by the defendant in the region of 2 seconds prior to impact.

13. However based on my analysis of the CCTV footage it is highly probable that the defendant had already decided to turn right at this time after

presumably assuming that the Enniskillen bound lane was clear of traffic.

14. As previously indicated the plaintiff was travelling on the Enniskillen bound lane and once the defendant started to turn right followed by the manoeuvre to the right across the Enniskillen bound lane and the intended travel path of the plaintiff, an impact with the plaintiff was inevitable.

15. Since the defendant had commenced to enter the travel path of the plaintiff approximately 1.5 seconds prior to impact, it is possible that the plaintiff had just commenced to apply braking immediately prior to the impact.”

[10] In light of this evidence, none of which was before the master, the parties’ submissions to me on appeal were quite different to what the master heard.

[11] Mr O’Donoghue conceded the possibility of a significant reduction in the plaintiff’s award by reason of excess speed but contended that some finding of liability against the defendant is inevitable in light of his admissions to the police and Mr Coll’s conclusion. As against that, Mr Ringland submitted that a judge could well decide that the defendant’s concessions are wrong or unreliable, based on an incomplete or inaccurate memory of this traumatic event. Instead, Mr Ringland suggested, a judge could dismiss the plaintiff’s case entirely on the basis of Mr Coll’s report in relation to the timing which his scientific analysis of events provided.

### *Conclusion*

[12] The plaintiff himself has no memory of the accident due to the extent of the injuries which he sustained. Accordingly, the case will most likely be decided on the basis of the evidence of the independent witness, the defendant’s admissions to the police, the CCTV footage and whatever engineers’ reports are available. (I accept that it is likely, as Mr Ringland indicated, that the defendant will engage an expert to respond to Mr Coll’s report.)

[13] While Mr Ringland contends that his client’s recollection or explanation of events is not consistent with the objective evidence, specifically the CCTV footage and the prevailing circumstances at the time, in my judgment it is inevitable that this police interview will be proved as part of the plaintiff’s case and will therefore establish a prima facie case of negligence which the defendant will have to answer.

[14] It is possible, but I conclude unlikely, that the case will be dismissed entirely because of the evidence of speed against the plaintiff. In my view, it is much more

likely that the plaintiff will succeed but that his damages will be reduced, perhaps substantially reduced.

[15] I consider that the ultimate valuation of the plaintiff's case is likely to be at least in the region of the £1.2m advanced by Mr O'Donoghue for the purposes of this application. The interim payment sought is £400,000 which is obviously one-third of that valuation. For the plaintiff to be awarded less than that amount, there would have to be a reduction of more than two-thirds or a complete dismissal of the case. That seems to me to be unlikely.

[16] That, however, is not the end of the matter. Order 29 rule 13(1) gives the court a discretion to make an interim payment of such amount as it thinks just "not exceeding a reasonable proportion of the damages which in the opinion of the court are likely to be recovered ..." It is clear that I am not to make an order for payment of the figure which I consider will ultimately be awarded but only for a reasonable proportion of that figure. I am not satisfied in the circumstances of this case that it is appropriate for me to order an interim payment of as much as £400,000. Instead, exercising the discretion given to me by Order 29 rule 13(1), I order an interim payment in the sum of £250,000. I am satisfied that such a payment does not exceed a reasonable proportion of the damages which the plaintiff is likely to recover. For the record, I confirm that I am also satisfied that in light of the plaintiff's significant care needs such an interim payment is necessary.

### *Costs*

[17] On behalf of the appellant, an application has been made for costs above and below on the basis that the defendant resisted the application a stance which was inappropriate in the circumstances.

[18] I reject that submission. The essential documentary evidence, which is required to support this application, the evidence upon which I have based this judgment, was not before the master despite the specific provisions of Order 29 rule 12(3)(b). It is for that reason that the application to the master was premature. In the circumstances I award the plaintiff one set of costs, to include senior counsel, rather than costs above and below.