

Neutral Citation No: [2024] NIKB 14

Ref: ROO12431

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No:

Delivered: 05/03/2024

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION

Between:

JOHN CAULFIELD

Plaintiff

and

JMG PLANT (BELFAST) LTD

Defendant

**Mr Brian Fee KC with Ms Maura Herron (instructed by Pascal O'Hare Solicitors) for the
Plaintiff**

Mr Christopher Ringland (instructed by Keoghs (NI) LLP, Solicitors) for the Defendant

ROONEY J

Introduction

[1] The plaintiff's claim is for damages for personal injuries, loss and damage sustained by him, arising out of the alleged negligence and breach of statutory duty on the defendant, its servants and agents on or about 10 May 2021. In summary, the plaintiff alleges that on the said date he was cycling on the Cardonagh Road, Co Antrim, in the direction of Ahoghill. As he approached a set of temporary traffic lights which were green in his favour, he noticed working operations at the left-hand side of the road. The working operations were cordoned off with cones and barriers. The plaintiff then crossed to the other side of the road and, as he passed the said works, he saw a man in front of him and to his left emerge from the cordoned area carrying a ladder. The plaintiff alleges that the ladder struck his left shoulder thereby causing him to fall heavily onto the road surface.

[2] The defendant denies that the plaintiff sustained his injuries in the manner as alleged. It is admitted that the plaintiff fell off his bicycle close to the working operations carried out by the defendant, but it is claimed that at all times the defendant's employees were within the confines of an area bordered by safety

barriers and at no stage did an employee of the defendant strike the plaintiff with a ladder. In fact, the defendant alleges that there were no ladders at the site or at the said works operated by the defendant.

[3] Mr Brian Fee KC on behalf of the plaintiff, and Mr Christopher Ringland BL on behalf of the defendant, agreed at the outset of the hearing that the central issue for the court was to assess the credibility of the witnesses and, thereafter, to decide whether the plaintiff had discharged the requisite burden of proof.

[4] The main injury sustained by the plaintiff was a comminuted intra-articular fracture of the right distal humerus. The injury to the right elbow joint required surgery in the form of open reduction and internal fixation with a plate and screws. The plaintiff suffered significant scarring on the posterior aspect of the right elbow and arm, which will be permanent. The range of movement of the elbow was reduced and unlikely to improve in the future. The risk of premature arthritic change in the right elbow remained and, according to the medical evidence, would lead to further pain and restriction of movement of the elbow.

[5] Sensibly, in my view, counsel agreed quantum in the sum of £75,000, thereby leaving the court to make an assessment as to the truthfulness and overall credibility of the witnesses. In order to make this assessment, it is necessary to consider in some detail the evidence of the plaintiff, his daughter and his wife, and thereafter the evidence of the defendant's employees, namely Liam McGill and Kevin Mullan.

The Plaintiff

[6] The plaintiff is employed as a contracts manager. He is married with two adult children. He and his wife reside in Galgorm approximately two miles from the scene of his injury. The plaintiff is now aged 54. He was aged 51 at the time of the accident.

[7] The plaintiff states that he was a keen cyclist, covering approximately 75-100 miles per week. On 10 May 2021, at approximately midday, he was returning home on his cycle along the Cardonaghy Road travelling in the direction of Ahoghill.

[8] While cycling on a reasonably straight stretch of the road, he noticed temporary traffic lights ahead and road works beyond. The green light was in his favour and the plaintiff cycled to the right-hand side of the road. A photograph was shown to the plaintiff which depicted the said works and a mechanical digger which were cordoned off with cones and plastic barriers. The plaintiff's recollection was that at the time of the accident, the said cones and plastic barriers were positioned in a straight line beside the works as opposed to the angled position of the barriers and cones as seen in a photograph produced during the course of the hearing.

[9] The plaintiff's evidence was that as he cycled on the right side of the road, he noticed a man in front and to his left carrying a ladder. This man was wearing a

hi-vis coat and emerged from the cordoned area with the ladder striking the plaintiff on his left shoulder.

[10] The plaintiff estimated he was travelling at approximately 15 miles per hour. The strike to his left shoulder caused him to veer slightly to the right and to fall heavily onto the road surface. He was aware of immediate pain. He picked himself up and sat on a nearby wall.

