

THE HIGH COURT

[2022] IEHC 137

RECORD No. 2018/2945 P

BETWEEN

BRENDA BYRNE

PLAINTIFF

AND

CIARAN STAMP

DEFENDANT

AND

THE HIGH COURT

RECORD NO. 2018/2944 P

BRENDA BYRNE

PLAINTIFF

AND

THE MOTOR INSURERS BUREAU OF IRELAND

DEFENDANT

Ex-tempore judgment of Mr. Justice Mark Heslin delivered on 25th of February 2022

Introduction

1. Two actions were heard together in the manner which Mr Kennedy SC, for the plaintiff, explained at the outset, in particular, with reference to clauses 2.3 and 2.4 of the MIBI agreement, dated 29 January 2009.
2. The plaintiff in both actions is Ms Brenda Byrne. The defendant in one case is a Mr Ciaran Stamp and in the other, the MIBI.
3. At the heart of the plaintiff's case is that responsibility for the accident in question lies with an unidentified and untraced driver. It is not in dispute that the plaintiff sustained very significant injuries from which, thankfully, she made a remarkable recovery.

Injuries

4. Those injuries included a sternal fracture with associated bruising; the fracture of the first six of the plaintiff's ribs on each side; L2 fracture of vertebrae; soft tissue injuries to both knees; and an injury to her left hand. She was in Wexford hospital for seven days where she received resuscitative therapy and physiotherapy; and she was out of work for 6 ½ months. The plaintiff described herself as "very sore" for 10 weeks and in her evidence described herself as having "come back well" in month 9, or 10. She was physically well, and back at work, in the first week of February 2017. It took appreciably longer to get over the accident from an emotional or psychological perspective, but this is also something the plaintiff did, as she confirmed with reference to a trip to Lisdoonvarna when she realised the accident was behind her.

Facts not in dispute

5. Many other facts are not in dispute and these include the following. The plaintiff is currently aged 47. She is a nurse who trained in the UK and worked there for 10 or 12 years. She has worked in Ireland since 2006, caring for people with intellectual disabilities. She is currently on full-time night duty, looking after some eight patients with varying degrees of disability.

6. On the evening in question, being Monday, 18 July 2016, she and her three nieces had been to the beach at Curracloe, some 30 minutes from home.
7. The plaintiff had done day-duty at that time. Her nieces were kind enough to clean her house before going to the beach. All four, that is, the plaintiff and her three nieces, were in the plaintiff's car driving home. It was after twilight, approximately 10:30 p.m., and dark. The plaintiff was wearing her seatbelt.
8. Next to the plaintiff in the front passenger seat, was her niece, Maeve Byrne, who was then aged nine. Maeve did not give evidence at the hearing.
9. Behind Maeve, in the rear passenger seat, was a second niece, Roisin Byrne, then aged 15. Roisin gave evidence at the hearing and I will presently refer to her testimony.
10. Behind the plaintiff, in the rear seat on the driver's side, was her third niece, Megan Atkinson, then aged 16, and then on an extended holiday from her home in Wales. Megan also gave evidence at the hearing, and I will presently refer to same.
11. It is not in dispute that the accident occurred as the plaintiff was driving along a stretch of road between Castlebridge and Crossabeg. The plaintiff was coming from the Castlebridge direction and approaching a bend to the right, for someone driving towards Crossabeg. The court was provided with a land registry compliant map, prepared by an engineer, upon which the accident locus is identified. There was no material dispute concerning the locus which was somewhat beyond (that is, on the Crossabeg side) the entrance to Ardtramon house i.e. approximately 10 m beyond that entrance, as the plaintiff drove in the Crossabeg direction. Nor is it in dispute that the plaintiff's car impacted virtually head-on with the vehicle which Mr Stamp was driving. It is also common case that Mr Stamp was driving in the opposite direction to the plaintiff, that is, coming from Crossabeg in the direction of Castlebridge. It is acknowledged that he was driving on the correct side of his road and there is no suggestion that he did anything wrong, whatsoever.
12. In other words, although named as a defendant in proceedings brought by the plaintiff, she was crystal clear in all of her evidence concerning Mr Stamp, that the latter was driving properly and was not in any way to blame for the accident.
13. Despite this, an accident did occur. It was one in which the plaintiff suffered significant injuries, in the manner summarised. It occurred when the plaintiff's car hit Mr Stamp's vehicle virtually head-on. In other words, the plaintiff's vehicle veered into Mr Stamp's path. Why this occurred is at the heart of the present case. In essence, the plaintiff claims that there was a third vehicle responsible.

The Plaintiff's evidence

14. Her evidence was that in the seconds before the crash, she encountered a car driving towards her, "fully" on her side of the road. Her evidence was that she definitely saw 4 lights heading for her, that is, 2 to sets of headlights - one set on the *correct* side of the road, and the other set on the *incorrect* side of the road, namely, driving straight towards her, fully on her side.

15. Her evidence is that, when she saw these four lights, she believed that the two cars were driving parallel to each other, both coming at her, one on *her* side of the road, one on the correct side.
16. The plaintiff's evidence was that she is familiar with the road, using it at least weekly, and familiar with the fine manor house at the location.
17. According to the plaintiff she was driving within the speed limit which was 80 km. Her evidence is that she was driving her '03 saloon car in a normal manner.
18. Her account of the accident is that, upon seeing two lights heading straight for her, she pulled in to the left-hand side to get out of the way of the oncoming vehicle. Her evidence was that, had she not pulled in, her car would have collided with the vehicle driving straight towards her on the wrong side of the road.
19. The plaintiff made very clear in her evidence that what she saw were "really strong halogen lights" and her testimony was that she was "*blinded*" by them, and knew she had to get out of the way or she and her nieces would "*all be dead*".
20. On her account, she diverted her vehicle the very moment she got space, and this space comprised a gravelled area to the left-hand side of the road the plaintiff was travelling, being best seen in photographs number 8, 9 and 10 in the booklet of photographs prepared by Mr Michael Fogarty, the plaintiff's engineer.
21. Mr Fogarty measured the gravelled area as being a maximum width of 6.7 m, and a length of 58 m, from where the layby starts to where it ends.
22. As can be seen in photographs 8, 9 and 10, the gravelled layby area is on the left-hand side of the road, at the start of a right-hand bend.
23. Therefore, to avail of that gravelled area involved diverting a car from the road upon which the plaintiff was travelling by going straight, rather than remaining on the road and following start of the bend; and this is the plaintiff's evidence.
24. The plaintiff emphasised that, having diverted her vehicle onto the gravel area to avoid a head-on collision with the untraced vehicle, she had a "*split-second*" decision to make, namely, to go left; to go straight; or to go right, and she chose the third option.
25. The plaintiff's evidence was that there was a ditch to the left, and a gate in front of her, and that she knew her option was to hit the gate in front or to get back onto the road. She acknowledged that she would not have seen the gate on the night of the accident, but her evidence was that she knew it was there; and her evidence was to the effect that she knew that if she continued going straight, there would be a very serious impact with the gate or post or wall beyond it.
26. According to the plaintiff, although not visible in the photographs which were taken long after the accident itself, there was normally an "*avenue*" in the run-up to the gate.

27. It is not in dispute that the plaintiff turned the steering wheel of her car vigorously to the right. Her evidence is that, upon doing so, she drove over a grass verge or embankment, of about 2 foot, running parallel between the end of the gravelled area and the road.
28. The plaintiff's evidence is that, after she swung to the right, she lost control of her car and realised she was going to hit the vehicle travelling in the opposite direction. This was Mr Stamp's vehicle which was travelling on his correct side of the road.
29. In cross-examination, the plaintiff was asked by Mr Walsh, for the MIBI, whether, upon seeing the initial vehicle coming straight for her on her side of the road, she applied her brakes. The plaintiff's response was to say that she only remembers getting out of the way of the oncoming vehicle. When pressed on the issue, her testimony was that "*I can't say yes or no to whether I applied my brakes*".
30. When asked by Mr Walsh about whether she applied her brakes when she reached the layby to the left of the road, at night, in the emergency situation she described, the plaintiff's evidence was to the effect that she did not apply the brakes because she felt the surface to be gravel and loose stone. The plaintiff also emphasised how little time she had to make decisions, and the entire episode from start to finish was estimated by her to be no more than 10 seconds but she acknowledged that it was quite possibly less.
31. The plaintiff gave an account of the immediate aftermath of the impact and there does not appear to be any material dispute as to what occurred *after* the crash. She also gave a very frank account of her recovery, including her return to work, and the point at which she was fully healed from a physical perspective, being some nine or 10 months post-accident; as well as the significantly later point when she described herself as absolutely fine from an emotional or psychological perspective.
32. Although understandably upset in the witness box given the need to re-visit the events of that night, the plaintiff made clear in her evidence that, as matters currently stand, she regards herself as fully better.
33. When cross-examined by Mr Counihan S.C., on behalf of Mr Stamp, the plaintiff confirmed that Mr Stamp's was *not* the vehicle on her side of the road. She also confirmed that "*100%*" Mr Stamp was driving properly and on his side of the road.
34. This was evidence given well *before* Mr Stamp went into the witness box. In other words, from the very outset of the hearing, the plaintiff made clear that no blame whatsoever was being laid at the door of Mr Stamp. The latter was in court to hear this and, thus, well before Mr Stamp gave evidence, he knew himself to be in a materially different position to the plaintiff insofar as the outcome of the case is concerned.
35. By that I mean, it is uncontroversial to say that, whether the case is, or is not, successful from the plaintiff's perspective, as against the MIBI, is of no relevance to Mr Stamp.

