

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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**ELIZABETH BROWNE who sues as the personal representative  
of the estate of LESLIE BROWNE (Deceased)**

**Plaintiff:**

**and**

**SANDRA MURRAY**

**and**

**MICHAL MARCZAK**

**Defendants:**

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**STEPHENS J**

**Introduction**

[1] The plaintiff, Elizabeth Browne, brings this action as the personal representative of her husband, Leslie Browne ("the Deceased") who died on 27 August 2010 as a result of grievous injuries which he sustained in a road traffic collision which occurred on the road between Newry and Hilltown shortly before 3 pm on Sunday 18 July 2010. The deceased was driving a silver Renault Megane registration number HJZ 1436 ("the Megane") towards Hilltown. Sandra Murray, the first defendant, was driving a grey Toyota Yaris registration number VEZ 4647 manufactured in 2008 ("the Yaris") in the opposite direction that is towards Mayobridge and Newry. Michal Marczak was driving a red Fiat Punto registration number ICZ 9034 manufactured in 2001 ("the Punto") behind the Yaris towards Mayobridge and Newry. The road traffic collision occurred on what was a right hand bend for both the first and second defendants and a left hand bend for the deceased. The first defendant lost control of her motor vehicle which rotated and came across the central white line so that it was virtually at right angles to the direction of traffic and facing the bank on the incorrect side of the road. In effect the deceased was presented with the Yaris broad side on completely blocking his side of

the road. A collision was inevitable and the front of the deceased's motor vehicle, which at all times was on the correct side of the road, collided with the passenger side of the Yaris. The front of the Yaris also collided with the bank on its incorrect side of the road. Miss Shauna Wright, who was driving behind the deceased's motor vehicle in a red Toyota Auris, registration number RTZ 5486, then collided with the rear of the deceased's motor vehicle.

[2] The case on behalf of the first defendant is that she lost control of the Yaris because it was struck from behind by the Punto. The second defendant denies that any collision occurred between the Punto and the Yaris asserting that the first defendant lost control of the Yaris on a bend due to a combination of factors including a wet road surface, excessive braking, excessive speed for the bend and inattention. The central issues in this case are (a) whether there was a collision between the Yaris and the Punto which caused or contributed to the first defendant losing control of the Yaris so that it rotated across onto the incorrect side of the road and (b) whether the first defendant lost control of the Yaris for other reasons.

[3] The defendants acknowledge that one or other or both of them are liable to compensate the plaintiff. Damages were agreed at £50,000. Mr Dornan who appeared on behalf of the plaintiff called, proved the statements of, and then proffered for cross examination the investigating police officer, Sergeant Quinn, Mrs Burns who was the driver of a car behind the cars driven by Ms Wright and the deceased, Mr Branniff, a rear seat passenger in Mrs Burns car and Mr Johnston, Senior Scientific Officer of Forensic Science Northern Ireland.

[4] Mr Dornan appeared on behalf of the plaintiff. Mr Quinn QC and Mr Dunlop appeared on behalf of the first defendant. Mr McCollum QC and Mr Cartmill appeared on behalf of the second defendant. I am grateful to all counsel for the assistance which I received from their analysis of the issues, the way in which they presented the case on behalf of their respective clients and the tone and content of their submissions.

### **The factual background**

[5] The road traffic collision occurred in proximity to a series of successive severe bends known locally as "the Seven Sisters". The defendants, both of whom were travelling towards Newry, drove around these 7 bends which were then followed by a short straight and then the sharp right-hand bend on which the collision occurred.

[6] There were heavy, intermittent rain showers on the day of the collision (B165). It had been raining before and after, though not at the time of, the collision. The road surface was wet.

[7] In the area of the collision the road, when travelling from Hilltown towards Newry, is continuously downhill so a vehicle in gear without the accelerator being depressed would be increasing in speed. Accordingly the driver of a motor vehicle

travelling in that direction would have to brake slightly in order to control the speed of the vehicle.

[8] The year of manufacture of both the Yaris and the Punto is relevant to the construction techniques used in respect of the bumpers and the underlying structures and also to the opportunity for deterioration due to use over the period since manufacture.

[9] The right hand bend on which the collision occurred is not uniform in its radius. The first part of the bend, in the direction of travel of the first and second defendants, has a radius of 100 metres and then towards the end of the bend it is less pronounced with a radius of 150 metres. The evidence of Mr McLaughlin, consulting engineer, which I accept, is that the critical speed for the part of the bend that has a radius of 100 metres, with a wet road surface, is 46-56 mph. At a speed in that bracket the lateral forces on the tyre will lead to loss of grip. The critical speed for the last part of the bend which has a radius of 150 metres is 55-71 mph. Mr McLaughlin stated that these critical speeds are an approximation. For instance moderate braking can lead to a lower critical speed. Also the calculation of critical speeds assumes that the driver is adopting a perfect line around the bend which exactly replicates the curvature of the bend. If through inattention the driver drifts to the off-side and then compensates by steering to the nearside the curvature of the bend is increased and the critical speed is decreased. So it can be seen that the combination of not steering a perfect line and moderate braking will impact on the speed at which the lateral grip of the tyres will be lost.

