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2015/14432

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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Between

MARK COLLINS

Plaintiff

and

ROBERT BRATTON

Defendant

_____

MAGUIRE J

Introduction

[1] The plaintiff in this case is a man aged 29 years of age. He currently is employed as a mental health nurse. While he was a first year nursing student, on 26 February 2012, he was involved in an accident in which he received significant injuries.

[2] The defendant is a teacher. At the date of the hearing he was aged 26. On 26 February 2012 he was driving his VW Polo car. His then partner (now wife) was in the front passenger seat. Behind his car he was towing a small enclosed trailer. There is no doubt that the plaintiff came into contact with the Polo's trailer but the exact circumstances of such contact are less clear.

[3] The scene of the relevant events in this case was Londonderry city centre. The time was around 02:30 hours on a Sunday morning. It appears that the plaintiff had been out with some of his friends at a bar in the centre of the city called The Gweedore. He had gone there around 11:30pm on the Saturday evening. By the time of the accident at 02:30 hours, the plaintiff was drunk having consumed a bottle of white wine on Saturday evening followed up by a number of pints of beer in the bar. Having left The Gweedore, the plaintiff said he went to get a taxi home. At this

stage his friends separated from him as they wished to go and get something to eat. The plaintiff went to a *de facto* taxi cab rank in William Street. There were lots of people about, some of them the worse for wear. There was a queue at the taxi rank which the plaintiff joined.

[4] In the plaintiff's account of the accident, while he was standing in the queue looking at his phone, without warning, he was subjected to verbal abuse from someone behind him. The abuse was along the lines of "you gay bastard". The plaintiff then received a push from behind. The effect of the push was to propel him onto the roadway. At the time the VW Polo and its trailer were passing by him and it was the plaintiff's case that the push caused him to come into contact with either the car or the trailer being pulled by it.

[5] The plaintiff's recollection is that when he came into contact as aforesaid he remembers his pullover being caught on something. This resulted in him being dragged along the road for a period, with his left hand side coming into contact with the road. During this time the plaintiff alleges that he was shouting out and trying to attract the driver's attention.

[6] The plaintiff goes on to make the case (which is undisputed) that the vehicle travelled along William Street towards a roundabout. It then took a left hand exit into Rossville Street. It was only after the vehicle had entered Rossville Street and travelled for a short distance that the car came to a halt.

[7] The plaintiff was discovered lying underneath the trailer.

[8] As a result of the accident, the plaintiff sustained a range of injuries mostly to his left side. These included injuries to his left arm; the back of the left scapula; and to his left buttock.

[9] These were significant injuries. An ambulance was called to the scene. It arrived at around 02:32 hours. The plaintiff was taken to Altnagelvin Hospital. He was taken to the operating theatre where his wounds were cleaned. Thereafter, he was transferred to the Ulster Hospital. While at the Ulster Hospital he appears to have gone through two operations involving skin grafting. He was a patient in the Ulster Hospital for 4/5 days. As a result of the accident, the plaintiff has been left with significant scarring, principally at his left buttock. This area continues to cause him significant difficulty. It is at times itchy and he has pain on sitting for a lengthy period. The appearance of his left buttock may be described as a significant cosmetic deformity.

[10] The defendant had been assisting that night at a music event at one of the local bars. He had been with his then girlfriend, now his wife. His Polo car was towing a small trailer. The trailer was used to carry musical equipment. After work he had stowed his equipment away in the trailer and had sought to make his way

home when the accident happened. The defendant said he could not put a figure on his speed but indicated that he was driving slowly.

[11] The defendant says that he passed the *de facto* cab rank in William Street and proceeded along William Street to a roundabout. The scene was noisy and he heard cheering from it. At the roundabout he took the first left exit into Rossville Street. In his evidence, he only became aware of something being wrong as he was going around the roundabout. The cheering was continuing but he said he did not hear any banging on the side of the trailer or shouts for help. He then stopped the car and got out. He went to the trailer and checked it, as he was concerned that there might be someone inside it. On walking back towards his car he saw the plaintiff lying on his side under the trailer with his feet facing the direction of the Polo car.

