Neutral Citation Number: [2019] EWHC 644 (QB)

Case No: HQ16P04078

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Tuesday, 19th March 2019

Before :

ROWENA COLLINS RICE
(Sitting as a Deputy High Court Judge)

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Between :

MRS JAN LUXTON	**Claimant**
- and -	
MR ZULQUARNAIN RAJA	**Defendant**

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- -

Mr Stephen Killalea QC (instructed by ASB Aspire) for the **Claimant**
Mr James Arney (instructed by DAC Beachcroft Claims Ltd) for the **Defendant**

Hearing dates: 4-5 March 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Rowena Collins-Rice

Introduction

1. The accident happened at 3.50pm on Friday 6th December 2013. Two cars collided at the junction of Canterbury Street and Chaucer Road, next to Byron Primary School, in Gillingham, Kent.

2. Canterbury Street is a long, fairly straight, town street. It is residential, with rows of terraced houses, and some little shops on the opposite side from the school. Cars park in bays along the shop side, but there is still room for traffic to pass in both directions. Chaucer Road is a side street, joining Canterbury Street at a T-junction. The corner encloses the school playground.

3. Mr Zulquarnain Raja was a 21 year old trainee pharmacy technician. He was driving his 1.4 litre Honda Civic down Canterbury Street, with his 13-year-old brother in the front passenger seat. He was going to drop his brother off at the launderette and continue on to the gym. The shops and parked cars were on his right; Chaucer Road and Byron School, as he approached them, on his left.

4. Mrs Jan Luxton was a 28 year old care worker, working towards her NVQ. She had been driving her Vauxhall Corsa up Canterbury Street, but had pulled off into the line of parked cars, facing the direction of travel, at a spot near the junction, opposite the corner of the school playground. As Mr Raja was approaching from the opposite direction, she began, from a stationary position, a manoeuvre which involved crossing Canterbury Street. She may have been turning right into Chaucer Road, or making a U-turn using the T-junction.

5. As she pulled out and was manoeuvring, Mr Raja's car went straight into the passenger side of her car, shunting it into the corner of the school walls. Mr Raja and

his brother were bruised and shaken, but Mrs Luxton was seriously injured. The emergency services had to cut her out of the car and take her by helicopter to hospital. Her most serious injury was to her head. She has suffered life-changing brain damage.

6. This is Mrs Luxton's claim against Mr Raja for compensation. It comes before me for two preliminary purposes. The first is to determine liability: how far, if at all, each driver must be held responsible for the accident. The second is to make a finding of fact as to whether Mrs Luxton was wearing her seatbelt. Both findings are necessary before any assessment of compensation can be considered.

Liability: Facts and Evidence

7. There is a speed limit of 30mph on Canterbury Street. There was nothing special about the driving conditions. It was dry and clear. It was half an hour before lighting up time. There was traffic about, and pedestrians, as usual. It was after the main school rush, but there were still a few children around. There was after-school football coaching going on in the school playground.

8. Mr Raja had grown up locally and knew the area very well. Mrs Luxton also knew the area well. Both had been driving since their teens, without previous incident. Neither had any impairment or particular reason to be driving below par on the day.

9. Mrs Luxton has no memory of the accident. Her injuries have left her unable to give any account or explanation of what happened. Mr Raja provided written and oral evidence. There were several other people around at the time, but none has been able to give any other first-hand account of the accident.

10. Mr Raja's account was that he was driving down Canterbury Street at 20-25mph, possibly a little more, with a clear view ahead of him. He says that Mrs Luxton darted out in front of him, from the line of parked cars, without warning. He does not think she indicated. He says he performed an emergency stop in the moments before impact. He had time to feel the hard braking and see the front of his car dip down in the split second before the collision. He also had time to register Mrs Luxton making eye contact with him (he said she did not look happy) before the crash. So he says he did all he could to avoid the accident as soon as he became aware of the danger.

11. Experts in the investigation and reconstruction of road traffic accidents were instructed by each party and produced a joint report for the court. They agreed on all points. Importantly, they agreed that the speed of Mr Raja's car at the moment of impact was 37-40 mph. That is not consistent with Mr Raja's account of his speed.

12. I prefer the experts' evidence on this point. I was grateful to Mr Raja for attending court and giving evidence. I found him to be well-intentioned. That was consistent with his behaviour at the scene of the accident, which I consider below. But I cannot put conclusive weight on his estimate of speed. It can be difficult to get perception and memory of distance and speed right. He said himself, very fairly, that he was not a good judge of distances. I conclude that, on a routine trip on a familiar road, on an otherwise unremarkable day, when he was not particularly focused on the question, the same is true of speed. He was probably going faster than he realised then, or would like to think now.

