

THE HIGH COURT

**[2023] IEHC 90
Record No. 2018/948P**

BETWEEN

DAVID MCNAMARA

PLAINTIFF

AND

BUS ÉIREANN/IRISH BUS

DEFENDANT

Judgment of Mr. Justice Cian Ferriter this 21st day of February 2023

Introduction

1. The plaintiff is a 60-year-old man with an unfortunate history of severe leg injury and related chronic pain. In these proceedings, he claims damages for personal injuries sustained as a result of being hit by a vehicle following an altercation with the driver of that vehicle in relation to the occupation of a disabled parking space in Catherine Street in Limerick city centre. The alleged accident happened on Thursday 26 January 2017. The driver was an employee of the defendant at that time.

The alleged accident

2. The plaintiff gave evidence that he was driving up Catherine Street (which is a one-way street) looking for a disabled parking place when he pulled alongside a disabled parking space in which was situated a white Ford Fiesta van. This van was essentially a Ford Fiesta car with its back passenger windows panelled out. For ease, I will refer to this van as "the car" or "the defendant's car".
3. The plaintiff gestured towards the driver of the car to enquire as to whether he was pulling out. The driver gestured back that he was not. The plaintiff says that he then

pointed to the disabled sign on the path directly beside the parked car to indicate that it was a disabled parking space but that the driver again gestured that he was not moving out. The plaintiff moved forward slightly in his car to seek to ascertain whether the driver of the parked car had a disabled parking permit on display on his dashboard. There were a number of items on the dashboard and the plaintiff said that he could not see any such permit. The plaintiff then drove forward and pulled in a short distance away at an intersection with a laneway.

4. The plaintiff says that he then walked back to the parked car (with the aid of his walking stick) and tapped on the window. He says that the driver pulled down his window and said he was not pulling out. The plaintiff gave evidence that he explained that he was a disabled driver and asked the driver of the parked car whether he had a disabled permit. He said that the driver of the parked car was rude and said to the plaintiff that "if you are not a traffic warden I don't have to show you any permit" and, indeed, asked the plaintiff to show him his permit. The plaintiff said that up to that point he did not know who the driver was or who he might have been working for but then noticed a Bus Éireann insignia on the driver's shirt.
5. The plaintiff says that he became annoyed at the driver's reaction and walked around to the front of the car to get a photo as he wanted to report the driver. He said that at that point a young girl came across the road and got into the passenger side of the vehicle. The plaintiff said that the driver of the car then started the car and moved forward towards him. He said that he then tapped on the bonnet to tell the driver to stop, which he did, but not before the car touched against his two knees ("barely touched" was his description in evidence).
6. The plaintiff says that he moved back a little, a foot or so out onto the road and took a number of photographs of the car. He said the driver got out of the car and shouted at him that he could not take photos of him. The plaintiff responded - and accepts that he was by now very exercised in doing so - by telling the driver that he was parked illegally and threatening to report him to the Gardaí. He said that the driver then got back into his car, aggressively slamming the door, picked up his phone and started taking photographs of the plaintiff.
7. What happened next is at the root of the plaintiff's case and is hotly disputed. The plaintiff gave evidence that he went to cross to the other side of the road and the driver then "shot out" of the disabled space very quickly with the side of his car striking the plaintiff on his left knee, causing him to twist and fall down the side of the car. He believed that

the wing-mirror of the car caught him on the left hip. He says that his walking stick went out from under him and that he put out his two hands to break the fall. He said that he then saw the brake lights on the back of the defendant's car come on briefly when the car was further on down the road before the driver drove off. He said he felt a crunching pain in his left knee. He rang the Gardaí, who said they would send someone out. The plaintiff also said that he rang a Bus Éireann number and sought to make a complaint about its employee. As no Garda showed up within a reasonable time, the plaintiff says that he went home with his wife (who had come to get him meanwhile). He said that his leg was very painful at that point and his wife took him into St John's Hospital in Limerick city centre (he went to the hospital as opposed to his GP as his GP was on a half-day that day).