[11] The plaintiff recollects three men coming towards him. In particular, he remembers the person in the hi-vis jacket say that he had not seen the plaintiff. Another individual, whom the plaintiff believes was in charge, asked him whether he was alright.

[12] The plaintiff states that he was nauseous at the time and remembers that one of the men suggested getting an ambulance. The plaintiff responded by stating that he lived a short distance away and preferred to go home. During the course of the journey to his home, the plaintiff states that the individual driving the van told him that the man who had struck him with a ladder had just returned to work following an operation to his private regions. The plaintiff states that he did not engage in any further exchange with the driver, due to the fact that he was feeling very sick and nauseous.

[13] On arrival at his home, the plaintiff states that he shouted for his daughter to come and take his bike. Jenny, his daughter, came out of the house and met the driver of the van. The plaintiff stated that he went into the living room of his home and his elbow was extremely sore. He believes that he contacted his father-in-law to take him to Antrim hospital.

[14] At Antrim hospital, an x-ray was taken of the plaintiff's right elbow. Following a review of the x-ray, a consultant told him to go immediately to the Royal Victoria Hospital (RVH), Belfast. The plaintiff's wife was contacted and thereafter she drove the plaintiff to the RVH. The plaintiff was admitted. Surgery was carried out on 12 May 2021, and he was then transferred to Musgrave Park Hospital on 13 May 2021. He was discharged home on 14 May 2021.

[15] When in the Royal Victoria Hospital, the plaintiff recalls receiving a phone call from an unidentified number. He sent an automatic text which stated "sorry, I can't talk right now." He then sent another text, "who is this? I'm at casualty." The plaintiff claims that he then remembered he had given his mobile number to the person he believed to be in charge. He then sent a further text which stated as follows:

"Sorry, just realised ... shattered elbow at the Royal may need pins, not sure.

For your accident book - John Caulfield (plus address and plaintiff's date of birth)."

The recipient of the text replied:

"Sorry to hear that John. If you would like to give me a call when you are feeling better. Thanks."

[16] Following discharge from hospital, the plaintiff returned home. In his evidence, the plaintiff stated that although he found it difficult and stressful, he managed to work from home using his laptop. No claim has been made for loss of earnings. A claim was made in the sum of £635.10 for gratuitous care and the cost of travelling to physiotherapy appointments.

[17] The plaintiff was subjected to robust cross-examination by Mr Ringland BL. The thrust of the cross-examination was to undermine the plaintiff's credibility in a number of respects. First, Mr Ringland referred the plaintiff to paragraph 3 of the statement of claim in which it was specifically pleaded that "[the plaintiff] was confronted by an operative who emerged from a manhole carrying a ladder into his path and was knocked from his bicycle onto the road thereby sustaining severe personal injuries ...". Mr Ringland put it to the plaintiff that this version of events as pleaded could only have come from a history he provided to his solicitor.

[18] The plaintiff stated that he does not recall saying the word, "manhole." Mr Ringland then referred the plaintiff to a history given by the plaintiff at the A&E Department, Antrim Hospital, at 14:21 on 10 May 2021. The handwriting is difficult to decipher, but appears to state as follows:

"Contracts manager. ? on bike today. Someone came out of manhole knocking him off bike. Injury to right elbow."

[19] The plaintiff's response to the above was that he does not recall using the word 'manhole' and that his words must have been misinterpreted. The plaintiff maintained that he always said that a man came out in front of him with a ladder.

[20] Mr Ringland then referred the plaintiff to the Replies to Particulars which stated at paragraph 1 that "the word manhole was a misnomer used by the plaintiff to describe a hole dug by [a] man. The statement of claim will be amended accordingly".

[21] Mr Ringland then drew the plaintiff's attention to the amended statement of claim which alleged at paragraph 3 that the "[the plaintiff] was confronted by an operative who emerged from an area adjacent to a trench ~~manhole~~ carrying a ladder into his path and he was knocked from his bicycle onto the road ..."

[22] Mr Ringland put to the plaintiff that it was clear from the above amendment that the description of the events had significantly changed, therefore impacting on his credibility. The plaintiff's response was that he had always maintained that a man had come out in front of him with a ladder.