13. I accept Mr Raja's evidence that at the last moment he braked hard to perform an emergency stop. That means that before he applied the brakes he was going faster than the 37-40 mph impact speed. How much faster depends on exactly how long

before the collision he began to brake. The experts agree that a speed loss of up to about 8 mph would have been possible before the cars met, but cannot say more than that. On the basis of Mr Raja's evidence that his view along Canterbury Street was unobstructed for a good distance, and that he started braking as quickly as he could, I conclude that a speed loss towards the upper possible range was probable. He was probably driving down Canterbury Street at somewhere between 42-45 mph.

Liability: Analysis

14. I was greatly assisted by Counsel in this case, but they were far apart on the question of liability. Mr Raja's speed was acknowledged by Mr Arney to attract liability, but he argued that the main cause of the accident was Mrs Luxton's unpredictable manoeuvre across the path of the oncoming traffic, and that she was at least 75% liable. Mr Killalea put the responsibility entirely on Mr Raja's speeding. If there was any possible criticism of the timing of Mrs Luxton's manoeuvre, which he did not accept, it could not possibly lower Mr Raja's liability below 75%.

15. I am clear that Mr Raja's excessive speed was a cause of this accident. I have also found that he had a long, clear line of sight and braked hard to try and avoid the collision. But he was going too fast to do so. That was unsafe driving. Mrs Luxton also had a long, clear line of sight, on the expert evidence. She pulled out from a standing start to turn across both carriageways in the path of an oncoming vehicle. This was at a moment when the combined speeds of the two cars made the accident unavoidable. She could not have safely completed the manoeuvre she had started. That was also unsafe driving, and a cause of the collision. I am clear that there must be a measure of responsibility on both drivers for this accident.

16. That makes the issue of liability an 'apportionment exercise'. So I must adopt the approach approved by the Supreme Court in *Jackson v Murray* [2015] UKSC 5. I must consider the relative 'causative potency' and 'blameworthiness' of each driver's conduct, as aids to forming a conclusion on a just and equitable apportionment of liability. That is not an exercise in coming up with a unique, demonstrably correct, answer. The Supreme Court called it a somewhat rough and ready exercise in settling on round percentage figures, where a variety of possible answers can legitimately be given. The decided cases give guidance as to the sort of factors it is right to take into account, and how to weigh them. But it is an exercise which is highly fact sensitive and evaluative, and no two cases are ever wholly alike.

17. I start with Mr Raja's driving. I have no basis for criticising his driving apart from his speed. But his speed was seriously at fault. He was exceeding the 30 mph speed limit by up to 50%. He knew Canterbury Street was well-used by traffic and pedestrians, and that cars travelling in both directions pulled into and out of the line of parked vehicles. He needed to allow for that.

18. There was some debate about exactly how dangerous Mr Raja's speeding was. He himself put a 'safe speed' for Canterbury Road at 20-25 mph, but I have already indicated the reservations I have about his evidence on questions of speed and distance. 30 mph is of course fixed as the maximum possible safe speed, and what is safe must always depend on circumstances. But in clear, dry conditions, with direct sightlines and no parked vehicles on his side of the road, there is no obvious reason to think that a competent and alert driver would not have been safe driving close to or at the speed limit.

19. The experts offer some guidance on the effect of Mr Raja's speed, depending on the assumptions you make about how fast he was travelling down Canterbury Street. Supposing he had been going at 39-43 mph: then the difference it would have made if he had stuck to the speed limit would be that he still could not have stopped before the junction, but Mrs Luxton would either have completed her manoeuvre and got out of the way, or been hit at the back of the car and with less force. Again, supposing he had been going at 43 mph or a bit more: then the difference between that and sticking to the speed limit could have meant no accident at all – he might have been able to stop in time, and in any event Mrs Luxton could have got out of his path. In other words, at the sort of speed I have found that Mr Raja was driving at, his speeding made the difference between the serious collision that happened, and a much less serious collision or even perhaps no collision at all – a near miss.

20. That is not the end of the matter. I also have to consider Mrs Luxton's driving. I cannot assess what was in her mind at the time, or why she drove as she did. She cannot tell me, and I must not speculate, in fairness to both drivers. I can only work back from what happened and make the most reasonable inferences I can from the circumstances as best we can put them together.

21. Mrs Luxton had a choice to make about the timing of her manoeuvre. She should not have started it unless she had assessed that there was a safe gap in the traffic to allow her to complete it without creating an unavoidable hazard for herself and other road users. She had clear sightlines. Mr Raja was in plain view. The experts agree that his Honda would have been clearly visible to her. He was approaching at significant and obvious speed. Instead of waiting, she pulled out, across his right of way, in circumstances when in fact he could not avoid hitting her.

