

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

**BETWEEN:**

**RICHARD BOYD**

**Plaintiff;**

**and**

**CAPPER TRADING LIMITED**

**First Defendant;**

**and**

**KRONOSPAN LIMITED**

**Second Defendant**

**HART J**

[1] Mr Boyd was 39 at the time of trial and employed by Capper Trading Ltd, the first defendant, when he was injured in a serious accident which occurred on the N55 road between Ballinagh and Granard in the Republic of Ireland on the night of 4 November 2001. At the time Mr Boyd was employed by Capper Trading Limited (to whom I shall refer as Capper) and was driving to Ennis, County Clare, to deliver a load of MDF sheets which he had collected from the premises of Kronospan Limited (Kronospan) at Chirk, near Wrexham in North Wales on 2 November. As Mr Boyd was negotiating what was for him a very sharp left-hand turn, the trailer of the articulated lorry tipped to the right and the entire vehicle overturned. As a result Mr Boyd suffered serious injuries to which I shall refer in greater detail later, and has not returned to work at the present time.

[2] Mr Boyd claims that the cause of the trailer tipping over was that the load shifted. In the alternative, he alleges that Capper were at fault because

no seatbelt was fitted for the driver to use in the cab of the tractor unit of the articulated lorry. The defendants deny that the load shifted and assert that the cause of the accident was the manner in which Mr Boyd drove the lorry at the time of the accident. They advance two alternative hypotheses as to how the lorry came to overturn. The first was that Mr Boyd allowed the rear left-hand wheels of the trailer to strike or mount a low wall beside the carriageway, thereby causing the trailer wheels to rise sufficiently to initiate the tipping action. The second was that Mr Boyd failed to follow the correct line as he was negotiating this sharp left-hand corner, and as a result created a situation where he was making the turn too tightly and thereby created centrifugal force which caused the trailer to topple. So far as the seatbelt issue is concerned, whilst Mr Elliott QC (who appeared on behalf of both defendants with Mr Michael Maxwell) conceded that the absence of a statutory requirement to fit a seatbelt in the cab did not necessarily provide Capper with a defence because there remained a duty of care on Capper to provide suitable equipment for its employees. In those circumstances the absence of a statutory requirement to provide a seatbelt did not mean that there was no breach of the employer's duty of care towards its employee. However, he argued that on the evidence in the present case, the plaintiff had failed to establish as a matter of causation that the absence of a seatbelt would have prevented the serious injuries which Mr Boyd suffered.

[3] Mr Boyd had only worked for Capper for a few weeks, having started work on 15 October 2001. However, he had considerable experience as a heavy good vehicle driver. From 1990 to 2001 he had driven vehicles for the then Milk Marketing Board, then for Ulsterbus and finally for the South Eastern Education and Library Board. Whilst he was primarily a bus driver during his employment with Ulsterbus and the SEELB, during that time he worked from time to time during his spare time as a lorry driver. He had worked on some odd days as a driver for a Mr Johnston, and over the period of a year or so prior to his starting with Capper he had worked from time to time driving a lorry for a local firm called Westland Fuels, delivering bulk and palletized peat. As a result he had considerable experience of driving heavy vehicles in the form of buses and lorries. As was accepted by Capper during the course of the hearing, his experience with Westland Fuels was something that made him attractive to Capper when they employed him.

[4] The evidence was that Capper had at that time a contract with Kronospan whereby Capper delivered materials to Kronospan and collected loads of chipboard or MDF for delivery from Kronospan's premises at Chirk in North Wales to various destinations throughout Ireland, North and South. The pattern was that usually two lorries would travel to Chirk to deliver or collect goods every day and would then return to Ireland, whether through Larne/Cairnryan or Holyhead depending upon the ultimate destination of the goods. Prior to Mr Boyd's accident some 62 deliveries had taken place and a further 438 occurred afterwards. On this occasion Mr Boyd collected 14

