**THE HIGH COURT**

[2021] IEHC 472

**[2017 No. 8614 P]**

**BETWEEN**

**KELLIE QUINLIVAN**

**PLAINTIFF**

**AND**

**MOTOR INSURERS' BUREAU OF IRELAND**

**DEFENDANT**

**JUDGMENT of Mr. Justice Twomey delivered on the 6th day of July, 2021**

**INTRODUCTION**

1. This is a case which considers claims for personal injuries where there is no witness to the accident and so this Court must bear in mind two key issues:

    - the high onus on the plaintiff to prove on the balance of probabilities that the accident occurred as she claimed – in this case because of a diesel spillage, which could make the MIBI liable, rather than some other cause, such as her excess speed, and,

    - in light of the financial incentive for the plaintiff to establish that the accident occurred in this manner, since her repair costs and personal injuries will be paid by the MIBI, an '*appropriate scepticism'* (per the Supreme Court in *Rosbeg Partners v. LK Shields Solicitors* [2018] 2 I.R. 811 at 823) must be applied to a plaintiff's claim, not because of any dishonesty on a plaintiff's part, but simply because human nature is such that memories and accounts tend to become '*unwittingly adjusted'* because of the potential financial consequences for that plaintiff of their evidence.

2. As noted below, evidence of how a plaintiff's memory can be become 'unwittingly adjusted' is provided in this case, where the plaintiff failed to give details of a previous accident to the defendant's doctor (from whom she was seeking compensation), but remembered to tell her own doctor. Indeed, how much a person's memory can become unwittingly adjusted is starkly highlighted by the fact that Ms. Quinlivan told her own doctor (in support of a claim for PTSD) that:

    > "the front of her car had burst through the wall on the bridge, which had a 30ft drop underneath onto the railway tracks",

    thus giving the impression of her car overhanging a precipice (when in fact there was little damage to the bridge and the car came to rest in the middle of the road).

**SUMMARY**

3. The plaintiff ("Ms. Quinlivan") seeks damages for personal injuries from the defendant ("MIBI") in relation to a single vehicle accident in which she was the driver and sole occupant of a car on the 6th July, 2015. She was a learner driver at the time of the accident and was driving unaccompanied (which she accepted was in contravention of the law), when she claims that her car skidded on diesel which caused her to crash into a bridge on a dangerous S bend on a secondary road between Borris-in-Ossory and Rathdowney in County Laois.

4. Ms. Quinlivan claims that she is entitled to compensation from the MIBI because the diesel on the road was caused by the negligent use of a vehicle by an unidentified driver.

5. She is claiming for injury to her back and this is the second of three separate accidents in which she has suffered such injuries. In 2010 she was involved in a car accident and recovered €20,000 in compensation for injuries to her shoulder and back from Tipperary County Council, when the car she was in went into a pothole. In 2018, she was involved in a third car accident in which she received €50,000 as a settlement in relation to damages to her back, neck and shoulder. Thus there is a significant overlap between those injuries and the injuries claimed in this case.

6. The MIBI claims, *inter alia*, that Ms. Quinlivan was the only witness to the accident and that in all the circumstances she has failed to discharge the onus upon her to prove that the diesel on the road (which the MIBI says was on the flat part of the bridge), was the proximate or legal cause of the accident, rather than some other cause, such the speed at which she was driving into a dangerous bend (and in this regard, Ms. Quinlivan gave evidence that she was travelling at a speed of approximately 50 kmph, when engineering evidence was provided that a safe speed was 40 kmph on a dry day, but this was a wet day).

7. The MIBI also claim that even if Ms. Quinlivan had established that the diesel was the proximate cause of action, she has failed to provide any evidence that its presence was caused by the '*negligent use of a vehicle'* as required by the relevant MIBI Agreement.

8. For the reasons set out, this Court finds that Ms. Quinlivan has not discharged the 'high onus' on her to prove on the balance of probabilities that the accident occurred as she claimed it did, since she was the only witness to the accident.

9. In addition, this Court concludes that even if Ms. Quinlivan had satisfied the Court that the accident had so occurred, she has not provided any evidence to support a finding that the alleged diesel spill was caused by the negligent use of a vehicle, so as to affix the MIBI with liability. In particular, this Court concludes that it is bound in this regard by the Supreme Court decision in *Rothwell v. MIBI* [2003] 1 I.R. 268. This Court concludes that the fact that the current MIBI Agreement (the Agreement dated 29th January, 2009) uses the term '*negligent use of a vehicle'* rather than '*negligent driving of a vehicle'* (applicable in the *Rothwell* decision) does not make that decision, on the question of providing evidence to establish negligence, any less binding on this Court.

