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*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

*Delivered: 26/10/2018*

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

2016 No. 101031

**BETWEEN:**

**CONOR BRESLIN**

**Plaintiff**

**-and-**

**PAUL McCARRON**

**Defendant**

**MAGUIRE J**

**Factual background**

[1] The plaintiff in this case is Conor Breslin. He was born on 4 September 1996. At or about 20.30 hours on 7 October 2013 he was involved in a road traffic accident in which he was seriously injured. At that time the plaintiff was 17 years of age. He lived with his parents at 94 Kylemore Park, Londonderry. The plaintiff was a keen sportsman and had been at the Templemore Sports Complex that night. He was on the way home at the time of the accident. His route from the complex involved him walking from it to Bunrana Road. Once at Bunrana Road he turned left as he was going home. Ahead of him was a pedestrian crossing of a type called a "Toucan" crossing. This spans Bunrana Road and crossing it would have advanced him towards his home. While it was dark at the time, the crossing appears to have been well lit.

[2] The defendant is Paul McCarron. He is a local man and is familiar with Bunrana Road, as he drives it regularly. On that night he was driving in a citywards directions along the Bunrana Road when the accident happened. The vehicle he was driving was a silver Renault Scenic. At the time of the accident, his young son (9) was seated in the front passenger seat. Behind the defendant, in the

back of the car, was another boy of a similar age. The defendant had driven from playing fields at St Columb's College and was on his route home at the time of the accident. The boys had been playing football at the College's playing fields. The defendant was driving citywards and could see the crossing ahead of him, as the road is straight in the lead up to the crossing. As already indicated, the crossing was lit up. According to the defendant, as related to the police at interview after the accident he was driving at 30-35 mph. On his left-hand side there was a laneway leading to the Sports Complex. He later indicated to police that he was aware that people used the laneway to walk to and from the Complex to the Buncrana Road. The speed limit on the Buncrana Road was 40 mph.

[3] In his interview with the police the defendant provided an account of the accident. Its key parts are best referred to using the defendant's own language as it appears on the transcript of the interview.

- "Q. Okay how far could you see ...
- A. I'm just looking at it and it's clear.
- A. The wee boy's playing his iPod. Paul was having a bit of craic with him because they were playing something on his iPod. The radio was on we were listening to music and the road in front of me is clear.
- A. I'm just looking at the road ahead, it's dark. I'm just looking at the road ahead. The traffic lights are green on the approach ... I continue to drive on there's no reason for me to think anything else. I come to the traffic lights and they turn amber and I maintain me speed because there is no reason for me not to continue my speed then I hear a bang. I drive on because I ... hear the bang. The left hand side was my wee boy sitting. The noise and then something falls off me car and my wee boy starts screaming. Paul starts screaming. I stop the car for me driver's side and everything else is just so slow. I see if there's a body lying half on the road and half on the kerb on the footpath and I run down to see if the wee boy's all right and I look and I think he's moaning ..."

Later, the defendant, in answer to further questions said:

- "Q. All right did you see anyone walking about in the area or?"

- A. I wasn't, wasn't aware of seeing anybody.
- Q. Em did you see eh would you said you saw the lights changing from green to amber?
- A. Yeah.
- Q. Can you give any indication to us as to how far back from you know the white traffic line or the traffic lights themselves you would have been when that happened?
- A. ... I was near enough on the traffic lights.
- Q. ... So it was close enough?
- A. Yes.
- A. And the way I'm driving if I go to brake ... I'm concerned ... that someone might come in the back of me ... and there was no reason for me to brake because the road in front of me was clear ... I just maintained my speed. It was flashing amber and I went straight ahead.
- Q. ... What you're saying is you're right at the traffic lights?
- A. Yes.
- Q. Whenever they started to change?
- A. Yes.
- Q. ... So when they started to flash amber you think?
- A. ... The road in front of me is clear ... on approaching the lights the lights is green.
- A. I'm maintaining me speed, I get right up to the traffic lights and they flash amber.
- A. And I continue on."

[4] Later the defendant indicated to police that the impact which had occurred occurred after he was through the traffic lights and that it did not take place on the traffic lights.

[5] He also stated, in answer to still further questions:

"I don't recall slamming on me brakes and doing an emergency stop."