bales of MDF sheeting which were loaded on his lorry. Each bale consisted of a number of sheets, and the sheets were then held tightly in place by metal straps applied by Kronospan when each bale was made up. The bales were then loaded onto the lorry by Kronospan employees and after the load was complete, it was Mr Boyd's function to secure the load. On this occasion it was ultimately established that there were 14 bales on the trailer. Ten consisted of 50 sheets each and these were positioned so that if one looked at the load from the side there were two rows each of five bales, with the second row on top of the first. Working from the headboard of the vehicle on the left, there were three further bales, each of 25 sheets, placed on top of the first three piles of two bales each. Finally, a fourteenth bale of sample products which was of different dimensions to the remaining thirteen bales and containing 30 sheets of material, was placed across the top of the first two stacks of bales, again as one looks at the lorry from the side. The effect of this was that the bales may be said to have resembled a series of steps. Again looking from the left at the vehicle, the first two stacks each consisted of three bales, but across the top of the three bale stacks was the single bale of sample goods. These were the highest points on the load. Then moving to the right there was a three bale stack, and then the final two stacks to the right, each consisting of two bales. The bales occupied almost the entire width of the trailer, although Mr Wright said without contradiction that approximately 12 inches of the trailer bed would have been left unoccupied on the other side.

[5] Each bale rested upon two pieces of wood or "skids" which were used instead of pallets. Mr Boyd secured the load by using webbing straps which were attached to hooks on one side of the trailer and then passed over the top of each stack and secured to the chine or side of the trailer on the opposite side. A ratchet device was then used to tighten each strap until the necessary tension to hold each stack securely in place had been achieved. Mr Boyd then increased the tension on each strap by using a lever inserted through the handle of the ratchet to provide extra leverage. The use of such levers had become common practice with Capper because one employee had requested a lever to be provided and others then requested that they be supplied with one also.

[6] However, securing the load in this fashion did not follow the instructions of Kronospan. The Kronospan instructions were that each individual bale should be secured with webbing straps. Therefore in the present case this would have meant that the two highest stacks would have been secured in the following fashion. Each of the three bales would be individually secured with webbing straps, and then the single sample bale on top would also have been secured by webbing straps. If I understand the evidence correctly, and assuming that two straps were used for each bale, this would have involved the use of at least 14 straps as opposed to what were presumably four straps used by Mr Boyd to secure the first stack. Each bale was of considerable weight. The total load was in the region of 22 tonnes and

therefore each bale was at least 1.6 tonnes each according to Mr Wright's calculations.

[7] Mr Boyd's evidence corroborated by that of Mr Flanagan, a director of Capper, was that when he made his initial journeys to Kronospan, he was shown how to secure the loads by a fellow employee, a Mr Patterson who is no longer an employee of the plaintiff. Mr Patterson had showed him how to secure the loads and whilst Kronospan's instructions were as described, these had never been conveyed to Capper's employees prior to the accident, nor was there any evidence to suggest that Cappers adopted them afterwards, because Mr Flanagan's evidence was that the delivery practices remain unchanged, from which I infer that the loading procedures remained unchanged also.

[8] Having loaded the trailer Mr Boyd then closed the curtains along the side of the trailer. This trailer is of the type known as a tautliner, meaning that the curtain sides contain reinforced webbing and as a result are sufficiently strong to contain certain types of bulk load. The curtains can be drawn back to enable the trailer to be loaded, but when they are fully in place they are secured by a ratchet mechanism attached to each strap as can be seen from the plaintiff's photograph number 3 for example. As a result, the curtain sides could provide some additional restraining force to that provided by the web strapping for the load.

[9] Having secured the load Mr Boyd then drove his articulated lorry some 270 miles from Kronospan's premises to Cairnryan, where he crossed by ferry and drove back to Capper's premises outside Dungannon. He parked the vehicle there on Friday night, and on Saturday and Sunday the tractor unit was taken away to be serviced. Mr Boyd then returned on Sunday afternoon at about 5.00 pm, washed his vehicle and, after some difficulty in getting it started, set off with the trailer again attached to deliver this load to Ennis. His journey required him to pass through Cavan town, and on negotiating a roundabout there he felt what he described as a 'light' feeling in the steering of the vehicle. This felt strange so he pulled in and checked his vehicle. He thought that a tyre might be soft and so he checked the tyres and carried out a visual inspection of the curtains but nothing seemed to be wrong.