22. When I come to 'causative potency' I start from the point that each of these drivers created a serious hazard for the other. Both were under a duty to themselves and to other road users to be alert to potential hazards and to drive safely according to the actual conditions they encountered. Neither was at any particular disadvantage and neither was more vulnerable than the other. Each was fully visible to the other. Neither needed, nor was entitled, to make assumptions about the other that they were capable of verifying, using their own perception and judgment. Had Mr Raja been observing the speed limit, then the worst that would have happened would have been a much more minor accident, perhaps no accident at all. Had Mrs Luxton waited for a safe gap in the traffic, and allowed a closing and obviously speeding oncoming car to pass by before manoeuvring, then the accident would not have happened.

23. The fact that both were drivers of private motor cars, and the clarity of their sightlines, distinguishes this case from many of those cited to me. When the analysis begins to shade into the issue 'blameworthiness', I have to consider not just what the two drivers did, but what they should have done – the choices they had, and the principles that should have guided them. Here I also give weight to a number of factors which distinguish this case from many of those we looked at.

24. The important context here is the ordinary, busy town street with two-way traffic, and drivers and pedestrians going about their normal business. Mr Raja's failure to moderate his speed to the legal limit was seriously wrong in these circumstances. I accept that the nature and level of the speeding made it careless or misjudged rather than reckless and flagrant. But the emergence of hazards was an everyday experience he should have allowed for. Pedestrians step out. Cars enter and leave the line of

parked vehicles; sometimes they need to turn in the road or turn out of it. Give and take should be expected.

25. Mrs Luxton's manoeuvre was not objectionable or unusual in itself. It was an ordinary incident of town driving. Give and take, and alertness for hazards, would be the rule here too. However, her starting point needed to be the priority of oncoming traffic. She had to give way. She had no entitlement to drive over the wrong side of the road without having made sure it was safe to do so. It was not safe in the circumstances she faced. That should probably have been obvious. All the information she needed to make a judgment was available to her before she made her decision. These are everyday judgments. Once she began her manoeuvre, there was little either of them could do avoid the accident. She made a serious timing misjudgement.

Liability: Conclusion

26. On the evidence before me, no explanation or mitigation appears for Mr Raja's excessive speed or the mistiming of Mrs Luxton's turn. Realistically, drivers navigating an ordinary town street such as this need to look out for each other. They need to be vigilant and prepared for the everyday hazards of town life, including the everyday misjudgments of other road users. For their own part, they need to drive carefully, respect the legal speed limits, and stay on their own side of the road until they can be satisfied it is safe to leave it.

27. My decision on liability in these circumstances is that no distinction should be made to identify either Mr Raja's or Mrs Luxton's driving as the more exceptional for the conditions, or the more negligent in kind or degree. Each created a considerable hazard for the other. Mrs Luxton's decision to begin turning when Mr Raja was

already visibly going too fast to accommodate her manoeuvre may have been the more proximate cause. Mr Raja's conduct in creating a general hazard for road users by driving above the speed limit may have been the more blameworthy. But in the end, it was the combination of Mr Raja's unsafe speed and Mrs Luxton's unsafe timing which set in motion an accident neither of them could then avoid. Mrs Luxton is the one who has suffered disastrous consequences. She deserves everyone's sympathy for her terrible injuries and for their impact on her life and her family's. The clear disparity in long-term impact on the two drivers is not allowed in law to predispose me on my decision on liability.

28. In all these circumstances, I conclude that a just and equitable apportionment of liability would be 50% in respect of Mr Raja and 50% contributory in respect of Mrs Luxton.

Additional finding of fact

29. I am asked to make an additional finding of fact, about whether or not Mrs Luxton was wearing her seatbelt at the time of the accident. This is not a part of my decision about liability for the accident itself. It is, however, potentially relevant to liability for the full extent of Mrs Luxton's injuries. The Court of Appeal in *Froom v Butcher* [1976] 1 QB 286 laid down the rule that if a seatbelt is not worn, and injuries would have been prevented or lessened by one, compensation should be reduced. My finding could be relevant to later stages of this case, when the amount of Mrs Luxton's compensation falls to be calculated.

30. It was accepted that Mrs Luxton's habit was to wear her seatbelt. She had set off from a stationary position just before the accident. The question was whether, by the moment of impact, she was clipped in, or not.

31. The only direct evidence about this is Mr Raja's. Immediately after the collision, he got out of his car and went over to Mrs Luxton's car. It was crushed between his own vehicle and the school wall. He describes returning to his own car and pushing it back from Mrs Luxton's. He then forced open her badly-damaged front passenger door, cutting himself in the process. Mrs Luxton was lying across the front passenger seat. He describes leaning across her to turn off the engine, which was still running. He says he could see she was severely injured and unconscious. He began to see what he could do to help her, but a paramedic or nurse (who may have been a bystander) was very quickly on the scene and took over from him. The emergency services' response was very rapid after that.