[6] At the hearing Constable Nicholl, who was the investigating officer in respect of accident, gave evidence. She was one of the officers who conducted the interview with the defendant and proved it evidentially. She also provided the court with a police sketch made shortly after the accident. Notably there was, however, no point of impact marked on it. She confirmed that a variety of statements had been taken

by police as part of the police investigation. She also said that the road was well lit at night.

[7] In the course of the hearing the plaintiff's father gave evidence. He indicated that the plaintiff was his eldest child. Unfortunately, he could give no evidence about how the accident happened.

[8] The plaintiff himself gave evidence. He told the court that at the time of the accident he had been a pupil at St Columb's College and had entered his lower sixth year. He was hoping that he might gain a sports scholarship. He was in the habit of going to the Sports Complex regularly, 3 to 4 times per week. He indicated that his normal route involved him crossing the Buncrana Road at the pedestrian crossing.

[9] As regards the accident itself the plaintiff was unable to recall what had happened due to the injuries he received in it.

### **Witness statements**

[10] There were a number of witness statements provided to the court, which the court has read carefully. Mr Diarmuid Doherty was travelling along Buncrana Road towards the city at the time of the accident. He was behind the vehicle driven by the defendant. He was travelling around 30 mph. In his statement he related that:

"As I was driving past the sports complex on my left I became aware of a Renault car in front of me. When this car was within the area of the crossing I saw it swerve to the right and back in. It was a slight, quick swerve. I was also 30-40 metres behind the vehicle at this time. I saw someone thrown into the air. The person was thrown up and ahead of the vehicle and to the left. I did not see the person land on the ground ... I saw the injured person was a young male, he was wearing sports gear, runners, shorts and a sports top. He was lying half on the footpath and half on the road, his head was on the footpath ... The vehicle involved had stopped 25-30 yards up the road towards the roundabout."

[11] John Joseph McDaid is a local taxi driver. He was travelling along Buncrana Road in the opposite direction i.e. going towards Donegal. He was driving at 30 mph. The road, he says, was well lit. In his statement he relates that:

"As I approached the traffic lights I was concerned by a vehicle travelling towards me. Its headlights shone towards my car and it seemed to swerve towards me

before quickly being corrected and returning to its normal course. I then heard a bang and saw a person flying through the air on my right hand side ... This person landed half on the road and half on the footpath."

[12] Mathew Doherty is a friend of the plaintiff. He had been with the plaintiff that night at the sports complex. He left the complex with the plaintiff. However, this witness stopped to tie his shoelace and speak to a girl. The plaintiff went on. This witness heard a loud bang. Later he saw the plaintiff lying on the footpath.

[13] While there are other witness statements which the court has considered, it is unnecessary to set out any detail concerning them here.

### **The plaintiff's consulting engineer's evidence**

[14] On behalf of the plaintiff Mr Walter Holmes, a consulting engineer, provided evidence to the court. His evidence dealt with the position at the crossing point. He indicated that the crossing was operated on a residual basis of showing a green light to the traffic save where a pedestrian or cyclist pressed the button at the control box on either side of the crossing. When this occurred the effect would be as follows:

- (a) First, the lights would, after a short delay, go to amber.
- (b) Then the lights would go to red.
- (c) Then the pedestrian or cyclist would get a green signal at the control box in order to tell him/her he could cross, together with a beeping sound for the visually impaired.

[15] Based on the papers in the case Mr Holmes noted that the defendant alleged he was travelling at 35 mph. The driver, he noted, had said that the lights were showing green to him. However, at some point, before the accident, they changed to amber. A feature of the driver's evidence he said was that the driver maintained his speed throughout. This was so even though he could see the crossing.

[16] In Mr Holmes view the manner of the driver's approach when coming towards a crossing like this was important. The driver, he said, should always be looking well ahead towards the crossing. The driver needs to check his interior mirror to see if there was anyone behind him and should keep a close eye on the crossing for any sign of a pedestrian waiting. The driver, in effect, must calculate that the lights might change. As he gets closer, he should decrease speed gently. The driver must check that the crossing is clear before driving on as pedestrians always have priority no matter what colour the lights are.