[10] He then continued on his journey and at Ballinagh he had to negotiate a staggered crossing and this involved him going first left and then right. As he carried out this manoeuvre he again felt what he described as 'unsteadiness, lightness' in the vehicle. As a result he again stopped and carried out a more thorough inspection of the vehicle, getting on his hands and knees underneath it to check the air bags and the tyres, as well as the curtains. Again he found that everything appeared to be in order and he resumed his journey, although he said that he felt wary of the lightness that

he had experienced. A few minutes later as he was driving along a stretch of the road between Ballinagh and Granard, he came to the left-hand bend where the accident occurred. As he approached the bend he said that he was driving between 25 to 20 mph and he saw the lights of a car approaching the bend from his left. On his left there were high hedges at this point. He then proceeded to slow as he knew he had to go to the centre of the road to negotiate this bend. He continued to slow and he was passed by the oncoming vehicle. He drove on and as he put it, "kept out to the line as normal". He continued to reduce his speed and carried out normal checks of his rear view mirrors. He then proceeded to negotiate the corner by entering the bend and he then felt "lightness" in the vehicle, whereupon he checked in his left-hand wing mirror and to his right and then to his left again. When he looked in his left wing mirror for the second time, he realised that he was having problems in seeing the marker lights which run along the nearside of the trailer which normally appear in the bottom half of the mirror. He saw them further up and the trailer must have been rising at that point to have produced this change in the position of the lights. This, combined with a lightness in the steering and an uncontrolled feeling, made him realise that something was wrong, In a split second he touched the brake but this was followed by a large thump on his head and when he came round he was lying in the footwell of the lorry with the windscreen broken and a tree against it and the lorry and trailer were lying on their right-hand side.

[11] When he regained consciousness he realised that something was wrong with his right arm but he was able to get a hand to the firm's mobile phone in the cab, he hit his wife's number and told her that he had had an accident, but was alright and was on the Granard Road and she was to inform his employers. A man then appeared at the driver's window of the cab having climbed up onto it and said that he had contacted the emergency services. This was Mr O'Reilly to whose evidence I shall refer later. When the fire service came he was extracted through the top window and taken to an ambulance, then to Cavan Hospital and ultimately to Navan Hospital where he remained as an in-patient for over two weeks.

[12] Before considering why the accident happened, it is convenient at this point to deal with the issue relating to the absence of a seatbelt. The evidence of Mr Wright, the engineer retained on behalf of the defendants, was that no seatbelt was fitted and he could not see any means by which one could have been installed after manufacture. The evidence of Mr Parks, the garage manager, and of Mr Flanagan, was that whilst some of the tractor units had seatbelts fitted by the manufacturers, this was in not invariably the case. The tractor cab in question on this occasion was new but no seatbelts were provided by the manufacture. The policy of Capper was that seatbelts were only fitted where they were compulsory by law and so no positive decision was made to have all lorries fitted with seatbelts. In other words, if a lorry was bought, it appears not to have been regarded as a relevant consideration

to choose a tractor unit that came with seat belts fitted in preference to a unit which did not have seat belts fitted.

[13] There was no evidence to show that it was a statutory requirement that all vehicles of this type should be fitted with seatbelts or seatbelts were not already fitted, that seatbelts should be installed. I have already referred to Mr Elliott's concession that the absence of a statutory obligation would not excuse an employer from the obligation to provide a seatbelt. However, I do not have to decide whether the employer was obliged to provide a seatbelt in this instance because of the absence of any medical or engineering evidence to establish that, had a seatbelt been available, it would have reduced or prevented the injuries suffered by Mr Boyd. It is for the plaintiff to show that this would have been the case but there was no such evidence. Mr Craig FRCS, who was the Orthopaedic Surgeon retained on behalf of the plaintiff, was asked to consider what protection might have been provided by a safety belt, and he concluded, on the final page of his report of 27 May 2005, that,

“The injuries to the right upper arm and elbow appeared to have been caused by a direct heavy blow from the right side. The blow to his side appears to have resulted from him moving from his seat against some immovable object rather than his cab being penetrated. I am unable to comment if a seatbelt would have offered protection in this event”.

[14] I therefore conclude that the plaintiff has failed to establish that even if a seatbelt had been fitted, it would have prevented or reduced the injuries which he suffered. In the absence of any positive engineering or medical evidence to support the assertion that the presence of a seatbelt would have had had this effect, I do not consider that I should assume that a seatbelt would have assisted. Indeed, whilst Mr McNulty did not formally concede this point, nevertheless the main thrust of the case on behalf of Mr Boyd was that the load shifted.