**THE EVIDENCE ON BEHALF OF MS. QUINLIVAN**

10. Evidence was given by Ms. Quinlivan in relation to both the circumstances of the accident and the injuries she sustained as a result of the accident. She gave evidence to this Court that at the time of the accident she was working as a health care assistant and that on the morning of the accident, on 6th July, 2015, she was on her way to a client's house. Her evidence in relation to the accident was that the morning in question was wet but bright and as she was travelling to her client's house, she approached a bend in the road just before a small humpback bridge and she felt the back of her car skid in a 'snake-like'

motion. Ms. Quinlivan gave evidence that she attempted to bring the car back under her control but was unable to do so and her car then crashed into the left side of the bridge, spun around and stopped on the opposite side of the road.

11. Ms. Quinlivan's evidence was that she saw a '*rainbow'* colour on the road after the accident and her belief is that her car skidded on the road due to a diesel spillage on the road.

12. Evidence was also given on behalf of the plaintiff by three witnesses who arrived on the scene in the aftermath of the accident (Mr. Daly, Mr. Deegan and Mr. Kirwan).

13. Mr. Daly gave evidence that he was travelling from the opposite direction to Ms. Quinlivan when he came upon Ms. Quinlivan's car in the middle of the road. He was able to drive past Ms. Quinlivan's car but then decided to move Ms. Quinlivan's car to the opposite side of the road as it was blocking both sides of the road. His evidence to the Court (some six years after the accident) was that he saw diesel on the road as he approached the accident, however, in his statement to the Gardaí just 24 days after the accident, Mr. Daly stated that:

> "The top of the bridge was covered in diesel and the roads were wet".

14. Mr. Deegan was travelling in the same direction as Ms. Quinlivan when he came upon the accident. His evidence to the Court was that he didn't notice anything in particular about the road but he also stated that he '*looked up'* the road after exiting his vehicle and could see '*oil or water'* on the road and that there were two patches in total on the approach to the bridge. However, this evidence was given six years after the accident and it is important to note that Mr. Deegan did not provide evidence to the Gardaí in the immediate aftermath of the accident (unlike Mr. Daly and unlike Ms. Quinlivan). It is also relevant to note that Mr. Deegan accepted in his evidence that he didn't have any difficulty when driving towards the bridge, unlike Ms. Quinlivan.

15. In his evidence, Mr. Kirwan said that he was also travelling in the same direction as Ms. Quinlivan and he was the first person to arrive at the scene following the accident. He gave evidence that he helped Ms. Quinlivan and that she sat in his vehicle. After Mr. Daly arrived at the scene Mr. Kirwan said that he helped Mr. Daly to move Ms. Quinlivan's car. Mr. Kirwan's evidence was that there was oil on the road but he was unable to say the size of that oil patch nor did he give evidence as to where that oil on the road was located.

**ANALYSIS**

16. Clause 6 of the relevant MIBI Agreement, the agreement dated 29th January, 2009 between the Minister for Transport and the MIBI, states:

> "Unidentified or Untraced Vehicle, Owner or User
>
> The liability of MIBI shall, subject to the exclusions of Clause 5 above, extend to the payment of compensation for the personal injury or death of any person caused by

the negligent use of a vehicle in a public place, where the owner or user of the vehicle remains unidentified or untraced."

17. The first issue to establish therefore is whether Ms. Quinlivan has established on the balance of probabilities that the cause of this accident was the diesel on the road, rather than some other cause, such as her own driving.

**Vigilant scrutiny of a claim that diesel caused the accident**

18. It is clear from the decision of Baker J. in *Gervin v. MIBI* [2017] IEHC 286 (in which she relied upon *Bennett v. MIBI* (Unreported, High Court, Morris J., 22nd April, 1994) and *Walsh v. MIBI* (Unreported, High Court, Geoghegan J., 15th May, 1996)) that a person who is making a claim against an untraced driver has '*a very high onus'* to discharge that everything she says in relation to the claim is true. This is for the very logical reason that, as is the case here, there is no independent witness to the crash and therefore nobody to contradict the version of events put forward by Ms. Quinlivan who has a financial interest in the claims she is making.