36. Given that it was made clear by the plaintiff, 100%, that she accuses Mr Stamp of no wrongdoing, his testimony could fairly be considered to be that of an objective witness as to fact, without a stake in the outcome of the proceedings.
37. Without intending any disrespect whatsoever, the position is otherwise in respect of the plaintiff, who plainly has a very material interest in the outcome.
38. That is not to question the sincerity with which the plaintiff gives her evidence. It is, however, to point out that Mr Stamp's testimony as to what, in fact, occurred is given by someone without any stake in the ultimate outcome of a dispute which hinges on what, in fact, occurred and whether the plaintiff's account is, on the balance of probabilities, the correct one.
39. I will presently refer to Mr Stamp's evidence in some detail but, for present purposes, it is sufficient to say that Mr Stamp was very clear in his testimony that there was no 'third car' on the wrong side of the road driving in the plaintiff's direction.
40. The court also heard the evidence of Mr Michael Murr. His evidence was that he was driving the vehicle ahead of what he now knows to have been Mr Stamp's jeep. I accept that evidence. Before referring in some detail to his testimony, it is appropriate to say that Mr Murr seems to me to be someone the court can consider to be an entirely disinterested and independent witness. I say this in circumstances where, for the last five and half years, since the accident occurred, there has never been even the slightest suggestion made to Mr Murr that he was in any way responsible for the accident. That was also the *status quo* when Mr Murr went into the witness box and gave his evidence.

Mr Murr's evidence

41. It is not in dispute that Mr Murr and his wife were named on the relevant Schedule served in 2020 on the plaintiff's solicitors. Mr Murr's evidence was as follows. He is a German national who came to Ireland in 2007. For the last 15 years he has worked on Ardtramon farm, which is a large dairy farm with over 300 cattle. He lives there with his family, comprising a wife and children. He identified his house as being in the cluster of buildings visible at the end of the driveway, employing the entrance closest to Castlebridge on the land registry compliant map supplied to the court.
42. His evidence was that on the night in question he and his wife, who was then his fiancée, were returning home from their horses which are on a neighbouring farm. He was driving his vehicle, being a seven - seater Mercedes 'Vito'. He was driving from the Crossabeg direction. It had been a nice sunny day. It was no longer bright. The sun had gone down. He had his normal headlights on. He could see a car a good bit behind him. He turned on his indicator, in circumstances where he needed to make a left turn into his home.
43. He saw a car coming towards him. It had headlights on. He estimated it was approximately 200 m away driving in the opposite direction to him when he first saw it. He saw the car pass him and, immediately after, he saw dust coming up. Within seconds, the lights from the car which had been travelling behind him disappeared.

44. He had already passed what subsequently became the accident locus when he encountered the vehicle coming from the opposite direction, throwing dust up in its wake. He estimated that it was "*two seconds*" from the time the lights behind him went out, until he reached his entrance gate.
45. He turned in to his entrance but did not drive up the laneway to his home. Rather, he turned in and then immediately turned out and went back to what, by then, was the accident locus. He did so because he wanted to see what had happened, given that the lights from the car behind him had suddenly gone out.
46. He immediately drove back in the direction of Crossabeg and came upon what he described as a "*really bad collision*". He remained there. He rang '999' his now-wife went to the plaintiff to try and help. Mr Murr went to Mr Stamp who was out of the car by then.
47. Mr Murr knew him, but was very clear in his testimony that they were not and are not friends. Rather, they are neighbours who see other and say 'hello' but nothing more.
48. Mr Murr described the Gardai arriving, followed, a very long time later, by an ambulance. Later still, the Fire Brigade came, in circumstances where the plaintiff had to be cut from her vehicle.
49. Mr Murr gave evidence that he recalled talking to one of the Gardai at the scene. He gave evidence that the Garda in question took Mr Murr's name address and phone number, as well as his wife's details. His evidence was that he was never contacted by An Garda Siochana subsequently.
50. Mr Murr described his wife getting blankets and water, to try and assist the injured. Mr Murr gave evidence in relation to the then condition of the young occupants of the plaintiff's car, describing Megan as very injured and lying down; with his wife trying to look after her.
51. His evidence was that the Fire Brigade asked him to move his car which he had parked in the road behind the plaintiff's, with his hazard lights on, and which was somewhat in the way of what the Fire Brigade needed to do.
52. He described the ambulance taking people away. His evidence was that he was at the scene for approximately an hour.
53. Under cross-examination by counsel for the plaintiff, Mr Murr confirmed that his 2005 Mercedes vehicle, did *not* have strong blue halogen headlights.
54. With reference to photograph number five, he confirmed that he was driving in that direction, namely, away from photographer.
55. As to where he saw dust thrown up on the driver's side of his vehicle, i.e. to his right, Mr Murr indicated, with reference to photograph five, that this was some "*two car lengths*"

beyond what is the splayed entrance to Ardtramon, which is visible on the left of the photograph.

56. He confirmed that he did not *hear* the impact. He was not sure as to whether or not he had a radio on. His evidence was that, when one is driving, one can see the lights behind; and the lights behind "*went out*" suddenly. He confirmed that he did not see the impact, being in front of the vehicle driven by Mr Stamp.
57. With respect to photograph number seven, Mr Murr identified the bend which the plaintiff's car was approaching on the night. His evidence was that "*I can't say that someone was travelling too fast*". He estimated the car coming towards him as travelling at "*70 or 80*" km/hr.
58. He was crystal clear in his testimony that, apart from his vehicle and Mr Stamp's, both of which were driving in the Castlebridge direction, there was no other car.
59. Mr Murr's testimony was to the effect that Mr Stamp was previously a greater distance behind him, but after Mr Murr turned on his indicator, signalling his intention to turn left, Mr Stamp, ultimately came to be a maximum of 200 m behind him, as he was slowing down and Mr Stamp's car was also slowing.
60. Mr Murr was very clear in his evidence that a Garda had written down his name and his wife's. His recollection was that he also told the Garda that they were the first on the scene. He was very candid about the fact that he could not identify, 5 ½ years later, the Garda he spoke to on the night. He recalled speaking to Mr Stamp on the night. He was not aware that Mr Stamp made a statement to the Gardai. Mr Murr was very clear in his evidence that the Garda he spoke to had a notebook and wrote his and his then fiancée's names in that notebook.
61. He also thought that photographs were taken by a member of the Gardai on the night in question. When asked in cross-examination to say what he thought was photographed, he believed it was tyre tracks on the gravelled area where the plaintiff "*lost control of her car*". He was very clear to say "*I think so*" but added that he was "*not sure*"
62. It was put to him that, if photographs being taken at the scene, it was surprising that none were available. Mr Murr agreed, expressing his surprise that there were no photographs, but also making clear that he did not see a member of the Gardai taking photographs. Rather, he believed photographs were taken. He did not know this for certain, but he thought so. He acknowledged that perhaps he could be wrong, adding that in Germany photographs of the road would be taken in such situations. It was also suggested to him in cross-examination that he did not give his name to the Gardai. Mr Murr was emphatic that he did.
63. Before proceeding further, it is appropriate to say that, not only did I find Mr Murr to be a very forthright and credible witness - based on a careful assessment of the content of his evidence, in the context of other evidence, as well as regarding the manner in which he

answered questions, whilst also observing his demeanour - it is fair to say that, there are no material inconsistencies, whatsoever, between the account given by Mr Murr and the accounts given, by Garda Doyle and Garda Bolger, respectively, who were the members of an Garda Síochána, who attended on the night.