[15] In his evidence on behalf of Mr Boyd, Mr Declan Cosgrove advanced five possible causes for the toppling of this trailer. The first was that that corner had been taken at an excessive speed. The tactograph was recovered from the vehicle and the reading shows that it slowed to 14 mph in order to negotiate the bend. It records a sudden increase to 18.75 mph then the impact occurred, but he suspected that the increase in speed from 14 mph was due to one of the wheels spinning faster as the lorry started to roll over thereby giving a false reading, rather an increase in the road speed. He therefore eliminated excess speed as a factor. Mr Trevor Wright on behalf of the defendants did not dispute this, although he suggested that a speed of 14 mph was not inconsistent with a combination of other factors to cause the vehicle toppling over. These other factors will be referred to in due course.

[16] A second reason why the trailer toppled over advanced by the defendants was that the left or nearside wheels on the trailer may have struck or mounted the remains of a low stone wall which can be seen in photographs 13, 14 and 15. However, as Mr Elliott conceded, if the evidence of Mr O'Reilly is regarded as credible this explanation could be excluded. Mr William O'Reilly gave evidence that he was following the lorry out of Ballinagh for some distance, and caught up with it about one to one and a half miles before the scene of the accident. He followed the vehicle and remembered it slowing down as it approached the bend. He initially described the vehicle as entering the bend in a position which was not tight to the hedge on the driver's left, but out a bit close towards the white line which is shown in the photographs. He said the trailer was a good bit from the ditch although he was unable to say how close it was to the white line. He remembered the lorry breaking and then started to drive round the bend. He did not notice Mr Boyd serve out of line as he kept to the same line. When the trailer was half way round the bend, he saw it move to the right and the wheels on the left came up. He said that the wheels on the left were out near the middle of the road. Then Mr O'Reilly realised that the trailer was turning over, and as it went on a bit it rolled over on to the ditch in what appeared to him to be slow motion. He thought that the vehicle was half way round the bend before he saw the trailer start to turn or roll over. He noticed nothing unusual about the way it was being driven, there were no jerky or sudden movements from the trailer. He said that the wheels were not close to the small wall to which I have referred and were some four to five feet out. He then stopped, reversed, put on his hazard lights and climbed onto the cab and shouted in. He remained at the scene for 15 minutes or so. The fire brigade arrived and he left shortly after that. He did not see any of the lorry's load and he saw nothing to show that the load had moved.

[17] When cross-examined he said that as the trailer came up to the bend he felt that the driver was out a bit, he said that he knew that the lorry was out from the ditch a bit so he assumed that it was near the white line, although he accepted that he did not remember the white line being in place at the time of the accident. He confirmed that from what he could remember the trailer was just round the bend when it started to roll. His final position was that the left-hand wheels were probably out six to seven feet from the side of the road. Mr Elliott accepted that Mr O'Reilly was trying to give an honest and independent recollection of what he had seen, but he suggested that the reliability of his evidence was undermined by his references in his evidence in chief to the presence of the white line, because in cross-examination he accepted that he could not remember whether there was a centre white line at time, although there is one shown in the plaintiff's photographs taken in September 2004.

[18] However the defendants called Garda John Walsh, who has been stationed at Ballinagh Garda Station for 18 years. He was familiar with this

particular piece of road and had been to three or four accidents at this point which mostly involved two vehicles. Whilst he accepted that he did not mark any road markings on his sketch, he believed that there always were markings on the road from his recollection and knowledge of the road and I accept that his evidence on this was probably correct. Although this is a road which may well be less than satisfactory by modern standards, it is a major road and I consider it probable that there was a white line at the time of this accident. Certainly there was no evidence given by any of the employees of Capper who went to the scene that there wasn't one and I am satisfied that Garda Walsh's recollection is correct, as is that of Mr O'Reilly. I can see no reason not to accept Mr O'Reilly's evidence, he appeared to me to be, as Mr Elliott conceded, doing his best to give a truthful and reliable account and I am satisfied on his evidence that the left-hand wheels of the trailer did not at any time strike the remains of the wall to which I have referred and, therefore that that can be excluded as a reason for the vehicle toppling over.

[19] This brings me to the two hypotheses which have been most strongly advanced for the trailer rolling over. The plaintiff's case is that the load shifted. The defendants argue that not only is there no evidence to suggest that the load shifted, but that there is evidence to show that it did not shift, and that the explanation for the trailer rolling over is that the toppling was initiated by Mr Boyd turning his steering wheel to the left in order to follow the line around this sharp corner when the radius of the bend changed, and as a result of correcting with the steering wheel to compensate for this he created the situation where the lorry was turning too tightly, thereby creating centrifugal force and causing the trailer to topple over.

