

High Court Approved Judgment:

Neutral Citation Number: [2018] EWHC 2114 (QB)

Case No. C90BM210

**IN THE HIGH COURT OF JUSTICE**

**QUEEN'S BENCH DIVISION**

**BIRMINGHAM DISTRICT REGISTRY**

Before :

**MR DEREK SWEETING QC (Sitting as a Deputy High Court Judge)**

Between :

MR ALAN SHAKESPEARE

Claimant

-and-

MISS SARAH MARTIN

Defendant

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**MALCOLM DUTHIE** (instructed by Carol Nash Legal Services) for the **Claimant**  
**JAMES ARNEY** (instructed by Horwich Farrelly) for the **Defendant**

Hearing dates: 21 – 23 February 2018

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**JUDGMENT**

1. This is a trial of liability only. It arises out of a road traffic accident on the 9th of June 2015.
2. At about 4:40 in the afternoon the claimant, Mr Shakespeare, was riding his Harley-Davidson motorbike along Rounds Green Road, Oldbury.
3. Rounds Green Road has one lane in each direction with a broken centre white line. The

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road was busy with a long line of queuing, slow moving, traffic; *bumper to bumper* as it was described more than once in the evidence. Because he was on a motorbike Mr Shakespeare was able to overtake the queue of traffic and proceeded to do so.

4. It was a fine, dry day and visibility along the road was good. The speed limit was 30 miles per hour. Mr Shakespeare, according to his own evidence, drove on or close to the centre white line as he overtook. There was no dispute that he was driving at between 10 to 15 miles per hour, his own estimate of his speed.
5. Mr Shakespeare reached part of the road where there was, to his left, an industrial estate or business park with office buildings. The defendant, Sarah Martin, was at that time a university student but was carrying out work experience at a firm of accountants whose offices are on the business park. She drove to and from her place of work in a VW Polo. She had been driving for some 3 years and was familiar with the vehicle. She left work at about 4:30pm and drove to the exit on to Rounds Green Road. She intended to turn right. It was the second day of her work experience and she had performed that manoeuvre on the previous afternoon. She had to cross the line of queuing traffic. Another motorist, Mr Rakowski, who was in his own vehicle in the traffic queue noticed her waiting at the exit junction and stopped his vehicle just prior to the exit and allowed a gap to open up in front of him. He waved Miss Martin across. She pulled into the gap indicating to go right, angling her car to make a turn in that direction.
6. Mr Shakespeare overtook Mr Rakowski's car. There was a collision between the front near-side bumper of the VW Polo and the left side of the motorbike in the vicinity of the motorbike foot peg and engine casing.
7. Mr Shakespeare suffered a severe fracture of his left lower leg just above the ankle. Unfortunately the fracture site developed an infection in the bone and soft tissue which failed to heal. Because of continuing functional difficulties and pain he decided to undergo a below knee amputation. Although Mr Shakespeare made a good recovery and has been fitted with a prosthetic leg there have been additional complications for which he will need further surgery. He was mobilising with crutches when he gave evidence but it is to be hoped that with successful surgery the outcome will be better.
8. The facts as I have set them out so far were not in dispute at the trial.
9. The obligation is on Mr Shakespeare as the claimant to establish that the defendant driver fell below the standard of care to be expected from a reasonably competent driver in the circumstances and that this in turn caused or contributed to the occurrence of the

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accident.

10. He of course had the right of way and I bear in mind that the standard of care and attention reasonably to be expected of a driver emerging from a minor road and crossing lines of traffic which have priority is a high one. The manoeuvre may often demand a very high level of caution particularly where the road is busy and visibility is poor or obstructed.
11. The central issue in the case was whether the VW was driven into the side of the motorcycle, as Mr Shakespeare maintained his position and direction of travel on the road so that the collision occurred at or near the centre white line, or whether Mr Shakespeare deviated from his route, moved to his left and in doing so struck the front of the VW when it was still well within the carriageway and had not yet reached the centre line. Both of the parties and Mr Rakowski gave evidence.
12. There was a police accident report. The photographs attached to that report were clear and helpful but otherwise there was very little assistance to be gained from the content of the report. In particular I set no store by the diagrammatic plan attached to the report. Although it purports to show the VW across the centre line at the point of impact it includes a number of features which it was accepted on both sides cannot have represented the position at the time of the accident. More significantly perhaps it shows the point of impact on the VW Polo as being the front offside corner when in fact the point of contact was on the nearside. That is a feature that could hardly have been missed by the police officers who attended since the VW Polo was plainly heavily damaged on the nearside and was present at the scene when the police arrived.
13. I was also shown video footage of the location, taken after but not on the day of the accident, which was intended to illustrate equivalent traffic conditions and the behaviour of vehicles, both motorcars and motorbikes, when traffic was queuing. I treat that evidence with some caution in so far as it was directed towards demonstrating what might have happened on the day of the accident. A collision of the type around which the issues coalesce in this case necessarily involves a combination of dynamic and static features which are difficult to reproduce. I did however find the footage helpful in understanding the general layout and gaining a better idea of the relative dimensions of the carriageway and the vehicles normally using it.
14. This video material also bore on the late introduction of evidence in relation to whether there were parked cars in a parking bay just after the location of the accident and what if