64. Mr Murr's recollection that a member of the Gardai had, and used, a notebook was correct. In the manner I will presently come to, that notebook was unfortunately - and through no fault of the Gardai - lost soon after the accident. With regard to the taking of photographs, Mr Murr was also correct. Again, and through no fault of the Gardai, those photographs are no longer available. Nor is the absence of either determinative of the claim by the plaintiff against the MIBI.
65. Regarding the speed at which Mr Murr was travelling the moment he was about to make the turn into his home, he estimated this at 10 or 15 km/h.
66. Regarding his speed when approaching the bend, Mr Murr estimated this as being some 60 km/h.
67. Mr Murr confirmed that he did not overtake anyone. He was absolutely clear in his evidence that there was a car behind him, being Mr Stamp's, and no car in front of him.
68. He confirmed that he first saw what turned out to be the plaintiff's car 5 to 10 seconds before the accident, driving towards him, with headlights on. This was after the sun had gone down, and Mr Murr was clear in his evidence that there was no sun to 'blind' a driver, although it was not completely dark.
69. When questioned further in relation to the dust from the plaintiff's car, Mr Murr's evidence was that he saw the car first, and then saw the dust behind the car. He saw the dust out of his side window.
70. He confirmed that he saw the dust when adjacent to or past the plaintiff's car, (being dust from the gravelled layby area).
71. His evidence was that he saw the car going past. He did not know at that stage that was the plaintiff's car. He did not even register the colour at that stage.
72. Mr Murr was also cross-examined in relation to the manner in which he took the turn into his property and his evidence was that he did not take a wide turn into his gate.
73. It was put to him, and he denied, that he went further to his right hand side as he turned into the entrance to his property. Mr Murr's evidence was to the effect that there was space to turn. And he stated "*This is a farm entrance; We go in with tractors and everything*" or words to that effect
74. Mr Murr gave evidence that the plaintiff was driving too far to her left and, with reference to picture number seven, he indicated a point on the gravelled area on the left-hand side of the road somewhat beyond his gate, i.e. closer to Crossabeg.

75. Mr Murr was cross-examined on the dimensions of his vehicle, and he gave "2 metres 10" for the width and confirmed that it has a long wheelbase. He acknowledged it is a bigger vehicle than a typical car.
76. It was put to Mr Murr that he was on the *incorrect* side of the road. He denied this. He was emphatic that he was on the correct side of the road. His evidence was that "*I saw dust, that means she was going too far on the left when I saw her*".
77. As well as confirming that he did speak to Mr Stamp on the night, Mr Murr's evidence was that it was months after the accident when he next spoke to Mr Stamp about it. As to the content of that discussion Mr Murr's evidence was that "*it was very clear to me*" and, with reference to the plaintiff, Mr Murr stated "*she lost control and she crashed into Mr Stamp*" or words to that effect.
78. He confirmed that he did not speak to the Gardai after the night in question. He confirmed that Mr Stamp did not tell him that he (Mr Stamp) was being sued. Mr Murr's recollection was that the next contact came from Mr Stamp's lawyer. The court was informed that Mr Stamp's legal team first made contact with Mr Murr in 2018. His evidence, with regard to being contacted by Mr Stamp's lawyers, was that he was surprised the matter was going to court.
79. For the purposes of the present claim brought by the plaintiff against the MIBI, the essential evidence given by Mr Murr in clear, consistent and emphatic terms is that, apart from Mr Stamp's vehicle behind him, and the plaintiff's car which passed him going in the opposite direction, there were no other cars involved. I accept that evidence.
80. Mr Counihan made clear that Mr Murr's wife was another witness as to fact and that she had been listed on the disclosure schedule, being the schedule served on 21 October 2020 in which both Mr and Mrs Murr were named. Mr Counihan explained that he had taken it upon himself to indicate to Mrs Murr, who was at home caring for the couple's children, that she would not be required to give evidence in relation to her involvement on the night. No objection was made in respect of the fact that Mrs Murr did not give evidence.

Garda Doyle

81. Garda Doyle, stationed in Wexford, confirmed that a notification came through the relevant system in relation to a two vehicle "RTC" on 18 July 2016. He went to the scene with Garda Tom Bolger. The accident was reported at approximately 10:35 p.m. and they arrived at approximately 11 p.m.. There were two vehicles at the scene of the accident, namely, Mr Stamp's and the plaintiff's. It was clear that both had been in a collision. The plaintiff was trapped in her car. Tyre marks were found on the road.
82. With reference to photograph number five, Garda Doyle confirmed that both vehicles were in the left-hand lane just outside the entrance to Ardtramon House, visible in that photograph. There are four 'pegs' visible in photograph five, on the Crossabeg side of the entrance, and Garda Doyle pointed to the second of those pegs as the accident locus.

83. He confirmed that the collision occurred in the left lane. There were tyre marks in the gravel. These were consistent with the driver, coming from the Castlebridge direction, over steering.
84. He identified where the car had entered the gravelled area, namely, halfway between the photographer's position and the white car visible in photographs number eight.
85. His evidence was that the tyre marks indicated that a vehicle swung out of control from the gravel, into the road, and into the lane opposite.
86. Garda Doyle confirmed that he had a notebook with him and would have taken notes on the night. Unfortunately, however, a couple of weeks later, as a result of Garda Doyle having to deal with a particular incident, that notebook ended up in the river Slaney and has never been recovered.
87. Regardless of the propositions put to Garda Doyle in cross-examination, it seems to me that nothing the Garda said, coupled with the fact that the relevant notebook in question was lost, calls into question the testimony given by Mr Murr.
88. Garda Doyle confirmed that when he arrived, there were already a number of people present. He recalls speaking to Mr Stamp. He confirmed that a test for alcohol was "nil" in respect of Mr Stamp. Garda Doyle recalled speaking to an elderly couple travelled in a car from the Crossabeg direction. He also recalls speaking to a young girl. He believes he spoke with Mr Stamp's father. Garda Doyle recalled speaking to Maeve and Roisin Byrne, but not to the plaintiff or the other passenger. Garda Doyle made clear that that was all he could recall. He did not have a recollection of Mr Murr's vehicle, but he confirmed that there were a number of vehicles at the scene.
89. He did not recall taking any details other than those of the occupants of the 2 vehicles involved in the crash, nor did he recall seeing anyone attending to people at the scene. He did not recall speaking to Mr Murr, but was clear in his evidence that there were a large number of people present.
90. Garda Doyle confirmed that he prepared a Garda abstract; the abstract report being the Garda investigation file, minus internal correspondence.
91. He confirmed that it would be imperative to get all relevant witnesses to cooperate and that it would be standard practice that the Gardai would speak to anyone who could assist with the investigation.
92. He did not recall speaking to Mr Murr at the scene and confirmed that no statement was taken from him subsequently. Garda Doyle confirmed that he heard Mr Murr's evidence and he went on to say that *"I don't think I spoke to him"*
93. Garda Doyle's evidence was to the effect that, if Mr Murr had spoken to him, and if Garda Doyle had taken his details, he could not see any reason why he would not have asked Mr Murr for a statement.

94. With regard to the foregoing evidence, it seems to me that the loss - through no fault of Garda Doyle's - of the relevant notebook, is highly material and, on the balance of probabilities, the explanation for why no statement was taken from Mr Murr.
95. Garda Doyle also confirmed that his colleague, Garda Bolger, the forensic examiner, took a photograph at the scene, which was "*not of good quality*", using a mobile phone. He described this as a photograph which was taken, "*not in an official capacity*". The photograph was of tyre marks going across the road.
96. Garda Doyle confirmed that a good number of months after the completion of the Garda investigation, he received a phone call from an insurance company to ask if he was aware of another vehicle on the road; and Garda Doyle confirmed that he was not and had not taken a statement from same.
97. With regard to Mr Stamp's statement to the Gardai, on 12 September 2016, Garda Doyle explained that it is standard procedure to take such a statement and that Mr Stamp was under no obligation in that regard.
98. The context is that An Garda Siochana is obliged to conduct an investigation in order to look into the prospects of a prosecution in respect of either driver.
99. Garda Doyle confirmed that, in his own words, Mr Stamp told him, that it was an accident, and that thankfully nobody was killed, and that he was more concerned over the safety of the occupants.
100. It was clear from Garda Doyle's evidence that there was no question of prosecuting Mr Stamp. As regards the plaintiff's position, Garda Doyle's evidence was to the effect that Mr Stamp did not want to assist in a prosecution against the plaintiff. The foregoing evidence seems to me to explain, cogently and completely, the brevity of Mr Stamp's statement to the Gardai.
101. Garda Doyle also confirmed, with regard to the night he attended the scene, that nobody was suggesting the involvement of another car, i.e. the involvement of an unidentified and untraced 'third' vehicle. His evidence was that nobody suggested, at any point, that there was any further vehicle involved. As regards the Garda investigation, it is not in dispute that matters were 'left to a civil remedy' and there was no criminal prosecution.