[20] Whilst Mr Elliott characterised the plaintiff's hypothesis that the load shifted as being a theory, it is theory which requires careful consideration. Although at paragraph four of the defence the defendant denied that the trailer or load became unstable, at reply number three of the replies dated 6 February 2004 of the first defendant to the plaintiff's notice for further and better particulars of 12 January 2004, it was stated, "The fact that the load was insecure is self-evident." Mr McNulty QC (who appeared on behalf of the plaintiff with Mr McNeill) pointed to this as an indication of the strength of the plaintiff's argument. However, it has to be remembered that the defendant denied that the load shifted and the extract from the reply which I have quoted has to be viewed in that light. The whole reply makes this clear.

"According to paragraph 5 of the Statement of Claim the plaintiff proceeded to secure the bundles. In paragraph 6 of the Statement of Claim he alleges that the load became unstable. The plaintiff, as driver of the vehicle, had a responsibility to stabilise or secure the load. The fact that the load was insecure is self-evident. Further particulars are a matter of evidence."



I accept that this is not an unqualified acceptance that the load must have moved.

[21] It is a striking feature of the plaintiff's case that there is no direct evidence to show that the load moved, or to indicate what would have been required to cause the vehicle to topple over. However, there is no suggestion by either side that there was any evidence of any mechanical failure in any part of the tractor unit or trailer which could have caused or contributed to what occurred. I mention this because of the evidence of Mr Boyd that he had noticed what he referred to as a 'lightness' in the steering on the two occasions when he stopped on this journey before the accident. There was no evidence from Mr Cosgrove that if the load had shifted or was shifting that it would have produced anything which resembled the 'lightness' to which Mr Boyd referred. In short there is nothing to show that this sensation which Mr Boyd says he observed can be interpreted as an indication that the load had shifted.

[22] Garda Walsh did not see any part of the load which of course was concealed behind the curtains of the trailer. There is nothing to suggest that anyone examined the interior of the trailer before the arrival at the scene of Mr Flanagan and his companions from Capper who came down to retrieve the load the following morning. It is their evidence upon which the defendants rely to disprove, or at least neutralise, the inference that the load shifted. The first witness to give evidence about this was Mr Parks, who was the garage manager with Capper. He was present when the rear doors of the trailer were opened, and he said that the load was still strapped to the bed of the trailer. The metal strapping around the loads was intact and he saw no indication that the load had moved before he and his companions proceeded to release the web straps which held the bales in place. As I have already indicated, the evidence of Mr Wright was that about 12 inches or so of the bed of the lorry was not covered by the bales, and therefore if the bales were still held securely in place and had not moved at any time, they would have protruded at right angles from the bed of the trailer. Accordingly there would have been some 12 inches of thereabouts from the side of the bales to the surface of the road. The evidence that Mr Parks, supported by that of Elmer Gault, a maintenance fitter, and Mr Flanagan was that when the webbing straps around each stack of bales were released the stacks of bales fell to the ground. Then a hacksaw was used to cut the metal straps around some of the bales, and the individual sheets were removed manually from the trailer and stacked on the road. However, it became increasingly difficult to remove the contents of the bales in this fashion and therefore steps were taken to remove the curtain and metal framework of the upper part of the trailer so that the recovery vehicle and crane which had come to the scene could right the trailer by pulling it back onto its wheels and thereby into a proper position. To enable this manoeuvre to be carried out, all of the webbing straps were

released and all the bales fell to the ground, thereby resting on the offside curtain of the trailer. The bottom of the offside curtain had to be detached from the trailer, and their evidence was that this was done by cutting the webbing straps which come down from the sides of the curtain, as opposed to the webbing straps which were used to secure the load.

[23] If the evidence of Mr Parks and his colleagues is correct, the inference which the defendants seek to draw is that the load had not shifted in any respect and the bales were still held in position before the webbing straps were released.

[24] Mr McNulty laid considerable emphasis on a letter written by the defendants' solicitors to the plaintiff's solicitors on 2 December 2004 as indicating that the evidence of Mr Parks and his colleagues was not correct. The material part of that letter was as follows:

"We are checking with our client, the plaintiff's employer in relation to the adequacy of the webbing assembly and straps used on the vehicle. It will not, however, have escaped your attention that none of the webbing straps perished during the road traffic accident, the subject matter of the plaintiff's unusual claim for Damages and that in fact, when our clients attended the scene, all webbing straps had to be cut to enable the material to be removed and transferred on to another flatbed trailer. Garda, who was in attendance, will confirm the above."