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any influence this may have had on the behaviour of vehicles approaching the bay in the same lane. Whether or not there were parked vehicles and if so where they were in the bay on the day of the accident essentially remained a matter of speculation at the conclusion of the evidence.

15. I do not attach any weight to this evidence in deciding what is likely to have taken place and more particularly whether the presence of parked cars was a factor which made it more likely that Mr Shakespeare would have changed his position on the road just before the accident. In so far as the presence of parked cars on the road ahead when the collision occurred was a matter explored in cross examination I accept Mr Shakespeare's evidence that they did not feature in his decision making as a motorcyclist and for that reason he has no recollection of whether they were there or not.
16. A number of the witnesses, including Mr Shakespeare himself, either in witness statements or in oral evidence gave estimates of distance or speed. Experience suggests that it is unwise to treat such estimates as if they were measurements and that it is often a more reliable approach to concentrate on evidence of relative positions and speed by reference to identified features or broader quantitative assessments such as car lengths or fractions (*half way, three quarters and so on*). Both counsel helpfully invited the parties and witnesses to answer questions in this way on most of the factual issues which turned on such an assessment and where they did so I found that to be of more assistance in understanding what the witness intended to convey by his or her answer.
17. In addition to the individuals I have mentioned so far I also heard evidence, called on behalf of the Defendant, from Kady Hanson. It is convenient to deal with her evidence at the outset.
18. The door to her place of work on the business park was a little further on from the site of the accident and she was standing outside, having just left work, when Miss Martin was at the exit waiting to turn right.
19. It would be fair to say that much of her evidence did not survive Mr Duthie's cross examination and I was left with the impression that it was difficult to separate what she may have seen from her own mental reconstruction of what may probably have happened in the aftermath of the accident. I do not doubt that she was sincere and attempting to be helpful but I cannot discount the possibility that she was sincerely mistaken about what she actually saw. I accept her evidence only to the extent that I

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consider it supports the contention that when Miss Martin *started* her manoeuvre she did so slowly.

20. Mr Shakespeare's oral evidence was consistent with, but more detailed, than the account given in his witness statement. He described the traffic on his approach to the point of collision as being stop-start. He was generally in the centre of the road passing slow moving cars unless there were no cars to overtake in which case he would move back into the centre of his own lane but would not do so unless there was a significant gap. Most of the time he was at or on the centre white line. He described the road as being of ample width to allow him to maintain that position even if traffic was approaching in the other direction. Since the road was straight he had good visibility ahead and was not aware of any traffic coming towards him immediately before the accident. He recollected passing Mr Rakowski's vehicle, which he described as being 1/3 into the junction with the exit road. He did not remember a large gap in front of Mr Rakowski's vehicle rather it was a case of the vehicle in front pulling away as he was alongside so that the gap began to open up.
21. He emphasised in his evidence that it had all happened very quickly. He had suddenly seen Miss Martin out of the corner of his eye. He described her as having "shot out". He attempted to swerve away to his right and at no stage had he swerved to the left or driven into the gap in front of Mr Rakowski's vehicle. Rather than braking in front of a moving motorcar he had swerved right but too late to avoid being struck. His motorbike remained upright for a while, he then came off and it fell over. He described the Polo as making no attempt to stop and he was certain it was moving at the moment of impact. His own front wheel had, he thought, passed the front of the Polo which accounted for the fact that it struck the foot pegs of the motorbike. He placed the point of collision as being on or over the white line in the centre of the road.
22. Miss Martin described the traffic coming from her right as very heavy and crawling nose to tail. A vehicle stopped to her right about one car length away to allow her to pull out. She pulled forward and had to allow cars to pass which were coming from the left, that being the carriageway she intended to turn into. It was not suggested to her directly in cross examination that she had "shot out" but her evidence was clearly to the opposite effect.
23. She described her manoeuvre as involving her creeping forward, stopping and starting, looking in both directions and not being committed to pulling into the far lane at any point. She considered that she performed the manoeuvre as carefully as possible and

