

**THE HIGH COURT**

**[2022] IEHC 125**

**[2015 2384 P]**

**BETWEEN**

**JENNIFER QUAID**

**PLAINTIFF**

**AND**

**BUS EIREANN/ IRISH BUS**

**DEFENDANT (S)**

**JUDGMENT of Ms. Justice Egan delivered ex tempore on the 23rd day of February, 2022**

**Introduction**

1. The plaintiff was born on the 15th October, 1983 and is now 38 years of age. These proceedings relate to an incident which occurred on the 19th March, 2014 when the plaintiff was a passenger on the defendant's bus. The plaintiff alleges that, as a result of the bus driver's negligence, the bus had to brake very suddenly to avoid a collision, as a consequence of which she was severely jolted in her seat and experienced a back injury, which, despite significant treatment, persists to this day. Although denying any negligence, the defendant accepts that, on the occasion in question, heavier than normal braking was applied to prevent an accident, but maintains that the plaintiff could not have sustained an injury as a result of these events.

**Circumstances of the incident**

2. The plaintiff was travelling with her mother, Geraldine Quaid, as a passenger on the defendant's bus from Limerick city centre to O'Malley Park in the south of the city. The incident occurred shortly before 6pm in a 50 km per hour zone at the junction of Carew Park and the Roxboro Road. Of these two, Roxboro Road is the road of greater importance. The road conditions were dry and there was ample daylight.
3. In understanding the scene of the accident, I have been assisted by photographs taken by Dr. Vincent Kelly, chartered engineer and chartered safety practitioner, who gave evidence for the plaintiff. The bus, which had been travelling along Carew Road, approached the junction, intending to turn right onto the Roxboro Road towards O'Malley Park. As one approaches the junction from this direction, it is governed by a stop sign. The word "stop" is painted on the carriageway and there is also a stop line on the road approximately twelve feet back from the outer line of the footpath. It is common case that if a bus were to stop exactly at the stop line, a driver's vision to the left would be obstructed by a wall, allowing road visibility of only 71 metres to the left. If, however, the front of the bus is aligned with the curb at the mouth of the junction, road visibility to the left extends to 138 metres.
4. This incident was recorded on three separate CCTV cameras with which the bus was equipped, which captured frames at a rate of 2.5 per second. This footage has been helpfully analysed by Mr. John G. Sullivan, engineer and assessor, who gave evidence for the plaintiff and by Mr. Tony O'Keeffe, consulting engineer, who gave evidence for the defendant. Both engineers have also taken a series of stills from this footage which I have considered.

5. The first CCTV camera was placed inside the bus slightly above and to the right of the back of the driver's head. The second camera is also situated inside the bus and records the interior of the bus, filming from the front to the rear. The third camera is in the nature of a dashcam and is located along the bus's front windscreen. This camera records speed at which the bus was travelling as captured by GPS. GPS calculated speeds are not as accurate as a speedometer and there may also be a slight time lag in the speed recorded on the CCTV footage at any given second. Overall, however, it was common case that the CCTV footage provides a good representation of these events. It is also worth observing that, although the front camera purports to record the acceleration of the bus, the acceleration metre was broken at the time of the incident. Therefore, the degree of acceleration and deceleration was calculated by the respective party's engineers and is the subject matter of some dispute.
  