Garda Bolger

102. The court also heard from Garda Doyle's colleague, Garda Bolger. Garda Bolger is based in Wexford and on the night in question he was approached by Garda Doyle to drive him to the scene. He confirmed in his evidence that his recollection of events was as described by Garda Doyle. Garda Bolger has been, for the last 15 years, a forensic collision investigator. His evidence was that the only thing he could recall concerning the night in question was a tyre mark on the left hand verge, that verge being visible in photo 8. He confirmed that a set of car tyre marks entered the hard-core area or verge, visible in photo 8; as if the car had driven straight, and had not negotiated the bend, and was heading in the direction of the gate.

103. He confirmed that he could see steering input in an effort to correct the trajectory of the car. He confirmed that tyre marks continued from the gravel, crossing the centre of the white line, and into the opposite lane. These tyre marks married up with the resting position of the plaintiff's car.
104. Garda Bolger confirmed that he tried to take a couple of photographs on a personal phone; these were of poor quality. He had these photographs on his phone for a while. Garda Doyle never required them. Approximately a year ago, he searched and went through old phones, but never located the photographs, which were of poor quality in any event.
105. He confirmed matters were left to a civil remedy he also confirmed that there were a lot of people coming and going on the night at the scene. His evidence was that he spoke to several people, but he has no note in relation to same. He confirmed that he was not conducting the investigation. Rather, he was assisting Garda Doyle. He had no recollection of speaking with Mr Murr. He confirmed that he made no notes on the night, at all.
106. Just as was the case in respect of Garda Doyle's evidence, I am satisfied that nothing in Garda Bolger's testimony calls into question the evidence given by Mr Murr.
107. Returning to the central elements in the plaintiff's case, it was put to her by Mr Counihan that there was another car driving ahead of Mr Stamp, in the same direction, and on the correct side of the road, immediately prior to the crash. The plaintiff's evidence was to say that she could *not* recall seeing any car driving in front of Mr Stamp's.
108. Mr Counihan also put to the plaintiff that Mr Murr's evidence was that he was turning left into the entranceway to his property. That driver was identified to the Plaintiff as Mr Murr. The plaintiff's evidence was to say "*That's news to me*".
109. Again, it was put to the plaintiff in cross-examination, that there was, in fact, a vehicle in front of Mr Stamp's and that the driver, Mr Murr, was turning off the roadway. Once more, the plaintiff's evidence was that she could not recall any vehicle in front of Mr Stamp's.
110. Later, and after her two nieces had given evidence, the plaintiff was re-called briefly in the following circumstances. When cross-examining the plaintiff initially, Mr Counihan understood that the driver in front of Mr Stamp (identified as Mr Murr) had completed his left-hand turn into his property. It transpired that Mr Murr's evidence is that he had not completed the turn, but was just about to make the turn, when he saw that the lights in the car behind him had gone out.
111. With reference to photograph number 7, Mr Counihan put to the plaintiff, that the driver of the car in front of Mr Stamp's, i.e. Mr Murr, says that he was on the point of turning into the entranceway visible on the right-hand side in that photograph. The plaintiff did not alter her previous testimony. In other words, despite having been asked the question

on multiple occasions, the plaintiff made clear to the court that she did not see any vehicle in front of Mr Stamp's.

112. That evidence given by the plaintiff to this court, on 23 February 2022, is impossible to reconcile with the evidence of Mr Murr, which I accept.

Certain texts

113. It is also very difficult to reconcile with the contents of a text which the plaintiff sent to Mr Stamp, just three days after the accident, that is, on 21 July 2016, in which text the plaintiff stated: "Kieran, Brenda here. Kieran there was a vehicle in front of you. Had it overtaken you. Because I don't understand why I veered off the road?" (emphasis added).
114. During the trial, reference was made to certain text communication between the plaintiff and Mr Stamp which took place in the wake of the accident. It is not in dispute that, in circumstances where, through no fault of Mr Stamp's, he was involved in an accident which also concerned for young people, he was anxious as to their recovery, in particular, with regard to Megan who unfortunately was badly injured. Nor did the plaintiff ever seek to blame Mr Stamp in any of the texts.
115. A book, containing copies of photographs of the texts, was handed into court; and the text dating from 21 July 2016, to which I've just referred, is contained in that book.
116. Other texts are of relevance. They include Mr Stamp's response to the plaintiff wherein he stated the following: - "I'm trying to remember here re the vehicle in front - I don't remember it passing me out but I will think hard here! How are you today?"
117. With regard to the foregoing text, it plainly contains a second reference to the car which was driving in front of Mr Stamp's, the plaintiff herself having made the first reference to that vehicle in her text sent on 21st July.
118. There was, at that point in time, no dispute between the plaintiff and Mr Stamp as to the fact that there was another vehicle driving in front of Mr Stamp. The issue of concern to the plaintiff, at that juncture, was whether the vehicle in front of Mr Stamp had overtaken him.
119. In light of the foregoing, it is difficult to consider to be reliable, the plaintiff's evidence that she did not see, and cannot recall, a vehicle which was driven in front of Mr Stamp's which we now know to have been Mr Murr's. That vehicle was, without doubt, ahead of Mr Stamp's and indicating to turn left, that is, to the plaintiff's right. It is appropriate to note that nowhere in the plaintiff's evidence did she claim that the vehicle ahead of Mr stamp's which was indicating to turn left (i.e. to her right) swung out on to her side of the road, causing the incident. Hers was a materially *different* case, namely, that at all material times it was a vehicle driving straight towards her, with really bright halogen lights on, fully on her side of the road which forced her off it, which vehicle drove away from the scene, namely, continuing in the Castlebridge direction.

120. Mr Stamp was cross-examined at some length in relation to certain texts between the plaintiff and him, and very freely admitted that in certain of them he was "evasive" as regards his responses to the plaintiff. He also explained why, in clear and cogent and entirely understandable terms. Put simply, the plaintiff was advancing a view of events which Mr Stamp says he knew to be incorrect. This was on the crucial issue of whether there was a third car, that is, an unidentified and untraceable driver who overtook Mr Stamp and drove towards the plaintiff with full headlights on, fully on the wrong side of the road, causing the accident, and also fleeing the scene. Throughout his cross-examination, Mr Stamp was absolutely steadfast in his evidence that there was no such 'third car.'
121. He was very frank and entirely willing to acknowledge that when he sent certain texts he was being evasive, the reason being that he did not want to get into a dispute, via text messages, with someone who was plainly articulating a very different version of events. The context was of course a very serious accident, and despite being the one in which the plaintiff's car ran into his, Mr Stamp's concern for the plaintiff and her nieces, in particular those most seriously injured, was entirely evident, and seems to me to have been reflected in the way he dealt with the texts. If what Mr Stamp said in any text could be characterised as 'a lie', I entirely agree with Mr Stamp's description of it being a 'white lie'.
122. It must also be remembered that Mr Stamp is someone who the plaintiff, from the very outset of her testimony, made clear was not to blame in any way. On the contrary, she emphasised that he was driving properly at all times. Moreover, it was clear from the testimony of Garda Doyle that there was never a question of prosecuting Mr Stamp. It is equally clear that he never at any stage bore the plaintiff any ill will. Rather, and as Garda Doyle confirmed, Mr Stamp's focus was on the health of those in the other car and - consistent with his concern for them, in particular the plaintiff - he did not want to say anything which might result in, or contribute to, any potential prosecution of the plaintiff. At a basic human level, not only is this understandable, it could only be to Mr Stamp's credit.
123. The text sent by the plaintiff in response to Mr Stamp's is also of some relevance, in that the plaintiff stated: *"It doesn't matter. I'm fully at fault. But I don't understand why I'd veer off the road. I know the car in front of you dazzled me with lights... Thanks Kieran. Brenda"*
124. That there was, in fact, a car in front of Mr Stamp's has been established. It was the car driven by Mr Murr. His evidence is entirely consistent with Mr Stamp's. Neither stand to gain or lose anything regardless of the outcome of the plaintiff's claim against the MIBI. Furthermore, the foregoing text, which was sent by the plaintiff, contained a third reference to the car in front of Mr Stamp's. It fortifies me in the view that, regardless of how sincere the plaintiff was when she gave her evidence to the court that she saw no car in front of Mr Stamp's, she was sincerely wrong in her recollection.