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- could not have pulled out any more cautiously than she did. She thought that she was still in the first lane when the collision occurred and did not think that the front of her vehicle had yet encroached onto the white lines.
24. In her oral evidence she said she could see across the bonnet of the car to her right but could not see very far up the road and only saw the motorbike at the last moment. She appeared unsure as to whether at that point she was still moving but the thrust of her evidence was that if she was moving at that stage then she was barely doing so.
  25. Although in her written evidence she had described the motorbike steering back into the flow of traffic immediately before the collision, in her oral evidence she accepted that she could not say with certainty what movement the motorbike had performed after she first saw it.
  26. Both Mr Shakespeare and Miss Martin struck me as having honestly held differences of perception as to what had happened immediately before the collision. In short each thought that the other vehicle had driven into them.
  27. Mr Rakowski had, what might be described as, a ring side seat sitting as he was at the wheel of his vehicle looking forward and observing Miss Martin pull out in front of him.
  28. He described stopping a car's length from the junction which he considered placed him more than a car's length away from Miss Martin's vehicle. In an earlier statement he estimated that the gap in front of him opened up to some 30 feet but in his oral evidence at trial he considered that that was incorrect as a measurement. Although this measurement and a similar estimate of some 8ft as the distance by which Miss Martin had advanced into the lane were the subject of criticism in closing argument, for the reasons I have set out above I do not attach much significance to a supposed error or inconsistency of this sort.
  29. Mr Rakowski went on to say in his oral evidence that the VW Polo was three quarters of the way across the lane and back from the broken white lines at the time of the impact. Prior to that he described Miss Martin as having executed her manoeuvre extremely cautiously and so slowly that at one point he vividly described thinking to himself that it would help if she went more quickly as he had to get home.
  30. He said that he first noticed the motorcyclist in his wing mirror. Although that is not a detail which appears in his witness statement, each of the witnesses to some extent

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added to their account in their oral evidence as they were asked to recollect events. Mr Rakowski described the motorcycle moving into his lane at an angle and striking the car. Although he used the term *swerved* in his witness statement he explained that he meant to convey that the motorcyclist turned into the lane rather than took any drastic action. He noticed that the point of impact was the footpeg of the motorcycle with the bumper of the car.

31. He considered that Miss Martin's vehicle was stationary when the collision took place, indeed he maintained that he was confident she had come to a stop when pressed in cross examination. Whilst in the course of submissions that was identified as a potential inconsistency or difference with Miss Martin's evidence neither Miss Martin nor Mr Rakowski accepted that VW Polo had at any stage accelerated towards the white lines.
32. Mr Rakowski readily accepted that the events he was giving evidence about had taken place sometime ago and had occupied a very short space of time. Nevertheless he said he had a vivid memory of what had occurred. He had in addition completed an insurance questionnaire on the 26th of February 2016 which to all intents and purposes accords with the evidence he gave. I found him to be an impressive witness who gave thoughtful and reliable evidence about an incident of which he had a clear view.
33. Against the background of this evidence the central factual issues are accordingly:
  - a. At what point in the carriageway the collision occurred;
  - b. Whether Miss Martin "shot out" and so collided with Mr Shakespeare or
  - c. Whether Mr Shakespeare pulled into the lane and collided with Miss Martin.
34. As I have summarised, Mr Shakespeare's evidence is that he was riding his motorbike on or just inside the centre white lines and did not deviate from that position prior to the impact until at the last moment he swerved to the right. Thus on his case the accident must have taken place more or less in the centre of the road.
35. The conundrum in this case is that it is apparent from the photographic, video recordings and diagrammatic evidence that Mr Shakespeare's sightlines would have been improving as he approached the point of impact. If the VW have been anywhere close to the centre of the road as he approached he would have seen it in good time to slow down or stop. In those circumstances, both for his own safety and because he struck me as a courteous and considerate man, I suspect Mr Shakespeare would have done as Mr Rakowski did and allowed Miss Martin to complete her manoeuvre

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notwithstanding that he had right of way.