[10] A question arises as to whether the first defendant lost control of the Yaris on that part of the bend with a radius of 100 metres or on that part with a radius of 150 metres. The Yaris came to a halt on that part of the bend with a radius of 150 metres but the loss of control happened further back in the direction of Hilltown. Some assistance can be gained from the start of the tyre mark made by the Punto on the grass verge. That mark also starts at a point where the radius of the bend is 150 metres but I find that that mark did not start at the point where the first defendant lost control of the Yaris. If there was no collision between the Punto and the Yaris then the driver of the Punto had to see and then react to what was occurring in front of him before driving with his off-side wheels on the verge. That would place the position at which the first defendant lost control of the Yaris at a point where the bend has a 100 metre radius. If there was a collision between the Punto and the Yaris then the Punto's off-side wheels could well have been on the verge at an earlier stage but I find that this still means that the first defendant lost control of the Yaris at a point where the bend has a 100 metre radius. Accordingly I find as a fact that the critical speed for the Yaris, adopting a perfect line and without moderate braking, was 46-56 mph.

[11] The Yaris was fitted with an ABS braking system the aim of which is to prevent any of the wheels from locking when the brakes are applied. However on a bend the critical factor is the lateral force on the tyres.

[12] The tyres of the Yaris were properly inflated and there is no evidence that the tyre treads were inadequate. There was no reason relating to the condition of the tyres for the first defendant to have lost control of the Yaris.

[13] As the Yaris rotated across the road one of its tyres deflated and this caused the rim of the wheel to come into contact with and to gouge the road surface. That gouge was under the position in which the Yaris came to rest after being struck by the Megane. The gouge confirms the point at which the Yaris and the Megane collided.

[14] The evidence of Sergeant Quinn, the investigating police officer, was that he attended the scene of the road traffic collision but that he was not aware at that time of the potential involvement of the Punto. He stated that he only became aware of the potential involvement of the Punto on 20 July 2010, two days after the road traffic collision on 18 July 2010 when Colleen Branniff (who has since married: now Mrs Burns), Connor Burns (whom she subsequently married) and her brother Connor Branniff gave witness statements to the police (B43 and B49). In all of those statements there were references to a Punto car travelling behind the Yaris. In his statement Connor Branniff said that the Punto was very close behind the Yaris and that

“when the grey car started sliding I saw the orange Punto swerve to the left and up onto the grass embankment and passed the grey car and drove on.”

He thought it was:

“a man driving this Punto.”

Sergeant Quinn said that the police then issued a press release asking for the driver of the Punto to come forward and they also researched the ownership of orange Puntos in the area but that neither of these avenues of enquiry having proved successful, they carried out a road traffic check at the scene of the collision on a Sunday some 3 weeks later. Sergeant Quinn states that as the police check was being set up an orange Punto drove pass and another police officer recorded its registration number. Sergeant Quinn subsequently phoned the second defendant who said in effect that he owned an orange Punto and that he had witnessed the road traffic collision on 18 July 2010. So in the event the car that had passed the police check point some three weeks after the collision turned out to be the car referred to by Mr and Mrs Burns and by Connor Branniff. Sergeant Quinn accepted that in response to his telephone call the second defendant did not attempt to hide that he was aware of the road traffic collision. He also stated that the second defendant then went to a Police Station and made a statement on 19 August 2010 (B42) with the assistance of an interpreter. In that statement the second defendant said that:

“When (he) approached the bend (he) saw the small black car in the middle of the bend. It was a right bend. When the car was in the middle of the bend (he) saw stop lights turn on. Almost at the same time when (he) saw the stop lights turn on (he) also saw the rear of the car skid towards the hard shoulder. Then (he) saw the car skid sideways and forwards onto the opposite lane. Then (he) saw it hit another car, tilt to one side standing on two wheels that I could see the undercarriage and then it went back on 4 wheels. (He) turned left in order to avoid a collision and drove on the hard shoulder. (He) drove on a bit and then stopped because (he) was shaken by what had happened. (He) sat in the car for a couple of minutes and then went back to see if they needed his help there. (he) saw that other cars had stopped and that first aid was being administered so (he) drove away.”

[15] The evidence in this case also includes the police statements of the three passengers in the car driven by the first defendant. The evidence is hearsay and I treat it accordingly. The front seat passenger was Siobhan Crothers (B37). She gave a statement to the police on 8 August 2010. She said that she did not really remember what happened in the road traffic collision. The rear seat passengers were Sophie Crothers (B39) and Manon Druet (B41). Sophie Crothers gave a police statement on 22 July 2010 in which she said that

“as we came around the corner the car seemed to lose control and slide across the road into the ditch.”

She did not mention hearing or feeling any collision to the rear of the first defendant’s vehicle. Manon Druet gave a police statement on 22 July 2010 in which she said:

“I am not completely sure about what happened because it all happened so fast, but I think Sandra lost control of the vehicle and our car crossed the road amongst the traffic of the opposite way and we ended up hitting the hard shoulder.”

Again she does not mention hearing or feeling any collision to the rear of the Yaris.