8. The plaintiff visited his GP, Dr Ronan Ryder, the following day complaining of pain in his left knee. Dr Ryder gave evidence that the plaintiff was very agitated in his presentation on that occasion.
9. The defendant called two witnesses, being Edward Ryan, the driver of the car parked in the disabled place, and his granddaughter, Brittney Ryan.
10. Mr Ryan was, at the time of the alleged incident, a school transport supervisor with the defendant (he has since retired). He gave evidence that he pulled into the car parking space to allow his granddaughter, who was then in her leaving cert year, to get out to get materials for a school project from a stationary shop on the street. Mr Ryan agreed that the plaintiff pulled up alongside him in his car and gestured as to whether Mr Ryan was moving out of the spot and that Mr Ryan gestured back that he was not.
11. Mr Ryan said that after the plaintiff parked his car further up the street and came back to him, the plaintiff started to verbally abuse him. He said that his granddaughter returned and got into his car. At that point the plaintiff had moved in front of his car and started to take photographs. He said that he then got his granddaughter to take photographs of the plaintiff as they were attempting to get out of the parking space. He said that the plaintiff was standing in front of the car blocking him from getting out. He reversed the car a few feet and then the plaintiff moved onto the road still blocking his path. He said that the plaintiff appeared to get distracted for a moment on his phone and that a gap opened up which gave Mr Ryan enough space to drive out and away. He paused his car when they got near the plaintiff's parked car and he asked his grand-daughter to take a photo of the registration number of the car.

12. While Mr Ryan accepted that there was a heated exchange between himself and the plaintiff, he was adamant in his evidence that he did not move the car forward and make any contact with the plaintiff, as the plaintiff alleged, and that his car at no point made contact with the plaintiff as he pulled out. He said that he kept watching the plaintiff in his rear-view mirror as he moved away down the street and that he could see the plaintiff standing in the middle of the road.

13. Mr Ryan said that he received a call from his manager the following day saying that there had been a report of him having hit a person with his car. His reaction was to the effect that that was a joke as he had not hit the plaintiff. If he had hit the plaintiff with his car, his evidence was that he would have stayed at the scene.

14. Mr Ryan gave evidence that he did not realise he was in a disabled parking spot until this was put to him by a Garda when he was interviewed a number of days later. He said that he put his hands up as soon as this was brought to his attention and he paid the appropriate fine.

15. It was put to Mr Ryan in cross examination that a photo taken by the plaintiff during the incident (which was in evidence before the court) showed that Mr Ryan was seeking to take photographs of the plaintiff while behind the wheel of the car. He denied this and Ms Ryan gave evidence that Mr Ryan handed his phone to her and that she then took photographs, including a photograph of the plaintiff in front of the car which was in evidence before the court and which was clearly taken from the passenger seat.

16. Brittney Ryan also gave evidence. She explained how, when she was coming back from the stationary shop, she saw the plaintiff talking to her grandfather. The plaintiff at that point was on the path. She assumed initially that the plaintiff was a friend of her grandfather. When she came within earshot, she said that she heard the plaintiff "hurling abuse" at her grandfather and that her grandfather "was giving as good as he got". She got into the front passenger seat of the car. She said that her grandfather started up the car at a point when the plaintiff was in front of the car in the parking space. Her grandfather then started to reverse the car. She was clear that he did not move forward and make contact with the plaintiff as alleged by the plaintiff. The plaintiff was taking photographs and she gave evidence that her grandfather handed her his phone and told her to take a photograph of the plaintiff which she did.