[23] Referring to the version given in the amended statement of claim, Mr Ringland questioned the plaintiff further on the allegation that the operative "emerged from an area adjacent to a trench ... carrying a ladder into his path." The plaintiff stated that the ladder was on this person's shoulder projecting approximately 3-4 feet in front of him. The plaintiff further stated that he saw the man emerge from his left-hand side and that the ladder struck him on the shoulder. The plaintiff maintained that he veered slightly but had no time to swerve. His evidence was that everything happened quickly, in a matter of seconds.

[24] Mr Ringland asked the plaintiff to look at a photograph taken by Mr Ferris, Consulting Engineer instructed on his behalf. He was also asked to look at a photograph taken by Mr McGill, the owner of the defendant company. The suggestion made by Mr Ringland was that the positioning of the cones and the barriers shown in the defendant's photograph was replicated in the depiction provided by Mr Ferris in his photograph. In other words, when consulting with Mr Ferris, it was clear that the plaintiff had not taken any issue with the positioning of the cones and the barriers as shown in the defendant's photograph.

[25] The precise date and time when the defendant's photograph was taken was not put to the plaintiff by Mr Ringland. Mr Ringland did say that the photograph was taken by Mr Liam McGill. As considered below, when the court asked Mr McGill when he took the photograph, he initially stated that it was taken shortly after the accident. Mr McGill then changed his evidence and stated that the photograph was taken shortly before the accident.

[26] This matter is significant. During cross-examination, Mr Ringland referred to Mr Ferris's depiction of the barriers on his photograph and asked the plaintiff to explain why there was no gap between the barriers. The plaintiff's response was that there was a gap between the barriers and that, from this gap, the defendant's operative emerged carrying the ladder. The plaintiff maintained that the barriers were not in the position as shown in the defendant's photograph.

[27] Mr Ringland specifically put to the plaintiff, by reference to the defendant's photograph, that the employees of the defendant initially saw the plaintiff on the road in the region of a pillar identified in the photograph. The plaintiff response was that he did not believe that he came to rest on the road as far down as the pillar. Rather, he stated that he fell at or about a pothole. Another photograph produced by the defendant did, in fact, show a pothole on the road, some distance away from the pillar. I will return to this matter later when considering the evidence of Mr McGill.

[28] Mr Ringland put to the plaintiff that the evidence of the defendant's witnesses would be that the purpose of defendant's working operations was to replace a sewer and that a trench had been dug measuring 600cm wide and a depth of 3-4 feet. It was further stated that the evidence of the defence witnesses would be that there was a slope at one end of the trench, so that it was easy to step in and out of the trench. Specifically, it was denied that a ladder was used or, indeed, that there was a ladder at the site. The plaintiff's response was that "there was a ladder, 100%."

[29] The plaintiff was asked to advance a reason for the said individual to be carrying a ladder. The plaintiff responded by saying that there was no obvious reason but was adamant that the operative was carrying the ladder.

[30] Mr Ringland specifically enquired of the Plaintiff that, if the accident happened in the way that he alleged, why did he not react in a furious or angry manner. The plaintiff responded by stating that he was not angry with anybody. He stated that the person concerned had admitted to him that he had not seen the plaintiff and that he remained worried about his elbow.

[31] During the re-examination by Mr Fee, the plaintiff was referred to the following entries and histories provided in the hospital notes and records. In my judgment, it is relevant to set out the following from the said records:

"(a) 11.5.21 (Ward round fracture/orthopaedic unit BHSCT)

"This 51-year-old gentleman who works in construction as a project manager was cycling yesterday and collided with a pedestrian holding a ladder."

(b) 11.5.21 (Clinical notes, Royal Victoria Hospital) at 16:57

"HPC: out on bike. Came to roadworks. Worker on ladder came out of hole in ground. Ladder caught [patient] on shoulder and knocked off bike onto right side. Immediate pain and deformity."

(c) Trauma and Orthopaedics - BHSCT. Date of injury 10.5.21. Time of injury 12:30. Mechanism of injury: bicycle v ladder. History of presenting complaint: man carrying ladder did not see patient (on bike) 25mph."

- (d) 13.6.21 Transfer note. Royal Hospitals. To plaintiff's GP.

