**Neutral Citation no. [2008] NIQB 28** | *Ref:* **MOR7111**

*Judgment: approved by the Court for handing down* | *Delivered:* **29/02/08**
*(subject to editorial corrections)**

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

---

**QUEEN'S BENCH DIVISION**

---

**BETWEEN:**

**DR JACOB MOREH**

**Plaintiff;**

**-and-**

**JAMES O'NEILL AND PATRICK MEGORAN AND SONS**

**Defendants.**

---

**MORGAN J**

[1] The plaintiff claims damages as a result of personal injuries sustained by him as a result of a road traffic accident at Malone Road Belfast on 14 October 2004.

[2] The plaintiff was born on 23 June 1926. On the morning of 14 October 2004 he had visited the library at Queens University Belfast and in the early afternoon was cycling home. He stopped at a filling station on Malone Road which was on his left having entered by the access point on the cityward side of the station. He remembers purchasing milk and placing it in his pannier. He then got on his bike and cycled to the exit which is on the countryward side of the station. He has no specific recollection of his movements thereafter but he said that his practice was to stop at the white lines which delineated the road carriageway from the exit at the station. Thereafter his routine was to look to his right and if the road was clear to continue left in a countryward direction. The countryward road at this point consisted of two lanes. If there was traffic visible to him in either lane he would not have moved.

[3] He recollects moving onto the road carriageway. He then became aware of everything becoming dark at his right-hand side and looked to see a

lorry beside him. He next became aware of a terrible pain in his leg and foot as the lorry went past and he screamed and fell.

[4] As a result of this accident the plaintiff sustained a Grade IIIB compound right distal tibia and tubular fracture. The tibia fracture extended into the ankle joint although the risk of arthritis is small because of the plaintiff's age. He was admitted to the Royal Victoria Hospital where he required the application of an external fixator. He developed compartment syndrome and eventually required split skin grafting. He had an area of necrotic tissue on the dorsum of his foot and fractures of the toes on the right side. The fracture has healed with angulation and recurvature. His walking distance is reduced as is his speed. It is to his considerable credit that he has returned to cycling.

[5] Constable Martin is a police officer who attended the scene. She established that there was a pool of blood close to the kerb approximately 10 feet on the country bound lane of the carriageway from the nearest part of the filling station exit roadway. The parties agree that the point of impact was somewhere close to the blood. She identified the location of the lorry involved in this accident which was driven by the first named defendant and owned by the second named defendant. She proved a statement by the first named defendant in which he said that he had noted the defendant stationary at the exit looking at the ground on his right fixing a plastic bag. He did not reduce his speed which he estimated at under 30 mph. A tachograph suggested a speed of approximately 29 mph. In his statement the first named defendant said that after passing the exit to the filling station he looked in his nearside mirror and saw the plaintiff come out into the side of him.

[6] Mr Cosgrove was an engineer retained by the plaintiff. He produced two photographs taken 210 feet and 133 feet from the location of the pool of blood representing in general terms the view that would have been available to the defendant driver. Each of these photographs demonstrates that the driver would have had a view of the plaintiff if he was stationary and waiting to get onto the carriageway as described by him in either location. The distance from the middle of the city bound entrance to the extremity of the country bound exit of the filling station was 144 feet. At a speed of approximately 30 mph Mr Cosgrove said that the plaintiff would require 30 feet for thinking time and 61 feet for braking before he could come to a halt. The front of the lorry was 47 feet beyond the suggested point of impact. That suggested that the first named defendant started to think about braking 44 feet before he reached the country bound extremity of the exit. If he only thought about braking once he had reached the country bound extremity of the exit he could not have stopped the lorry where it stopped from a speed of 30 mph.

[7] The first named defendant is now a student but in October 2004 was a lorry driver with a class 2 HGV licence. On the day of the accident he was travelling countrywards on the inside lane. Although there was some suggestion that he was changing lanes I accept his evidence on this point. His lorry was laden with rubble and clay. He said that he first saw the plaintiff stationary at the white line at the filling station beside the kerb on the countrywards side of the exit. At that point he estimated that his lorry was approaching the filling station entrance. He said that the plaintiff was stationary and had both feet on the ground. He noted that he was an elderly man. He described him as looking down to his right and fixing something towards the back of the bicycle where the pannier was located. He said that the plaintiff's position did not change as he approached him. There was no sign that he was going to move out. He said that he then checked his nearside mirror after passing the exit and saw the plaintiff coming out on the bicycle and striking the middle axle of the lorry. He then braked. He accepted that the plaintiff represented a possible hazard to him as he approached the exit but he had not slowed down when doing so.

[8] In his evidence Mr Cosgrove said that if the plaintiff was in the position described by the first named defendant he would have had to straighten up from the bent position, lean the cycle over and lift 1 foot up to the peddle before he could get moving. From a standing start to the point of impact would need sharp acceleration if one was going to achieve it in less than two seconds.

[9] The plaintiff has fairly accepted that he has to rely on his memory of his routine in relation to his position and activities prior to emerging onto the carriageway. The first named defendant has given a specific account of the plaintiff bending over to his right and apparently working at the pannier with his 2 feet on the ground. Although I do not know the reason for it I consider it probable that this account is correct. Secondly on the engineering evidence the first named defendant thought about braking and commenced doing so before he had reached the point where the plaintiff had been stationary. The probability is that he did so because he saw that the plaintiff had started to move and the relative speeds are consistent with the plaintiff having commenced his movement at the time that the first named defendant started to think about braking.

[10] It must follow that the plaintiff had prior to that straightened up, leaned over his bicycle to one side and placed a foot onto the pedal. All this was clear evidence of an intention to emerge, in particular in the case of an elderly man who was not looking in the direction from which the lorry was coming. Having identified the plaintiff's circumstances some distance back there is no explanation for the first named defendant not seeing these manoeuvres by the plaintiff which ought to have caused him to brake and give warning by way of the use of his horn.

[11] I consider, therefore, that the plaintiff has established lack of care on the part of the defendant in not keeping a proper lookout, failing to brake and failing to give a warning. It is clear, however, that the presence of the first named defendant's vehicle on the road ought to have been apparent to the plaintiff and that he must bear a large share of the responsibility for this accident. Accordingly I reduce his award by 50% by reason of contributory negligence.

[12] The plaintiff suffered a very serious injury to his right leg which has left him with substantial residual disability. I consider that the appropriate figure for general damages is £75,000 and I make an award of £37,500 plus interest at 2% from the date of issue of the writ.