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Judgment: approved by the Court for handing down | *Delivered:* **26/11/03**
(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

ELLEN BROWNLOW

Plaintiff;

and

DEON LUKE KNIGHT AND GERALD KNIGHT

Defendants.

CAMPBELL LJ

[1] On the evening of 8 March 1996 an accident occurred in Castle Street in Ballymoney involving a pedestrian, Mrs Ellen Brownlow, and a motorcar driven by Deon Knight. As a result of the accident Mrs Brownlow has suffered brain damage and this has changed her life.

[2] In this action she claims that she is entitled to damages for her injuries and loss by reason of the negligence of Deon Knight and Gerald Knight his father, who is sued as the owner of the car driven by his son. They in turn deny that they were negligent and say that if, contrary to this assertion, they were negligent there was contributory negligence on the part of Mrs Brownlow.

LIABILITY

[3] On the evening in question Mrs Brownlow, who was then 59 years of age, was playing bingo in the parochial hall at Castle Street, Ballymoney. She has no recollection of the accident or for some weeks thereafter. It appears from the evidence that she was at the bingo in the parochial hall accompanied by a Miss Evelyn Gordon, who has since died. Around 9.30pm the bingo session ended and with Miss Gordon in the lead they both left the parochial hall and walked towards Castle Street.

[4] The bingo was well attended and those who had arrived by car parked in Castle Street either on the same side as the hall or in a parking bay on the opposite side of the street. Mrs L A McMichael said that she and her daughter were among the first to leave when the bingo ended and she

remarked that when people are leaving they always seem to be in a hurry. Mrs McMichael and her daughter intended to cross to the opposite side of Castle Street where their car was parked. Mrs McMichael said that as she stood between two parked cars, with her daughter directly behind her, waiting for an opportunity to cross over to the other side, she saw Mrs Brownlow to her left with a parked car between them. She knew Mrs Brownlow through bingo and she described seeing Mrs Brownlow look to her right as she walked very fast across the street without stopping. Mrs McMichael said that in her language walking very fast is the same as running. She saw a car coming from her left and her immediate reaction was to shout "watch", but Mrs Brownlow ran into the side of the car and was thrown up into the air before falling to the ground.

[5] Constable J R Deane was called to the scene at 9.35pm and he arrived at 9.42pm. He recorded damage to the offside wing of Mr Knight's car above the wheel arch and on the side aspect of the car. He noted that the windscreen was broken in the area in front of the driver. The Constable spoke to Deon Knight who said, "she just walked out in front of me". There was nothing on the road surface to indicate to the Constable where the impact had taken place but at the Constable's request Mr Knight showed him where he thought it occurred. This was at a point beside Mr Knight's car and measured at right angles from the kerb from which Mrs Brownlow had set out to cross the street, it was some 20 feet.

[6] Mr Cosgrove, a Consulting Engineer, measured the town bound lane which Mrs Brownlow crossed at 14 feet 9 inches and if the estimated point of impact is correct then he estimated that Mrs Brownlow was 5 feet 3 inches into the lane in which Mr Knight was travelling.

[7] In his evidence Mr Deon Knight, who was 18 years of age at the time of the accident, said that he was driving with headlights dipped at a speed of 15-20 miles per hour. When he first saw Mrs Brownlow she was in the centre of the town bound lane and running. He applied his brakes but she ran into the side of his car and struck the windscreen before falling to the ground. When he got out of his car she was lying at his feet. He was unable to say if she had emerged from between parked cars.

[8] The weather conditions were good and it was dry. The street is 32 feet 3 inches wide where the accident happened and there are lamp standards on the pavement from which Mrs Brownlow had stepped. The lights were in operation and lit up the whole road surface. It was estimated by the engineer that a car driver and a pedestrian would have an unobstructed view of each other of about 170 feet.

[9] At the hospital Mrs Brownlow's daughter received the clothing that her mother had been wearing on admission. She described the articles as a

tight fitting black skirt and white blouse with a red woollen blazer and a pair of black patent high heeled shoes,.

[10] The late Miss Evelyn Gordon made a statement on 25 June 1996 to Mrs Brownlow's solicitor. In this statement she said that she and Mrs Brownlow came out of the bingo hall together and that as they were crossing the road Mrs Brownlow was a few steps behind her. Miss Gordon said that she was across the road when she heard a loud bang. She added that there was lots of traffic about and there were cars doubled parked everywhere and that there was no car coming when she crossed the road.

[11] I am satisfied from the evidence of Mrs McMichael and the statement of Miss Gordon that there were cars parked on side of the street from which Mrs Brownlow set out to cross. I am also satisfied that cars were also parked in the bay opposite the parochial hall. This is consistent with the general experience of Constable Deane who at the time had been stationed in Ballymoney for 6 years.