[16] Mrs Burns in evidence stated that on 18 July 2010 she was driving Connor Burn’s car towards Hilltown. Connor Burn’s was in the front passenger seat, her brother Connor Branniff and a friend Shannon Doyle were in the rear passenger seats. As she was driving and ahead of her she saw the Yaris when it was almost out of the bend slide across the road onto her side of the road. Her brother said “There’s

an accident". The collision occurred with the Megane. She did not consider that the Yaris was being driven fast. She saw the Fiat Punto behind the Yaris and she could not see a gap between the cars from her position. She could not be sure but she thought that the Punto hit the rear of the Yaris. However, in her police statement made 10 days after the road traffic collision (B43) she had not said that she thought that the Punto had struck the Yaris. I considered that omission to be significant. I find, having seen her in the witness box, that she did not see or have enough information to deduce, that the Punto had collided with the rear of the Yaris.

[17] In his evidence Connor Branniff, the rear seat passenger in the motor vehicle driven by Mrs Burns, stated that the vehicle in which he was travelling was almost 100 yards away from the point at which the first defendant lost control of the Yaris. He said that the Punto was right up behind the Yaris. In his police statement he said:

"... When I first saw (the Yaris) coming around the bend towards us I saw (the Punto) travelling very close behind it. When the (Yaris) started sliding I saw the (Punto) swerve to the left and up onto the grass embankment and past the Yaris and drove on. ... Just before the collision happened I said, 'There's a car accident'. I said this because I could see the back of the (Yaris) sliding down the hill. I don't know if the (Punto) had anything to do with this but it was travelling very close to the back of the Yaris. I cannot say if the Punto collided with the (Yaris)." (B49)

I find, having seen him in the witness box, that he did not see or have enough information to deduce, that the Punto had collided with the rear of the Yaris.

[18] The first defendant was interviewed by the police on 9 September 2010 after which and on 14 September 2010 Mr Johnston, Senior Forensic Officer, re-examined the Yaris to determine whether there was any damage to the rear of the vehicle that would be consistent with a collision between the Punto and the Yaris (B171). On the same date he also examined the Punto for evidence of contact with the Yaris (B173).

[19] In relation to the rear of the Yaris he found two small isolated areas of damage comprising horizontal scrapes at the nearside region of the wrap around rear bumper, the appearance of which was indicative of contact with a rough textured abrasive surface such as rough cast plasterwork as opposed to contact between the Punto and the Yaris. Two additional areas of very minor vertical scrapes were apparent, one on either side of the number plate. In his opinion none of the damage noted to the rear of the Yaris was consistent with forceful contact by or with another vehicle. He did not see any evidence of foreign material such as paint, rubber or plastic on the rear of the Yaris.

[20] On 14 September 2010 Mr Johnston also examined the front of the Punto at Newcastle Police Station for evidence of contact with the Yaris. He did not see any material foreign to the car or damage to it of the type that he would expect to be present if it had sustained a forceful contact with another vehicle.

[21] Mr Johnston concluded that there was no evidence of any damage to either the Punto or the Yaris that would be consistent with a collision between those two vehicles.

[22] In his evidence Mr Johnston stated that the Yaris and the Megane came to rest close to the area where they collided so that in effect they had come to a halt at the point of impact. This indicates that when they collided the opposing component of each cars momentum would have been broadly similar. Mr Johnston then calculated the differential weights of the Megane and the Yaris both including and excluding occupants. Based on that information he was able to calculate the speed of the Yaris at the point of impact. He stated that if the deceased was driving at 25-35 mph, as estimated by a number of witnesses, then he calculated, and I find, that at the point of impact the Yaris was travelling at 27 to 37 mph. It is important to appreciate that this was the speed of the Yaris after it had rotated and spun across the road. It was not possible for Mr Johnston to assess the speed of the Yaris on its own side of the road prior to the rotation movement except to say that it would be in excess of the range of 27 to 37 mph.

[23] Mr Johnston stated that as the driver and front seat passenger of the Yaris were considerably heavier than the rear seat passengers this would have lightened the load on the rear wheels. He also said that as 60% of the braking was on the front wheels any braking would have also have lightened the loads on the back wheels. Both of these factors would make the back wheels more vulnerable to loss of lateral grip on a bend.

[24] Mr Johnston stated, and I find, that a safe gap between the Yaris and the Punto in wet road conditions would be 53½ metres as opposed to the distance of 15-20 metres which was the approximation given by the second defendant.

[25] Mr Johnston stated that if the Punto had collided with the rear of the Yaris then that there would be visible damage done to a bumper cover of the Yaris either in the form of some change in the lustre of the paint work or in the form of marks to the paint work. Dr Woods who was called on behalf of the first defendant disagreed with this evidence. I consider that the lack of damage to the bumper cover is not conclusive but that it is a factor to be taken into account.