36. In order for the accident to have occurred where Mr Shakespeare suggested it had and for him to have failed to see the VW Polo in time to take avoiding action Miss Martin would have had to have carried out her turning manoeuvre, or at least much of the last part of it, at some speed. Mr Shakespeare did indeed describe her as having “shot out”.
37. If the accident did not occur near the centre line but within the carriageway then that would have required Mr Shakespeare, contrary to the account in his evidence, to have deviated from his position in the centre of the road and turned in to his left or nearside at a time when Miss Martin was crossing or stationary in the carriageway but had yet to reach the centre.
38. Both parties called accident reconstruction experts; Mr Parkin, on behalf of the Claimant and Dr Ninham for the Defendant.
39. The experts agreed:

*“that if the collision occurred at all close to the centre white lines and Miss Martin was creeping out as described by Mr Rakowski her car should have been in view to Mr Shakespeare for sufficient time and distance for him to stop.*

*We agree that if the Volkswagen Polo was some distance from the centre white lines and was stationary or moving very slowly and the motorcycle steered left into the gap then it is difficult to see what Miss Martin could have done to avoid the condition. Equally, if the Volkswagen Polo had been stationary for some time with its front close to the centre white lines it is difficult to see what Miss Martin could have done to avoid the collision. In such a position the front of the Volkswagen Polo would have been visible from some distance away such that a filtering motorcyclist could have seen it and slowed accordingly.*

*We agree that if the Volkswagen Polo ‘suddenly shot’ out as per Mr Shakespeare’s account then it is likely that he would not have had sufficient time to take any effective avoiding action. This scenario would also suggest that Miss Martin had not emerged far enough to check if it was clear to proceed.*

*We agree that if there was a significant gap ahead of Mr Rakowski’s car then this would have been in view to Mr Shakespeare from far enough away for him to consider the possibility of the vehicle emerging into his path from the commercial properties and that he could have slowed and been prepared to stop should that occur.”*



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40. These agreed observations accord with the other evidence as to the road layout and what can be seen on the approach to the point of impact by a motorcyclist proceeding along the centre of the carriageway.
41. The experts also agreed that:

*“There is no physical evidence that assists us in determining the likely speed of the Volkswagen Polo or indeed if it was moving at all when the collision occurred.”*
42. There was however a significant difference between the experts as to what could be inferred from the resting position of the motorbike after the accident. That position was shown clearly on the police photographs as being on its side, straddling the kerb on the corner of the side-road entrance on the opposite side of the carriageway to where Miss Martin was exiting. There were no scuff marks on the roadway which may indicate that the motorbike was upright until it came into collision with the kerb, as Mr Shakespeare himself suggested.
43. Mr Parkin’s analysis was, in effect, that the resting position of the motorbike after a low impact collision was more likely to be consistent with a shallower angle of deflection involving some degree of swerving to the right (offside) than with the steeper angle which would be involved if the Polo had been further back in the carriageway. Hence he concluded that it was more likely that the point of collision was at the centre of the road. He went on in his report to acknowledge and illustrate the effect that this position would have had on the sightlines for an approaching motorcyclist (about which neither expert disagreed).
44. Dr Ninham did not think any such conclusion could be drawn on the basis of the available evidence. His view in effect was that there were too many variables to allow an angle of deflection to be calculated in the way that might be attempted for billiard balls striking a flat surface. The angle of the vehicle and the motorbike to each other as well as the motorcyclist’s own steering inputs were all potentially significant but were either unknown or difficult to assess.
45. On this issue I prefer the views expressed by Dr Ninham. I do not consider it is possible to infer with any degree of probability that the accident occurred towards the centre of the road as a result of the position in which the motorbike came to rest. I note that the difference between the front of the VW Polo being near the centre of the lane it was crossing and the centre of the road is at most about two metres according to the measurements taken by the police. I accept Dr Ninham’s view that there is no

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satisfactory way of factoring in the angle of the motor car or the angle of approach of the motorbike even before one takes into account the effect of steering or subsequent braking on a vehicle (the motorbike) which probably remained upright immediately after the collision.

46. Ultimately therefore the expert evidence does not assist in determining what in fact occurred although it does succinctly frame the factual dispute. I agree with the joint view of the experts that if the accident occurred in the way described by Miss Martin and Mr Rakowski it is difficult to see what else Miss Martin could have done to have avoided it.

47. I find as facts that:

- a. Miss Martin proceeded cautiously and slowly to cross the lane in front of her, keeping a proper lookout, in order to turn to the right;
- b. at the moment of the collision the front of her vehicle was about three quarters of the way across the initial lane she was traversing;
- c. the collision took place within the lane and not at or on the centre white lines;
- d. at the moment of the collision Miss Martin's vehicle was either stationary or barely moving;
- e. Mr Shakespeare had moved from his position in the centre of the road into the nearside lane so that the collision occurred when his motorcycle drove into the angled front bumper of the VW Polo striking a glancing blow which caused him to deviate to the right and become unseated.

48. I conclude that Miss Martin exercised the degree of care reasonably to be expected of a motorist performing the manoeuvre she was carrying out in the circumstances in which she found herself and that the accident was not the result of any lack of care on her part.

49. It follows from these findings that claim must be dismissed.