[12] Although Mrs McMichael said that she and her daughter were practically the first to leave the parochial hall she accepted that once the session ends the "herd" emerges and, as already noted, that people always seem to be in a hurry.

[13] Mr Deon Knight said that he did not see anyone cross the road as he approached and it may be that Miss Gordon crossed further in front of Mrs Brownlow than she suggested in her statement. As she was not cross-examined the weight given to her evidence must allow for this.

[14] I am satisfied on the evidence of Mrs McMichael that Mrs Brownlow was looking to her right as she crossed the road and that this explains how she failed to see Mr Knight's car as it approached. She must not have seen it as she struck the side of it. It is also clear that she was in a hurry.

[15] It was suggested on the basis of research carried out on joggers in California that Mrs Brownlow may have been travelling at 8½ feet per second and that she would have covered 20 feet to the point of impact in 2.35 seconds. If she emerged from between parked cars then on the basis of this research she would cover the shorter distance of 14 feet in 1.7 seconds. A motor car travelling at 30 miles per hour will stop in an overall distance of about 2.7 seconds and at 20 miles per hour in 2 seconds. Thus it was suggested to Mr Cosgrove, the engineer called on behalf of Mrs Brownlow, it would have been impossible for Mr Knight to avoid this collision.

[16] This theory is based on a number of assumptions as to the speed at which Mr Knight was travelling and the speed at which Mrs Brownlow, then 59 years of age and wearing high heels and a tight skirt, was moving. The

assumption is made that Mrs Brownlow was crossing at a right angle as if she was crossing at another angle this would increase the distance that she had to cover to the point of impact and therefore the time for Mr Knight to react to her presence. The lesser figure of 1.7 seconds is based on the assumption that Mrs Brownlow would have been invisible to an approaching motorist while she was between two parked cars but at least some part of her upper body should have been visible.

[17] As Mr Knight approached the vicinity of the parochial hall it should have been obvious to him from the large number of parked cars and people coming out from the hall that he was entering into an area that called for a particularly careful lookout on his part as people would be likely to cross the road. He did not see Mrs Brownlow until she was in the middle of the carriageway to his offside although the street is well lit and she was wearing a red blazer. His spontaneous response to the police officer was that Mrs Brownlow "walked" in front of him and his evidence at the trial was that she was running when he first saw her. The latter may be a more accurate impression of the manner in which she was moving but his description at the scene of her walking suggests that he did not see her in time to see that she was travelling quickly. He said that he does not remember seeing anyone waiting to cross the street though Mrs McMichael and her daughter were waiting to do so and I am satisfied that there were others within the immediate area of the kerbside. There is no suggestion that Mr Knight was driving at an excessive speed but I consider that had he been more attentive to the situation and keeping a proper lookout he would have seen Mrs Brownlow sooner. This would have allowed him to take evasive action either by braking or sounding his horn or putting his lights on full beam to warn her of his approach. As it is he did not have time to sound his horn or flash his headlights. It was suggested that the fact that Mrs Brownlow did not react to the warning cry from Mrs McMichael indicates that she would not have reacted to the sound of a horn. I do not accept this as the sound of a car horn is likely to have made her more alert to danger than any cry from Mrs McMichael.

[18] Unquestionably Mrs Brownlow created the situation that gave rise to this accident by looking to her right and not looking to the left before stepping onto the carriageway in which Mr Knight was travelling. Mr Knight was in charge of a potentially dangerous weapon and a high burden is imposed on the driver of a car to reflect this fact. The presence of cars parked on both sides of the road and of a number of people called for extra caution on his part and he failed in this respect. I measure the relative responsibilities of the parties as 60% on the part of Mr Knight and 40% on the part of Mrs Brownlow.

DAMAGES

General

[19] Mrs Brownlow was rendered unconscious and taken to Coleraine Hospital. She was found to have a fracture of the occiput and a CT scan revealed a subdural haematoma on the left side and bilateral frontal lobe contusions. She had a laceration on the back of her head that was sutured, and she had bruising and contusions over her trunk, left shoulder and right leg. She spent eleven days as a patient in the Intensive Care Unit and then she was transferred to a Rehabilitation Unit where she remained until she was discharged on 5 April 1996. She has no recollection of the time she spent in hospital but she does remember going home with her daughter.

[20] Her skeletal symptoms improved with time but even four years after the accident she was still having problems with her left shoulder due to capsulitis. This had been treated with injections and physiotherapy. She also complains of headaches and a painful lower back.