6. The CCTV footage from the dashcam at the front of the bus shows the bus approaching the junction. One can see that the bus passes the stop sign, the stop line and the word STOP painted on the road. The bus does not come to a stop but rather slows down to a crawl of 2 km per hour at the edge of the Roxboro road. The camera overlooking the driver's head shows that the driver is looking left and right as he emerges onto the Roxboro road and continues across the carriageway. As the bus continues across the carriageway, nearing the centre line of the road, it gains speed up to approximately 11 km per hour. During the last couple of frames prior to the bus reaching the centre line of the road, the footage from the camera above the drivers head, which shows the roadway to his left, reveals a black car in the far lane approaching from the direction of the Roxboro roundabout. Although this car is visible on the CCTV footage, it appears that the bus driver does not initially notice it while he proceeds across the near lane to the centre line. Just as the bus crosses the centre line travelling at 11 km per hour, the bus driver applies his brakes. The bus does not come to stop but rather drops its speed from 11 km per hour to 10 km per hour, 3 km per hour and finally 2 km per hour. During this time, the approaching black car veers to its left to avoid the bus, moving very close to the margin of the road. The evidence is that there appeared to be approximately a one metre distance between the front of the bus and the driver's side of the black car as it passes. After the black car passes in front of it, the bus regains its speed and follows the car down the road.
  
7. The CCTV footage from the inside of the bus captures the reaction of the passengers to the braking incident. It is fair to say that the CCTV footage suggests that such reactions are very subtle. There are only a handful of people on the bus at the relevant time. The plaintiff and her mother appear to be are seated in the fifth row from the front of the bus. The plaintiff is in the aisle seat and her mother is in the window seat. The plaintiff is seated with her left arm by her side and was in conversation with her mother both before and after the incident. As the bus brakes, the plaintiff's left upper arm remains by her side but her left lower arm moves up towards the top of the seat in front of her. It is not possible to see from the camera angle whether or not the plaintiff's hand makes contact with, or perhaps momentarily grips, the seat in front of her. After the braking incident, the plaintiff's left arm goes back down to her lap and her right hand comes up to her head

for a short period of time. Thereafter, the plaintiff adopts her former position. From the camera angle, it is difficult to see whether the plaintiff's torso moves forward and back at the time of the braking incident. However if it does so, then this is only to a small extent.

8. The reaction of the other occupants of the bus is also of some relevance as they were, of course, subjected to the same deceleration forces as the plaintiff. Ms. Patricia Walsh Bodie is seated two rows in front of the plaintiff. She is sitting with her knees and ankles together and her legs are angled to one side. Her left hand is on the top of the seat in front of her, with her arm braced for support. At the moment of the incident, Ms. Bodie's left arm bends and then straightens again. From this, one can infer that her torso must have moved forward and then back to some extent. It does not appear that this is a particularly violent movement although one could not exclude some jolting or jerking. Also on the bus is a passenger very close to the camera at the front of the bus who was wearing a top/jumper with a hood. This passenger might be either sitting or standing. At the time of the braking incident, one sees the head of this person move out of shot towards the front of the bus and then back into shot. It is not clear what caused this movement. One can also see that certain small items on the floor of the aisle of the bus appear to scatter forward a short distance as the bus brakes. In addition, a can which is on its side in the luggage rack also rolls forward. It would be difficult to infer much from the movement of these unrestrained light items, as they would, in the normal course, shift back and forward on a bus as it travels. Finally, a careful viewing of the CCTV footage also appears to show that the yellow grab handles hanging from the bus's ceiling move slightly forward and back at the time of the braking incident. These grab handles are usually quite stiff, fixed items and this may therefore be of more significance.
9. No other passenger on the bus was injured. Neither did the plaintiff, nor any other passenger, make a complaint to the driver about this incident on disembarking. The plaintiff's initiating letter was sent by her solicitors to the defendant a reasonably short time after the incident on 8th April, 2014.

#### **Plaintiff's evidence**

10. The plaintiff was a mother of two young children living with her own mother. The plaintiff stated that she had previously been diagnosed with Crohns disease but that, at the time of these events, this was well controlled and her health was good. The plaintiff had been working part time for two years as a clerical assistant pursuant to a Community Employment Scheme. The plaintiff regularly walked for half an hour from her home into town and back again carrying messages. She also assisted her mother with household chores. She was, she stated, very active and constantly on the go.
11. The plaintiff's evidence is that this incident occurred because, as the bus driver negotiated the junction, he was not looking at the road but was rather looking down counting coins from the change dispensing machine to his left. The plaintiff's evidence is that as a result of this sudden braking, her torso was jolted suddenly forwards and backwards and that she had to put her left hand up to the seat in front of her to steady herself. The plaintiff was afraid that the bus would hit the car and this was, she states, a shocking incident.