32. Mr Raja said in his witness statement dated 28th May 2018 that while he was leaning into the car, he could see that Mrs Luxton was not wearing her seatbelt. He did not refer to the seatbelt in his police statement at the time. In oral evidence he was clear that Mrs Luxton was not restrained by the top (or diagonal) part of her seatbelt. He said he did look down to see if the lap part was still clipped in but saw that it was "unclipped". If it had been clipped in, he said he would have seen that. He could not say positively that the seatbelt was in its fully retracted position. He also said he was unaware of seeing it at all.

33. There was some indirect evidence. Kent Fire and Rescue Service was mobilised at 3.51pm and arrived at the scene at 3.54pm. Mr Paul Wood was the senior officer in charge. He deployed his officers to their roles at the scene and maintained strategic control. He told the court he always asked his officers at road traffic accidents to report to him on seatbelt conditions and did so on this occasion. They reported that

the seatbelt was being worn. They may have understood that from the paramedic/nurse first in attendance.

34. There are some references in the incident and medical reports to Mrs Luxton being 'unrestrained'. There is no suggestion that any of these are other than indirect reports. There are other references in these reports to her having been restrained (and one, clearly wrongly, to her having been a pedestrian).

35. There was also expert evidence. The experts commissioned by each party provided separate reports, and could not agree. They both gave oral evidence. The disagreement was a question of degree. Whether or not a seatbelt was worn, a collision of this sort would have thrown the driver sideways across the passenger seat; the diagonal part of the seatbelt would not have prevented that. If no seatbelt had been worn, there would have been more lateral movement and less pivoting or tilting of the upper body.

36. Mr Parkin, the expert instructed by Mrs Luxton's lawyers, gave clear evidence that the presence or absence of a seatbelt would have made all the difference to her injuries. If she had not been clipped in, he said any other obstacles to sideways movement (such as friction, the moulding at the side of the front seats, the gear lever, the structural barrier between the two front footwells) would not significantly affect her sideways movement. The driver would be thrown to the left. The car was small. The space inside was further reduced by the pushing in of the passenger door and the sideways compression of the interior. Without a seatbelt, the whole of the left side of the driver's body would hit the passenger side of the car. The result would inevitably be multiple rib fractures and significant pelvic injury. Mrs Luxton sustained nothing like that. Her major injury was to her head. That, in the absence of really serious

torso injury and fractures, was consistent only with the pivot from the left hip or buttock caused by a clipped-in seatbelt.

37. Dr Ninham, instructed by Mr Raja's team, said that the presence or absence of seatbelt restraint would not have made as much difference as Mr Parkin suggested. Without a seatbelt, those other obstacles to sideways movement would still have produced a degree of tilt or pivot. Either way, given the small amount of room remaining in the interior, the principal impact would have been to the head. He could not himself deduce whether a seatbelt had been worn or not.

38. Although the difference between the experts is a matter of degree, it is an important one. We do not know the exact position Mrs Luxton was thrown into, and it may have been affected by the opening of the door. I found Mr Parkin convincing. Within his field, he is a seatbelt specialist, one of considerable experience and standing, extensively published on the subject. He was definite that the absence of rib fractures was a clear indication that a seatbelt had been worn. I found both his explanation of that, and his description of his long experience in seeing that pattern, persuasive.

39. That is consistent with Mr Wood's evidence. Mr Wood was a good witness, but his evidence was quite indirect, so I do no more than note the consistency. The references in the incident and medical notes are inconsistent with each other and indirect. I cannot give any of them real weight. Those which described Mrs Luxton as 'unrestrained' may have been referring to the fact that she was not found fully restrained in the driver's seat and had been thrown sideways out of the diagonal part of her seatbelt.

40. I have to handle Mr Raja's evidence with care. He had been in a state of shock. He was cut and bruised himself and in need of medical attention. He was concerned for

his young brother who was in a state of distress. He was inside Mrs Luxton's car for a very short time. After turning off her car engine his first thought was for Mrs Luxton and she was in a frightening condition. He was trying to work out what to do to help. People gathered on the scene very quickly and distracted him. The seatbelt issue was hardly his main concern and he too may have been at some level influenced by the fact that Mrs Luxton was lying across the car and not in the fully restrained position in the driver's seat. He was not able to identify precisely the position of the seatbelt, and what he did say about it is in some respects unclear and capable of more than one interpretation. None of this is surprising, and allowances must be made. Mr Raja's account does not give me a sure enough basis for making a finding of fact.

41. In all these circumstances I conclude that it was more probable than not that Mrs Luxton was wearing her seatbelt at the time of the accident.