[12] The defendant's then partner, now his wife, was in the passenger seat of the car at the time of the accident. As they were making their way to the roundabout she said she heard noise from the crowd. After the accident she saw the plaintiff on the ground and put her coat under his head. She told the court that at or about this time the plaintiff said to her that he should not have done it as he was a student nurse. The defendant, in his evidence, said that he had also heard the plaintiff say this.

[13] There is material in the papers which suggests that unknown witnesses at the scene claimed that the plaintiff had jumped from his place in the taxi queue from the kerb onto the trailer. It was suggested that the plaintiff was riding on top of the trailer and subsequently fell off. The defendant and his then partner maintain that they heard such accounts after the accident.

Engineering Evidence

[14] Two consulting engineers, one for each party, gave evidence. From that evidence it can be said that the trailer in length was some 6ft 5 inches; in width it was just over 4ft; its height was 5ft 7ins at the back and 5ft 4ins at the front. Entry into it was controlled by a metal rolling shutter at the back of the trailer. It had two wheels within plastic mudguards of a curved shape. The mudguards provided small platforms on either side of the trailer approximately 2ft from ground level. The trailer was connected to the car by a tow-bar some 3ft in length. It was some 2-3ins in width. There was a vertical post and ball hitch as part of the tow-bar apparatus. There was cabling from the car to provide power for the rear lights of the trailer.

[15] There was broad agreement that it would be difficult for someone to jump onto to a moving trailer and then to stay up. While the tow-bar could be stood on, as could a flat area of a mudguard, maintaining a stable position would present very great difficulty. The likelihood is that a person perched on the trailer would go down towards the ground.

[16] Neither engineer was able clearly to identify a feature of the trailer upon which it was likely that a pullover would catch on it or become attached.

[17] Equally it was not possible to say what speed the car and trailer may have been travelling at that morning, though the description of the vicinity at that time on a Sunday morning in the centre of the city just after the pubs and bars had closed, suggested that it was likely that there would be a large number of people about and the speed of traffic would have been modest.

[18] The distance between the *de facto* taxi rank and the roundabout was stated to be 71 metres. The further distance to where the car and trailer later stopped in Rossville Street was stated to be 31 metres. The total distance the car and trailer had travelled was *circa* 102 metres. The time which would be taken to cover this distance plainly depends on the average speed of the car and trailer. The faster they were travelling at, the shorter will have been the time taken and *vice versa.*

The Issues

[19] This judgment is concerned with the issue of civil liability of the defendant. Two particular issues appear relevant to the court's enquiry. The first can be summed up by asking the question whether the plaintiff was pushed into the trailer (as he alleges) or whether he jumped onto the trailer (as the unknown witnesses at the scene appear to maintain). The second issue in the case is whether it can be said that it has been demonstrated, to the civil standard of proof, that the driver was negligent by failing to stop materially sooner than he did in fact stop.

[20] The court has considered carefully the evidence of the plaintiff, the defendant, the defendant's then partner, two consulting engineers and the range of materials found in the trial bundle in respect of these issues. The court will discuss each issue in turn before making its finding as to the facts.

Was the plaintiff pushed or did he jump?

[21] The plaintiff makes the case that he did not, of his own volition, jump onto the passing trailer. Rather, he says, he was pushed onto the road by someone behind him in the taxi queue. In considering this issue, the court must take into account that the plaintiff, by his own admission, was drunk at the time. It is trite to say that it is difficult to believe that a sober person would have sought to jump on board a moving car or trailer simply passing by him. Such action would be obviously unwise and dangerous. However, a manoeuvre which a sober person would dismiss out of hand might have an attraction to someone who, though the consumption of drink, had lost his judgment. There is hearsay evidence in this case from persons who have not given evidence and/or whose identity is unknown which suggests that this is what the plaintiff did. This information is before the court by means of references in police documentation compiled at the time of the accident and it is reflected also in the accounts given to the court by the defendant

and his then partner, who said they had been have told this during conversations each had with people at the scene after the discovery of the plaintiff underneath the trailer. The question will be what weight the court should give to this evidence? In considering it, it is necessary to bear in mind that a possible scenario might be that observations at the scene may have mis-interpreted events. For instance, it might be that an observer did see the plaintiff at or on the trailer and have assumed that he had got there by jumping on it as an act of drunken bravado.