[17] In Mr Holmes' view, the plaintiff was likely to have activated the lights as there was no other pedestrian in the vicinity of the crossing at the time. Once he pressed the button he said there would be a short delay which varied from a few seconds to two minutes for the lights facing the roadway to change to amber. He noted that the defendant had said that the lights had changed to amber just before the accident. According to Mr Holmes the lights stay on amber for 3 seconds before changing to red. He noted that at no point do the lights flash amber (as claimed by the defendant).

[18] Once the crossing is clear, the lights turn back to amber and, after two seconds, to green. At this stage the control box shows "do not cross".

[19] This witness was of the view that when he inspected the roadway on 11 January 2017 it was in excellent condition. He visited the area at night as well as during the day and he found the lighting to be good. He considered that the crossing was clearly signposted and that a driver would have a clear view of the location of the crossing.

[20] In his report Mr Holmes concluded that:

"... The defendant states he observed the traffic lights change from Green to Amber but he did not see the plaintiff ...

There is no doubt that the plaintiff who was wearing a red sports top was clearly visible ... Witnesses observed the defendant's SUV swerve at the crossing immediately prior to impact [and] ... saw the plaintiff being thrown into the air after being struck by the defendant's SUV.

I drove the defendant's route a number of times during darkness and confirm that a pedestrian using the crossing would have been clearly visible in the excellent street lighting and the lights of a vehicle. According to the defendant, he did not see the plaintiff even when his SUV vehicle struck him ... the defendant stated he was very familiar with the roads as he drives it daily ... the probable cause of the accident was inattention or distraction ... on behalf of the defendant. Had the defendant been driving with due care and attention this near fatality would not have occurred."

[21] Mr Holmes was vigorously cross-examined by Mr Ringland QC. Mr Ringland suggested that the distance the plaintiff would have to walk from the control box to 2½-3 feet into the road *viz* assuming the nearside of the car was driving in the middle of the citywards lane was very short and would take less than a second for a man of the plaintiff's age. The witness appeared to accept this. Likewise, the witness appeared to accept that if the vehicle was travelling at 35 mph (as the driver claimed) it would travel some 51 feet in one second. Thus, counsel suggested that if the vehicle was less than 51 feet from the crossing it could not stop in time if the plaintiff had stepped out from the footpath on to the road. An accident, in these circumstances would, Mr Ringland posited, be unavoidable. Thinking and perception time would be over one second. The witness appeared to accept these propositions. The witness also confirmed that the damage to the defendant's car was to the car's nearside.

### **The hearing**

[22] At the hearing no evidence was called by or on behalf of the defendant.

### **Court's findings of fact**

[23] Having considered the evidence which the court has summarised above, it finds the following facts:

- (i) The accident occurred at the crossing, probably on the crossing.
- (ii) The plaintiff had activated the crossing by pressing the control button.
- (iii) At a point when the defendant was close to the crossing the traffic lights changed from green to amber.
- (iv) As the defendant approached the crossing he had an unobstructed view of it as it was well lit up.
- (v) Nonetheless, the defendant did not see the plaintiff prior to the accident.
- (vi) As the driver approached the crossing he maintained his speed and did not decelerate.
- (vii) The change of the signal to amber took place before the accident. The signal will have remained on amber for 3 seconds.
- (viii) The impact occurred a short distance into the road way and involved contact with the near side of the defendant's car.

- (vix) At or about the time of impact the defendant momentarily swerved to his right. This will have been because he apprehended an event to his left, probably the movement of the plaintiff onto the roadway.
- (x) The effect of the impact was to throw the plaintiff into the air. The plaintiff ended up half on and half off the road/footpath.

### **The court's assessment**

[24] The court begins by reminding itself that in a case of this nature the duty on the defendant is to take reasonable care and that no driver can provide to a pedestrian a guarantee of his or her safety. Drivers, it may be said, cannot be all seeing of everything at all times and the court must be astute to avoid applying unrealistic standards.

[25] Three main factors have to be considered.