12. As the bus braked, the plaintiff felt a pop in her lower back but did not think too much of it. She took paracetamol later that day and went to bed early. The plaintiff however did not sleep well and the next morning was unable to get out of bed due to pain. When matters did not improve, the plaintiff attended her GP, Dr. David Hannon, the following day, 21st March, 2014. I will set out the plaintiff's subsequent symptoms and medical treatment below when reviewing the expert medical evidence.
13. As of the present time, the plaintiff's evidence is that she often experiences a dead weight feeling in her left leg. The plaintiff states that, notwithstanding significant treatment, her back pain has not improved since the incident. The plaintiff experiences some level of pain all day every day and she needs to take some form of pain relief medication every week. On occasion, the plaintiff's pain becomes so bad that she is unable to get out of bed for three or four days, or perhaps even for a week. At other times, her pain will be bearable and she will be able to carry out her usual activities, albeit slowly. The plaintiff describes her day to day life as "horrible".
14. In general, the plaintiff states that she remains limited in her activities of daily living. She is able to cook but cannot, for example, lift a pot of boiling water onto the stove and is unable to Hoover. She cannot walk easily in and out of Limerick and she is no longer working (albeit that there is no claim to loss of earnings). The plaintiff states that she had been a very active person and that she is very sad not to be able to live the normal life that she had expected to lead.
15. Cross examination of the plaintiff related to three particular aspects of her evidence.
16. First, the plaintiff was cross examined as to her recollection of what caused the braking incident to occur. It was put to the plaintiff that her evidence that the driver was counting change, rather than looking at the road, was entirely inconsistent with the footage from the CCTV camera located above the driver's head, which demonstrates that the driver's head was moving from left to right as he drove through the junction and that his hand did not move from the steering wheel, save perhaps to the emergency brake. I will deal with this further below.
17. The second principle line of cross examination was that the incident was not as sudden or violent as the plaintiff depicted in her pleadings or in her accounts to the various doctors who had examined her. The personal injury summons pleads that, suddenly and without warning, the bus braked severely, causing the plaintiff to be thrown forward and/or backward in her seat and/or to be severely jolted and/or thrown forward violently. I agree that the CCTV footage does not reflect the plaintiff being violently thrown around in her seat. On the other hand, however it does demonstrate that the plaintiff's left hand came up towards the seat in front of her, she says to steady herself in response to a sensation of being pushed forward. Whether or not such movement is capable of inflicting the kind of injury of which the plaintiff complains is primarily a matter for medical evidence, which I examined below.