[26] The first defendant was prosecuted in the Crown Court with the trial taking place before His Honour Judge Finnegan with a jury in March 2013. After a number of days of evidence a verdict of "Not Guilty" was entered on the direction of the judge. Prior to that trial commencing a report prepared by Dr Woods, of Denis Woods' Associates, dated 27 February 2013 (B/111) had been served on the

prosecution. Dr Woods noted that Mr Johnston had only examined the plastic bumper covers of the rear of the Yaris and the front of the Punto and that he had not removed the plastic bumper covers of either vehicle. Accordingly he had not examined the underlying metal bumper bars, crush boxes and attachments for damage. Dr Woods stated that it was his experience that in a number of collisions the plastic bumper covers do not show signs of visible damage while there is significant underlying damage. So the lack of external visible damage to the plastic bumpers did not exclude a collision between the two vehicles. At the trial before me Dr Woods stated that flexible plastic bumper covers can deform in a collision and then reform so that there is no apparent damage to the cover but depending on the speed of collision there will be underlying damage to structures below the bumper cover. So at speeds in excess of 3 or 3.5 mph damage is likely to occur to the underlying structures. At speeds between 5 to 10 mph one can still have no damage to the bumper cover but damage to the underlying structures. Dr Woods stated, and I agree, that it is essential to remove the bumper cover to examine the underlying structures.

[27] For the purposes of his report in relation to the criminal trial and on the evidence available to him Dr Woods concluded that it was his opinion that this incident was caused when the Yaris being driven by Ms Murray in the direction of Hilltown at a speed of around 30 miles per hour was hit on its nearside rear by the Punto which was travelling behind and at speeds between 6 and 12 miles per hour faster (B118).

[28] Upon receipt of that report Mr Johnston wished to re-examine the two vehicles and on this occasion to remove the plastic bumpers to look for underlying damage. He was informed by the police that neither vehicle was available. However, in fact the Yaris was, and had at all material times been, in a recovery yard in close proximity to Newry Courthouse. This became known during the criminal trial and on 15 March 2013 it was examined by Colin Glynn of Denis Woods Associates and by Mr Johnston. That examination took place 2½ years after the road traffic collision. The Yaris had not been kept in the same part of the recovery yard but had been moved from its position when it was last examined by Mr Johnston on 14 September 2010. The ambience of the recovery yard and the way that the vehicles are kept is not dissimilar from a scrap yard in that the Yaris was in close proximity to other damaged vehicles and there were leaves and debris in the area. The recovery yard does not have secured areas in which vehicles are kept pending criminal trials.

[29] I find that between 14 September 2010 and 15 March 2013 the rear of the Yaris had sustained additional damage whilst in storage. Mr Johnston found, and I hold, that the rear bumper cover was slightly displaced from its normal position at each end and there was damage to the outer surface of the bumper cover at a position slightly to the nearside of centre. The damage to the bumper cover was at a position on the lower edge of the moulded number plate recess; it took the form of a concave depression just to the nearside/passenger side of centre. There was associated damage on the bumper surface extending a short way from the depression to the

approximate central point of the rear. The appearance of this damage was indicative of a localised forceful contact.

[30] Following examination of the boot area, the rear bumper cover was removed to facilitate examination of its inward facing surface, the bumper bar, the outer most surface of the rear metal panel of the boot and the crash cans at each side. A crush can is a metal component designed to deform during an impact to the area of the car where they are located, for example, at each end of the longitudinal chassis members of the vehicle. The function of the crash can is to absorb energy from the impact, thereby reducing the amount of energy transmitted to the occupant compartment of the car. Examination of the inward facing surface of the bumper cover revealed a narrow horizontal contact mark on the back of the full width of the number plate recess area. The bumper bar was very slightly curved in the forward direction by approximately 1.5 millimetres over one metre of its length. This curvature appeared symmetrical about its central position.

[31] There was no damage to, or deformation of, the rear crash cans to which the bumper bar was attached at its ends.

[32] I find that whilst in the recovery yard the Yaris had sustained rear impact damage and that the damage to the bumper cover and the bumper bar found on 15 March 2013 was not caused in the collision on 18 July 2010.

[33] At the trial before me Dr Woods stated that he has used computer software in relation to accident investigations for many years. The models involve analysing the damage to the vehicles and within a tolerance of 5 degrees arriving at evidence as to the angle of impact which enables calculations to be made as to various possible or probable points of impact some of which may, depending on the circumstances of each individual case, be capable of being rejected so that in some cases one is left with only one probable point of impact.

[34] The output of the computer models depends on the data that is entered which data can vary. So in this case there can be a variation in speeds of the Punto and the Yaris, variations in the differential speeds of the Punto and the Yaris, variations as to the respective distances back of both vehicles from a fixed point along the line of travel, variations in the overlap between the front of the Punto and the rear of the Yaris, and variations in the angles of both cars.

[35] Dr Woods, for the purpose of the criminal proceedings, produced four computer models simulating the crash. Each of the models had different parameters (B124-B128; B129-134; B135-139; and B140-144). For the purposes of this trial he produced two further computer models (report 3). He accepted that none of the computer models which he had produced demonstrated the degree of rotation that was achieved by the Yaris prior to impact with the Megane. The Yaris had undergone a significantly greater degree of clockwise rotation, relative to its intended direction of travel, before the stage of the collision with the Megane than