[25] Mr Flanagan said that he could not understand why he had misinformed the defendants' solicitors as to the webbing being cut, because his evidence was that the same strapping was used to secure the load when it was taken back to Capper's yard as had been used to secure the load before the accident. He said that the only strapping cut were the metal straps around each bale. As I have already indicated the straps which secured the bottom on the curtain were cut to enable to curtain to be separated from the side of the trailer.

[26] I have given careful consideration to this because of the contents of that letter is as odds with the evidence of those who were at the scene and how Mr Flanagan came to misinform Mr Warner, as Mr Flanagan accepts he did, is hard to understand. However, as against this Mr Flanagan pointed out that it was much speedier to release the webbing straps by releasing the ratchets than it was to cut them and this is undoubtedly the case.

[27] I have concluded that the most likely explanation for this is that there was a failure on the part of Mr Flanagan to describe exactly what happened

with sufficient precision and that as a result it was incorrectly stated that all webbing straps had to be cut to enable the material to be removed.

[28] How reliable is the evidence of Mr Parks in particular, and that of his colleagues who by inference or expressly supported his assertion that the load was still in place before the webbing straps were released? They each appeared to be reliable and credible witnesses. Whilst each of the ratchets securing the webbing straps which secured the load were being released, the curtain on the near side of the trailer had to be opened, and the person who released the ratchet had to get onto the trailer in a position which would allow him to work at the ratchet. If the load had moved to any material extent I think it would probably have been apparent to the witnesses at that time. As against this, they are relying upon their recollection, which in turn is based upon the inference to be drawn from the fact that each bale dropped when the webbing strap securing it was released. None of the witnesses appear to have expressly studied the condition of the load before the webbing straps were released in order to see whether or not the load had shifted, and there is therefore an obvious risk that their recollections are inaccurate in this respect. Nevertheless, if their evidence is correct it is incompatible with the plaintiff's case and, given the absence of any positive evidence on the part of the plaintiff to support the hypotheses that the load shifted, the plaintiff's case and the defendant's case at this stage must be regarded as evenly balanced.

[29] I must now turn to the hypotheses advanced on behalf of Capper that Mr Boyd brought about the roll over by the line he took round the corner.

[30] Mr Wright's evidence was that the entrance to this bend was relatively tight, and that it was necessary to change the line of direction in negotiating the bend because the radius of the bend itself changed. Although a modern road will have a constant radius on a bend, this was described by him as a very old road where the radius of the bend gets tighter and tighter as one goes round it. Mr Cosgrove had found that the radius of the curve from the nearside verge ranged from 515 feet to 60 feet at the tightest point that he could find. Mr Wright's view was that because the radius was getting tighter and tighter it was necessary for the driver to continually move his steering wheel to accommodate the demands of the changing radius. If the driver had swung out to the centre of the line and did not alter his line of approach, this would result in the lorry veering across the centre line. This creates an additional problem for an articulated lorry as such a lorry can topple depending upon its speed and radius of the bend. Because the effect of making the radius of the turn tighter than the radius of the bend is to make the centrifugal force inversionally proportionate to the radius, so that it doubles if the radius is halved, and it is also directly proportionate to the speed, so if the speed doubles the centrifugal force quadruples. A moderate increase in speed gives a disproportionate increase in centrifugal force. The effect of this was although the vehicle may be stable, a modest increase in