18. The third principle line of cross examination concerned the plaintiff's pre-existing medical history. By way of notice for particulars the plaintiff was asked whether she suffered from any prior relevant medical conditions. The plaintiff's reply of May 2015 referred only to her Crohns disease as a result of which she could not take anti-inflammatory medication.
19. However, in a subsequent letter of July 2017, the plaintiff's solicitor directed the defendant's attention to two specific occasions on which the plaintiff had had to attend her GP complaining of back symptoms.
20. The first such occasion was 9th July, 2010, on which date the plaintiff awoke with lower back pain radiating down her left leg as a result of which she was unable to mobilise. On examination, tenderness and decreased range of movement of the back were elicited, straight leg raising was reduced but there was no neurological deficit. Dr. Hannon diagnosed muscular pain with possible nerve impingement and sciatica. These symptoms were self-limiting and resolved after the plaintiff took difene and applied topical anti-inflammatory gel as advised.
21. On the second occasion notified to the defendant, 24th October, 2011, the plaintiff woke with symptoms of back spasm and pain in the right shoulder. On objective examination, the plaintiff appeared stiff with muscle spasm. Dr. Hannon's diagnosis was acute back spasm with an unknown trigger.
22. In this letter of July 2017, the plaintiff's solicitor also notified the defendant's solicitor that in October or November 2012 the plaintiff had fallen at home, sustaining a fracture to her right arm and a sprain to her right leg.
23. The plaintiff had made voluntary discovery of five years pre-incident medical records and was also cross examined about certain entries in these records.
24. Thus, between February and June 2009, the plaintiff attending her GP on several occasions complained of pain in her neck, right shoulder, right arm and wrist. Medical records over this period indicate that the plaintiff had injured her right shoulder eight or nine years prior to this. When questioned, the plaintiff confirmed that she had suffered this injury whilst lifting a bag of potatoes in a vegetable shop where she worked. The plaintiff had been fifteen or sixteen years of age at the time and no personal injuries proceedings had been brought.
25. Later in the same year, in October 2009, the plaintiff experienced chest pain and a sore neck, this time radiating down her left arm, which Dr. Hannon attributed to rib pain. This episode was also self-limiting.
26. In February 2011, the plaintiff experienced pain in both shoulders radiating to both arms. Once again, this pain appears to have been self-limiting.
27. In March 2012, the plaintiff attended the emergency department of St. John's Hospital, Limerick with a complaint of a right hand injury occurring seven days previously when she

had slipped and fallen onto her right hand. A sling was applied. The plaintiff had no recollection of this event.

28. Finally, in August 2013, approximately six months prior to these events, the plaintiff attended her GP with restricted shoulder movement and pins and needles in her left elbow and hand which her GP felt were due to nerve root compression at the neck.
29. Arising out of the above, counsel for the defendant observed that, prior to these events, the plaintiff had suffered from sciatica type symptoms, on occasion without any particular triggering event. This is correct, but the relevance of this, in causation terms, is a matter for medical expertise and was explored, as appropriate, with the medical experts.
30. The plaintiff herself was also cross examined as to her candour in disclosing in her pleadings only an incomplete account of her previous medical history. I have read the plaintiff's medical records in detail and I do not think the plaintiff or her solicitors can be criticised for failing to set out the details of her prior symptoms of intermittent her neck, shoulder, arm and hand pain. Rather, it seems to me that the plaintiff's solicitors fairly drew the attention of the defendant to any past history of pain in her lower back. I accept that, for a young woman, the plaintiff has had quite a number of prior attendances with her GP for symptoms of pain and discomfort in the neck, shoulders, arms and hands and indeed that she also had some prior history of unexplained back pain. However, neither the medical records, nor indeed the expert medical evidence, suggest that either sets of prior symptoms could fairly have been described as chronic or debilitating. Insofar as concerns the plaintiff's back in particular, there is no suggestion that the two prior incidents of recorded back pain were anything other than self-limiting. I therefore find that there is nothing in these prior medical records which suggests that the plaintiff lacked candour in relation to her prior medical history.

**The evidence of the plaintiff's mother, Ms. Bodie and the bus driver.**

31. The plaintiff's mother gave very short evidence consistent with that of the plaintiff, save that it she did not recall the driver counting change at the time of the accident. Ms. Bodie, on the other hand has a vivid recollection of this, upon which she was robustly cross examined. Although Mrs. Bodie was somewhat known to the plaintiff's mother prior to these events, they were not close friends and she struck me as a completely honest and independently-minded witness.
32. However, it is simply impossible to reconcile this particular recollection with the CCTV footage. In the light of this footage, I can only conclude that the plaintiff and Ms. Bodie are both mistaken in their recollection and I therefore reject their evidence in this particular regard.
33. However, having carefully observed the demeanour of both the plaintiff and Ms. Bodie, I do not think that either of them are fabricating this evidence or are deliberately lying. I can only conclude that they are both mistaken and that their respective mistaken memories have become reinforced over time.