125. Not only am I entitled to hold, on the balance of probabilities, that the plaintiff *did* see a car in front of Mr Stamp's, she *stated*, within days of the accident, that this car in front of Mr Stamp's dazzled her with lights. In other words, the essential elements of, firstly, a car known by the Plaintiff to have been in front of Mr Stamp's and, secondly, the plaintiff knowing that she had being dazzled with the headlights of that car, were already raised by her at that very early stage, shortly after the accident.
126. What was *not* raised by the plaintiff at that juncture was any suggestion that the car which was driven ahead of Mr Stamp's was on the *wrong* side of the road. Nor was it suggested that a *different* car dazzled her with lights and / or was on the wrong side of the road.
127. During the course of her testimony, the plaintiff suggested that, when she sent those texts, she was "*shocked*" and that, at that time, she could not remember what had put her off the road. She also suggested that it was when one of her nieces mentioned "*the lights*", that this triggered a realisation that she had been dazzled by the headlights of a car, fully on the wrong side of the road, and that this was the cause of the accident.
128. I am not for a moment doubting the sincerity with which the plaintiff has given her account to this court, but I do have to say that there are difficulties with shock-in-the-wake-of-the-accident accounting for the plaintiff's inability to recall the true cause of the accident until a reference to car lights triggered the recollection.
129. I say this in circumstances where she, herself, made very clear that she was dazzled by the lights of the car which was driven ahead of Mr Stamp's and she did so without also suggesting that such a vehicle was being driven towards her on the wrong side of the road.
130. I want to emphasise that the outcome of these proceedings does not hinge on that observation, nor do I consider the plaintiff to have been anything other than entirely genuine in terms of the testimony she gave. The point is one can be genuine but genuinely mistaken.
131. On 26 July 2016, the plaintiff wrote: "Kieran I'm home. Got Ned to drive me back on the road. The full car overtook you and was in my path so I had no option but veer off the road to avoid it. 100% certain. And they blinded me with their full lights. I went into the stones and chose to turn car rather than drive into sturdy gate ahead. As I allowed sturdy gate ahead could decapitate us. Once I turned car, car lost control. And drove bang straight into you."
132. The reply sent by Mr Stamp was as follows: "Wish I could remember a car Brenda but honestly I can't. But thank God we are all alive to tell the tale".
133. It is perfectly clear from the evidence of Mr Stamp that, when he stated in the foregoing text that he could not remember a car, he was not referring to the car which was driven in front of him on the *correct* side of the road by a driver he now knows to be Mr Murr.

Rather, he made clear in the foregoing text that he could not recall any car which, according to the plaintiff, had *overtaken* Mr Stamp's and was on her side of the road, driving straight for her with its full headlights on, being an unidentified and untraced vehicle which the plaintiff regards as responsible for the accident.

134. The plaintiff sent a text to Mr Stamp on 18 August 2016, in which she put her version of events in the following terms: "A vehicle which overtook you at top of that hill/ bend before Ardtramon estate entrance on L to your side (my R on the night) veered me off the road and caused the accident..." and later in that text the plaintiff stated "...My niece Rios 15 years and I remember clearly car oncoming with full lights on my side of the rd having overtook you..." and the plaintiff went on to say "... I know you're totally innocent. But ... It's just very hard to understand how someone would drive off into the sunset having caused a near carnage collision".
135. It is fair to say that the contents of the text to which I have just referred, reflects the evidence which the Plaintiff gave to this court. In other words, she presented as a witness who is utterly convinced, and sincerely believed her evidence that the sole cause of the accident was a vehicle which had overtaken Mr Stamp's, and was driving ahead of Mr Stamp's, but fully on the *wrong* side of the road, a car which was coming straight for the plaintiff, at speed, which caused her to have to take emergency manoeuvres, in a matter of seconds, as a direct result of which she impacted with Mr Stamp's car, and being a car which, far from being at the scene, drove off without stopping, regardless of the carnage in its wake.
136. Several comments can be made in respect of the foregoing. Firstly, at no stage did the plaintiff state or suggest that the car driven by Mr Murr was the one driven at speed on the wrong side of the road in her direction. Secondly, not only is such a version wholly inconsistent with the evidence given by Mr Murr and Mr Stamp, there is no dispute about where Mr Murr lives. In short, there is clear evidence, not only as to what entrance he was driving towards but *why*, namely, it is where he lives and has lived with his then fiancée, now wife, for 15 years. His slowing down intending to turn into his home is wholly inconsistent with speeding on the opposite side of the road in the plaintiff's direction and continuing on after causing an accident. On the contrary, it is a fact that he was at the scene with his wife and their presence and obvious concern and efforts, including to call 999 and trying to offer comfort to those involved, were plainly of the 'Good Samaritan' type and to the great credit of both of them. I accept entirely that during their hour at the scene, Mr Murr gave his name and details to the Gardai. It was no fault of his that his statement was not taken. Nor, I want to emphasise again, was it the fault of An Garda Síochána given the blameless, but unfortunate, loss of the only notebook used at the scene.
137. It will be recalled that the plaintiff initially thought that two vehicles (namely Mr Stamp's and an untraced unidentified 'third car') were *parallel* to each other. She was clear in her evidence that this could *not* have been so. This is for the simple reason, as she acknowledged, that if they had been parallel, then her being able to avoid colliding with

the oncoming vehicle on her side of the road would necessarily have meant avoiding any collision with Mr Stamp's vehicle (as it would have been to the right, again, of the third car which, on her account, was to her right when she avoided it).

138. Therefore, on the plaintiff's account, what was referred to during the hearing as the "*third car*" was mere seconds ahead of Mr Stamp's and driving in the same direction, but on the *wrong* side of the road. I now turn to look at Mr Stamp's evidence.

Mr Stamp

139. Mr Stamp, who is a farmer, give evidence that his home is just "*two minutes*" from the site of the accident, but on the Castlebridge side. His testimony was that, when he was young, the road was calm, but that it gets busier each year; and he described it as a very busy road.
140. His evidence was that he was driving his father's vehicle, returning home after getting parts for a broken machine. It was about 10:30 p.m. Driving conditions were good. It had just turned dark. He was driving on his own and travelling at approximately 70 km per hour.
141. He was very clear in his evidence that, immediately before the impact, he saw a little bit of oncoming traffic, that is, traffic driving towards him, in the same direction as the plaintiff, travelling from Castlebridge, towards Crossabeg. He described seeing "*one or two*" cars passing him in the opposite direction, immediately prior to the plaintiff crashing into his jeep.
142. He was clear in his testimony that this oncoming traffic, of maybe two cars, was driving on the correct side of the road in the moments prior to the impact. I accept that evidence.
143. The first thing to say about that testimony, concerning one or two cars coming towards Mr Stamp on their correct side of the road immediately prior to the crash, is that it is wholly inconsistent with a vehicle being driven on the wrong side of the road, travelling in the opposite direction to those vehicles, at that point.
144. It seems self-evident that if Mr Stamp is correct and two cars passed him, travelling in the same direction as the plaintiff, and did so on the *correct* side of the road, there could not have been, at the same time, a vehicle travelling in the opposite direction, i.e. the same direction as Mr Stamp, but on the *wrong* side of the road. Otherwise, that 'third car' would have impacted, not with the plaintiff's car, but with the cars which passed Mr Stamp coming from the plaintiff's direction, prior to the plaintiff's car crashed into him. As I say, I accept Mr stamp's account of the traffic he saw coming towards him just before the accident.
145. Mr Stamp gave an account of the impact itself. He recalled his jeep quickly filling up with light, "*out of the blue*". He recalled the shudder of impact; the airbag filling the vehicle; the alarm going off; and the impact being so hard that his jeep was bounced on to the green verge. Mr Stamp also gave an account of the aftermath of the crash and there is no dispute in relation to those events.