[21] She has lost her sense of smell for common odours and her sense of taste. The damage to the frontal lobes of her brain, which control drive and personality, has caused a change in her personality. For eight years until a fortnight before the accident when she had hypertension, Mrs Brownlow kept a shop in an indoor market in Ballymoney, selling clothing six days a week. She looked after the home doing all the housework and went out in the evening to play bingo and on Friday and Saturday evenings she went for a drink in the pub with her husband. She was described as very outgoing and having a good social life. Now she lacks motivation and often she feels that life is not worth living. Her memory is moderately impaired. Her appetite is poor and she has a disturbed sleep pattern. She wakens sometimes three or four times during the night and then finds it difficult to get back to sleep again. She is both anxious and depressed. The evidence is that she has an insight into this change in her personality and that there is no prospect of further improvement in her functioning. On full liability I measure the general damages for her injuries at £175,000.00.

FINANCIAL LOSS AND COSTS

[22] The cost of caring for Mrs Brownlow since the accident and in the years to come was a matter of considerable debate at the trial. Dr J.P. McCann, a consultant in rehabilitation medicine expressed the opinion that she should not be left on her own for periods during the day and that she needs relatively constant supervised assistance. He said that he would not like to think of her being on her own at night because she may get up and leave a lit cigarette

lying about. Dr D A J Keegan who is also a consultant physician in rehabilitation medicine and was called by the defendants did not dispute that Mrs Brownlow was in an "at risk" category and that she would be incapable of living alone. His view was that she required companionship with slight assistance with dressing and that she could not cook or manage her household.

[23] Mrs Sylvia Molloy who is the eldest of Mrs Brownlow's three daughters described an ordinary day in her mother's life since the accident. She rises between 8.00 and 8.30am and her husband makes her a cup of tea and then Mr Brownlow or one of their daughters helps her to dress. If the clothes that she is to wear are not set out for her she would put on the same clothes as she had worn the day before. She has little very little to eat at breakfast and she then sits and drinks tea and smokes. Lunch and supper are made for her by one of her daughters but she eats little at either meal. Although the family encourage her to do things she is not interested. Mrs Brownlow told Dr Walsh, a consultant psychiatrist, that she watches soap operas on television but Mrs Molloy does not think that her mother can follow such programmes though she does like football and car racing where there is no storyline to follow. During the day one of her daughters may call and take her out for a short walk and she likes going out for a drive in the car. Her main outing each day is to bingo. She goes there with a daughter or else her husband leaves her off and collects her again. At the bingo she is safe as she is with friends. According to Mrs Molloy her mother is never out on her own and never makes any attempt to do so. At the weekend Mrs Molloy takes her mother out in the car on Saturdays to give her father a break and on Sunday they both spend the day at Mrs Molloy's house.

[24] Since the accident Mrs Brownlow's smoking has increased from about 20 cigarettes per day, to 60 or 70 and this is possibly due to her forgetting that she has just smoked one as she lights another. The family is concerned about her smoking as there is a danger that she may set down a lit cigarette and forget that she has done so and cause a fire. When she gets up during the night she may light a cigarette and Mr Brownlow has to make sure that she does not leave it burning. Because of the disturbance to his sleep one of his daughters will occasionally stay overnight to give him the opportunity to have a proper night's rest. Mrs Molloy feels that her mother is more aggressive towards Mr Brownlow since the accident but her daughters do not find her difficult. There was some dispute as to whether Mrs Brownlow was ever out of the house unaccompanied. Mr Deon Knight's mother, Mrs Mary Elizabeth Knight, said that she was travelling along Trinity Drive where Mrs Brownlow lives about 3 weeks prior to the trial and that she saw Mrs Brownlow walking along the footpath from the direction of a Spar shop, which is 500-600 yards from her home, carrying a plastic carrier bag. Mrs Molloy found this difficult to accept and said that she would be shocked if her mother was out on her own.

[25] It is clear that Mrs Brownlow's husband and daughters are her carers and that they intend to continue in this role as long as this is possible. This places a considerable burden on all of them but I gained the impression that they are most attentive to all her needs. When Dr McCann reported in November 1998 he felt that the high level of care was such that Mrs Brownlow may have developed a state of learned helplessness and that she was probably capable of doing a little more than she did at home.

[26] Dr Keegan considered that Mrs Brownlow requires about three hours formal care each day and two hours overnight. Formal care he described as the heavier housework, help with showering and meal preparation and he allowed about two hours for this. If she is able to do some shopping he would reduce the formal care by an hour per week. Dr Keegan said that as Mr Brownlow is retired he could be expected to be in his wife's company for extended periods.