34. Ms. Bodie's evidence was that she was quite shocked by the near miss between the bus and the car. She feared that there would be a full collision and that the occupants of the car would be badly injured. Indeed, Ms Bodie was so upset that she had to have a brandy when she arrived at her friend's house at the end of her bus journey. Ms. Bodie also confirmed that in her experience, the braking was indeed sudden and that although she was in no way injured by the events, she experienced quite a severe jolt.
35. The driver of the bus, Mr. Houlihan gave evidence to the court. At the time of these events, he had been a bus driver for almost twenty years and had previously been a coach driver for a private company. Mr. Houlihan was very familiar with the route and was aware that one had to slow down when approaching the junction with the main road which could be very busy. Mr. Houlihan was adamant that he would not have been handling money whilst driving and that the only time he would handle money would be when giving change back to customers as they embarked or at the end of his shift when cashing out. Mr. Houlihan was unable to explain why he had not noticed the oncoming black car prior to entering the road or before moving towards the white line. Having said that, Mr. Houlihan had no clear memory of these events.

**Liability evidence: engineers.**

36. Mr. Sullivan who gave evidence for the plaintiff and Mr. O'Keeffe who gave evidence for the defendant were agreed that, whilst usually one should stop at a stop sign or stop line prior to entering the carriageway, in this particular case, this would not afford good visibility of traffic coming from the left. Both engineers were therefore agreed that it was necessary to proceed to the mouth of the junction to get a better view of traffic from the left. Mr. Sullivan expressed the view that, once at the mouth of the junction, it was imperative to stop prior to entering the road carriageway.
37. Both engineers accepted that the CCTV footage showed that the oncoming black car was visible coming from the driver's left. Neither engineer was in a position to shed any light upon why the driver did not appear to have seen this car. Mr. O'Keeffe, for the defendants, frankly accepted that the car was "there to be seen".
38. Mr. O'Keeffe was inclined to emphasise that, once he saw the car, the driver's reaction time was very good in that he applied the brakes quickly, but not violently. The difficulty is that if the driver had seen the car approaching at an earlier point in time, it would not have been necessary for the bus to brake in the first place. Further, in such a scenario, as the driver would have seen the car in the course of taking off from a rolling stop at the mouth of the junction, the bus's speed would have been slower. As a result, the driver would presumably not have carried on across the near carriageway to the dividing white line with the intention of traversing the white line and no emergency would have presented itself.
39. Ultimately, it would be hard to interpret the footage other than as demonstrating that the bus pulled out from a minor road onto a road of greater importance into the path of oncoming traffic which ought to have been fully visible to the bus driver and which, furthermore, was in possession of the junction. Mr. O'Keeffe could not disagree with the

proposition that the footage appeared to suggest that by failing to see the car, until it was almost too late, the bus driver had created an emergency.

