THE HIGH COURT

1980 No. 1829P

GABRIELLE MORGAN

PLAINTIFF

and

BAS IL PHIPPS AND MOLLY TAAFE

DEFENDANTS

Judgment of Mr. Justice O'Hanlon delivered on the 18th day of April, 1985.

In this case having reviewed all the evidence I have come to the conclusion that I should accept what was said by the second-named Defendant, and the independent witness, Mrs. Higgins, about the sequence of events insofar as it concerned the arrival of the car driven by Mrs. Taafe on the scene of the accident, in preference to the account given by the Plaintiff and her sister.

In other words, I have come to the conclusion that the car had nothing to do with the accident, but came on the scene just after the Plaintiff had fallen or been thrown from her horse, and pulled up some reasonable distance back. I am also disposed to accept the account given by Mrs. Higgins, to the effect that Mrs. Taafe stressed that the Plaintiff should not be moved, and did not at any time ask to have her moved out of the way so that she, Mrs. Taafe, could continue her journey.

These findings lead to a dismissal of the action for damages brought against Mrs. Taafe, and I dismiss that action, with costs to the second-named Defendant against the Plaintiff.

The legal situation vis-à-vis the first-named Defendant is more problematic. I make the following findings of fact. I accept all the evidence given by Mr. and Mrs. Harrington and by the first-named Defendant, about the previous history of the horse, "Crackers", which was involved in the accident. I believe that he had been well-trained from the time he was a foal, and had been a good children's pony and later a good horse for adult riders. Eventually he emerged as a horse suitable for hunting, with plenty of go in him, and in the hands of a competent and confident rider he would not give any trouble to the rider. I accept what was said about his general temperament and behaviour, and I think that Mr. Phipps was very frank and honest in his description of the horse, and in the account he gave of his dealings with the Plaintiff and her sister. I think it puts a Defendant in an almost impossible situation to be confronted with a claim for damages years after the event on which the claim is based has taken place and I have considerable sympathy with both Defendants in the present case because they have been put in this position.

The Plaintiff was undoubtedly thrown from her horse, and undoubtedly suffered serious injuries in the process. On the finding I have already made in favour of the second-named Defendant, it appears that the horse threw her while she was riding along a quiet country road with no traffic whatever near her which could disturb the horse or cause a sudden movement, so there must be some other explanation for what happened. I think it is very likely to have happened in the manner suggested by Mr. Phipps, namely, that the

Plaintiff was given a horse with plenty of go in him, who was rather frustrated when he was not given his head and this led to him straining at the bit and ultimately acting up in some manner which dislodged the Plaintiff.

I have reluctantly come to the conclusion that some degree of responsibility must be laid at Mr. Phipps' door for what happened. He let out a horse which was accustomed to plenty of action to a customer who was in reality little more than a school-girl, and let her off on her own around the countryside without really satisfying himself about her competence as a horsewoman and her ability to handle the lively animal she was being given to ride. His own recollection is that he was acting on the information which her sister, Cora, had given him about her sister's ability, on a previous occasion, but I think he was bound to go further and see her in action before the horse was let out to her and she was sent off unaccompanied on the roads near stables.

On this basis it seems to me that the Plaintiff has made out a case against the first-named Defendant and I propose to make an award of damages in her favour. I am required by the terms of the Order made by Hamilton P. to assess damages as though the action had been tried in 1980.

I think the Plaintiff must herself be found guilty of some degree of contributory negligence. She says she was in trouble from the very beginning of the ride and decided at an early stage to return the horse to the stables. She dismounted and led the horse along the canal bank. I think, having regard to her own description of her experiences that

she should have resigned herself to the tedious and perhaps rather undignified course of leading the horse back all the way rather than taking her chance on the public roads where passing traffic might at any moment precipitate a crisis.

On apportionment of fault, the main burden must fall on the person who let the horse out on hire; the Plaintiff was in a situation not too far removed from that of the employee who is given dangerous tools to use by his employer. In such circumstances, most, and sometimes all of the blame is laid on the employer although the employee continues to use the equipment knowing its dangerous condition. I propose to apportion fault as between the parties, as follows - as against the first-named Defendant 75%; as against the Plaintiff 25%.

With regard to the injuries sustained by the Plaintiff, I feel there may be substance in Mr. McAuley's belief that there was a pre-accident weakness of the spine, but the Plaintiff avers on oath that she never had any previous painful symptons, and that these have persisted since the accident. Accordingly, I incline to the view that even if there was some congenital condition there, it was aggravated by the accident in a way to cause it to flare up and become a painful condition for the first time. The medical witnesses confirm that after an initial period of considerable pain, the fractures of the pubic rami healed up satisfactorily and I incline to the view expressed by Mr. McAuley which admittedly is not supported by the report of the gynaecologist and obstetrician, that as the pelvis was not injured the Plaintiff should have

a good chance of getting through child-bearing without any of the complications of which she is fearful.

I think the injuries were very painful and traumatic, but have healed well while leaving a residue of pain in the back which is likely to be chronic but not unbearable for the future, and which the medical witnesses hope will improve with the passage of time.

I measure the damages at £30,000, and reducing this figure by 25% leads to an award of £22,500. I am unable to give the Plaintiff the benefit of an order over against the first-named Defendant for the costs already awarded against her in favour of the second-named Defendant as on the findings already made I have to hold that it was not reasonable to join the second-named Defendant in the proceedings.

R. J. O'Hanlon

26.6.1985.