



**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

HQ18P03844

[2019] EWHC 2076 (QB)

Royal Courts of Justice  
Strand, London, WC2A 2LL

2 August 2019

Before :

**MASTER DAVISON**

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Between :

**BUSTER ANGUS STARK**

**Claimant**

- and -

**TABITHA LYDDON**

**Defendant**

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**Mr David Sanderson** (instructed by **Stewarts Law LLP**) for the **Claimant**  
**Mr Geoffrey Brown** (instructed by **Ellisons**) for the **Defendant**

Hearing dates: 22 & 23 July 2019  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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## **Introduction**

1. This is my reserved judgment on the trial of the preliminary issues of liability and (if relevant) contributory negligence. The claim arises out of a road traffic collision that occurred on the A358 near Taunton at 8.05pm on (Bank Holiday) Monday 29 August 2016 about 150 metres from junction 25 on the M5. The claimant, then aged 21, was driving his Suzuki 750cc motorcycle. The defendant, then aged 23, was driving her Mazda CX3 motor car. She turned right out of a "Toby Carvery" car park, across the claimant's path. The claimant "T-boned" her vehicle in the area of the rear offside passenger door. His speed at the collision was 55mph. He was thrown over the top of the car landing some way down the road. He sustained injuries of which the most severe was a brachial plexus injury to his right dominant arm, which has removed all useful function in that arm – a grievous injury.

2. There is hardly any dispute of fact.

## **The accident**

3. It is convenient to describe the scene from the perspectives of, first, the claimant and, second, the defendant.
4. The claimant was very familiar with the route having travelled it many times before. He and his family had been to the beach and the zoo that day. He often went out for a ride on his motorcycle as a way of relaxing. He decided to do so on this day and his intended route from his home address in Taunton was take the A358 then the A378 to Langport and then to loop back on the A361 to Taunton. That route took him under the M5 motorway and along the A358 south of the village of Ruishton. As that road leaves the roundabout under the M5, it is a single lane heading east governed by a 40mph speed limit. (There are two westbound lanes, separated from the eastbound lane by a double white line.) The road initially curves to the left coming off the roundabout, but soon straightens out. Some 130 metres from the exit of the roundabout, the speed limit drops to 30mph. A further 30 metres on is the entrance / exit of the Toby Carvery. A little before this the eastbound lane widens and immediately beyond the Toby Carvery the road becomes a dual carriageway. The driver of a motorcycle coming off the roundabout would therefore be presented with a 130 metre section of straight, single carriageway broadening into a dual carriageway with the hazard of the entrance / exit to the Toby Carvery on the left just after the speed limit drops from 40mph to 30mph.
5. The claimant has no memory of the accident. His last memory is of reaching the traffic lights under the M5.
6. The defendant was also familiar with the location. She had eaten at the Carvery with her friend Shaunie Marie Goode. Leaving the restaurant, she intended to turn right towards the M5 roundabout and Taunton. Ms Goode was in the front passenger seat. There is a wide entrance / exit and a driver pausing at the Give Way lines would have a clear and unobstructed view all the way to the roundabout. In order to turn right, the claimant had to drive across the eastbound lane and into the inner of the two westbound lanes. At this point the centre of the carriageway is marked with a hatched area bounded by a double white line on the eastbound lane and a dotted white line on the westbound lanes. These road markings are primarily directed towards the parallel lines of traffic on the A358. There was no sign prohibiting a right turn out of the Carvery and cars very commonly did this.
7. The defendant gave two accounts of the accident. To the police on the day of the accident she said this:

"We were pulling out of the car park to go onto the road. We waited. The traffic lights to the left were red going towards Taunton so those lanes were completely clear. I checked to my right, I could see two cars near the roundabout so I waited for them to pass me. I then checked the lights were still on red to my left and then I checked again to my right. There was absolutely nothing to my right so I pulled out of the car park onto the road to

head towards Taunton. I then felt an impact behind me almost in the rear seats. I then saw lights as my car spun around.”