his computer models suggested. The evidence of the first defendant and most significantly of the independent witness Mr McCarthy, was that the Yaris had rotated to such an extent that it was effectively broadside on to the direction of travel of the Megane. That meant that the Yaris had rotated through 90 degrees or almost 90 degrees. However none of the computer models produced by Dr Woods show the Yaris rotated by 90 degrees. Rather the impact is shown between the Megane and the Yaris in such a way that the front nearside of the Yaris would be struck by the Megane as opposed to the passenger side being struck. Dr Woods stated that a computer model could be produced that would result in the Yaris rotating through 90 degrees if the information he imputed into the computer model was changed. He considered that if the angle of the Punto was increased that this could produce 90 degree rotation but he was not in a position to stipulate the amount by which the angle would have to increase. The other variables that could be changed are the degree of overlap, and differences in the relative speeds of the Punto and the Yaris. The result of not producing a computer model which shows the Yaris rotating through approximately 90 degrees before collision with the Megane is that there is no evidence as to which variables had to be changed and by how much. It also means that one does not have the computer generated values for deformation energy, deformation depth and impulse. Impulse is the average force between the two vehicles over a period of time. The models which Dr Woods did produce give an impulse value up to 3,053.71 (B131). In evidence Dr Woods stated that an impulse of 2,468.76 was equivalent to 2½ tons over a period of 0.15 seconds. So as a result of Dr Woods not producing a computer model that showed the Yaris rotating through almost 90 degrees the court does not have an assessment of the impulse value involved in achieving such a rotation.

[36] I find that an impulse of 2½ tons should be readily appreciated by all the occupants of the Yaris.

[37] I find that the likely impulse would be at least 2½ tons, if not greater, if the correct computer model had been used.

[38] I find that the deformation depth if the correct computer model had been used would be at least 11 cms to the Punto and 10 cms to the Yaris. I find that there was no relevant damage to the Punto except for a pre-existing tear to the front plastic cover and that the damage which was subsequently sustained by the Yaris whilst in storage was not to that depth.

[39] A car negotiating a right hand bend could be caused to rotate clockwise and move into the oncoming traffic lane if it was struck forcefully at the rear, with the force of the impact concentrated to the nearside of centre as it negotiated the bend. However the nature of the Yaris' rotation is also characteristic of the behaviour of a car subjected to excessive braking when it is following a curved path. The application of braking to a car results in an associated mass transfer from the rear wheels to the front wheels, this reduces the amount of lateral frictional force available at the rear wheels to resist rotation on the vehicle about its centre of

gravity. If the available lateral frictional force at the rear wheels is not sufficient to prevent the rear tyres sliding sideways as the car continues along its curved path they will rapidly rotate about its centre of gravity and adopt a tighter curved path than its driver intended. In such circumstances a car negotiating a right hand bend will rotate clockwise about its centre of gravity and follow a path taking it rapidly into the lane at the driver's right. The loss of control could have occurred in both ways.

### **The evidence of both defendants**

[40] The second defendant, now 35, is Polish and though his English has improved somewhat, he required the assistance of an interpreter to give evidence. His ability to speak English was very limited at the time of the road traffic collision. In evidence he stated that he had moved to Northern Ireland in 2004 and that he purchased the Punto for £800 in about 2007. At the time that he had purchased it there was damage to the bottom nearside of the plastic cover that extends down from the bumper forming the entire front of the car. The damage was a tear of the plastic which was only a few inches from ground level at a point which was in effect near the underside of the front of the car. He also stated that the front nearside headlight and its alignment with the front bumper as shown in the police photographs was in the same condition as when he purchased the Punto.

[41] The second defendant described how on 18 July 2010 he had been driving the Punto behind the Yaris as it went through the Seven Sister bends. That he was some 15 to 20 metres behind the Yaris and that as he approached the last bend he saw the Yaris brake and the back of the car drifted. He said he also saw the back wheels lock and that he quickly swerved around the Yaris to avoid colliding with it which involved driving with the nearside wheels of the Punto on the grass verge. He would not have been able to brake in time to have avoided a collision between the Punto and the Yaris and he was compelled to take avoiding action. That braking heavily would have risked losing control of the Punto. He also said that he could not remember whether he had braked. He saw the Yaris drifting and turning to the other side of the road where it collided with an oncoming car. He denied that any collision occurred between the Punto and the Yaris.

[42] The second defendant said that he then drove some 100-150 metres down the road where he stopped in a lay-by adjacent to a house on the left hand side. He then waited for about a minute to settle down having seen what had been a major road traffic collision. He then turned his vehicle to return to the scene of the accident now driving towards Hilltown. He recounted that the whole of that side of the road was now blocked as a result of the collisions between the various motor vehicles so that he went over onto the incorrect side of the road. That there were people directing the traffic and as the window of his Punto was down one of the people directing the traffic told him to be careful as he passed. He said that he looked at the aftermath of the collision as he passed by and that he saw that people were attending to the persons in the deceased's motor vehicle. He decided that it was not necessary for

him to give assistance or to stay at the scene given that others were providing assistance, that he did not speak English and that he was not involved in the collision though he had witnessed it. After he had passed the scene of the collision he stated that he again turned his vehicle now travelling in the original direction towards Newry. He again passed the scene of the collision. He did not stop the Punto and he was not present at the scene when the police arrived.