19. It is important to bear in mind that the standard of proof remains on the balance of probabilities, however, as noted by Baker J. at para. 33, there is a:

> "need for vigilance in the scrutiny of evidence given by a plaintiff when rebutting evidence cannot be called by or on behalf of the driver of an untraced vehicle."

20. Baker J. also noted at para. 35 (quoting from *Walsh v. MIBI*) that it is important that in cases such as these, involving claims against the MIBI, the Court does not involve itself in '*sheer speculation'*.

21. This is not because the plaintiff is not to be believed, rather vigilance is required because when an accident occurs to which there are no witnesses other than the driver, it is an easy matter for that driver to blame somebody other than themselves, in this case diesel, since there is nobody who can contradict this version of events, and therefore it is necessary to vigilantly scrutinise the evidence.

22. There is also a second reason for such vigilance, or as O'Donnell J. termed it '*appropriate scepticism*' in relation to a plaintiff's memory (see *Rosbeg Partners v. LK Shields Solicitors* [2018] 2 I.R. 811 at 822 - 823):

> "It is important to remind ourselves that courts should approach claims such as this not simply on the basis of the genuineness or plausibility of witnesses, but by applying common sense and some degree of scepticism. Litigation inevitably shines a very bright light on the events the subject matter of a claim, **but it is also a distorting process in at least two ways.** First, there is an inevitable tendency to highlight and focus only upon the issues which are particularly relevant to the claim. **Second, the light is being shone in retrospect, when we know the outcome of the events. Inevitably, there is a tendency to recall events and attribute to them a significance in the light of what is known to have occurred subsequently. This is not a reflection on the honesty of witnesses,**

> **rather it is human nature. Persons involved in routine car accidents will regularly tend to recall events in a way which discounts or avoids their own culpability**. It is not unusual to give ourselves the benefit of the doubt, in any field, and all the more so when the stakes are high. The hearing of some contested cases may sometimes involve a direct conflict of evidence in which the only conclusion is that one of the parties must be giving evidence which is deliberately false. However, that is relatively rare. In many cases courts must sift through differing accounts at some remove in time from the facts, and **do their best to allow for human error and the tendency for memories and consequently accounts to become subtly and unwittingly adjusted under the focus of a case, and in the light of the consequences of failure. [...] Courts must, and do, try to bring an appropriate scepticism therefore to their task at each stage of litigation."** (Emphasis added)

23. This appropriate scepticism arises when a plaintiff is making a claim for damages as in this case. It is important to emphasise that this is not because of any dishonesty on a plaintiff's part, but simply because human nature is such that memories and accounts tend to become '*unwittingly adjusted'* because of the potential financial consequences for that plaintiff of their evidence. While this point was made by O'Donnell J. in the context of the extent of the damage claimed, it seems clear from his judgment ('*at each stage of the litigation'*) to this Court that the principle is equally applicable whether one is remembering the facts which support the damage claimed or facts which support a finding of liability. It against this background that this Court must assess the evidence of Ms. Quinlivan.

**A. What caused the accident?**

24. The plaintiff claims in this Court that the accident was caused by her losing control of the car as she approached the corner and the bridge (which corner starts before the bridge and ends at the start of the bridge), rather than on the flat part of the bridge. She relies on the evidence of Mr. Kirwan, Mr. Deegan and Mr. Daly to support her claim.

25. However, this Court places particular reliance on the evidence of Garda Greene who appeared on the scene shortly after the accident and whose job it was to investigate the cause of the accident. There is no evidence to suggest that Garda Greene was not an independent witness. Furthermore, he is a guard and therefore somebody with experience and training in the investigation of road accidents and this Court found him to be a compelling witness. It is important to note that this Court is not dismissing the evidence provided by Messrs Daly, Deegan and Kirwan, but for the foregoing reasons it is attaching particular importance to the investigation and evidence of Garda Greene.

26. In this regard it is relevant to note that Garda Greene walked up and down the stretch of road, approaching the flat part of the bridge, upon which the plaintiff claims her car skidded.

27. However, Garda Greene, whose role was to investigate the cause of the accident did not make any reference to diesel on this part of the road and his evidence was that he did not see any diesel until he reached the apex of the bridge.

28. In fact when he photographed matters of evidential value in relation to the accident he photographed only the top of the bridge in which he observed an area several feet in length along the flat part, or apex, of the bridge. The photographs indicate that this section of diesel was a foot or two in width. His evidence was that the vast majority of this diesel was on the opposite side of the road, to which Ms. Quinlivan was travelling. His photographs which were produced in court were consistent with this evidence.