[22] To resolve this issue, it seems to the court that an important factor will be what the plaintiff said about it at or in the immediate aftermath of the accident. In respect of this, there is evidence in the form of records from police officers who spoke to him and from medical staff who tended to him. In considering this evidence the court must factor in that at the time the plaintiff had consumed a large quantity of alcohol and that he will have just gone through a frightening and painful experience. In these circumstances it is unlikely that the plaintiff will have had the time or guile to devise a made up story upon which he could simply later rely.

[23] A further aspect of the court's consideration will be the consistency of what the plaintiff said over time.

[24] The records show that the plaintiff said the following:

- He seems to have spoken to the investigation officer at the scene, Constable McGuigan. From relevant police documents this occurred shortly after 02:30 hours. The records show that the victim told the officer that his injuries were caused by being dragged along by the vehicle after he had been pushed from behind by an unknown attacker. His jumper became trapped on part of the vehicle.

- A hospital record of 04:03 hours that morning indicates, *inter alia*, that the plaintiff said to a member of the medical staff that he had been "pushed under car …".

- A similar reference is found in the medical records at 07:00 hours on 26 February 2012. This notes that he told the triage nurse that he had been "pushed on top of moving car. Fell down to ground and jumper caught under wheel of car and dragged along on left side."

- A similar record is found at 08:30 hours on the same morning. It refers to patient being pushed out in front of a car, have fallen and was dragged along road.

- At 10.45 hours on the day of the accident there is a particularly interesting record from the hospital which refers to the plaintiff account in these words: "following alleged homophobic attack where he was pushed in front of an oncoming vehicle…".

- In a continuous police record dated 27 February, there is a reference at 06.29 hours to the injured party having alleged that he had been pushed into the vehicle and to him getting trapped.

[25] The above references are not exhaustive of everything the plaintiff said. The court, moreover, can see that not everything the plaintiff said at or about the time can be married exactly with the now known facts of this incident. But on the issue of whether he was pushed out on the road there is a consistent account given by the plaintiff and there is no suggestion from him that he jumped onto the passing car or trailer. While all things are possible when a person is drunk, and while the court recognises that alcohol can have a disinhibiting effect on people, in the light of the evidence before it and its consistency, the court is inclined to believe that what is found in these records, taken with the plaintiff's oral evidence to the court, which was to the same effect, should be afforded greater weight than the competing evidence to the contrary. Another way of putting this is to say that the court does not believe that the applicant has made up the incident of him being pushed out into the road by someone behind him in the queue. On the balance of probabilities, this account, in the court's judgment, is likely to be true.

[26] There is, however, a piece of evidence on this issue which has troubled the court. It has been referred to at paragraph [12] above, and appeared in both the oral evidence of the defendant and in the evidence of his then partner. Both said that the plaintiff had said at the scene, while still on the ground, that he should not have done it as he was a student nurse. The implicit suggestion in this evidence seems to be that the plaintiff was making an allusion to the impropriety of a person in his position jumping onto a moving trailer or a vehicle. Notably, however, there is no reference to the plaintiff having made this remark in any of the police logs the court has seen, whereas there is reference, as recorded above, to him having said he was pushed, as he claimed.

[27] Interestingly, there is no other evidence which contains this specific allegation, which one might have thought would have featured if either the defendant or his then partner had made a written statement of evidence to the police. On this point, the defendant gave evidence that he did make a statement of evidence to the police. From other records before the court, this seems to be correct. There is a notebook entry from the investigating officer which refers to him taking a statement from the defendant. But the court has not seen any such statement and the defendant was unable to locate any such statement. The position of the defendant's then partner is less clear. In evidence, she said she had made a statement of evidence to the police, but there is no corroboration that the court has seen that she, in fact, did so (unlike the position in the defendant's case). She also could not find any such statement and bring it to court, assuming she made one. The court is inclined to believe that in fact she did not make a statement to the police. An unfortunate theme in this case, relied on by both sides, was that the police investigation in this case was somewhat haphazard. Not for the want of trying on

the part of the parties, the investigating officer did not give evidence to the court. In these circumstances the court has certainly been denied seeing the defendant's statement and, it may be, if the partner is right, any statement made by her. Likewise such evidence has not been available for use by either party. This situation is unsatisfactory, no doubt. But the court has to decide the case on the information before it. The court is unpersuaded that it should rely on the remark attributed to the plaintiff in these circumstances.