146. Mr Stamp's evidence is that he was driving normally and paying good attention to the road. That evidence was not contested, and I fully accept it.
147. Mr Stamp went on to say that, when he was driving towards Ardtramon, there was one car, perhaps 200 m *in front* of him, driving on *his* side of the road, i.e. on the *correct* side of the road. I accept that evidence.
148. Not only is this evidence by Mr Stamp consistent in every way with the testimony of Mr Murr who was driving ahead of him, in truth, Mr Stamp's evidence to the court, that there was a vehicle in front of him, is entirely consistent with the plaintiff's statement, in her text to Mr Stamp of 21 July 2016, that there was a vehicle in front of Mr Stamp.
149. Mr Stamp's evidence is that the car in front of him was just driving normally along the road. I accept that evidence, entirely consistent with Mr Murr's.
150. In her evidence, the plaintiff did not suggest that any car which was in front of Mr Stamp's, i.e. Mr Murr's, was being driven dangerously. It will be recalled that the plaintiff indicated that she had no recollection of seeing the car now known to be Mr Murr's. Though undoubtedly sincere when she gave that evidence, I am satisfied that the plaintiff was mistaken.
151. Mr Stamp acknowledged that, in an initial statement, he indicated that he had not been injured, but he subsequently brought what the court understands to be a circuit court claim commenced in March 2019. Mr Stamp's explanation for this was forthright, cogent and entirely understandable.
152. His evidence was that, as a farmer, he regularly sustains injuries (a kick from a farm animal being cited as an example). His evidence was that he 'brushes them off.' The essence of his evidence was that, despite in fact sustaining injuries, his attitude when he made the statement to An Garda Síochána was that he intended to brush them off and, at the time, had no intention of issuing proceedings. It was only in circumstances where his injuries had not healed by the following January, but got worse, that he decided to make the claim. As well as referring to bruising all down his side, Mr Stamp gave evidence that he had to go to "*physiotherapy 20 times*" in 2017. His statement to the Gardai was made in 2016.
153. It is hardly surprising that Mr Stamp would have sustained injuries in this near head-on collision, out of the blue, for which he was not responsible; and it was plain from his testimony that it was because the injuries which he sustained in the accident, as he put it, "*didn't go away*" that he sought compensation for them. There could be no criticism of Mr Stamp for this attitude to a claim for injuries and I am satisfied that nothing turns, for the purposes of determining the issue in the present proceedings, on Mr Stamp's attitude, or actions, as regards the injuries he sustained.

154. Nor does the fact that Mr Stamp sought compensation for injuries arising out of a crash in which a vehicle crossed to his side of the road and impacted his, mean that he has any personal interest or stake in the outcome of the plaintiff's claim against the MIBI.
155. In other words, his injuries, and any claim concerning same, do not seem to me to make him any *less* an objective witness as to fact, given the lengths to which the plaintiff went to make clear that no blame is attributed to Mr Stamp.
156. Similarly, nothing turns on the fact that Mr Stamp indicated to the Gardai that he did not wish to make a statement. On the contrary, based on the evidence given to this court by both Mr Stamp and the Gardai, it is perfectly clear that Mr Stamp's reluctance to give a detailed statement was not at all because he was *unclear* as to what had happened. Rather, his reluctance was exclusively out of *concern* for the Plaintiff. In short, he did not want to be an active participant in a process lest it result in a prosecution of the plaintiff.
157. Under cross-examination Mr Stamp made very clear that this in no way suggested that he agreed with the plaintiff's account. I entirely accept that evidence. The same is true in respect of the fact of, and reason for, Mr Stamp's decision to be less than forthcoming in response to questions put to him by text by the plaintiff.
158. It should also be stressed that it was the *Plaintiff* seeking information, not the other way around. Perhaps more correctly, the texts indicate that the Plaintiff was seeking that Mr Stamp agree with a version of events which he knew the Plaintiff to be convinced of but also knew to be incorrect, namely, that there had been a driver on the wrong side of the road who caused the accident and fled the scene.
159. It is also worth pointing out, with reference to the texts, that, although Mr Stamp was evasive, as he openly acknowledged, for understandable reasons, he never stated that there was in fact a 'third car' which overtook him or which drove on the wrong side of the road. That was the version of events *put to him* by the plaintiff, not vice versa.
160. Mr Stamp was very clear in his testimony to this court that he saw *no* third car driving on the wrong side of the road. Regarding how he felt on the night, his evidence was that he was physically tired, but mentally sharp.
161. There is no conceivable reason for him to deny that there was a third car if there was one. As well as an important observation for this court to make, it was a point Mr Stamp himself mentioned during his cross examination, and a highly relevant one. As Mr Stamp put it, he wishes there had been a third car, as this would have made things easier and avoided conflict. He was equally clear, to his credit, that he could not give evidence that there was such a car, when there was not.
162. Regarding his reference in a text to "*maybe he was at fault with his lights*", Mr Stamp explained that he was taking the plaintiff at her word when she said she was "*dazzled*". Mr Stamp was very clear in his evidence that he could not say whether Mr Murr's lights

were on 'full' or not and the text was sent without much thought save not to get into a conflict with the plaintiff, via text, over what had occurred.

163. Mr Stamp was very clear that the one and only car he saw driving in front of his was driving carefully, on the correct side of the road, indicated left, and slowed down. With reference to the question of a third car, Mr Stamp was emphatic that a car could not have gotten by him, through oncoming traffic, and passed him, *without* Mr Stamp noticing, and none did. As he said *"I can't make it any plainer"*.
164. Regarding the possibility that such a car passed him without him remembering it, Mr Stamp was emphatic in his denial. As he put it, *"There was no other car here. That's just the truth"*. I am entirely satisfied that this is so.
165. Regarding the night of the accident, Mr Stamp believed that he spoke to Mr Murr and his wife and to the Gardai. This is consistent with what Mr Murr says and what Garda Doyle stated in evidence.
166. It will be recalled that Garda Doyle confirmed that nobody, that night, as much as suggested that there had been a car on the wrong side of the road travelling in the wrong direction. Whatever about the plaintiff's situation, Mr Stamp never suggested that the shock of the accident interfered in any way with his recollection of what occurred. Despite this and despite the fact that the Garda spoke to Mr Stamp on the night, the latter did not mention the involvement of an unidentified third car which had fled the scene. If there had been one, it strains credibility beyond breaking point that Mr Stamp would not have mentioned it to the Garda.
167. Even if Mr Stamp had been fearful in that first 90 minutes after the impact (the last hour of which saw the Gardai at the scene) that someone might think *him* responsible for the crash, any such fear would plainly have motivated Mr Stamp to inform the Gardai of the existence of a so called third car, if there had been one.
168. In short, if motivated only by the desire to exculpate himself, it was plainly in Mr Stamp's interest to inform the Gardai that a third car had driven on the wrong side of the road and caused the crash.
169. If motivated by any concern for the plaintiff and her passengers - and the evidence puts beyond doubt that Mr Stamp was full of genuine and selfless concern for them - he was equally likely to inform the Gardai if the accident was caused by a third car driving on the wrong side of the road, had that been the case.
170. There was no such car, confirms Mr Stamp and Mr Murr. As Mr Stamp put it: *"I'm not a legal person. I'm a farmer. A lady made an error. She went off her side, and came back to mine and hit me. There was no other car"*.
171. He described the event as an *"accident"*, making clear that his understanding of what an accident is, is something which happens when someone makes a *"mistake"*. As he put it, *"The lady just made an error of judgement"*.