29. While this Court cannot ignore the evidence of other parties, for these reasons, this Court attaches particular importance to Garda Greene's evidence and it prefers his evidence to Mr. Deegan's evidence (that there was diesel on the approach to the bridge), particularly when one bears in mind that Mr. Deegan's evidence was given six years after the event and one also bears in mind that Garda Greene took photographs on the morning of the accident, which are consistent with his evidence.

30. This Court also prefers Garda Greene's evidence to Ms. Quinlivan's evidence to this Court (that she skidded on the approach to the bridge) and this is because Ms. Quinlivan's evidence in the aftermath of the accident was inconsistent with her evidence to this Court.

31. This is because in her statement to the guards which was taken just 24 days after the accident, she stated that:

> "As I approached a railway bridge I slowed down. It was hump back type railway bridge as in there was quite a high gradient to it at its crest. *I drove slowly over the bridge, and around the middle of the bridge, without warning, the back of my opel astra kicked out*. I think I tried to straighten the car but it was out of control. It felt as if the wheels had skid or slipped on something on the surface of the road. The car veered right and struck the wall of the railway bridge on the other side of the road." (Emphasis added)

32. This was her evidence in the immediate aftermath of the accident and it seems to this Court that it is more likely to be correct, since her memory was freshest at that time, than her evidence which she gave to this Court, some six years after the accident. In contradiction to this evidence which she gave three weeks after the accident, she claimed in this Court that in fact the skid did not happen on the apex of the bridge, but rather as she approached the bridge.

33. On the balance of probabilities therefore and bearing in mind the comments of O'Donnell J. in *Rosbeg Partners* above, it is this Court's view that the plaintiff went into a skid when she was driving the car on the apex of the bridge.

34. This Court should also add that it would have misgivings about the reliability of the memory of Ms. Quinlivan, since there were a number of inconsistencies, oversights and errors on her part. For example,

- She gave an account to Mr. Ganly of the MIBI in her solicitor's office of the accident in which she stated that she had no previous accident or injury and so did not mention her 2010 car accident for which she received €20,000 compensation. Furthermore, her oral evidence to Mr. Ganly was taken down by him in a statement and this statement (confirming no previous accidents) was then read over to her by Mr. Ganly before she signed that statement to that effect. Yet this was clearly incorrect. Subsequently, her solicitor corrected this relevant and important error made by Ms. Quinlivan.

- She gave an account to a psychiatrist of the accident, in support of her claim for damages for PTSD, which suggested that the accident was more severe than it was and arguably implied that her car was hanging over the precipice of the bridge when this was clearly not the case as it came to rest in the middle of the road: i.e. she stated to her own doctor that:

  > "the front of her car had burst through the wall on the bridge, which had a 30ft drop underneath onto the railway tracks."

  This was untrue as there was little if any damage found to the bridge and Ms. Quinlivan's car came to a rest in the middle of the road.

- When in 2019 she saw the medical expert on behalf of the MIBI (Mr. O'Riordan) to assess her back injuries for which she was seeking compensation, she never told him about the injuries to her back in the 2018 accident, even though she knew, or should have known, that he was assessing her on the assumption that the back injuries of which she complained were caused in the 2015 accident. This omission is curious, to say the least, when one considers that Ms. Quinlivan did tell her own side's medical expert (Dr. Cryan) about the 2018 accident when she met her in 2019, but she did not tell the other side's medical expert from whom she was seeking compensation for back injuries.

35. As regards the location of the diesel, this Court also notes that the other relatively contemporaneous evidence (in addition to Ms. Quinlivan's statement and the photographs of Garda Green - i.e. relative in the sense that it was given on the 30th July, 2015, just 24 days after the accident) is the evidence of Mr. Martin Daly, who came upon the accident at approximately 10 am on the day in question. His statement makes reference only to the top of the bridge as the location of the diesel:

> "The top of the bridge was covered in diesel and the roads were wet."

36. For these reasons, this Court believes that the recollection of Garda Greene, who was charged with investigating the accident and who took photographs of items and locations of evidential value in the hour or two immediately after the accident and Mr. Daly (who

gave a statement 24 days after the accident) and Ms. Quinlivan's statement (24 days after the accident), are to be favoured over the evidence of Mr. Deegan and Mr. Kirwan, who it seems did not give statements after the accident and rather gave evidence close to six years after the accident. On this basis, this Court concludes that there was no diesel on the road leading up to the bridge, but only on the apex of the bridge.