[43] The second defendant recounted that he was subsequently telephoned by Sergeant Quinn. That he immediately informed Sergeant Quinn that he owned and drove the Punto and that he had witnessed the road traffic collision. He agreed to and did attend Newry PSNI Station to make a statement. Subsequently, Sergeant Quinn visited him at his place of work seeking to take the Punto away for examination given that there was a suggestion that the Punto had collided with the Yaris. He agreed and the Punto was taken away for a day during which it was examined. When it was returned he was informed that everything was okay and nothing had been found. He did not tell the police about the tear to the underside of the front of the Punto when they collected the car as he was not asked and in any event he has a limited ability to speak English and no interpreter was present.

[44] There were a number of issues in relation to the credibility of the second defendant's evidence which I have considered both individually and cumulatively. They included the following.

- (a) The fact that he did not remain at the scene of the collision could lead to the inference that he wished to avoid responsibility for having caused it. The potential for this inference would be even stronger if I reject his evidence that he returned to the scene.
- (b) The second defendant accepted that there was no reference in his police statement or in his evidence at the criminal trial to the rear wheels of the Yaris locking.
- (c) The second defendant's account of stopping 100-150 metres down the road was at variance with his evidence in the criminal trial when he stated that it could have been "a mile, a mile and a half, 2 miles" (D57).
- (d) The second defendant has been convicted in Poland of two offences of theft. Those convictions are relevant to the honesty of his evidence, though they are to be seen in the context that they were minor offences committed when he was aged 19.
- (e) The second defendant has had penalty points imposed for and has been convicted of speeding offences. The most significant incident of speeding occurred after this collision when he was prosecuted and convicted of driving on the motorway at an average speed of 105 mph.

- (f) The poor standard of the second defendant's driving can also be discerned from the fact that 9 months after this collision he was involved in another collision in which the Punto was written off. He states that this collision was caused when a fox ran out in front of the Punto causing him to lose control of it.
- (g) It is apparent that the distance the second defendant left between the Punto and the Yaris of 15-20 metres was totally inadequate. An appropriate distance was some 53 metres. The short distance between the Punto and the Yaris meant that the second defendant would have been, and in the event proved to be, unable to bring the Punto to a stop when an emergency developed in front of him. This requires consideration as to whether this short distance meant that because the Yaris braked that the Punto then collided with back of it.

[45] The first defendant was interviewed by the police on 9 September 2010 (B/88 et seq). The record of that interview has been introduced in evidence. The first defendant states that she told Sergeant Quinn in advance of the interview and by telephone that she considered that the cause of the loss of control of the Yaris was that her motor vehicle was hit. However the evidence of Sergeant Quinn, which I accept, was that the police investigations between 18 July 2010, the date of the road traffic collision, and the interview with the first defendant had not revealed any allegation from the first defendant that there had been a collision between the second defendant's Punto and the first defendant's Yaris which caused the first defendant to lose control of the Yaris. I find as a fact that the first defendant's police interview was the first occasion on which it had been suggested by her that the accident was caused by something hitting the Yaris. However I note that on 20 July 2010 Connor Burns had told Sergeant Quinn that he could not say whether the Punto collided with the Yaris (B50)

[46] The questions and answers at interview included the following extracts:

- "Q. Can you explain just in your own words and in your own time how this collision occurred as you see it?
- A. We were on our way to Newry and we were through what they call the seven sisters and after that there is a slight, there's a straight in the road and then there's a wide sweeping bend to the right. I was on that bend, I wasn't fully around that bend when *I heard a thud or a bang* and I went "what the". I didn't get the words "was that" out of my mouth till my car was spun 180 degrees and I was sent flying to the other side of the road ..."

Q. You described it as hearing this thud, bang.  
*What do you think made that thud or bang?*

A. *I haven't a clue. I was too busy concentrating on the bend.*

...

Q. Can you tell me have you any idea what speed you were travelling at?

A. It is a digital clock in my car, I know coming round the Seven Sisters it was registering 26, 27 miles per hour and going around that bend I was braking I always do, it's just it's habit with me because it is a wide sweeping bend and I know to be careful and if I hit thirty it was the height of it.

...

Q. Sandra just something your solicitor brought up and I don't want to interrupt. *You said you heard a thud or a bang. You didn't say you felt.*

**Solicitor:** *Well she meant that.*

Q. Sorry sorry.

**Solicitor:** No sorry she meant that.

...

Q. ... You said you heard a thud or a bang?

A. Yes.

Q. You used them exact words, would that be fair to say that. Are you now saying that?

A. I am saying something hit me. I am saying something hit me because I was spun 180 degrees and I was sent flying to the other side of the road and I was sent over that road a hell of a lot faster than I came around that corner.

Q. *Have you any idea where this came from, did it come from the front or did it come from your rear Sandra or whereabouts exactly did this?*

A. *I don't know, I was that busy concentrating on the corner. I was too busy concentrating on going around that bend and as I said out of here I either got a flash and I don't know whether I got it out my window or out my wing mirror. I don't know where the flash come from. I couldn't tell you the colour of the flash.*

Q. *Was there anything behind you?*

A. *I don't know.*

...

A. *Where did it hit you?*

A. *I don't know. I really don't know.*

Q. ... obviously once you have heard this bang you lost control of your car. Would that be fair comment?

A. I heard the bang and my car was spun. I was spun out of control. I didn't lose control of my car. I was spun 180 degrees and sent flying." (My emphasis).