Why was the plaintiff pushed?

[28] The court has given attention to the question of why would someone endanger the plaintiff by pushing him out onto the roadway from the footpath. The plaintiff has attributed motive to do this to someone who wished to abuse him as a gay person. As noted above, in evidence the plaintiff said that, in advance of him being pushed, someone referred to him as a gay bastard.

[29] The plaintiff is unable to identify who this person was. This is unsurprising as the remark came from behind him. The question for the court is whether it accepts that this was the motive behind the push. It is evident from bullet point 5 at paragraph [24] above that on the same day as the accident the plaintiff referred (in conversation with medical staff) to homophobia as the motive. Additionally, he has maintained this view in his evidence to the court. No other motive has been put forward, with the defendant's defence being that he, the plaintiff, jumped onto the trailer, a scenario to which the court is un-attracted. In these circumstances, the court sees no reason why it should not accept the plaintiff's account on this point, even though the plaintiff was unable to say how it would have been known that he was gay.

Was the driver negligent?

[30] The answer to the above question lies at the centre of this case.

[31] There are a number of surrounding circumstances which the court considers to be of importance:

(i) Any traffic passing along William Street at that time of the morning in the centre of Derry would be likely to have been travelling relatively slowly. The range of likely speed of the car and trailer could be anything between 3 mph and 15 mph. Neither consulting engineer thought the speed would be as great as 20 mph, given the crowded nature of the city centre at that time of the night.

(ii) There were a lot of people around at that time of the morning as the pubs had just closed. The scene will have been one of many persons milling about, both sober and inebriated and in between. No-one at the trial dissented from this depiction of the situation.

(iii) The scene will have been a noisy and boisterous one. Any driver entering into the scene would have been alert to the presence of pedestrians.

(iv) The route being taken by the driver, very likely, will have been one which required him to travel at variable speeds, as it involved negotiating crossing points and a roundabout as the vehicles may their made way down William Street and to the roundabout which had, as its left turn, Rossville Street.

[32] No-one has suggested that in the circumstances pertaining early that morning a reasonable driver could have done anything to have prevented the plaintiff coming into contact with the trailer. Neither the defendant nor his partner will have had any reason to expect that an accident of this type was likely to occur. It must be a somewhat unusual event for a pedestrian to make contact with an enclosed trailer while it was being towed by a car in motion. The Polo car, in fact, will probably have passed the point where the applicant had been standing just prior to the incident occurring. There was no reason to believe that someone would leave the footpath and (voluntarily or otherwise) come in contact with the trailer. Nor could the driver have done anything to avoid it occurring.

[33] An issue arose at the trial as to whether someone who came in contact with the trailer could have boarded it and maintained stability sufficiently to prevent them falling off it or down to the ground below it. Both engineers were of the view that boarding the vehicle was hazardous and that keeping stability, even if the person was able to get on board, would be very difficult. An important factor would be the speed at which the vehicle was travelling. The faster the speed, the more difficult it would be for the vehicle to be boarded successfully. In addition, there were only limited areas of the trailer where there would be even a tenuous ability to stand with any stability. These were in the area of the tow-bar and in the areas of the mudguard above the trailer's wheels. The clear tendency would be that a person who attempted to board the trailer would either fall off or, having obtained something in the nature of a toe-hold, would go down towards the ground. Neither expert could locate with any confidence a snagging point which might catch a boarder's pullover and hold him. The preponderance of the evidence pointed in the direction that a precarious perch might be more likely to have been found in the area of the toe-bar in this case, while not ruling out altogether a perch in the area around the mudguard. In considering this issue, account had to be taken of where the plaintiff had been found after the accident. On this point, the defendant and his then partner were both clear that he was found under the trailer which had to be moved out of the way in order for him to be attended to. The plaintiff had no recall on this point. If the account of the defendant and his partner is accepted (and the court sees no reason why it should not be) this favours the view that he more likely than not had been initially in contact with the area around the toe-bar. If he had fallen from the area around the mudguard, he would be less likely to have ended up under the trailer. If he had fallen from the back end of the trailer, the same would also be the

likely conclusion. In short, the most likely scenario seems to be that his contact was with the area around the tow-bar. But he would have been unable, due to the speed of the moving vehicle, to achieve more than a fleeting stability. At this location the loss of stability would have driven him down towards the ground.