[27] Mrs Lesley Moncrieff who is a partner in a firm specialising in personal injury assessment gave evidence on behalf of the plaintiff. She assessed the amount of care required by Mrs Brownlow since the accident by dividing the period into four categories. The first of these was when she was a patient in hospital and at this time she estimated the care hours at between eight and four per day. The second was following her discharge from hospital in the period between 6 April 1996 and 31 March 1997. Mrs Brownlow was then gradually improving so that she walked independently. Mrs Moncrieff estimated the care hours in this period at fifteen hours per day. The last period she took is from 1 April 1998 to date and the care in this period she estimated at thirteen hours each day.

[28] Mrs Maureen Bingham a specialist in trauma nursing and rehabilitation was called by the defendants. She allowed one hour per day and an additional two hours per week for the period when Mrs Brownlow was in hospital. The family were with her day and night when she was in the Intensive Care unit and helped her to order meals and combed her hair when she was in the rehabilitation unit and washed her clothes. The second period taken by Mrs Bingham was from 5 April 1996 to 31 August 1996 when Mrs Brownlow was confused and unsteady on her feet. The care in this period she estimated at ten hours in each twenty-four hour period. Next she took from 1 September 1996 to 31 December 2000 a period she describes of slow general improvement and for this she allowed eight hours per day. In the final period she allowed six hours care each day.

[29] In an internal family situation it is difficult to say how much time members of a close family such as this would have spent together if this accident had never happened and how much extra time they have to spend by reason of the consequences of it. It has to be quantified and in order to

obtain some idea of the sum that is appropriate I regard a measure of the number of hours per day and the cost per hour as a reasonable approach. I do not accept that there is likely to be any outside care or any requirement for a case manager.

[30] During the initial period when Mrs Brownlow was in hospital and in a confused state it must have been an encouragement and support to her to have her immediate family present. The amount of care that they were able to provide in addition to that provided by the hospital is reflected by allowing two hours per day with an additional two hours per week for washing and ironing her clothing. For this period I allow a total of sixty two hours.

[31] Following her release from hospital Mrs Brownlow required a high level of care and this may have been increased by the fact that the family must have been especially anxious as they were only becoming accustomed to this new responsibility. I measure the care during the ensuing six months to 6 October 1996 at twelve hours per day.

[32] As Mrs Brownlow appears to have gone through a period of gradual improvement I estimate that for the ensuing 12 months the level of care at some ten hours per day to 5 October 1997.

[33] From October 1997 to date I estimate day care at seven hours and included in this figure is an allowance for the fact that although Mr Brownlow may be at home in any event and so providing supervision for his wife he is tied and cannot go out when he wishes without making sure that his wife will not be alone. His nights are disturbed and I allow an additional eight hours per week so that he can have a night each week when his sleep is undisturbed. This gives a total of 57 hours per week.

[34] Applying the National Joint Council scale 1 point 8 rate to these hours as set out in the report of Goldblatt McGuigan of 17 September 2003 and making a 25% reduction for family care this gives a round figure of £92,500. I have adopted this scale which is paid to local authority care workers, despite the criticism of it by Mrs Bingham, because it is a national scale and a reduction is being made from it for family care.

[35] The cost of care into the future I measure at £17,250 per year and after deducting 25% and applying the multiplier of 7.26, agreed by the parties, the result when rounded up is £94,000. At present Mr Brownlow is in good health and hopefully this will continue to be so. If he should become unable to look after his wife to the extent that he does currently, I consider it probable that his daughters will take over this additional task. This will extend the time that they spend already with their mother and to allow for this there should be an additional five hours care a day for two years. As this is more likely to occur at some time in the future I have discounted this to £1,250.

[36] I have been greatly assisted by counsel who have found it possible to reach agreement not only as to the multiplier to be applied but also as to a number of other heads of damage. These are as follows:

	£
Past loss of earnings	5,000
Special equipment	2,200
Travel and transport	6,000
Extra expenditure	20,000
Past loss of services	5,000
Future loss of services	7,500
	Sub total £45,700

[37] To this is to be added the following figures;

	£
General damages	175,000
Cost of past care	92,500
Cost of care in the future	95,250
	£362,750

This gives total of £408,450 and less 40% in respect of contributory negligence the result to the nearest round figure is £245,000.

[38] It was submitted that Mrs Brownlow should not recover interest on an award of general damages for the entire period from the date of the issue of the writ of summons or on an award for the cost of past care from the date on which the cost was incurred, by reason of the delay in bringing the action to trial. The writ was issued on 28 March 1998 and the action was set down for trial on 27 July 2002 four years later. If there is unreasonable delay in the prosecution of proceedings it may be appropriate to make a reduction in the period over which interest is awarded or in the rate of interest allowed. It has been agreed that the rate of interest on an award for the cost of past care should be 4% so it is only the period of time to be allowed that is in question. Before determining this issue I will allow Mrs Brownlow's solicitor an opportunity to advance any explanation for the delay that it is considered appropriate to put before the court.