[47] A number of points arise from a consideration of that police interview which consideration has to take into account the character and presentation of the first defendant. There are some people who are not good at describing events or in accurately recalling events so that a distinction may have to be drawn between inattention in recollection and in recounting on the one hand (in the first defendant's words "her head was away with it") and alternatively inattention in driving or in awareness on the day of the collision. The points arise from the police interview as a whole and they are as follows:

- a) the first defendant did not know that there was another car behind the Yaris;

- b) the first defendant did not mention that, before the first defendant lost control of the Yaris, Siobhan Crothers, her front seat passenger, said anything at the time that could lead one to believe that she also had heard a bang or thud or had felt a collision or that she also did not know what it was that had caused the bang or had caused the feeling;
- c) in relation to the thud or bang which the first defendant said she heard she said that
  - i. she did not know what made it; and
  - ii. she did not know where it came from;
- d) the first defendant did not say that she *felt* a collision as opposed to hearing a thud or a bang, but rather her solicitor intervened to indicate that she meant that she felt it;
- e) the first defendant did not say that her body was moved forward at the same time as she said she heard the thud or bang;
- f) in relation to the something that the first defendant said hit the Yaris she did not know where the Yaris was hit;
- g) the first defendant did not say that she had seen the Megane on the opposite side of the road until after she had lost control of the Yaris;
- h) the first defendant did not say that, at any time, she had seen the red Auris being driven by Miss Quinn or the VW Passat being driven by Mr McCarthy (B45) or the motor vehicle being driven by Mrs Burns, all of which were on the opposite side of the road.

[48] The first defendant in her evidence stated that she was driving at 26 to 27 mph on the straights between the bends known as the Seven Sisters, that she had navigated those bends and then travelled along a short straight before the bend on which the collision occurred. That she braked slightly before the bend and also braked slightly on the bend. That her speed reduced to 23 to 24 mph or thereabouts. That when she braked the second time she heard and she *felt* a thud. She illustrated how she felt the thud by moving the top part of her body forwards. She said that she also got a flash of something out of her right side but could not say what it was and whether it was in her right wing mirror or right window. That her front seat passenger, Siobhan Crothers said

“What was that Sandra?”

and that she said:

“What the”

and could not get out the words “was that” as the Yaris spun and sent to the other side of the road. That before these events occurred she was not aware of any car behind her having last checked in her rear view mirrors before the first of the seven bends. She was also unaware of the deceased’s vehicle on the other side of the road until the Yaris started to rotate across the road. That she was unaware of the cars driven by Ms Shauna Wright, Mr McCarthy and Mrs Burns at any stage. She explained that the reason why she did not see these other vehicles coming in the opposite direction either before she lost control of the Yaris or at all, was that she was concentrating on negotiating the bend. However I consider that if she had been keeping a proper lookout they would have been clearly visible to her.

[49] The first defendant stated that two collisions occurred, the first with the Megane and the second with the bank on the far side of the road. I also consider that there would have been another collision when the deceased’s motor vehicle was struck from behind by Ms Wright’s motor vehicle.

[50] The first defendant stated that she was then detained in the Daisy Hill Hospital until the Friday following the Sunday on which the collision occurred and that in the same hospital were Siobhan Crothers and also the plaintiff, Mrs Browne. On the Friday that Mrs McMullan was discharged she went to Newry Police Station to collect her keys and then to Warrenpoint Police Station to collect some items of personal belongings which were given to her by Sergeant Wright. Siobhan Crothers was discharged from hospital on the following Monday and Mrs Murray visited her in her home during the course of that week. Mrs Murray recounts that Siobhan Crothers then told her of a conversation which she had in the hospital with the plaintiff during which the plaintiff said

“It was them young ones that were overtaking that caused this accident.”

The first defendant informed the police about this conversation saying “Siobhan read out to me word for word”. The police subsequently interviewed Siobhan Crothers about this and she said that she could not remember saying that to Mrs Murray (B38). They also interviewed Mrs Browne who said that at no time did she discuss the accident and certainly did not say about a car overtaking her (B36).

[51] There are a number of difficulties with the evidence of first defendant which I have considered both individually and cumulatively.

- (a) The first defendant’s evidence is that she did not inform Sergeant Wright when he visited her in hospital or on the Friday of her discharge from hospital that the Yaris had been hit and that this caused it to spin across the road. This lack of a report to the police at the earliest opportunity taken individually could be explained on the basis of her upset and her nature but I consider it significant when taken cumulatively with the other matters.