[34] At this point in the scenario, the medical evidence is significant. There was no real dispute in this case about the fact that the plaintiff's injuries arose from abrasion with the road surface. In particular, the plaintiff's left side appears to have been in contact with the road surface over a period of time, the exact period being an unknown. This was the view of the doctors as expressed in the medical reports before the court. It suggests to the court that the plaintiff was caught in a prostrate or semi-prostrate position with his left side below his right. The plaintiff says, in effect, that he was caught in such a position, which may be correct. Whatever the position, it is likely that he was caught in a way which involved contact with the road surface.

[35] There is no reliable evidence before the court as to the exact speed the car and trailer were travelling it. The speed will probably have gone up and down as it made its way from William Street to the roundabout and into Rossville Street. It seems to the court that the journey to the point at which the vehicle stopped from the point the plaintiff came into contact with the trailer will have been in the region of one minute, perhaps a little more, maybe 75 seconds.

[36] Over the above period, the route will have taken the car and trailer over a rumble strip across the road which is just at the likely point when the plaintiff may have boarded the trailer. The vehicle will have travelled down William Street to the roundabout, some 70 or so metres. The court considers from the evidence of the defendant and his then partner, and as a matter of common sense, that the vehicle will have slowed as they approached the roundabout to enable them to negotiate it and turn left into Rossville Street. By the time it reached Rossville Street the evidence of the defendant and his then partner suggests that the decision had been made to stop the vehicle because of the possibility that something untoward had occurred. The untoward matter which had come to their attention, according to their evidence of the defendant and his then partner, was the possibility that someone had got inside the trailer at the point when the trailer was being loaded. That this was their belief is supported by the fact that when the vehicle stopped the first thing which happened was that the trailer was opened up and the interior checked. It was only after this had occurred that the plaintiff was found underneath the trailer, a discovery which caused the trailer to have to be moved to enable the plaintiff to be treated. In the absence of any significant evidence to the contrary, the court accepts this version of what occurred.

[37] Superimposed on the above train of events, is the question of the warnings received by the defendant driver that something may have been wrong. The court does not doubt that it is likely that there were some events which, at least with the benefit of hindsight, may have raised question marks about whether all was well.

First of all, it seems to the court that the fact of the plaintiff coming into contact with the trailer is one such event. It seems to the court that the impact of an adult man on a small and somewhat lightweight trailer must have resulted in some degree of impact, which would have been translated to the driver in some form. Some sort of bumping effect seems likely, but it is less clear to the court how that effect would have been understood by the driver. On this aspect, the court had very limited evidence before it upon which to make any certain judgment. Towing a trailer may well involve movements on the part of the trailer depending on what it goes over on its journey. Not all roads surfaces are smooth. It is not unusual to come across features on the roadway which may result in greater or lesser impacts upon a trailer which is being towed. For example, in the modern road-scape, devices to assist in the process of reducing speed (humps and the like) or rumble strips, of which there was one in the area of the road at the point at or about where the plaintiff may first have boarded the vehicle, would not be uncommon. Secondly, the court has no difficulty in accepted that the plaintiff will have been trying to bring his plight to the driver's attention. He may well have been hitting the side the trailer and/or shouting out, but, as against this, there is clear and undisputed evidence in this case that the area in question at this time on a Sunday morning was noisy and boisterous so that it cannot be left out of account that the steps taken by the plaintiff to draw the driver's attention may, through no fault on the driver's part, simply not have got through. The third point relates to those in the vicinity who may have perceived that something was wrong and have sought to gain the driver's attention by shouts or gesticulations. This may indeed have occurred but would it have been evident to the reasonably prudent driver in the circumstances prevailing in the area at the time that something was so seriously wrong as would require him to bring the car and trailer immediately to a halt? Surely, the driver with or without the assistance of a front seat passenger, would have to be allowed some time to gain an understanding of what was happening and some time to assess the situation and stop?

