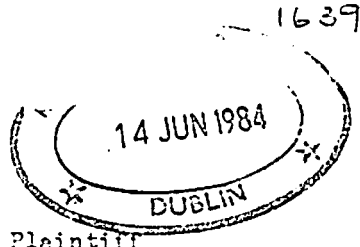


THE HIGH COURT  
Record No. 1982/7059P



BETWEEN:

JOHN QUILLIGAN

Plaintiff

and

DENIS SUGRUE

Defendant

Judgment of Mr. Justice Hamilton delivered the 13<sup>th</sup> day of February, 1984

On the 22nd day of January, 1982 the above named plaintiff suffered injury as a result of an accident which occurred at Castleisland Road, Tralee, in the County of Kerry.

The said plaintiff caused to be instituted proceedings in which he alleged that the said injuries and consequent loss and damage was occasioned by the negligence of the defendant in and about the driving, management, care and control of the defendant's motor truck.

The particulars of negligence alleged against the defendant are set forth in the plaintiff's reply to the defendant's notice for particulars and dated the 4th day of January, 1983.

In his defence, the defendant denies that he was guilty of negligence of breach of duty as alleged and pleaded that the accident was caused solely by the negligence of the plaintiff or alternatively that the plaintiff was guilty of contributory negligence.

On the 13th day of October, 1983 the Master of the High Court made an Order compelling the defendant to answer interrogatories delivered

on behalf of the plaintiff.

The said interrogatories are as follows:-

1. Did not the defendant drive his motor truck on the 22nd day of January, 1982 on the public highway at Castleisland Road, Tralee, in the County of Kerry in the direction of Tralee town?
2. Did not the defendant observe the plaintiff crossing the public highway at a point between St. Catherine's Hospital and the premises of Kerry Kars Limited on the said day?
3. Did not the defendant observe that the plaintiff was thumbing or signalling for a lift in his the defendant's vehicle as he was crossing or upon the said highway on that occasion?
4. Did not the defendant on observing the plaintiff thumbing or signalling as aforesaid slow down his, the defendant's, motor truck almost to a standstill as it approached the plaintiff?
5. Did not the defendant observe the plaintiff grasp or grasp at the door handle of the cab of the defendant's motor truck at the door on the passenger side when he the defendant had slowed down the said truck?
6. Did not the defendant continue to drive on and to increase the speed of the said truck?

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7. Did not the defendant know that the plaintiff was in the proximity of the left side of the cab of the said motor truck and the remaining portions of the said motor truck as he continued on and increased the speed of the said truck?
8. Did not the defendant continue on and increase the speed of the said motor truck in the same line of travel as he was taking prior to approaching the plaintiff then thumbing or signalling for a lift on the said highway?
9. Did not the defendant in the said motor truck having struck the plaintiff with the rear wheels of the same continue on for a further distance of eighty six feet before bringing the said motor truck to a halt?

The defendant has appealed against the Order of the said Master of the High Court on the grounds that the plaintiff is not entitled to deliver the interrogatories numbered 2 to 9 inclusive.

In his affidavit the plaintiff's solicitor states that the plaintiff has no recollection of the accident and that the information available to him does not cover or does not adequately cover the said interrogatories. Order 31 Rule 2 of the Rules of the Superior Courts provides, inter alia, that:-

"Leave shall be given as to such only of the interrogatories as shall be considered necessary either for disposing fairly of the cause or matter or for saving costs".

In the course of his judgment in J&L.S. Goodbody Limited .v. The Clyde Shipping Company Limited (unreported but delivered on the 9th day of May, 1967) Mr. Justice Walsh stated:-

"While Order 31 Rule 2 of the Rules of the Superior Courts provides that leave to deliver interrogatories shall be given only when it is considered necessary either for disposing fairly of the cause or matter or for saving costs, it is well established that one of the purposes of interrogatories is to sustain the plaintiff's case as well as to destroy the defendant's (see the judgment of this Court in Keating .v. Healy) and that interrogatories need not be confined to facts directly in issue. Furthermore the interrogatories sought need not be shown to be conclusive on the questions in issue but it is sufficient if the interrogatories sought should have some bearing on the question and that the interrogatory might form a step in establishing the liability. It is not necessary for the person seeking leave to deliver the interrogatory to show that it is in respect of something he does not already know".

It seems to me that the first issue I have to consider is whether the interrogatories, or any of them, sought to be delivered on behalf of the plaintiff can be considered necessary either for disposing fairly of the cause or matter or for saving costs.

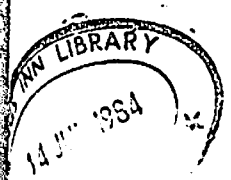
This is a "running-down case" and in the course of his judgment in Griebart .v. Morris 1920 1 King's Bench page 659 Lord Justice Banks stated at page 663 that:-

"No doubt in many running-down cases it may be right not to allow interrogatories because they are not "necessary either for disposing fairly of the cause or matter or for saving costs"; as where the plaintiff can call witnesses who saw the accident"

and Lord Justice Scrutton stated at page 666 that:-

"In most accident cases both parties are able to call witnesses, and therefore to interrogate upon small questions of fact relating to the details of the accident cannot be necessary for the fair trial of the action, and interrogatories should not be allowed".

As appears from the abstract of report on the road accident dated the 18th day of June, 1982 and obtained from the Superintendent's Office, Garda Siochana, Tralee, in the County of Kerry. the accident was witnessed by James P. Brick, of Caherlaheen, Tralee in the County of Kerry, Dermot



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Curran of 10 Rock Street, Tralee in the County of Kerry and Joseph Leen, of Arabolla, Ballymacelligott, Tralee in the County of Kerry each of whom made statements to the members of the Garda Siochana with regard to the circumstances of the accident. In addition the accident was investigated by Garda Crowe and a statement was made by the defendant.

These witnesses and the statement made by the defendant are and will be available at the trial to the plaintiff.

That being so I do not consider that the interrogatories sought to be delivered in this case are necessary for the purpose of disposing fairly of the cause or matter and consequently I will allow the defendant's appeal in this case and vary the Order of the Master as sought by the defendant and by consent will give leave to the plaintiff to deliver interrogatory No. 1.

*Sean Hamilton*