speed or reduction in radius, or a combination of both, can cause the vehicle to roll over. The smaller the radius, the lower the speed necessary to bring about a toppling effect, and in his view a speed of 14 miles an hour on entry of the bend is not inconsistent with a combination of factors which would cause the vehicle to roll over. In support of this evidence he pointed to pages 11 and 12 of a report issued in 1978 by the Transport and Road Research Department of the Department of the Environment and Department of Transport entitled 'Articulated Vehicle Road Stability; Methods of Assessment and Effect of Vehicle Characteristics'. I do not attempt to paraphrase or summarise the technical evidence set out in the extracts which were placed before the Court and referred to by Mr Wright, save to say that it appears to amply support his hypothesis. In any event, Mr Cosgrove accepted the validity of the hypothesis. He pointed out that the total length of tractor and trailer was 54 feet, and a prudent driver would be advised to keep out to his right as he entered the bend, and that going towards, or over, the centre line is what one would expect in those circumstances. Mr Cosgrove accepted that if Mr Boyd went too far to the right it would be necessary to correct by steering to the left and on going through the bend the effect is to reduce the radius through which the vehicle is travelling. He accepted that if the radius were reduced below 60 ft this increased the prospect of a roll over if speed were maintained and that it could cause what Mr O'Reilly had seen. He said that the driver could induce roll over by a tight turn, and that it was possible to topple at a lower speed by reducing the radius. He accepted that it was quite possible to induce a roll over at 14 or 15 miles per hour if the radius was reduced sufficiently, and he did not think that this was a particularly difficult situation to induce. In re-examination he said that if an over correction of the steering wheel had been made this could happen without someone following, such as Mr O'Reilly, noticing.

[31] On the basis of the largely common position of Mr Wright and Mr Cosgrove as to how a roll over could be brought about it is clear that if the load did not shift the only other explanation for this trailer rolling over is that Mr Boyd must have induced, no doubt, inadvertently, roll over by correcting his steering wheel at a point during the manoeuvre of going round the corner when the correction was necessary because he was taking in incorrect line as he went round the corner. How likely is that? Although Mr Boyd was an experienced driver of heavy goods vehicles, he had been working for Capper for less than a month. He accepted that he was familiar with this road and therefore had some familiarity with this bend and so it should not have come as a surprise to him, something that would make an error of the type described by Mr Wright less likely. There was no suggestion that his driving prior to the accident had in anyway been such as to attract Mr O'Reilly's attention and that suggests that he was driving in a careful and normal fashion.

[32] The onus is on the plaintiff to establish on the balance of probabilities that the trailer rolled over because of a set of circumstances that was the responsibility of Capper. Mr Cosgrove accepted that if the strapping did not fail and the load remained secure then any criticism of the method of strapping of the load by using a lever to increase the tension on the strapping was irrelevant. I am satisfied that if the load did not move then the only other explanation that has been advanced in evidence which is likely to have brought about the roll over is that Mr Boyd drove the vehicle in the manner suggested by Mr Wright with the result that he induced the centrifugal forces by taking the vehicle round the corner in too tight a radius and as a result it toppled over. I have already referred to the absence of any evidence of a positive nature to show that the load shifted and I consider it less likely that it shifted than that the roll over was brought about by Mr Boyd's method of taking the bend. I consider that the evidence of Mr Parks and his colleagues that the load had not shifted is probably correct. That being the case the plaintiff's case fails and must be dismissed.

[33] In those circumstances it is not strictly necessary for me to say anything about damages, but in view of the nature of the injuries suffered by Mr Boyd and the measure of agreement that was reached as to the financial loss aspect of the case it is appropriate that I should say something briefly about both general and special damages. I do not propose to go through the medical evidence in detail because there is considerable measure of agreement between Mr Craig FRCS on behalf of the plaintiff, and Mr Calderwood FRCS on behalf of the defendants in particular. Mr Boyd suffered two fractured teeth. He also had a history of depression prior to this and although he had made a very substantial recovery, unfortunately he underwent a recurrence and increase in his symptoms, resulting in a condition described by Dr Chada as an adjustment disorder which lasted some 13 to 14 months from February 2002. He has however improved well since that. He also suffered from neck pain for two years after the accident. He suffered from lumbar and thoracic pain for two years after the accident. He still suffers pain both in his neck and lumbar and thoracic areas, but the consensus of the medical opinion is that these can no longer be attributed to the injuries he sustained. He has been left with a capsulitis in his right shoulder which would be permanent and which causes him significant pain and discomfort. Although there has been an improvement, he has impairment of power and grip in both his right ring and little fingers. His right arm was his dominant arm, and as a result he is left with a considerable degree of awkwardness and difficulty in using his right arm for fine movements. This was apparent on two occasions during the case. First of all when Mr Boyd and counsel came into my chambers to allow him to demonstrate the scarring to which I shall refer in a moment. He had considerable difficulty in unbuttoning his shirt and collar and removing his shirt with his left arm. I also noted that while giving evidence he removed the cap from the carafe of water in the witness box. He did this with his left hand in an awkward and slow fashion. In addition he also suffered severe scarring