**Conclusions regarding the cause of the accident**

37. On this basis therefore it is concluded on the balance of probabilities that if the plaintiff skidded on the apex of the bridge (as she claimed in her statement to Gardaí) and that therefore the alleged existence of diesel on the road leading into the bridge is irrelevant. Equally, if she skidded on the road leading into the curve (in accordance with her evidence to this Court and in contradiction to her statement), on the balance of probabilities, this Court prefers the evidence of the person who was charged with investigating the accident (which was taken by photographs within hours of the accident) and so concludes that there was no diesel leading into the bend. In this regard, it is relevant to note that Ms. Quinlivan in her statement to the Gardai stated that she was travelling at 50 kmph, yet engineering evidence was given by Mr. Kelly on behalf of the defendant that the appropriate speed when driving in wet conditions on that road would be 40 kmph, and that this speed would be lower still for an unexperienced driver, such as Ms. Quinlivan, which evidence was not controverted by the plaintiff's expert engineer.

38. Uncontroverted engineering evidence was also provided that if the diesel was on the flat part of the road, as this court has concluded, and if the vast majority of it was on the opposite carriageway to the one in which the plaintiff was travelling (so that only a small quantity was on the plaintiff's side), it could not have been the cause of the plaintiff's crash.

39. For all these reasons, this Court concludes on the balance of probabilities that the cause of the crash was not the diesel on the road. Although not a determinative factor in this Court's conclusions, it is also relevant to note that Ms. Quinlivan was not a qualified driver and in addition she was driving without being accompanied by a driver with a full licence.

40. This is the end of this case, but if this Court is wrong in this regard, it will briefly deal with the second issue which would have to be established for the Court to make an award of damages to the plaintiff.

**B. Was the diesel spill caused by the negligent use of a vehicle?**

41. An important case in considering this issue is the Supreme Court case of *Rothwell v. MIBI* [2003] 1 I.R. 268 since a very similar issue arose in that case as here i.e. an allegation that a spillage of diesel from a vehicle driven by an unidentified driver caused an accident, thereby giving the plaintiff a right of recovery against the MIBI.

42. However, that claim was rejected by the Supreme Court.

43. The facts of *Rothwell* are very similar to the circumstances of the present case. There, the plaintiff lost control of his vehicle and collided with an oncoming vehicle. In the High Court, the trial judge found that the accident was caused by a spillage of oil on the road

from a vehicle driven by an unidentified driver. However, in relation to the cause of the oil spillage, the trial judge stated that there was '*no way of knowing what happened'* and held that the spillage of oil could have occurred with or without negligence.

44. While the plaintiff had established that his accident was caused by a fuel spillage therefore (unlike in Ms. Quinlivan's case), the trial judge found, which finding was not appealed, that the mere fact that the accident was caused by a fuel spillage did not give rise to a finding of negligence on the basis of *res ipsa loquitur*, as the fuel spillage may have been caused with negligence or without negligence.

45. Despite this finding, the trial judge held in favour of the plaintiff and made an award of damages on the basis that it would have been contrary to the intention and purpose of the relevant MIBI Agreement to have denied damages to the plaintiff in the circumstances of that case.

46. The MIBI appealed to the Supreme Court and the primary issue on appeal was whether the finding that the accident was caused by an oil spillage which may have occurred with or without negligence was sufficient to ground a finding of liability against the defendant. Giving judgment, Hardiman J. considered that negligence in the driving of a vehicle by an unidentified driver was a condition precedent to the MIBI's liability and that therefore the '*principal question'* was whether there was '*evidence'* of negligence. However, as set out above, the High Court had found that the oil spillage could have occurred with or without negligence and the plaintiff could go no further than that. The plaintiff was unable therefore to prove negligence nor could he rely on an inference of negligence on the basis of *res ipsa loquitur*.

47. The onus being on the plaintiff to prove negligence, and the plaintiff being unable to do so, Hardiman J. considered that in order for the onus of proof to shift from the plaintiff to the defendant the negligence sought to be proved must be:

> "peculiarly within the range of the defendant's capacity of proof."