[38] What is known is that, according to the driver, he did not appreciate that something was sufficiently awry from the events going on around him to require him to stop until he had reached and was going round the roundabout. He says that at this stage he decided he would stop and he then did stop, having turned into Rossville Street. As already noted, his suspicion at that stage was not concerned with someone riding the trailer but of someone being inside it. Plainly, the issue for the court is whether this was a case of reacting outside the time frame for reaction of a reasonable prudent driver?

[39] In seeking to come to a conclusion, it is relevant for the court to indicate that the defendant driver in this case gave evidence to the court and was cross-examined. The driver was sober at the time. He had just finished work. He knew the area, living not far away. He appeared to the court to be a straightforward witness. The court did not receive the impression that he was lying. The court has absolutely no reason to believe that this was a man who knowingly would have driven on, if he had been aware that any serious mishap was unfolding involving him. Indeed, he did not just drive on, but stopped within a minute or so of the events occurring. The

court has asked itself whether the driver should have done more than he did? A variety of points were raised on behalf of the plaintiff. One suggestion was that the driver should have seen the plaintiff on the trailer by means of consulting his mirrors. In the court's view, this is far from a self-evident truth. Given the plaintiff's location after the accident – under the trailer – it seems unlikely that he would have been seen by resort to one or other of the car's wing mirrors. This leaves the possibility of him being seen in the driver's mirror. In respect of this, the likelihood is that the possibility of him so being seen would have been fleeting, as he would not have enjoyed more than a short period of stability, even if he had able to establish a perch of sorts. Most likely the plaintiff would have gone down towards the ground and out of view quickly ending up close to the ground. Once below the level of the tow-bar, the court finds it difficult to accept that his image would have been captured by the mirrors on the car.

[40] Overall, while there may have been signs that something unusual was occurring or had occurred, this must be counterbalanced by the need for the driver to enjoy a reasonable opportunity to discern and appreciate what was going on and to assess what to do. The court is unconvinced that this driver reacted tardily and in a way which was outside what a reasonable and prudent driver would have done. The court has not been persuaded to the contrary and this is an issue where the onus of proof rests on the plaintiff.

The partner's complaint to the nursing authorities

[41] The main matter which has caused the court to hesitate to accept the driver's account of the accident is an e-mailed complaint made by the driver's partner to the nursing authorities on 8 October 2015 – some three and a half years after the accident. The background to this document appears to be that it was composed as a response to the plaintiff issuing civil proceedings against the defendant. There is no evidence to suggest that the defendant himself was involved in the production of this e-mail. It appears to have been all the work of the defendant's partner who, when questioned about it, admitted that she wrote it in anger when she heard of the initiation of these proceedings against the defendant.

[42] In the e-mail the defendant's partner, in essence, stated, *inter alia*, that:

- While driving through town we could hear noises which appeared to come from the trailer. They sounded like "wooing", someone having fun.

- However, we thought nothing of this.

- While negotiating a roundabout, we heard noise again and thought someone must have got inside the trailer as we were packing.

- My partner pulled into a nearby layby.

- We opened the trailer but there was no one inside.

[43] It has been suggested that the above account demonstrates that the driver must have been aware of the problem for some time before he stopped and that the e-mail shows that this is so. What should have happened, the suggestion continues, is that the vehicle should have been stopped much more quickly at the first appreciation of strange noises. In other words, the need for investigation should have involved the car stopping straightaway. If that had happened, it is suggested that the period the plaintiff spent being dragged along the ground would have been foreshortened.

[44] In assessing this e-mail, the court considers that it should bear in mind that it was written by the driver's partner not by the driver himself. It was also written some considerable time after the accident and in the circumstances described above.

[45] Notwithstanding this e-mail, it seems to the court the issue in the case remains that which has already been discussed *viz* whether it has been proved that the driver failed to meet the standard of care of the reasonable prudent driver in the circumstances. For the reasons already given, the court is of the view that the driver has not been shown to have acted in defiance of that standard.