8. In her witness statement for the purpose of these proceedings (and in relevant part), she said this:

“I remember approaching the junction to the A358 and noticing the road to my left was clear ... I would describe my driving style at that stage as edging towards the junction. I looked to my right and noticed two vehicles coming from the direction of the roundabout, so I paused on the clutch and waited for them to pass. When they had passed by, I then checked to my left again ... I looked back to my right as I came closer to the junction to ensure the road was clear. To my recollection it was clear. ... I did not see the motorcycle. I cannot remember exactly what happened but in the normal course of driving I would have taken my foot off the clutch and put my foot lightly onto the accelerator. ... The next thing I remember was an explosion of noise and feeling a massive impact behind my seat which made the whole car spin.”

### **The CCTV**

9. There was a CCTV camera mounted on the Carvery which captured the collision. The view is of the entrance / exit on to the A358, which comprises a broad expanse of tarmac some 30 metres wide and directly abutting the road. The camera recorded an image every 0.48 seconds and there are 13 stills showing the two vehicles. I watched the footage several times during the course of the trial. What it shows is as follows. The defendant's car emerges from right of camera; she slows down to walking pace (some 3mph); as she approaches the Give Way lines the brake lights come off and she accelerates gently; she drives across the eastbound lane; as she is beginning to cross the hatched area in the middle of the road the claimant's motorcycle comes into view from the right; he is riding in the centre of the road (i.e. at the outside edge of his lane) and his headlight is on; the motorcycle's rear wheel is just lifting as the claimant applies emergency braking; a split second later the defendant's brake lights come on and the motorcycle strikes the rear offside passenger door of the car. At no point does the defendant indicate that she is turning right.

### **The police investigation**

10. The police attended. They took measurements of the scene; they interviewed the witnesses including a witness, Ms Kim Bourton, who had seen the claimant's driving just before the accident; (see further below). The officer in charge was PC Hignett. The police calculated that the claimant was travelling at over 81mph before he applied the brakes. Ultimately, no one was charged with a road traffic offence. So far as relevant, the data in the various police reports have been subsumed within the reports prepared for the purposes of these civil proceedings by the accident reconstruction experts.

### **The expert evidence**

11. The parties each instructed an expert in accident reconstruction, Mr Ward for the claimant and Mr Hague for the defendant. They agreed on more or less everything and, in particular, the following (which I gratefully adopt from Mr David Sanderson's opening skeleton argument):

- (a) The eye position of the defendant in the driving seat of her Mazda was approximately 2 metres to the rear of the front bumper.
- (b) Her available view to the right, from a position 2 metres behind the give way lines, i.e. with the front of the car at the give way lines, would have been 130 metres.
- (c) Her available view to the right, from a position 4 metres behind the give way lines, i.e. when the front of her car was 2 metres behind the give way lines, was shortened by the hedge and sign to 70 to 80 metres.

(d) The CCTV shows that defendant did not come to a halt or stop at the give way lines. Instead it can be seen that she slowed from 8 mph, as she comes into the view of the camera, to 3 mph, as the front of her car reaches a point 2 metres from the give way lines. From there she accelerated smoothly first towards and then straight across the give way lines, reaching 13 mph at impact.

(e) The claimant's motorcycle is shown in two stills before impact, the first 0.53 seconds before impact and the second 0.05 seconds before impact. The distance travelled by the motorcycle between those two stills was 13.1 or 13.2 metres.

(f) PC Hignett miscalculated the distance travelled by the motorcycle between the two stills at 17.4 metres; hence the police's calculation of its speed was incorrect.

(g) The average speed of the motorcycle between the two stills was 61 to 62 mph. Because the motorcycle was braking over this distance, its initial speed can be calculated to be 65 to 66 mph [but see paragraphs 12 and 13 below] and its speed at impact to be 55 mph.