Hardiman J. continued as follows:

> "That is not the position here. As the trial judge clearly and succinctly held, neither party could go further: the matter was not within the knowledge, exclusive or otherwise, of either of them."

48. In overturning the High Court's decision and dismissing the plaintiff's claim, Hardiman J. held as follows:

> "Negligence in the driving of the unknown vehicle by the untraced driver is a condition precedent to the liability of the defendant. There is no proof of negligence and (as I have held) the onus of proof in this regard is not shifted. *If it is unjust that the plaintiff should carry an onus of proof which, practically speaking, he cannot discharge, it would be equally unjust that the defendant should do so. […] Where proof of some proposition is insufficient, that*

*will enure to the disadvantage of the party on whom the onus of proof lies. In my view, this is the plaintiff. There is simply a failure of proof, unremedied by any presumption or shifting of the onus of proof*." (Emphasis added)

49. Having regard to the circumstances of this case, it seems that, even if one were to accept that the plaintiff's accident was caused by a spillage of fuel on the road, this spillage could have occurred with *or* without negligence. It is simply not possible to know what caused the diesel to spill onto the road and to say that it was due to negligence on the part of a driver in failing to fit or properly fit the cap onto the fuel tank or in fitting a defective cap onto the fuel tank, or otherwise, is purely speculative.

50. In that regard, the most that can be said is that any fuel spilled on the road may have been as a result of negligence on the part of an unidentified driver. However, one cannot discount the possibility that the spillage may have been due to some other reason, unrelated to any negligence. Just as the plaintiff in *Rothwell* could go no further than to say that the oil spillage may have been with negligence, Ms. Quinlivan can also go no further than this.

51. This is not a case where the matter which the plaintiff, Ms. Quinlivan, has to prove, i.e. negligence on the part of an unidentified driver of an unidentified vehicle, is a matter which is '*peculiarly within the range of the defendant's capacity of proof'* and as such, there can be no shifting of the onus of proof in this case. The fact is that neither party can say why the spillage of diesel occurred, if indeed one were to accept that the accident was caused by a spillage of fuel, and the plaintiff can go no further than make the case that the spillage may have been caused by negligence. As in *Rothwell, 'there is no way of knowing what happened'.* In circumstances therefore where it is clear that the spillage could be accounted for with or without negligence, there can be no inference of negligence on the basis of res ipsa loquitur and that principle can have no application to the present case.

52. Even if one were to accept therefore that Ms. Quinlivan's accident was as a result of the fuel spillage on the road, in order to establish liability on the part of the MIBI, Ms. Quinlivan must prove negligence on the part of the unidentified driver of a vehicle. This she has failed to do. As stated earlier, there is no shifting of the burden of proof in this case. In those circumstances, there is '*simply a failure of proof'* and Ms. Quinlivan's claim must also fail on this basis therefore.

53. Counsel for Ms. Quinlivan argued that because the wording in the version of the MIBI Agreement in the *Rothwell* case is different from the wording in this case, the decision in Rothwell can be distinguished from this case. However, the only difference is the use of '*negligent driving'* of a vehicle in the MIBI Agreement in the *Rothwell* case, versus '*negligent us*e' of a vehicle in this case. It is clear from Hardiman J.'s judgment that the key issue is establishing negligence, and this cannot be assumed. This is the case whether one is dealing with the use of vehicle or the driving of a vehicle. Accordingly, this Court, while recognising that 'use' is wider than '*driving'* can nonetheless see no basis for dispensing with the usual requirements to establish negligence (i.e. providing evidence of

negligence) in the former case, but not the latter case. Negligence has still to be established and no evidence was provided to support such a claim in this case.

**CONCLUSION**

54. In summary therefore, having concluded that on the balance of probabilities, Ms. Quinlivan's accident was not caused by a spillage of fuel, her claim for damages arising from the car accident on 6th July, 2015 must be dismissed. However, even if this Court is wrong in this respect and Ms. Quinlivan's accident was caused by the spillage of fuel, the onus is on Ms. Quinlivan to prove that the fuel spillage in question was due to the negligence of an unidentified driver in his/her use of a vehicle. Having failed to do so, Ms. Quinlivan's claim must be dismissed on this basis also.

55. Insofar as final orders are concerned, this Court would ask the parties to engage with each other to see if agreement can be reached regarding all outstanding matters without the need for further court time. If it does become necessary for this Court to deal with final orders, the parties have liberty to mention this matter one week from the date of delivery of judgment, at 10.30 am.