Neutral Citation No. [2006] NIQB 38 | *Ref:* **MORF5588**

Judgment: approved by the Court for handing down | *Delivered:* **01/06/2006**

(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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MAUGHAN

-V-

BOYLAN

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MORGAN J

[1] The plaintiff was born at 27 March 1927 and claims damages as a result of a road traffic accident which occurred at Main Street Irvinestown on 4 February 2004. The plaintiff's case is that he got a lift into the village from his home sometime after 9:30 p.m. on that evening. He went into the Central Bar where he had one drink. He left their intending to go to Gallagher's bar. His evidence was that he turned left on coming out of the Central Bar on the footpath and then went across the road to his right. As he did so he was struck by the defendant's motor vehicle as a result of which he sustained severe personal injuries.

[2] In cross-examination he said that he did not know if there were any cars parked along the footpath from which he stepped onto the road. He did not know why he had not seen the defendant's motor vehicle. He denied that he had staggered into the vehicle. He accepted that he had struck the passenger side pillar at the windscreen.

[3] Ann Ward give evidence that she was a witness to the accident. She described how the plaintiff had stopped before crossing the street and looked up and down. As he started to walk across she described hearing a slap and saw the plaintiff in the air up at the front of the car. She said there were no cars parked along the side of the road other than a white van which was parked some distance back from the Spar shop. She described how the driver after the accident had come round to the side of his car and kicked it and cursed.

[4] In cross-examination Mrs Ward agreed that she told police that the plaintiff had just reached the kerb of the traffic island in the middle of the

road when he was struck. She also agreed that she told police that the defendant's car had glanced off the wall of the traffic island and come back onto the road. She also told police that the driver had not gone near the plaintiff as he lay on the ground. She repeated this in her evidence. I do not accept any of these assertions by Mrs Ward. It is clear that the first named defendant spoke to the plaintiff as he lay on the ground and that the plaintiff talked to him about going to see a friend. It is also clear from the engineering evidence that the plaintiff walked into the side of the defendant's vehicle as it drove along so that the plaintiff had not reached the traffic island and that the defendant's vehicle did not contact the traffic island at any time. I find it impossible to rely on the evidence of this witness.

[5] Mr McCusker is a member of the Institute of Traffic Accident Investigators. He proved his photographs and gave evidence about braking and thinking times. He said that in the absence of parked cars at the kerbside the driver of the defendant's motor vehicle would have no difficulty seeing a pedestrian. He gave evidence of walking speeds which was not materially in dispute. In cross-examination he agreed that if cars were parked at the left-hand side this altered things. He agreed that this would limit the view of the pedestrian by the motorist and could provide a screen of some 7 feet allowing for the width of the car and the distance out from the kerb that the car was parked. He agreed that the evidence tended to suggest that the pedestrian walked into the side of the car rather than being struck by the front of the car.

[6] The next witness was Constable Porter who attended the scene and identified the first named defendant as the driver. She interviewed the first named defendant who told the Constable that he was driving along Main Street at 20 mph when an elderly man staggered into his path. He said that he tried to avoid him but the man hit his car. She said that she did not recall that the first named defendant mentioned parked cars at the scene in relation to his account of the accident. This was first mentioned in his written statement on 19th February 2004. She said that she arrived 17 minutes after the accident and no cars were parked at the scene at that time. In cross-examination she accepted that it was common for vehicles to be parked at the left-hand side of the road during the evening. She had no reason to doubt the assertion that cars were parked there on that evening.

[7] The first named defendant said that he was going into Irvinestown to get some milk and bread for lunch the next day. It was close to 10 p.m. and the Spar shop was about to close. He was travelling between 20 and 23 MPH. He was behind a car which pulled into a layby before the Spar shop. After he passed the Spar he caught a glance of someone. This person came between cars and he had no time to sound his horn. He applied his brakes but the person travelled on and collided with the windscreen pillar on his nearside. The first named defendant got out of the car to see the plaintiff on the ground. He kicked the car are on its nearside front and swore. He explained that this

was because the car had only recently come back on the road after being damaged. He phoned his father and then the ambulance. His father arrived less than five minutes later.