[26] First, it seems likely to the court, that the plaintiff should have been seen by the defendant prior to the accident occurring. If the defendant has been paying close attention, as he should have been, it is difficult to see why the defendant would not have noticed the plaintiff at or about the time when he pressed the button to activate the pedestrian crossing or afterwards. Moreover, once alerted to the plaintiff's presence, it would be reasonable to expect that the defendant would have kept his eye on him. The defendant has offered no real explanation to account for his apparent blindness to the plaintiff's presence.

[27] Second, the court believes that a careful driver, seeing the crossing ahead and appreciating that someone was at it, would have gradually moderated his speed to take account of both that fact and the fact that the traffic lights might change. The driver should seek to put himself into a position where, so far as this is practicable, he could stop with the minimum of difficulty if he had to do so. The defendant, self-confessedly, did not react in this way and did not decelerate at all.

[28] Third, it is inescapable that the plaintiff must have entered onto the crossing without looking for oncoming traffic. It defies logic that the plaintiff would have attempted to cross without first being clear that no traffic was coming towards him but this would not be the first case where this has occurred. If the plaintiff had looked to his right it is not easy to come to any conclusion other than that he would have seen the defendant's car coming towards him, as the car was a large moving object with its headlights on. If the plaintiff had seen the defendant's car he surely would have remained at the safe haven of the footpath.

[29] An important issue, in the court's view, is that of the point at which the plaintiff entered onto the crossing in relation to the defendant's on-coming car.



[30] On this issue the interview account of the defendant and, to a lesser degree, Diarmuid Doherty, suggests that the defendant's vehicle was close to the crossing at the point when the plaintiff entered on to it.

[31] Unfortunately, for understandable reasons, the court does not have the benefit of any evidence from the plaintiff in relation to this aspect.

[32] It appears that the plaintiff collided with the near side of the defendant's vehicle. At the point of impact there is no suggestion that the defendant's vehicle was other than in the middle of the lane travelling city-wards. It seems to the court that the probabilities are that the plaintiff can only have entered onto the road by a few feet at the time of the accident. The plaintiff's move from the footpath and onto the road can only have taken a very short time. The plaintiff's consulting engineer did not dispute that the timescale involved may have been one second. Nor did he dispute that the distance the plaintiff may have travelled from the footpath to the point of impact may have been 2½-3 feet.

[33] In these circumstances the question arises as to whether, even if the defendant had his eye on the plaintiff and had been watching the traffic lights and had moderated his speed he could have brought his vehicle to a halt before the impact occurred.

[34] It seems to the court that the defendant should have moderated his speed as he approached the crossing. While it is not possible to be dogmatic about the extent of the moderation of his speed, it would be reasonable to expect that his speed should have been no more than 25 mph as he approached the crossing, for the reasons already advanced. According to the defendant's account, as provided to police, he was nearly at the crossing at the point when the traffic lights changed to amber. It seems likely to the court that the sequence of events thereafter will have been that from that point there would have been 3 seconds before the traffic lights turned red. By this stage the plaintiff must have been close to the crossing and, while again the court cannot be definitive, the probabilities suggest that it most likely that the plaintiff will have left the footpath at the point when the pedestrian received the signal that he could cross. Any other view seems unlikely in that it would defeat the plaintiff's purpose in pressing the button on the traffic lights in the first place. This will mean that the defendant will have had a minimum of approximately 3 seconds in which to stop before the plaintiff was struck by the car from the point when the lights changed to amber. This would translate to around 108-110 feet, if the court adapts the distance per feet table in the Highway Code.

[35] These figures cause the court to believe that, on the basis of the evidence before it, the defendant should have been able to stop if he had approached the matter in the manner which the court has suggested, as travelling at 25 mph or below, he

ought to be able to stop within a distance of 108-110 feet, given that at that speed a car should be able to stop at around 56 feet.

[36] In the above circumstances the court is of the view that the defendant's speed, taken with his failure to keep a proper look-out, makes him partly responsible for the accident.

### **Contributory Negligence**

[37] The court is in no doubt that this is a case where for the reason referred to at paragraph [28] *supra*, the plaintiff must be viewed as also at fault. In the court's opinion he ought to have remained on the footpath and ought not to have entered onto the crossing without ensuring that there was no on-coming traffic.

### **Conclusion**

[38] The court finds liability against the defendant but reduces any award of damages to the plaintiff by 60% for contributory fault.