(h) If the claimant had been riding at 40 mph and if he had slowed to 30 mph as he passed the 30 mph sign he would have had sufficient time and distance to avoid an impact with the defendant's car as it crossed his path. Even if he had not braked, he would have reached the point of impact 2 seconds later than he did and therefore after the defendant had joined the westbound lane. [Mr Ward agreed in cross-examination that if the claimant had been travelling even a little slower and in the middle of his lane rather than the outer edge, he would have passed behind the defendant's car.]

12. In the event, such was the measure of agreement that, after cross-examining Mr Ward, Mr Geoffrey Brown elected not to call Mr Hague. I was left with just two matters to resolve on the expert evidence, neither of which makes any real difference to my ultimate conclusions. The first was the claimant's speed. It was accepted by Mr Ward that because the rear wheel of the claimant's motorcycle had just begun to lift in the first frame of the CCTV it would follow that there must have been some small speed loss already and that his initial speed before applying maximum braking force was therefore about 68mph. Mr Ward assumed that the claimant's perception reaction time was triggered by the defendant's car crossing the Give Way lines. In his opinion it was at this point that the claimant would have perceived that the defendant was not going to stop and that there was a risk of a collision. He further assumed a perception reaction time of 1 to 1.5 seconds. He accepted that if the claimant's perception of the need to brake occurred when the defendant's vehicle started accelerating towards the Give Way lines and if his reaction time was 1 second, then it would follow that his initial speed was higher. If taken in combination with an interval of half a second (Mr Hague's figure) not two tenths of a second (his figure) for the back wheel to start to lift after full emergency braking was applied, the claimant's initial speed could have been as high as 82mph.
13. I do not think that it is likely that the claimant's perception reaction time began much before the defendant's car crossed the Give Way Lines. Mr Ward relied upon a paper from *Muttart*, which posited that a driver confronted with a car approaching from a side road would usually assume that that car would stop at the Give Way lines. That makes sense and is the likely scenario in this case, especially as the defendant was not indicating right. However, I think that it is also likely that the claimant would already have seen and noted the presence and movement of the defendant's car from the Carvery, (which he acknowledged in evidence was a source of potential hazards of which he was already aware). I therefore think that he would have been in a state of heightened awareness and that his reaction time from the point when he realised the car was not going to stop would have been at the very lowest end of the scale. I would therefore place his speed before braking at about 70mph. This was more than double the speed limit.
14. The other matter was the defendant's view to her right if it was assumed that the point at which she looked right was when her car's front bumper was still some 2 metres from the Give Way lines. (For reasons which I will come to, this is a safe assumption and I so find.) Because, at the time of the accident, there were both an overgrown hedge and an advertising billboard for the Carvery intruding into the defendant's line of sight, the experts agreed that

the extent of her view to the centre of the eastbound lane was (as set out at paragraph 11 (c) above) 70 to 80 metres, with Mr Ward at 70 metres and Mr Hague at 80 metres. The difference is unimportant and Mr Sanderson made the sensible proposal that I should assume it was 75 metres, which proposal I will adopt. But Mr Sanderson also drew my attention to some significant figures for the defendant's sight lines if she had looked (or looked again) when she was only slightly further forward.

15. These sight lines were set out in a helpful table at paragraph 3.18 of Mr Hague's report. With her bumper 1 metre back from the Give Way lines, she would have been able to see 120 metres and with her bumper on the Give Way Lines she would have been able to see 130 metres – effectively all the way to the roundabout, (see paragraph 11(b) above).
16. The significance of these figures arises from the fact that the experts agreed that when the defendant looked to her right, the claimant and his motorcycle were probably just beyond her field of vision. But if she had kept looking, or looked again, as her car approached the Give Way lines, he would have been well within her field of vision and she certainly would, or ought to, have seen him.
17. The further significance is that if (as I find) the defendant only achieved a sight line of 75 metres to her right, a vehicle observing the speed limits would have been upon her in 4.86 seconds and a vehicle exceeding the speed limit by a margin of one third (as the experts' observations of the other vehicles shown on the CCTV demonstrated was commonplace) would have been upon her in 3.7 seconds. In other words, she was cutting things fine because 3.7 seconds is not long in which to cover the 14 metres that she still needed to cover in order for the whole of her car to clear the middle of the road.