"This 51-year-old gentleman was admitted to Ward 4B from AHED following an injury whilst out cycling. He collided with a pedestrian holding a ladder and was knocked off his bike onto his right side."

- (e) 13.5.21 BHST. Physiotherapy fracture in-patient assessment "cyclist, 28mph. Fell closed NVI distal humerus (right fracture)"

Jenny Caulfield

[32] Jenny Caulfield is the daughter of the plaintiff. She is now aged 19. At the time of the accident, Ms Caulfield was 16. She recalls seeing her father return home in a "shocked condition." He had been brought home in a van. Ms Caulfield was not able to positively identify the driver. It is noted that Mr Kevin Mullan, in his evidence, accepted that he was the driver of the van and had spoken to Ms Caulfield.

[33] Ms Caulfield states that the driver of the van told her what happened, namely that her father had been hit by a ladder and had fallen off his bike. She was also told that the person responsible had just returned to work after an operation. At the invitation of Mr Mullan, Ms Caulfield took a photograph of Mr Mullan's clothing which depicted the following, namely "JMG Plant Ltd. 07740 761251."

[34] Mr Ringland's initial question to Ms Caulfield was to attack her credibility inferring that her only motive in giving evidence was to assist her father in his compensation claim. Ms Caulfield adamantly denied this assertion.

[35] It was suggested to Ms Caulfield that Kevin Mullan never said to her that her father had been struck with a ladder. It was also suggested that her recollection was based on a discussion she had with her father. In response, Ms Caulfield was adamant that this man, identified in court as Kevin Mullan, told her that her father had been struck with a ladder. She also repeated to the court that Mr Mullan had invited her to take the said photograph from the sleeve of his jumper.

[36] It is my impression that Ms Jenny Caulfield was an honest witness and accurate historian. I do not accept, as suggested by defence counsel, that her evidence was fabricated in support of the plaintiff's claim. Her father had been injured. In providing an explanation for her father's injuries, it is entirely reasonable that Mr Mullan would have told Ms Caulfield what happened. Ms Caulfield's evidence, although corroborative in some respects, is not determinative of the plaintiff's claim.

Mrs Lynn Caulfield

[37] Mrs Caulfield was at work when her husband returned home following the incident. In her evidence, she states that she collected him from Antrim hospital and brought him to the Royal Victoria Hospital. Mrs Caulfield states that she took a photograph of the significant bruising injury to her husband's upper left shoulder. The reason for this was to share the photograph with her family on WhatsApp. When asked by Mr Fee KC as to what she understood had happened to the plaintiff, she responded by stating that he had been struck with a ladder which knocked him off his bike. It must be assumed that this version came from her husband.

[38] Mr Ringland did not cross-examine Mrs Caulfield. I took the opportunity to look at the photograph of the plaintiff's upper left arm taken by Mrs Caulfield. As stated, the injury shows a significant bruised area. Mr Ringland did not cross-examine Ms Caulfield in relation to the nature of the injury as shown in the photograph, the date when it was taken and the reason for taking it.

Mr Ferris, Consulting Engineer

[39] Mr Ferris had been instructed as a Consulting Engineer on behalf of the plaintiff. Before providing any testimony, Mr Ringland objected to Mr Ferris's evidence. It was pointed out to Mr Ringland that the plaintiff had been cross-examined from a marked photograph provided by Mr Ferris. Furthermore, Mr Fee KC indicated that the main purpose of Mr Ferris's evidence was to concentrate on the discoverable documentation given by the defendant, including the method statement, the risk assessment, the nature of hazards identified, and the control measures identified to reduce the risks. Mr Fee KC stated that the evidence of Mr Ferris would also highlight any references to ladders contained in the documentation. In addition, his evidence would concentrate on the daily work management sheet dated 10 May 2021 as signed by J Ferris, employed by the defendant. Following submissions, I allowed Mr Ferris, Consulting Engineer, to give evidence.

[40] Mr Ferris drew the court's attention to the risk assessment contained within the defendant's method statement, and in particular the hazard identified as "falls into excavation." The control measures specified to deal with this risk were, inter alia, the use of ladders in the case of deep excavations which must be tied off at least one metre above ground level.