40. There was, however, significant disagreement between the engineers in relation to the likely force of the braking and the consequent effect upon the occupants of the bus including the plaintiff. The plaintiff's engineer contended that this was an emergency brake, almost equivalent in force to a full slam on brake. Mr. Sullivan calculated that as a result of this sudden braking, the occupants of the bus had been subjected to a force in the order of 0.495g at its maximum deceleration. 0.4g is the maximum deceleration that a passenger in a vehicle will experience if brakes are "*slammed on*" in wet weather conditions; in dry conditions, the equivalent is 0.7g. The opinion of the plaintiff's engineer, therefore, was that the plaintiff experienced only slightly less than the maximum deceleration that would be experienced in a full "*slam on*" emergency situation.
41. The defendant's engineer disagreed with the method of calculation adopted by the plaintiff's expert. Mr. O'Keeffe pointed out that Mr. Sullivan had calculated the maximum deceleration by reference to the comparatively sudden drop in speed between 10 km per hour and 3 km per hour rather than by reference to the longer time it took to reduce from the maximum speed of 11 km per hour to a minimum speed of 2 km per hour. Adopting the latter calculation, Mr. O'Keeffe's view was that the maximum deceleration experienced by the plaintiff and the other occupants of the bus was in the range of 0.21g to 0.28g, which he stated was heavier than normal braking, but not as severe as full emergency braking. Mr. O'Keeffe observed that, if it had been necessary to fully slam on the brakes, the bus would have come to a halt within three metres, which did not in fact occur. Mr. O'Keeffe's view, therefore was that the deceleration experienced by the bus's occupants was reasonably subtle. Furthermore, were it otherwise, Mr. O'Keeffe would have expected to see the bus's occupants being more violently jerked or jolted as had initially been described by the plaintiff as the cause of her injury.
42. I agree that, as a lay person observing the footage, it is difficult to understand how the plaintiff could have sustained a significant injury as result of the movement witnessed. I further agree that it is somewhat difficult to understand how a sudden reduction in speed from a speed of only 10 or 11 km per hour to 2 or 3 km per hour could inflict significant and permanent injury upon the plaintiff. However, in the light of the medical evidence, the court cannot make assumptions based upon the likely degree of injury that a robust person might experience as a result of a comparatively innocuous incident such as this. The plaintiff had a pre-existing degenerative condition rendering her more vulnerable to injury. Both parties' medical experts agree that, however violent or non-violent may have been this initial jolting or jerking movement, it was, in all likelihood, the triggering event for the plaintiff's subsequent difficulties. The court must therefore be cautious about substituting its own views for those of the medical experts called to give evidence on behalf of both the plaintiff and the defendant. It is not for this court to reject that evidence merely because the incident looks subtle to the court's eye. Indeed, the plaintiff's GP viewed the footage and confirmed under cross examination that such

movement as was demonstrated was capable of causing the injuries of which the plaintiff complains.

**Evidence on causation and quantum; medical evidence**

43. Medical evidence was given on behalf of the plaintiff by her GP, Dr. David Hannon and by Professor Brian Lenehan, consultant orthopaedic surgeon. In addition, the reports of Dr. James Shannon, consultant in pain medicine and anaesthesia, were admitted without the necessity for formal proof.
44. The plaintiff attended her GP within 48 hours of the incident. There has been no suggestion that the plaintiff sustained any intervening injury. On examination, Dr. Hannon found that the musculature of the plaintiff's mid and lower back was very tender and that flexion and extension were restricted. Treatment consisted of analgesics and the plaintiff was advised to rest and to use heat to ease her symptoms. The plaintiff was referred for x-rays which confirmed no fracture in the lumbar spine.
45. The plaintiff's back pain persisted and did not respond to medication. She was seen by Mr. Michael Gilmore, consultant orthopaedic surgeon, on 3rd June, 2014, who advised that the opinion of a spinal surgeon should be obtained.
46. The plaintiff was therefore referred to Professor Brian Lenehan, consultant orthopaedic surgeon and came under his care. Professor Lenehan examined her on 4th June, 2015, when her complaints were of constant pain in the lower back and left leg, a feeling of deadness in the left thigh, a subjective feeling of giving way in the left leg and numbness in the ball of the left foot. Professor Lenehan noted that an MRI of October 2014 had revealed a central L4/L5 disc protrusion with facet hypertrophy and ligamentary hypertrophy and a broad based disc bulge at L3, L4 and L5 and S1.
47. Professor Lenehan's initial advice was that the plaintiff should attend for physiotherapy and interventional pain management. Accordingly, the plaintiff attended Professor Dominic Harmon, consultant pain specialist, in December 2015 on which date an injection was administered from which the plaintiff unfortunately received no long-term benefit.
48. The plaintiff was seen again by Professor Lenehan on 26th February, 2016 and reported ongoing symptoms. A repeat MRI performed in July 2016 re-identified the L4/L5 central disc protrusion and facet and ligamentary hypertrophy resulting in central and lateral recess stenosis. July 2016, Professor Lenehan wrote to the plaintiff regarding treatment options including an L4/L5 epidural or surgical decompression of L4/L5.
49. The plaintiff opted for the more conservative treatment and was referred to Dr. Brendan Conroy, consultant pain specialist, who administered an epidural injection in November 2016, which unfortunately resulted in no perceived benefit.
50. The plaintiff was reviewed by Professor Lenehan in February 2017 and complained of ongoing low back pain, left leg pain, numbness in the ball of her foot, burning sensation in her back and subjective left leg instability. Examination revealed an obvious left sided limp and forward sagittal imbalance. Professor Lenehan's view at that time was that this