#### **The evidence of Ms Kim Bourton**

18. Ms Bourton was the only other witness to give oral evidence. She was an independent witness who was very familiar with the road. She was also an experienced driver and someone who had ridden pillion on a motorbike with both her ex-husband and her brother. She gave her evidence calmly and dispassionately, readily making concessions where appropriate. She had stopped at the Costa Coffee adjacent to the A358 before the M5 roundabout. Her attention was drawn to a motorcyclist riding around in circles in the car park revving the engine. She thought he was showing off and "riding like a prat". The same motorcyclist caught up with her when she resumed her journey. She was travelling at the speed limit and it followed that he was exceeding it. He drew up on her right at the lights at the roundabout. He was leaning forward on his bike and revving the engine, obviously looking to make a quick getaway. When the lights turned he "shot off". He had one buttock barely on the seat and he looked to her as though he was not in control. She decided to keep as far away from him as possible. She regarded him as unpredictable. She thought (it turns out correctly) that he was "going to have an accident". This person was the claimant. Although he denied it and Ms Bourton accepted the possibility that the motorcyclist in the car park and the motorcyclist who caught up with her were different people, I think it is likely that the motorcyclist that Ms Bourton saw in Costa was also the claimant.
19. The claimant was an experienced motorcyclist and he also drove lorries for a living. Ms Bourton's impression that he was not in control is unlikely to be correct. He was probably shifting in his seat in order the better to distribute his weight for the upcoming left-hand bend. But her impression of someone driving irresponsibly and far too fast was, in my view, correct. That is, indeed, borne out by his grossly excessive speed immediately before the accident. As Mr Brown put to him in cross-examination and later submitted to me, it appears that he was riding that way for the thrill of it. To put it another way, he was "racing".

#### **Counsel's submissions**

20. Counsel lodged written submissions, addressed me and took me to a formidable bundle of authorities. I express my gratitude to them for their great assistance. They both accepted (and from time to time demonstrated) that, in cases such as these, it is easy to descend to a level of detail as to speeds, timings, sight lines etc, that over-complicates and clouds the

issues. For that reason and also for the sake of economy, I will not set out their submissions. The principal submissions and authorities will, I hope, appear sufficiently from the discussion which follows.

21. The relevant sections of the Highway Code are set out in the appendix to this judgment.

### **Discussion**

22. Both sides were to blame for this accident, the defendant for not looking properly to her right before she commenced her right turn and the claimant for his grossly excessive speed.

23. The CCTV demonstrates that the defendant's account to the police of how she went about her right turn was an artefact of memory. And her account in her witness statement was somewhat carefully worded. Contrary to the clear impression given by her statement to the police, she did not stop and look. She did not stop at all. She looked to her right when her front bumper was still 2 metres from the Give Way lines and she herself was 4 metres away. At that point she had a restricted view. She could see only 75 metres to the centre of the eastbound carriageway and less than 50 metres to its nearside edge. She did not look again. This is the clear inference from the fact that she never saw the motorbike until it hit her, or, perhaps, a split second before it hit her. Had she looked again even a metre further forward the motorcyclist would have been within her field of vision and she could scarcely have failed to see him. But instead of maintaining a look to her right, or, at the very least, taking a last look to her right before she crossed the Give Way lines, she concentrated on the road ahead of her. She said as much in cross-examination: "... the lights [to my left] were currently on red at the time, but you have to be aware of those lights changing as you are crossing three and a half to four lanes; I would have been looking in the direction I would have been going because I don't believe it would have been safe to be constantly staring in one direction". Her failure to look properly was the more serious because (a) this was a busy road only a short distance from the M5 and (b) she was crossing over a hatched area bounded on the near side by double white lines. Both circumstances suggested extra caution. Lastly, she did not indicate.