17. Ms Ryan said that the plaintiff then moved out to the centre of the road shouting that he was going to report her grandfather to the Gardaí. He then moved over to the edge of the road at which point he appeared to be distracted on his phone, and was holding his walking stick on his arm. At that point, her grandfather moved the car out and drove it slowly away. She said that there was at least 1 or 2 feet between the plaintiff and the car and that she had a very good view of him as she was in the front passenger seat. She said that she kept an eye on the plaintiff as they were moving out. While there was a brief blind spot as the car moved away due to the back passenger window of the car being covered in panel, she said that she was able to see him out the passenger window and continued to watch him as they moved off. Ms Ryan was very clear in her evidence that the car did not hit or otherwise touch the plaintiff.

Decision

18. While it was clear from his demeanour in evidence that the plaintiff had become convinced that he was struck by Mr Ryan's car, I have formed the view that, on the balance of probabilities, he was not.
19. I found the plaintiff to be argumentative and defensive in his evidence under cross-examination, when he often deflected from the question he was asked to give his own fixed narrative. Over the course of his evidence, I formed the distinct impression that he had convinced himself, against the actual facts of the incident, that the wrong occasioned to him included being hit by the defendant's car.
20. I found the evidence of Mr Ryan, and his grand-daughter, Brittney Ryan, as to precisely what occurred on the date in question to be clearer and more reliable overall than that of the plaintiff.
21. I found Ms Ryan's evidence in particular to be clear and compelling. I accept her evidence as being reliable on the question of whether the plaintiff was hit or caught by Mr Ryan's car as the plaintiff alleges. I accept her evidence that the defendant's car did not make any contact with the plaintiff. I accept as credible and reliable her evidence that the plaintiff, at the point at which Mr Ryan moved out of the parking space and drove away, was 1 or 2 feet away from the car at the side of the road and using his phone.
22. If the plaintiff had been struck by the car as it was moving out of the spot, it is very difficult to see how Ms Ryan would not have seen that occurring given that, on the

plaintiff's account, the point of contact would have to have been between the front left of the car and the passenger seat door. Ms Ryan was ideally placed to witness such contact if it happened as she was in the front passenger seat. Any blind spot resulting from the lack of a rear passenger window in the car was, in my view, irrelevant to Ms Ryan's line of sight of the alleged point of contact between the car and the plaintiff, on the plaintiff's case; the fact that the back passenger window was blacked out did not mean that she would not have been able to see what, on the plaintiff's account, was contact between him and the car at a point almost under her nose outside the front passenger seat area.

23. I should say that I found aspects of Mr Ryan's evidence to be less than convincing, such as his evidence that he did not become aware that he was in a disabled parking spot until that was put to him by Gardaí a number of days later. His account of not becoming aware of that fact on the day was contradicted by his grand-daughter's evidence under cross-examination at the hearing. It is difficult to avoid the conclusion that the entire episode could have been avoided if Mr Ryan had acted more reasonably from the outset of his exchanges with the plaintiff, particularly when it must have become clear to him that he was not entitled to be in the disabled parking place and that the plaintiff in contrast was entitled to use that place.
24. However, I did ultimately find Mr Ryan to be credible on the key question of whether or not he hit the plaintiff with his car. I accept Mr Ryan's evidence, as confirmed by the evidence of Ms Ryan, that he did not drive the car forward and make contact with the plaintiff when the plaintiff was standing directly in front of the car (when the car was still in the parking place) but rather moved the car firstly into reverse for the purposes of pulling out. Furthermore, I accept his evidence that he made no contact whatsoever with the plaintiff when driving out of the parking place and away from the scene. I also accept his evidence that he paused only to have his granddaughter take a photo of the plaintiff's car registration at the point at which the plaintiff's car was then parked 100 yards or so up the road (and not, as inferred by the plaintiff's account, that he realised he had hit the plaintiff but nonetheless decided to drive off). Having assessed the demeanour of Mr Ryan, I am satisfied that he was credible in stating that he simply would not have driven off in the car if he had hit the plaintiff.
25. For the reasons outlined above in relation to Ms Ryan's evidence, I do not believe that the car hitting the plaintiff as alleged by him could have happened without that being witnessed by Mr Ryan or Ms Ryan (indeed, the plaintiff's case was that he was deliberately driven into) but for completeness I also rule out that there was any accidental striking of the plaintiff by the defendant's car.