[41] Mr Ferris also focused on the daily work management sheet dated 10 May 2021. This document had been completed by J Ferris. The defendant had indicated that Mr J Ferris was an engineer. On the date in question, with regard to the work to be carried out to the sewers, the dimensions of the excavation were specified as 7.5 (length) and 1.2 (width) and the excavation depth range estimated from 1.2m to 3metres (ie 4'-10'). Mr Ferris stated that even a depth of 4' presented a significant risk for an operative to get in and out of an excavation. He stated that a ladder

should be used and that the ladder should be tied. In cross-examination, Mr Ringland stated that the evidence of the defence witnesses would be that the excavation was, at one side, very shallow and that a ladder was not required. Mr Ringland also stated that, although the daily work management sheet referred to an excavation depth of 1.2m to 3m, the actual depth was only 3' and the defendant's employees could easily step in and out of the excavation at the sloped end.

[42] In my judgment, in relation to the circumstances of the alleged accident, I gained limited assistance from the evidence of Mr Ferris. This is not a criticism of Mr Ferris. The photographs submitted by the defendant did not include any which showed the excavation on the road. I find this surprising. From the defendant's photographs that were served, it was not possible for Mr Ferris to estimate the actual depth of the excavation. However, I was prepared to take into consideration Mr Ferris' evidence that, if the excavation depth had been estimated at 1.2m to 3m, the defendant should have had a ladder on site.

Mr Liam McGill

[43] Mr Liam McGill identified himself as the owner of the defendant company. On the day in question, he stated that he and two employees were engaged in carrying out working operations which involved excavating a trench so as to install a 4-inch sewer pipe to existing sewers on the road. The employees were named as Kevin Mullan and Jason McElhinney.

[44] Mr McGill was shown a number of photographs by Mr Ringland. One photograph, in particular, had been put by Mr Ringland to the plaintiff during his cross-examination. In the course of his examination in chief, Mr McGill stated that he thought he had taken this photograph. He did not provide the date and time when the said photograph (or, indeed, when any of the photographs) were taken. Mr McGill stated that the purpose of taking the photographs was that he was required to do so and that each photograph was uploaded onto a system. Mr McGill further stated that work commenced on 10 May 2021. A digger had been used to excavate a trench on the road. He claimed that the trench sloped, to the extent that it measured approximately 1' at the shallow end and 4-5' at the deeper end. Mr McGill alleged that the operatives easily stepped out of the trench at the shallow end.

[45] Mr McGill denied that any ladder was used in the trench. Indeed, he denied that any ladders were on site.

[46] With regard to the incident, Mr McGill stated that he heard a "clatter" and looked round to see a man had fallen off his bike. When asked specifically to pinpoint where this man was positioned on the road after the fall, Mr McGill stated that the plaintiff was adjacent to a pillar as shown in the photograph. Mr McGill claimed that he went to help the plaintiff. He asked the plaintiff whether he was "ok", whether he needed help and an ambulance. Mr McGill denied that he heard any conversation or statement from his work colleague, Mr McElhinney, as to how

the plaintiff's injuries were caused. He maintained that he was always only a couple of feet away from the plaintiff. He accepted that Mr Mullan had driven the plaintiff home in a van.

[47] Mr McGill admitted that he had contacted the plaintiff on his phone. He stated that the reason for this was to ask if the plaintiff was alright. He accepted that he had received the messages referred to by the plaintiff in his evidence.

[48] Mr Ringland referred Mr McGill to a document entitled "health and safety reporting." The name of the reporter is identified as Ian Harrison. According to Mr McGill, Mr Harrison was a health and safety officer employed by T O'Connell Utilities. Mr McGill stated that the information contained in this document was provided by himself. Mr McGill claimed that the first time he became aware of the allegation that the plaintiff had been pushed off his bike was when he received the letter of claim.