172. It was very clear from his testimony that, in a sensitive manner, and despite the fact that the plaintiff's vehicle without doubt veered across the road and impacted with his in a serious crash, Mr Stamp was keen not to ascribe blame to the plaintiff in a personal sense, plainly bore her no ill-will, and was at pains to describe the cause of the accident in as neutral terms as possible. Carefully considering his evidence, and forthright the manner in which he dealt with all questions and his demeanour, I am satisfied that he is an entirely reliable witness.
173. He was very clear, however, in his evidence that, whilst he saw the car ahead of him, driving normally on his side of the road (Mr Murr's), he did not see any car ahead of him, driving on the wrong side of the road, causing the crash.
174. I accept entirely that Mr Murr was ahead of Mr Stamp, just as both of them say; Mr Murr having indicated to make a left turn, just as both of them say; driving properly on the correct side of the road, just as both of them say; and slowing down, just as both of them say; the speed in Mr Murr's case, being between 10 and 15 km, in the context of Mr Murr being about to make a left-hand turn into his property.
175. The evidence is that Mr Murr was *not*, for example, driving *further* than his own entrance. The evidence allows me to hold that, at the time the plaintiff's car passed him, she had already entered the gravelled area. At that point, Mr Murr was driving at less than a quarter of the plaintiff's speed.
176. Quite apart from the testimony of both Mr Stamp and Mr Murr, themselves, why he would have been driving at *speed*, in the direction of somewhere *beyond* his own entrance, makes no sense.
177. Based on the evidence, including the undisputed fact of where he resides, the point at which the plaintiff says she entered the gravelled area, the point at which she passed Mr Murr, the fact he indicated and slowed to make a turn into his home, the facts which emerge from an analysis of the evidence in respect of Mr Murr's actions on the night are inconsistent in material ways with the case the plaintiff makes against the MIBI, insofar as what she says an untraced and untraceable driver did on the night to cause the crash.
178. It will be recalled that on the plaintiff's account, this third car, could only have been *ahead* of Mr Stamp, and not parallel to, or behind, Mr Stamp's vehicle, otherwise the plaintiff's car simply would not have impacted with Mr Stamp's car.
179. It is also uncontroversial to say that if this 'third car' driving on the wrong side of the road, had been in *front* of the car which was in front of Mr Stamp's (namely, in front of the car which Mr Murr was driving), then, on the plaintiff's account, there are several but a limited number of possibilities.
180. The first possibility (a) is that, being ahead of Mr Murr's vehicle, the Plaintiff would have encountered the 'third car' on the wrong side of the road *sooner* than she did, that is, closer to Castlebridge, thereby depriving her of the possibility, in the few seconds

available, to find the safety of the gravel layby and, thus, she would have crashed head-on *into* the 'third car'.

181. Alternative (b) is that, encountering the 'third car' closer to Castlebridge, and therefore not close enough to reach the safety of the gravel layby, she would have gone left (i.e. off the road into the ditch visible in photographs 6 and 7).
182. Alternative (c) is that, instead of the Plaintiff going left in that scenario, she would have gone *right*, to avoid the 'third car' which was ahead of Mr Murr's, and thus closer to Mr Murr's in this notional scenario (to go right is of course to go on to the *wrong* side of the road, thereby impacting with Mr Murr's car).
183. There is another conceivable scenario (d), which is that, encountering the 'third car' closer to Castlebridge, the Plaintiff would have slammed on her brakes and the driver in the 'third car' would have either done likewise, or, far more likely, veered back on to the *correct* side of the road.
184. It is very clear that none of these alternative scenarios apply. Thus, the 'third car' which, according to the plaintiff, was driving towards her, fully on the wrong side of the road, had to have been in *front* of Mr Stamp's car, but also *behind* Mr Murr's car, i.e. driving in the same direction as both cars, but on the wrong side of the road.
185. Mr Stamp saw no such vehicle. His was the testimony of someone driving normally and paying good attention to the road and entirely blameless for the accident; and who also confirmed that Mr Murr was driving entirely appropriately on the correct side of the road. Mr Murr saw no such vehicle either.
186. It must be recalled that the plaintiff was unwavering in her evidence that the 'third car' was driving towards her, fully on the wrong side of the road, when she encountered it and had just seconds to save herself and her passengers.
187. It also seems to me that if there was a third car driving on the wrong side of the road heading straight for the plaintiff with "*really strong halogen lights*" on, the driver of that car could not have failed to see *her*. That being so, the most obvious reaction would have been for the 'third car' driver (who was *not* of course blinded by headlights) to immediately swerve back on to their correct side of the road.
188. The evidence establishes that there was space for the third car to do so. Such a manoeuvre, namely, to veer back on to their correct side of the road (being its left and the plaintiff's right) would not have been possible for the third car to do, had it been parallel to Mr Stamp's vehicle. But the plaintiff makes clear that it was *not* parallel, it was ahead.
189. Thus, the lane to the left of the third car, i.e. the correct lane, for a driver going towards Castlebridge, was clear. It was not occupied by Mr Stamp's car.

190. That the driver of what the plaintiff believes to have been a third car did not immediately swerve back on to the correct side of the road, in circumstances where Mr Stamp's presence did not prevent them from doing so, is another aspect of the plaintiff's account which is very difficult for me to understand, especially bearing in mind that the third car driver would have known, and seen, that they had space to their left; and would have seen that, unlike them, the plaintiff did not have free a lane of normally surfaced roadway to her left i.e. to the third car driver's right.
191. With regard to that road, it is also a fact that there is an unbroken white line clearly visible on the approach to the accident locus from the Crossabeg side. Photographs two, three and four show it clearly. Thus, if there was third car driving on the wrong side of the road, not only would it have been ahead of Mr Stamp, and behind Mr Murr, it would also have been on the wrong side of the road at a bend, and beyond an unbroken white line. The latter element, i.e. the presence of an unbroken white line on a road around a bend, seems to me to make it even more likely that someone driving with care and attention, as Mr Stamp was, would notice - indeed could not fail to notice - a car to his right, illegally beyond an unbroken white line, on the wrong side of the road.
192. The evidence is also that Mr Stamp knows this road well. Indeed, he knows it from childhood. His farm is two minutes away. I am entitled to hold that Mr Stamp knows this bend well. On any analysis, the facts as described by the plaintiff would have been strikingly unusual and it seems to me that it would strain credibility beyond breaking point to think that Mr Stamp saw the third car, doing something highly dangerous, unlawful, and potentially fatal, on a stretch of road familiar to him and two minutes from his home, but has forgotten this.
193. The evidence also demonstrates that, as a matter of fact, the ability to have a clear view was materially different, insofar as Mr Stamp and the plaintiff were concerned in the moments leading up to the accident. In the plaintiff's account she saw "*really strong halogen lights*" and her testimony was "*I was blinded*" by them. By contrast, Mr Stamp gave no evidence that he was blinded by any lights, insofar as his view of, firstly, the car driving in a normal fashion ahead of him (namely Mr Murr's car) and, secondly, the one or two cars which he saw coming in the opposite direction, namely, from the plaintiff's direction, and which passed him immediately prior to the accident.
194. Having very carefully weighed the evidence, and without for a moment doubting the sincerity with which the plaintiff gave her testimony, I have come to the view that, on the balance of probabilities, there was no 'third car' of the type the plaintiff describes. Had there been one, it seems to me inconceivable that Mr Stamp would not have seen it. He was very clear in his evidence and is not the case that he failed to see what was in front of him. On the contrary, he gave clear evidence as to what he *did* see in front of him, namely, a vehicle travelling in the same direction as him, which indicated left, and slowed to make a turn, as well as one, or perhaps two, cars travelling towards him from the opposite direction, all such vehicles being on the correct side of the road. That was the situation immediately prior to the impact.

195. It is also noteworthy that the expert evidence given by Mr Fogarty the plaintiff's engineer is that, from Mr Stamp's vantage point, had there been a third car driving on the wrong side of the road in the direction of the plaintiff, Mr Stamp would have seen it. Mr Stamp did not see it, and I am of the view, on the balance of probabilities, that this is because it was never there.
196. I have come to this view having very carefully weighed all evidence including that given by two of the plaintiff's nieces.

Ms Byrne

197. Ms Roisin Byrne (born in Feb 2001) was 15 at the time of the accident and she was a back-seat passenger. Her nine-year-old cousin Maeve was sitting in the front seat ahead of her. Roisin is a niece of the plaintiff, her father being the plaintiff's brother. Her evidence was that the minute their car hit the bend, there was a car on their side of the road which had its full headlights on, and it barely clipped the car she was travelling in. Her evidence was that they drove onto the gravel and, a couple of seconds later, the car "jumped up" and it felt to her "that the road was really wide and that time was taking a long time to pass". She gave evidence that she took off her seatbelt before impact, although she doesn't know why. She gave evidence that there was one big 'bang' and she described the impact in the aftermath.
198. Ms Byrne was not sitting in the front seat. It is unclear whether there was a headrest in the seat in front of her, but, plainly, the seat in front of her meant that her view was not uninterrupted. Furthermore, until she took off her seatbelt immediately before impact, she was restrained by a seat belt in the back of the car and, thus, she necessarily had a very different perspective than, say, a driver. In addition, she was a minor at the time. Nor was she a driver. Moreover, it was 10:30 p.m. at night and this, too, could only have affected visibility. Plainly, she was and remains very close to her aunt the plaintiff. Her testimony, although materially similar to her aunt's, is not the testimony of, say, an adult with a clear view, experienced in driving cars, including driving at night. Not doubting for a moment the genuineness with which it is given, it does not seem to me that Roisin's testimony adds materially to the plaintiff's case.