- (b) The first defendant did not inform the police during her interview that she “felt” a thud. She said that she heard “a thud or a bang” (B89). It was her solicitor who said that she meant that she felt it (B91). If the Yaris was struck from behind with enough force to deform the plastic bumper cover which then reformed and with enough force to cause damage to the underlying structures and to cause loss of control of the Yaris then I consider that the collision would have been felt by the first defendant. I consider that her failure to mention that to the police to be of significance.
- (c) None of the other occupants of the Yaris have stated that they felt any impact from behind before the first defendant lost control of the Yaris.
- (d) None of the other occupants of the Yaris have stated that they heard any thud or bang either at all or from behind before the first defendant lost control of the Yaris.
- (e) The first defendant was adamant that she had told the police that after she heard and felt the thud her passenger said “What was that Sandra?” There is no mention of that in the first defendant’s police interview and I hold that she did not tell Sergeant Wright that either during the course of that interview or in any earlier telephone calls.
- (f) The account of the conversation between Siobhan Crothers and the plaintiff does not gain any support from either Siobhan Crothers or from the plaintiff. I consider that the first defendant must have realised that there were no overtaking cars involved in this collision. I also consider that if this remark had been made to her she would have been eager to find out more about the conversation so that she would have made enquiries from Siobhan Crothers as to whether anything was said about the direction in which the overtaking car was travelling. How the overtaking car caused the accident. What was a car doing overtaking on a bend. What was the type of car. I do not consider this was a reliable account given by the first defendant to the police. I consider that it reflects the fact that the first defendant did not and does not know what happened so that she grasped at anything that might exonerate her.

## **Conclusions**

[52] The issues between the defendants are relatively finely balanced and it would be impossible to satisfy the criminal standard of proof in relation to either of them. The evidence is not only insufficient to satisfy the criminal standard of proof but also there were inadequacies in the criminal investigation and in the preparation of the criminal trial. I consider that the use of computer models emphasises the need, if possible, for the police to keep securely the vehicles involved in road traffic collisions where criminal proceedings are anticipated. Any opportunity to

independently assess is lost if the vehicles are no longer available or if an inadequate inspection is carried out or the findings of the inspection are not properly recorded. In this case and during the course of the initial police investigation the bumper covers ought to have been removed and the underlying structures examined with the findings properly recorded. There was also a failure on the part of the investigating authorities to identify that the Yaris was still available for examination. There was a failure by the same authorities to keep the Yaris securely in such a way that it could not receive any further damage whilst in storage.

[53] As far as these civil proceedings are concerned the second defendant was undoubtedly travelling too close behind the Yaris. The first defendant was not paying attention to motor vehicles behind her or in front of her. The decision in this case involves, but is not restricted to, distinguishing between two defendants in circumstances where the evidence of both is open to question and in circumstances where the bumper covers ought to have been, but were not, removed during the course of the initial police investigation.

[54] I consider that there are various factors which tilt the balance against the first defendant. The most significant is that I consider that she has not given any convincing evidence as to the rear of the Yaris being struck which lack of evidence is to be seen in the context that none of the other three occupants of the Yaris has given any account to the police or given any evidence at the trial, that the Yaris was struck. The force of the collision was in the region of 2½ tonnes from the rear. There was no evidence that such a collision could go unnoticed. I find as a fact that it would have been heard and felt by every single occupant of the Yaris, if it had occurred. The only assertion by the first defendant to the police was that she had heard it. I found her demonstration in the witness box of how she felt it, by moving the upper part of her body gently forward, to be entirely unconvincing.

[55] There are other factors which also point towards the first defendant being liable. The loss of control could have occurred by a combination of braking and correcting the line which she was following around this bend. The fact that she was unaware of other cars in her vicinity leads me to the conclusion that she was equally inattentive to the line that she was following. Furthermore, given a deformation depth of 10 centimetres predicted for the rear of the Toyota Yaris at the nearside, I would expect more obvious damage to that region. In particular, in view of the suggested overlap at the rear nearside of the Yaris, I would have expected to have found some degree of deformation of the rear nearside crash can and to other body components in that region. However, no such damage was apparent. I also find that there was no damage to the bumper covers and whilst this is not conclusive it is a factor to be taken into account. I also find that there was no damage to the rear of the Yaris or to the front of the Punto that would support the proposition that the two cars collided. I have weighed up the demeanour and presentation of both defendants and I prefer the evidence of the second defendant. I consider that the first defendant decided to brake and to brake excessively at the same time as

correcting the line that she was following and that this led to the loss of control of the Yaris. I find that there was no collision between the Punto and the Yaris.

[56] I make the following additional findings of fact.

- a) The first defendant was not travelling at 23-24 mph. That evidence is inconsistent with the speed at which the Yaris collided with the Megane which was 27-37 mph. The Yaris was travelling faster than 27-37 mph before the first defendant lost control. It is not necessary to determine the exact speed at which the first defendant was driving save to say that it was at a speed which was in excess of the critical speed given the wet road conditions, the weight distribution of the occupants in the Yaris, the line which the first defendant was following and the way in which the first defendant was braking. In short it was an excessive speed in the circumstances.
- b) The first defendant did not hear or feel any thud or bang before she lost control of the Yaris. I consider that she has confused the sequence in that she heard and felt the noise and impact of the subsequent collisions with the Megane and the bank on the far side of the road.
- c) The second defendant did return to the scene of the collision. I do not infer that he wished to avoid responsibility.

[49] I enter judgment for the plaintiff against the first defendant for £50,000.

[50] I enter judgment for the second defendant against the plaintiff.

[51] I will hear counsel in relation to costs as between each of them and the plaintiff and as between the defendants.

[52] I will also hear counsel in relation to the question as to whether in the age of electronic money transfers there should be a shorter stay on the award of £50,000 than the traditional stay of three weeks.