[49] Mr Fee KC subjected Mr McGill to careful and focused cross-examination. Mr McGill was asked to look at the said 'health and safety reporting' document completed and signed by Mr Harrison on 11 May 2021. The document records that the account in the said report was provided by Liam McGill. Mr Fee focused on a section of the report which stated that "the men went to [the cyclist's] aid to check on his well-being. Liam stated that there seemed to be no significant injuries, obvious cuts or torn clothing sustained, however, the cyclist was holding his left arm and complaining of pain." Mr Fee put it to Mr McGill that this must be an untruthful account, since from Mr McGill's phone call exchange with the plaintiff, Mr McGill would have been aware the plaintiff had told him that his elbow was "shattered." Mr McGill's response was that he was unable to say whether he gave this version to Mr Harrison before or after the text received from the plaintiff. Mr Fee put to Mr McGill that, if he only became aware that the plaintiff had sustained a shattered elbow after his report to Mr Harrison, then why did he fail to contact Mr Harrison to advise him that the plaintiff had, contrary to his previous report, sustained significant injuries. It was suggested that, as the health and safety officer, it was essential for Mr Harrison to be told the nature and extent of the injuries sustained by the plaintiff so as to instigate an investigation or provide further details to assist such an investigation.

[50] It was clear that no investigation took place. The plaintiff's name and address, date of birth and telephone number, which had been provided by the plaintiff to Mr McGill in the said text, were not given to Mr Harrison, despite the fact that the plaintiff specifically stated in the text that the details were "for the accident book."

[51] Mr Fee KC further probed Mr McGill in relation to the accuracy and truthfulness of his evidence. After the fall, according to Mr McGill, the plaintiff was positioned on the road close to a pillar as identified in the defendant's photograph. However, this assertion differed from the account given by Mr McGill to

Mr Harrison as contained in the “health and safety reporting document” which specifically stated that “it appeared to Liam that the man fell forward off the bicycle and fell onto a pothole just ahead of the bicycle.” Furthermore, below one of the defendant’s photographs which depicts the approach to the site in question, it is typed that the photograph “details the position of the pothole at which point the cyclist is alleged to have landed after being dismounted/ thrown from his bike.”

[52] During further cross-examination, Mr Fee KC elicited from Mr McGill that a blue van parked in a driveway across the road from the said working operations was owned by Mr McGill. Mr McGill accepted that equipment and materials used during the said working operations would be placed in the said van. The implication was that if ladders were used or were on the site, they would be brought and placed in the van.

[53] Mr Fee KC then focused on the daily work management sheet dated 10 May as completed by Mr J Ferris, Engineer. It was clear from this document that Mr J Ferris had estimated the excavation depth to be in the region of 1.2m to 3m. Therefore, as suggested by Mr Fee KC, if the assumption is that this was an accurate estimate, and since no evidence was called to the contrary, a ladder would have been necessary to get in and out of the excavation. For this reason, it would have been essential in the interests of safety to have a ladder on site.

Mr Kevin Mullan

[54] Mr Mullan was employed by the defendant as a labourer. In his evidence, he stated that on the day in question he was standing at the arm of a mechanical digger, when he heard a “clatter.” He then saw a man lying on the road. Mr Mullan stated that he saw Liam McGill and Jason McElhinney go over to the cyclist. Mr Mullan states that he did not hear any conversation between Mr McElhinney and the cyclist. He also stated that he did not speak to the cyclist because he does not like “confrontation.”

[55] Mr Mullan stated that he saw the plaintiff holding both arms. At no stage did he ask the plaintiff what happened. Mr Fee stated that the reason for not making any such enquiry was that he already knew that it was his colleague, Mr McElhinney, who had caused the accident.

[56] Mr Mullan stated that he took the plaintiff to his home address in a van. He admitted that he told the plaintiff that the other employee had testicular cancer. However, Mr Mullan stated that his reason for so doing was to provide comfort for the plaintiff, inferring that matters could have been worse. Mr Mullan described the plaintiff as a “gentleman.”

[57] Mr Mullan denied that he told Jenny Caulfield that her father had been knocked off his bike by a man holding a ladder. He did accept that he invited Ms Caulfield to take a photograph of the defendant’s telephone number from his

upper garment. However, he denied that he did this because he was aware the defendant was responsible for the accident.

[58] Mr Mullan denied that there was a ladder on the site. However, during cross-examination by Mr Fee, Mr Mullan accepted that the depth of the excavation would only be known once the digging started.

[59] When Mr Mullan was asked to look at the defendant's van, he was able to see roof rails on the van which could be used for ladders. Previously, Mr Mullan denied that ladders could be placed inside the van.