[46] It seems to the court that the mere fact of sounds like wooing noises coming from the trailer must be viewed in the overall context already described. These include that the court should allow time in which what was happening is comprehended and assessed. The court should be wary of finding fault with the benefit of hindsight. What the e-mail then referred to as the trigger to action was the recurrence of noises while the car and trailer were negotiating the roundabout. It is this which resulted in a decision to stop at a nearby layby and investigate, because of the possibility that someone may have got inside the trailer.

[47] In short, the court is unconvinced that there is sufficient material in this e-mail to cause it to alter the conclusion which, on the basis of the driver's evidence, in particular, it has reached.

Findings of Fact

[48] On the basis of the court's assessment of the witnesses and the documentary evidence available, the court finds the following facts in this case on the balance of probability:

(i) The plaintiff was drunk at the time of the incident.

(ii) He left his friends after leaving The Gweedore Bar and went to the local taxi cab rank in William Street.

(iii) The Plaintiff was subjected to verbal abuse from someone behind him in the queue for a taxi.

(iv) He did not see his abuser.

(v) The basis for the abuse was homophobia.

(vi) Most likely his abuser pushed the plaintiff without warning into the path of the defendant's trailer.

(vii) Understandably, the plaintiff was unable to identify the person who pushed him.

(viii) The plaintiff came into contact with the trailer.

(ix) It is not possible to say for sure what speed the trailer and the car towing it was going at but it may, most likely, have been in the range 3-15 mph.

(x) It is not possible to say for sure what part of the trailer the plaintiff came into contact with. The court considers that the most likely scenario is that the plaintiff came into contact with the area of the tow-bar.

(xi) It is likely that whatever the manner of his contact aforesaid, the plaintiff would have been unstable and would not have been able for any significant period of time to maintain his stability.

(xii) The effect of the above would likely have been to cause the plaintiff to go down towards the ground.

(xiii) The court does not think that the plaintiff could have been seen in the car's mirrors for more than a fleeting moment before he went down, if he could be seen at all.

(xiv) The journey of the car and trailer prior to the point at which the plaintiff was discovered was in the region of 102 metres. The speed of the car and trailer will likely have been variable. The court believes that the journey may have taken in the region of one minute.

(xv) There were some signs that everything was not well. The court accepts that the plaintiff will have tried to draw attention to himself and that others may also have tried to obtain the driver's attention. However, a great deal was going on at this time in the area and it will have been difficult for the driver to appreciate what exactly was occurring.

(xvi) While there may have been some element of impact when the plaintiff came into contact with the trailer the driver reasonably may not have appreciated

that this signalled any substantial problem given the overall circumstances prevailing; the presence on the road of a rumple strip; the noise and boisterous nature of the crowd in the area; and the normal movement of the trailer on the road-scape. These factors will likely have obscured the impact in question.

(xvii) The driver only appreciated that there may be something awry at the point where he reached the roundabout. In so approaching he was not acting differently that a reasonable prudent driver would have acted.

(xviii) After he appreciated that there was a problem the driver acted responsibly in leaving the roundabout and then stopping in Rossville Street.

(xix) At this stage the suspicion being harboured by the driver (not unreasonably) was that someone may have got into the trailer at the time when the musical equipment was being stored and was not that someone may have become tangled with the trailer or was being trailed along the ground.

(xx) The trailer was opened and checked first with negative result.

(xxi) Only after this was the plaintiff found beneath the trailer, which had to be moved so that access to him for treatment could be achieved.

(xxii) The Plaintiff had had abrasive contact with the ground, particularly to the left side of his body.

(xxiii) The distance and time over which the contact occurred cannot be determined with confidence.

(xxiv) The court heard no evidence which supported the plaintiff's account that his pullover caught on part of the trailer. The plaintiff genuinely believes that it did, but his belief was not supported by either engineer who gave evidence.

(xxv) The court does not accept that the applicant at the scene made the remark that he should not have done what he had done as he was a student nurse or any similar remark.

Conclusion

[49] In the court's opinion a reasonable driver would have been likely to react in much the way that the defendant acted. The contrary proposition has not been proved on the balance of probabilities. In these circumstances, the court dismisses the plaintiff's claim.