Ms Atkinson

199. Similar comments apply in relation to the testimony given by the second of the plaintiff's nieces, Ms Megan Atkinson. Ms Atkinson confirmed that she was 16 at the time of the accident and on an extended holiday from Wales, where she normally resides (her mother being the plaintiff's older sister). Megan's evidence was that she was sitting in the rear of the car, behind the plaintiff who was driving. Her evidence was that she "didn't remember as much" as Roisin, but she did say that she remembered lots of lights coming towards them, all in a row, and she said there were four. Her evidence was that she may have closed her eyes. She recalled the surface of the road changing and gave evidence regarding the noise of a car going past, "very fast" to her right. She doesn't remember the impact. She recalled someone saying "we're going to crash". Megan was wearing a seatbelt.

200. In cross-examination, it was put to her by Mr Walsh for the MIBI that the four headlights she referred to were those of Mr Stamp's and Mr Murr's cars. Her testimony was "*I'd say someone was on the wrong side of the road*". It was put to her that Mr Stamp had an unobscured view but did not see a 'third car' driving towards the plaintiff's vehicle. Megan's evidence was that she could not explain this, but she maintained that there were bright headlights coming towards the car she was in. With regard to whether there was a headrest on the driver's seat in front of her, she could not recall. She accepted, however, that, being a rear seat passenger sitting behind the driver, she did not have an uninterrupted view.
201. I believe it fair to characterise the testimony of the plaintiff's nieces as that of persons who, like the plaintiff, are undoubtedly sincere and genuine but, in the present case, genuinely mistaken. As I have said, neither of the plaintiff's nieces were adults at the time of the accident; neither had a front seat view; both were restrained in the rear of the car by seat belts, materially affecting what they could see; the view of both was impeded by the seat in front, regardless of whether the seat had a headrest; neither were drivers; still less drivers familiar with driving in the dark or semi-dark; and plainly not drivers experienced in making determinations about the point from which headlights emanated, taking into account variables such as distance, darkness, road length, road camber et cetera.
202. It is not all to criticise either of these two young women, who doubtless gave their evidence as they believed it to be, but it is also a fact that neither could be considered as wholly independent, and objective witnesses. Both give an account consistent with, but which does not add in any material way to, the plaintiff's account.
203. Insofar as four lights were seen as the plaintiff's car drove towards a bend which, from that car's perspective was a bend running from left to right, the explanation for this, on the balance of probabilities, is that these were the headlights of two cars, both of which are driving on the correct side of the road coming in the opposite direction. That finding flows inexorably from the finding that there was no 'third car' driving on the *wrong* side of the road and this court's finding that both Mr S and Mr Murr were driving on the *correct* side of the road.

Conclusion

204. For the reasons explained in this decision, regardless of the undoubted sincerity with which the plaintiff appears to believe the account she has given, and the, no doubt genuineness with which she gave her evidence, I am satisfied, on the balance of probabilities, that it is not an account which is correct and, for the reasons explained, in this decision, I am obliged to dismiss the plaintiff's claim against the MIBI.
205. Yesterday evening, at the conclusion of both cases, Mr Counihan SC for Mr Stamp applied, formally for a Direction, having made clear at the conclusion of the plaintiff's evidence that this was something he sought but, in circumstances where both cases had to run together, the formal application for a Direction was moved after the conclusion of all evidence in both cases. I granted that application in circumstances where, the plaintiff

and her counsel had made very clear that no blame was said to attach to Mr Stamp. There being no circumstances which would justify a departure from the general rule that costs should follow the event, Mr Stamp's client was also entitled to his costs for the reasons given.

206. Shortly before 4 p.m. last evening, the plaintiff's counsel indicated, in the presence of counsel for the MIBI, that, had the plaintiff had information concerning Mr Murr at an earlier stage, proceedings would have been issued against him.
207. As a matter of first principles is, of course, open to any plaintiff to institute proceedings against any party they regard as having committed a legal wrong which caused them damage. The proceedings I was called upon to determine comprised the plaintiff's case against Mr Stamp in respect of which I have given a Direction; and the plaintiff's case against the MIBI, which has failed. I do, however, feel that it is appropriate, indeed important, to say that a careful consideration of the entirety of the evidence for the purposes of deciding the two cases before me, did not result in any finding of responsibility for the accident on Mr Murr's part.
208. It is a statement of the obvious that Mr Murr was not a defendant in the present proceedings. Although at one point, well into the hearing and after the plaintiff's case, the issue of joining Mr Murr, or bringing separate proceedings against him, was raised by Mr Kennedy SC, there was no formal application made to join Mr Murr and he was not joined. Mr Murr gave evidence in the present case. He gave his evidence in a clear and forthright manner and I found his testimony to be entirely consistent, credible and reliable.
209. It is also appropriate to observe that there was every opportunity for Mr Murr to be joined into these proceedings. By that I mean, if Mr Stamp or the MIBI regarded Mr Murr as in any way responsible for the crash in respect of which the plaintiff had instituted proceedings against each of them, it was open to both, or either, of those parties to apply to join Mr Murr as a 'Third Party' in one, or both, actions. No such application was made in either set of proceedings. This is because neither Mr Stamp, nor the MIBI regarded Mr Murr as responsible and during a hearing which was conducted with consummate skill by most experienced practitioners on all sides, the facts which emerge from an analysis of the evidence make the decisions by Mr Stamp and by the MIBI *not* to join Mr Murr entirely understandable.
210. Rather than at any stage seeking to join Mr Murr, both defendants met the plaintiff's claims directly, and on the merits. The plaintiff wholly abandoned her claim against Mr Stamp and has been unsuccessful as against the MIBI.
211. This court is entirely satisfied that the absence of Mr Murr as a co-defendant in the present case made no difference to the Court's ability to fairly determine the outcome of these proceedings.
212. The proposition that, because a driver is unfortunate enough to lose control of a car, means that, of necessity, some *other* person must be responsible, is a flawed proposition

as a matter of first principles, and, on the particular facts which emerge from an analysis of the evidence in this case, it is also flawed, as a matter of fact.

213. What further proceedings may, or may not, flow from this very unfortunate accident is not a matter for this court to decide, but it is important to say that this court was required carefully consider the evidence put before it; and to make findings in order to determine the proceedings heard over the last 2 days. Those findings are clear. Equally clear are the very well-known principles of *res judicata* and the rule in *Henderson v Henderson*.
214. When trying very hard, for entirely understandable reasons, to explain the cause of a serious accident, it is possible to be convinced that it had a particular cause, even if that very genuinely - held conviction is not evidence - based. Such, it seems to me, is the position in relation to the plaintiff's claim regarding the actions of an untraceable driver having caused this incident.
215. Thankfully, the world was *not* deprived either of three young people or their aunt who is plainly a very talented, hard-working, kind and generous individual and who obviously loves her nieces very much - someone whose character and dedication to her profession, is evident from how soon she returned to carrying out very important work so quickly after sustaining serious injury in the accident in question, and her obvious love and concern for her nieces.
216. I also want to make clear that all those who gave evidence can leave with their 'heads held high', having assisted the court by giving evidence which each and every one of them, no doubt, sincerely believed to be true. There can be absolutely no criticism of anyone for so doing and it fell to this court to reach findings, on the balance of probabilities, which duty can be a heavy burden, but one this court has discharged in the manner explained.
217. Although on the evidence before me this is a case which could not succeed, on the balance of probabilities standard and, therefore, I am bound to dismiss, I am grateful to each witness. However, for the reasons given, I cannot visit liability on the MIBI.
218. But for the fact that both actions had to be heard together, Mr Stamp would have been entitled to a Direction after the plaintiff's evidence, indeed, *because of* the plaintiff's evidence and very much at her behest, in circumstances where no claim whatsoever was laid at his door.
219. My final word is to thank all four counsel who appeared at the hearing, and to their instructing solicitors. The trial was conducted by them with great skill, as well as sensitivity.
220. The court's obligation is to give a decision and these are the reasons for it. In conclusion, I simply want to wish all those involved, the very best for the future, in the hope that this unfortunate accident can be put behind them.