26. I should say that there were a number of other aspects of the evidence before me which highlighted infirmities in the plaintiff's account of the alleged incident and which fortify me in the view I have formed that the plaintiff was not struck by the defendant's car as alleged.
27. The plaintiff's description of the incident to Dr Ryder at the consultation the day after the incident was as follows: *"Mr McNamara is a disabled driver. On the 27 January 2017 he wanted to park his car in a disabled car space. He saw that there was a car in the space without a disabled sticker. He asked the driver to move his vehicle but he didn't. He then went to the front of the other vehicle to take a photograph of the details of the vehicle. Mr McNamara claims that the driver deliberately drove his car forward hitting him in both his legs"*.
28. Dr Ryder confirmed in his evidence that this account reflected what the plaintiff had told him during that consultation.
29. This account is consistent (to a point) with the plaintiff's description in oral evidence of the first alleged contact with him by the defendant's car (i.e. that Mr Ryan moved forward with his car at the point at which the plaintiff was directly in front of the car while it was still in the parking place), save that in his oral evidence the plaintiff's account was that when Mr Ryan moved forward at that point in time he "barely touched" the plaintiff.
30. What is distinctly lacking from this account is the far more dramatic incident claimed by the plaintiff in his evidence to the court to have occurred a short time later i.e. that Mr Ryan "shot out" of the car parking space at speed, with the left front part of the car (in particular, the wing mirror) hitting the plaintiff on his left hip/leg and causing him to be thrown to the ground.
31. If the plaintiff had been hit by the defendant's car on his left hip/leg after Mr Ryan "shot out" of the car parking space, and thrown to the ground as he claims (a graphic and shocking incident on any view – in effect, a "hit and run"), I would have expected that account of events to feature immediately and prominently in the plaintiff's account of the incident to his GP, Dr Ryder, the following day, all the more so given that the plaintiff was an articulate man with a good and long-standing relationship with Dr Ryder and a person with extensive experience of relaying relevant information to medical professionals.

32. Furthermore, given the plaintiff's underlying disability (with a history of severe osteomyelitis in his left femur, and a very weak left leg as a result) one would have expected that such an impact would have caused at least some external damage to him and yet no bruising, cuts or other obvious external damage was reported on presentation by the plaintiff to A&E later on the day of the accident or to Dr Ryder the following day. Dr Ryder specifically recorded "no bruising" on the plaintiff's body during that visit.
33. It is also difficult to imagine why if he had been hit and knocked over as alleged, the plaintiff did not wait for the Gardaí to arrive or why he did not immediately arrange to be taken to the hospital.
34. It is clear that the plaintiff was extremely agitated and exercised as a result of the altercation with Mr Ryan and took the view that Mr Ryan had acted very unreasonably. This sense of wrong in relation to the incident appears to have become inflated in the plaintiff's mind to the point that he was convinced that Mr Ryan had driven his car into him. Over time, that conviction morphed from a position of "front on" contact while in the car parking space to the more dramatic case of "shooting out and knocking over" while he was the middle of the road. Such conviction is not in my view supported by the evidence as to what in fact happened on the day in question.
35. It is clear that the plaintiff had a severe stress reaction to the whole episode. While one would have sympathy for the plaintiff's difficult and challenging medical history arising from previous accidents and injuries, and the compromise to his quality of life resulting from those events, in my view the plaintiff has not made out a case in negligence against the defendant on the facts of this case. Specifically, I do not accept on the balance of probabilities that the defendant's car hit or otherwise came into contact with the plaintiff and thereby caused him injury as alleged.
36. I will accordingly dismiss the plaintiff's claims against the defendant.