24. Mr Brown submitted that the defendant was not to be found liable because the check to her right which she carried out was sufficient to see a vehicle approaching at any speed which could reasonably have been anticipated. He relied upon a well-known passage from the speech of Lord Uthwatt in *London Passenger Transport Board v Upson* [[1949] AC 155 at 173:

"I ... dissent from the view expressed by the Master of the Rolls that drivers 'are entitled to drive on the assumption that other users of the road, whether drivers or pedestrians, will behave with reasonable care'. It is common experience that many do not. A driver is *not, of course, bound to anticipate folly in all its forms*, but he is not, in my opinion, entitled to put out of consideration the teachings of experience as to the form those follies commonly take."

25. Mr Brown also asked me to find, separately, that the claimant was not someone who ought to have been in the defendant's contemplation. For this, he relied upon a passage from the judgment of Christopher Clarke LJ in *Scott v Gavigan* [2016] EWCA Civ 544 at paragraphs 17 & 18:

"17. In one sense any sort of foolishness is foreseeable. As is well known, some people do silly or absurd things; or deliberately take risks. The question is, however, whether what happened was the sort of thing that, in the applicable circumstances, this defendant, acting reasonably, ought to have foreseen, such that the claimant ought to have been in his contemplation as someone likely to be affected by any failure of his to brake sooner.

18. ... It was not incumbent on the defendant to take steps to avert a risk of which he neither was nor should have been aware."

26. I am not sure that there is anything other than the most jesuitical distinction between the two approaches. Mr Brown's submission, in both its forms, boiled down to the simple proposition that the claimant's speed was so egregiously high that the defendant could not reasonably have anticipated what occurred. The obvious difficulty with this is that the defendant did not look properly and, had she done so, she would have seen the claimant and avoided the accident. The Highway Code lays heavy emphasis on the duty of the motorist emerging from a minor on to a major road and equally heavy emphasis on the need to keep a special look out for motorcycles, which can be hard to see and which can be approaching "faster than you think". As Sir William Aldous said in *Heaton v Herzog* [2008] EWCA Civ 1636, the driver's duty in these circumstances is "to take extreme care before doing so and when doing so"; see paragraph 12 of the judgment. The defendant did not comply. As the calculations I have set out at paragraph 17 above show, she put at risk even motorists who were only slightly exceeding the speed limit. It is no answer to the breach of duty so demonstrated to say that the claimant, by reason of his excessive speed, fell outside its scope, (which is essentially Mr Brown's submission). It was an accident of precisely the kind that the rules of the Highway Code exist to prevent and which would not have happened if the defendant had observed those rules.
27. I turn then to the apportionment of liability, which requires an assessment of the blameworthiness and causative potency of the negligence found against each motorist. Cases on apportionment formed the bulk of the authorities cited to me. But, as has been said many times before, this is an exercise which is exquisitely fact-sensitive and previous decisions are of limited assistance.
28. As to blameworthiness, the defendant failed to look and, as already stated, that failure was all the worse for the various reasons I have given. As for the claimant, Mr Sanderson sought to draw a parallel with my own decision in *Hernandez v Acar* [2019] EWHC 72 (QB). I must treat that decision with some caution not only on the ground that it is my own but also (as I told counsel) because it is under appeal. The apportionment there was 60/40 in favour of the motorcyclist who was doing at least 45mph in a 30mph limit (but in circumstances where a safe speed would have been below 30mph). It is correct that I said in that case that the motorcyclist was doing "about double" a safe speed for the circumstances. But he was only exceeding the actual speed limit by a factor of 50%. Here, the claimant was doing well over twice the legal limit. Further, the claimant in *Hernandez* was on a bike that he had picked up that very morning and with which he was relatively unfamiliar. His speed was inadvertent. This claimant was, as I have found, "racing" in a way that was dangerous and irresponsible and which had already alarmed at least one other motorist. It is clear to me that he bears a much heavier share of the blameworthiness than the defendant.
29. As to causative potency, I was taken to an inconsistency between the approach of Burnett J (as he then was) in *Jones v Lawton* [2013] EWHC 4109 (QB) and the approach of the Court of Appeal in *Woodham v JM Turner* [2012] EWCA Civ 375. In the former case Burnett J clearly thought that the vulnerability to serious injury of a motorcyclist in an accident such as the present was a factor indicating that greater causative potency rested with the negligence of the car driver<sup>1</sup>. I followed the same approach in *Hernandez*. In *Woodham*, however, the Court of Appeal approached a similar accident on the basis that there was parity in the causative potency of each driver's negligence. In neither case does there seem to have been very much argument on the point. The rules of precedent aside, I would prefer the approach of Burnett J. A vehicle emerging from a side road has the potential to cause an oncoming vehicle a head-on collision from which it is the common and melancholy experience of judges that the driver of that vehicle, particularly if it is a motorcycle, may sustain death or very grave injuries. But in this case, whichever approach is taken, the effect is marginal. This is because, in my view, the causative disparity in this type of accident must be regarded as diminishing in line with the excessive speed of the motorcyclist. I can illustrate this by postulating what would have happened had the defendant had a rear seat passenger in the seat directly behind her, (which, mercifully, she did not). That passenger would in all