Assessment of the evidence of the witnesses

[60] I considered the plaintiff to be an honest and credible witness. Despite robust cross-examination, the plaintiff remained adamant that the defendant's employee, whom he described wearing a hi-vis jacket, emerged from his left carrying a ladder which struck the plaintiff on the left shoulder. It is correct, as stated by Mr Ringland, that the initial statement of claim and the A&E entry at Antrim Hospital referred to the word 'manhole.' The plaintiff's response was that he could not recall making reference to the word 'manhole.' He stated that there has been a misinterpretation of what he had said. I take into consideration this discrepancy highlighted by Mr Ringland. However, having assessed the totality of the plaintiff's evidence, in my judgment, he provided a truthful account when he stated in his evidence that the employee emerged from a gap between the barriers to his left carrying a ladder and that the plaintiff was struck on the left shoulder by the ladder. My overall impression of the plaintiff as a truthful witness, is bolstered by the following. Firstly, a photograph taken by the plaintiff's wife shows a significant area of bruising to the plaintiff's upper left shoulder. The photograph is entirely consistent with the plaintiff's account. I also accept that the photograph was taken by the plaintiff's wife at the Royal Victoria hospital in order to send a WhatsApp image to her family showing the nature of the plaintiff's injury. Mrs Caulfield was not questioned regarding the nature of this photograph, including when it was taken and the reason why it was taken. It was never suggested to the plaintiff nor, indeed to Mrs Caulfield, that the injury as shown in the photograph was not caused by a ladder, but rather resulted from the plaintiff's fall. Presumably the reason was the lack of any such evidence.

[61] Secondly, in my judgment, there is a consistent theme in the description of the relevant events as provided by the plaintiff in the hospital records. Leaving aside the reference to the word 'manhole', the initial history provided at Antrim hospital is that the plaintiff "recalls someone knocking him off (his) bike." As highlighted above at para [29] a clinical record also refers to the plaintiff coming off his bicycle after colliding with a pedestrian carrying a ladder. A further history refers to the plaintiff cycling and colliding with a pedestrian holding a ladder. Of course, the possibility remains that the plaintiff, in the histories provided to the medical staff,

may have deliberately fabricated the correct version of events. From my assessment and evaluation of the plaintiff's evidence, I categorically reject this.

[62] Thirdly, the plaintiff's evidence was that the person who struck him with the ladder admitted shortly afterwards that he did not see the plaintiff. In my view, this admission by the said individual defused the situation. The plaintiff clearly was in considerable pain and the defendant's employees were quickly on the scene to assist him. I accept he was offered an ambulance. However, since the Plaintiff was close to home, he accepted the offer of a lift, and his bicycle was put into the defendant's van. I have no doubt that the plaintiff was told in the van that, the person who had injured him, had just returned to work following an operation to his private regions. Why would the plaintiff be told this sensitive information unless it was proffered as an explanation for the individual's conduct? I reject Kevin Mullan's evidence that he only provided this information to the plaintiff to make him feel better and to emphasise that things could be worse.

[63] Fourthly, I totally reject the evidence of Liam McGill and Kevin Mullan that Mr McElhinney was not holding a ladder and, indeed, that there were no ladders at or about the site of the working operations. As emphasised by Mr Fee KC in his cross-examination of Liam McGill, reference was made to a daily work management sheet dated 10 May 2021 and signed by Mr J Ferris. Mr McGill accepted, in cross-examination, that J Ferris was a supervisor who worked for Meridian Utilities Ltd. He also accepted that this document would have been completed before the work was carried out on the date in question. The proposed work related to sewers at 100 Cardonaghy Road, Cullybackey. The work was estimated to take two days. The dimensions of the excavation were estimated to be 7.5metres (length) and 1.2metres (width). Significantly, the excavation depth was estimated at 1.2 metres to 3 metres. In light of the anticipated excavation depth, it was likely that a ladder would have been required. In other words, even if as alleged by the defendants that a ladder was not necessary to enter the excavation, this would not have been known until after the excavation was opened. Furthermore, in the method statement/risk assessment, specific references were made to the use of ladders. One hazard identified 'Falls into an excavation' and specified that "ladders must be used in the case of deep excavations, these must be at the correct angle, appropriately tied of and extend at least one metre above ground level."