[8] In cross-examination he stated that the vehicle directly in front of him had turned right but the two other cars in front of that car had pulled into the left towards the Spar shop. He said that he only had a split second to see the plaintiff come out and that he applied his brakes and sought to avoid him. He said that he remembered seeing the plaintiff come between two vehicles. He could not say how many vehicles were parked on the left-hand side. He agreed that he had told the police that the elderly plaintiff had staggered into his path but that he had not seen him staggering.

[9] The first named defendant's father described how he arrived at the scene. That was less than five minutes after receiving a telephone call from his son. By that stage there were parked cars at the left-hand side and right-hand side. After parking his car he went to speak to his son. In cross-examination he said that he had not explained to police when they arrived that the scene had been different. He described how some of those at the scene were hostile to his son. He described how Spar staff moved cars from outside their shop. He was asked if he discussed with his son the circumstances of the accident. He said that he had not but told his son to tell the police what happened.

[10] Evidence was given by Mr Maguire of the nature of the damage to the car which was not materially in dispute. Mr Wright gave engineering evidence. If the plaintiff emerged from between parked cars he suggested that one should allow between six and 7 feet for that. He agreed that the evidence of damage to the car suggested that the plaintiff had walked into the side of the car. In cross-examination he accepted that if there were parked cars one might just see the top of the plaintiff's head as he went between them. He suggested that one should allow a period of between one second and 1.25 seconds for perception to reaction. He said that the damage was consistent with the impact occurring at the travelling speed of 20/25 mph.

[11] The issue of the defendant's liability depends on whether the plaintiff emerged from between parked cars thereby depriving the defendant of an opportunity to react until it was too late to do anything about the accident. I consider it likely that there were parked cars on the left-hand side of the road. The Spar shop was still open and the evidence suggests that traffic was fairly busy at this time of night. I treat the evidence of the first named defendant's father cautiously because he arrived at the scene approximately 5 minutes after the collision and the parking position may well have altered considerably in that period.

[12] The next question is to consider the extent to which the parked vehicles contributed to the accident. On the evidence I conclude that no case was made to the police officer at the scene that the plaintiff emerged between parked vehicles. If he had so emerged I consider it very strange that the case was not made at the scene to that police officer. Secondly the evidence suggests that the first named defendant did not make the case to his father at the scene that the plaintiff had emerged from between parked cars when he arrived at the scene. Making all due allowance for the upset that the accident would have caused the first named defendant I consider it unlikely that he would have omitted to mention this fact to his father at the scene if it had been the cause of the accident. Thirdly there was no particular reason for the plaintiff to cross the road at this point given his intended destination and it is, therefore, unlikely that he would have sought to cross between parked cars rather than continue further up the road on the footpath. I consider it likely, therefore, that the plaintiff crossed at this point because there was a substantial gap in the parked traffic at the side of the road.

[13] On that basis I consider it likely that the plaintiff came into the view of the first named defendant either when he came off the pavement or within a few feet of doing so. The point of impact occurred at a point at least 11 feet out from the side of the pavement and given the estimated walking speed of the plaintiff this would have enabled the defendant to begin his braking manoeuvre and substantially reduce the speed of his vehicle. In those circumstances the impact of any collision between the plaintiff and the first named defendant's vehicle would have been substantially reduced. I accordingly consider that there was negligence on the part of the first named defendant contributing to the extent of the plaintiff's injuries.

[14] I have no doubt, however, that the principal responsibility for this accident rests with the plaintiff. He created the danger by walking onto the road without looking. If at any stage as he walked across he had stopped he would have avoided the collision. He apparently neither saw nor heard the first named defendant's vehicle. By contrast the negligence of the first named defendant rests in his not having reacted quickly enough to the emergency because of his failure to keep a proper lookout. I consider that the appropriate induction for contributory negligence in this case is 80%.

[15] There is no real disagreement between the parties that the value of general damages was £20,000. In the circumstances I awarded plaintiff the sum of £4000 together with interest thereon from the date of the issue of the writ. I will hear the parties on costs.