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<sup>1</sup> As in *Hernandez* it would appear that the motorcyclist was going "far too fast" for the conditions and was therefore as much to blame as the emerging car driver, but the disparity in causative potency tilted the balance in favour of the motorcyclist and the apportionment was two thirds, one third in his favour.

likelihood have sustained very serious injuries too because of the claimant's grossly excessive speed. It can also be said that a motorcyclist riding in that way is (as Ms Bourton presciently observed to herself) going to cause an accident. Thus, in the particular circumstances of this case where the claimant's speed was (a) over double the limit, (b) grossly excessive for the circumstances and (c) calculated (in the sense that he was deliberately "racing"), the most important consideration is not causative potency but blameworthiness.

30. After careful consideration, I have decided that the proper apportionment is 70/30 in favour of the defendant.



## Appendix – relevant provisions of the Highway Code

### **Rule 130 – Lines and lane markings on the road**

**Areas of white diagonal stripes** or chevrons painted on the road. These are to separate traffic lanes or to protect traffic turning right.

- If the area is bordered by a broken white line, you should not enter the area unless it is necessary and you can see that it is safe to do so.
- If the area is marked with chevrons and bordered by solid white lines you **MUST NOT** enter it except in an emergency.

### **Rule 170- Road junctions**

Take extra care at junctions. You should

- watch out for ... motorcyclists ... as they are not always easy to see. ...
- look all around before emerging. Do not cross or join a road until there is a gap large enough for you to do so safely.

### **Rule 172 – Road junctions**

- The approach to a junction may have a 'Give Way' sign or a triangle marked on the road. You **MUST** give way to traffic on the main road when emerging from a junction with broken white lines across the road.

### **Rule 180 – Turning right**

Wait until there is a safe gap between you and any oncoming vehicle. Watch out for cyclists, motorcyclists ... Take great care when turning into a main road; you will need to watch for traffic in both directions and wait for a safe gap.

### **Rule 204 – Road users requiring extra care**

The most vulnerable road users are pedestrians, cyclists, motorcyclists and horse riders...

### **Rule 211 – Motorcyclists and cyclists**

It is often difficult to see motorcyclists and cyclists, especially when ... coming out of junctions, ... Always look out for them before you emerge from a junction; they could be approaching faster than you think...