to his right upper arm as a result of the injuries he received. He had anterior dislocation of his right shoulder and it was necessary to put in place a surgical plate and screws. He also had a fracture of the upper third of the humerus outside the shoulder joint, although there was no direct damage to the articular surface head of the humerus or glenoid socket. He has been left with not merely significant operational scarring, but a substantial amount of muscle loss in the area of his right upper armpit and bicep. This amounts to a considerable cosmetic disfigurement. He also suffered from a supra condylar fracture of his right elbow. Although there was no damage to the articular surface of the elbow joint, two plates and screws were necessary to hold the fracture. Subsequently it was necessary to remove one of the screws which was done and this has eased the pain quite a lot. He appears to have suffered an injury to his left knee as a consequence of the accident. So far as general damages are concerned, in his closing submissions Mr Elliot suggested that the general damages should be in the range of £65,000 to £75,000 pointing to the guidance given at pages 26 and 27 of the Second Edition of the Green Book. Mr McNulty did not significantly disagree with Mr Elliot's range of damages. I consider that the damages should be at the top of this range. These injuries were individually significant, and Mr Boyd has not only suffered a significant amount of pain, but will continue to do so. I am satisfied that his hobbies of fishing, gardening and model aircraft making have largely been removed from him. He is now just 40 and this represents a serious loss of amenities of life for him. Interestingly, although there are references in the medical reports as having been a nine handicap golfer, he did not refer to this is his evidence. Had it therefore been necessary to make an award of damages I would have awarded £75,000 for general damages for personal injury.

[34] It was agreed that loss of earnings to date amount to £100,486.00 if it is proper to allow loss of earnings in their entirety. I accept that this figure is what the plaintiff would be entitled to were he to succeed. His injuries were severe and until he made a substantial recovery I have no doubt he could not expect to find any work. Even now it is accepted that he cannot drive a heavy goods vehicle which has been his occupation for the majority of his working life. He can drive a motor car with the aid of a ball attached to the steering wheel. His evidence was that he had made efforts to find work and had kept cuttings from newspapers for jobs that he was interested in and had looked for suitable jobs amongst those advertised in the local Job Centre. However, he lives in a rural area some miles from Dungannon and I have little difficulty in accepting that it would be difficult, though perhaps not impossible for him to get suitable work in that area, handicapped as he is and only fit for some form of light work. In the future I expect that he will have considerable difficulty in getting anything other than light employment, and even this may be difficult enough. I am satisfied that he will try and find such work and will take whatever he will get, but for the reasons I have already referred to in the context of his loss of earnings to date I think I will be difficult for him to

do so. It is agreed that the multiplier should be 17.32. There is a difference of opinion between the forensic accounts on each side as to the multiplicand. I consider that the current earnings are the appropriate starting point in this case, and therefore accept the calculation of the plaintiff's forensic accountants of £377,303.00 for future loss. It is common case that an allowance must be made for residual earnings. Again the multiplier is agreed at 16.82 and the difference between the parties relates to the level of earnings that may be expected to be achieved in the future. I prefer the basis of the calculations put forward by Messrs Goldblatt McGuigan to those of Harbinson Mulholland in the circumstances of this case and I would award the plaintiff damages for loss of earnings to date and for future loss as calculated by Goldblatt McGuigan at £220,502.00. So far as loss of services is concerned, the figure of £250.00 per annum suggested by Goldblatt McGuigan is entirely reasonable. Mr Boyd's injury was to his dominant arm and in view of the difficulties he has with his right arm and hand to which I have already referred I accept that many straight forward DIY tasks are now difficult if not impossible for him. I therefore would allow the figure £13,275.00 suggested by Goldblatt McGuigan. There is no evidence to support the claim for increased transport and travel costs and I would have disallowed this. Had it been necessary to make an award I would also have included interest at the appropriate rate on loss of earnings to date.

[35] In conclusion therefore, had the plaintiff succeeded in establishing negligence and/or breach of statutory duty on the part of the first defendant I would have awarded a total of £334,263.00 for loss of earnings to date and in the future, together with £75,000 for general damages, making a grand total of £409,263.00 plus interests on the loss of earnings to date. However, for the reasons I have already given I consider the plaintiff's claim must fail and it is accordingly dismissed with costs to the defendants. The plaintiff is legally assisted and therefore there will be the usual order for legal aid taxation of the plaintiff's own costs, costs not to be enforced without further order of the court.