[64] It is relevant that Liam McGill stated that ladders had been used on the previous work operation carried out by the defendant. Mr Kevin Mullan stated that it was not possible to place ladders in the van. When asked whether ladders could be placed on roof rails on the van, Kevin Mullan said that he did not think there were roof rails on the van. When the defendant's photograph was produced showing the van, Kevin Mullan admitted that he could see roof rails on this vehicle.

[65] I found Mr McGill to be an unconvincing witness. In my judgment, he provided a deliberately untruthful version of events to Mr Harrison, the health and safety officer. Mr McGill was aware that the plaintiff had sustained a significant

injury. He failed to report this fact to Mr Harrison. Indeed, he had offered to get the plaintiff an ambulance. Mr McGill knew that the plaintiff had provided him with his name, address and date of birth and that these details were to be included in the defendant's accident book. Mr McGill deliberately failed to give these details to Mr Harrison. If such details had been provided, it is likely that this would have prompted an investigation. At the very least, it would have provoked contact with the plaintiff. Despite the fact that Mr McGill had the plaintiff's mobile phone number, at no stage was the plaintiff contacted to make a statement.

[66] Significant inconsistencies were highlighted by Mr Fee KC in cross examination of Mr McGill as detailed above. For example, after the Plaintiff's fall, Mr McGill in his evidence placed the plaintiff on the road close to a pillar which he identified on one of the defendant's photographs. This assertion differed from Mr McGill's account to Mr Harrison as contained in the "health and safety reporting document" which stated that the plaintiff appeared to have fallen forward off his bike "onto a pothole just ahead of the bicycle." A photograph taken by Mr McGill showed the pothole and a typed statement at the bottom of the photograph highlighted the pothole as the location where the cyclist landed. These inconsistencies are highly relevant. Mr McGill did accept in his evidence that the pillar was much further along the road away from the work operations than the said pothole as shown in the photograph. In my judgment, by placing the plaintiff close to the pillar, Mr McGill was making a deliberate attempt in his evidence to locate the plaintiff a considerable distance away from the work operations.

[67] I found Mr Mullan to be an untruthful and evasive witness. Mr Mullan admitted that he told the plaintiff that his fellow employee had testicular cancer. In my judgment, the only reason for this comment was to provide the plaintiff with an explanation for the fact that the employee had struck the plaintiff on the shoulder with a ladder causing him to fall off his cycle. I do not accept Mr Mullan's explanation that his reason for providing such sensitive information was to make the plaintiff feel better. In respect of the exchange between Ms Jenny Caulfield and Mr Mullan, I prefer the evidence of Ms Caulfield. I have no doubt that a conversation would have taken place as to how the plaintiff sustained his injuries and that Ms Caulfield was told by Mr Mullan that a fellow employee had knocked her father off his cycle. In his attempt to offer an explanation as to why this happened, I accept Ms Caulfield's evidence that the person responsible had just returned from an operation.

[68] I reject Mr Mullan's evidence that there was no ladder on the site. In my judgment, Mr Mullan was not only aware that there was a ladder on the site but also that his colleague, Mr McElhinney, was holding a ladder when he struck the plaintiff on the left shoulder.

[69] Mr McElhinney, whom it is alleged struck the plaintiff with a ladder on the left shoulder, was not called to give evidence. The court was told that this witness

was suffering from a recurrence of cancer. I totally accept this explanation and draw no adverse inference for his failure to give evidence.

Decision

[70] For the reasons given above, I am satisfied on the balance of probabilities that, during the course of his employment, an employee of the defendant negligently held, controlled and manoeuvred a ladder which struck the plaintiff on the left shoulder causing him to fall off his bike and to sustain significant injuries, including bruising to his left shoulder and a fracture to the right elbow joint, requiring internal fixation. The plaintiff also suffered significant scarring and there is a risk of premature arthritic changes. The defendant remains vicariously liable in negligence for the said injuries to the plaintiff.

[71] Quantum has been agreed in the sum of £75,000. Accordingly, I make an award of £75,000 plus interest.

[72] I will hear the parties in respect of further submissions relating to damages and costs.