braking incident had resulted in both significant back pain and the development of left leg pain. The plaintiff's symptoms had failed to improve with more conservative treatment and, having regard to the failure of non-operative management, the plaintiff was scheduled for surgery and in May of 2017 underwent a left L4/L5 discectomy.

51. The plaintiff had early excellent results from surgery but unfortunately experienced a recurrence of left leg and buttock pain. Her back pain remained.
52. In December 2017, the plaintiff reported to Dr. Shannon, consultant in pain medicine and anaesthesia, that she was suffering from lumbar pain and left sided radicular leg pain in the lower limb to the knee. Accordingly, facet joint injections were administered by Dr. Shannon in March 2018 and again in December 2018 resulting in minimal relief.
53. In December 2018, the plaintiff was still experiencing intermittent numbness of the left limb on prolonged sitting. On examination by Professor Lenehan, she was still found to have a left sided limp.
54. Further MRI was undertaken in April 2019, which revealed post-discectomy status with right central disc protrusion, caudal disc extrusion, asymmetry to the right and mild left degenerative facet joint arthrosis resulting in mild central spinal canal and left neuroforaminal stenosis. Professor Lenehan wrote to Dr. Shannon in May 2019 requesting further interventional pain management.
55. A further MRI was undertaken in May 2021 which again showed L4/L5 disc protrusion. Dr. Shannon duly administered a lumbar transforaminal epidural injection which provided only minimal relief.
56. The plaintiff's GP, Dr. Hannon, re-examined her in March 2021. He noted that the plaintiff continued to attend the symptomatic pain clinic in St. Johns Hospital Limerick under the care of Dr. Shannon. She reported constant pain in the left lower back which was very localised. She described a popping sensation in the left lower back intermittently. Examination revealed that the plaintiff walked with a mild limp. Dr. Hannon considered that the plaintiff had sustained a significant lower back injury as a result of the incident complained of.
57. The plaintiff was reviewed by Dr. Shannon for the purposes of ongoing pain relief in March 2021. The plaintiff complained of ongoing paraesthesia, limitation of movement and restricted function of the left lower limb. The plaintiff has been scheduled to have further diagnostic medial branch block with a view to ascertaining whether she would be a candidate for radiofrequency denervation.
58. Dr. Shannon's report states that the plaintiff suffers from chronic lower back pain and chronic secondary muscular scoliotic pain, together with chronic radicular left leg pain. The accident exacerbated underlying degenerative changes in the lumbar spine resulting in persistent lower back pain and radicular left pain. Dr. Shannon's view was that it is unlikely that the plaintiff will be completely relieved of her symptomatic lower back and

left leg pain and that she will continue to experience these symptoms and require ongoing physiotherapy and pain management. His report expresses the opinion that the plaintiff is entirely genuine, has coped well with her persistent pain and has engaged well with all available treatment.

59. That view is consistent with the view expressed by Professor Lenehan in his reports and in oral evidence to the court. Professor Lenehan's view is that the plaintiff now has chronic and permanent symptoms, particularly in the lower back, which are directly related to the braking incident.
60. In terms of causation, Professor Lenehan's evidence was that the plaintiff was vulnerable to this kind of injury as she likely had pre-existing disc degeneration in the lumbar spine which was largely asymptomatic but which, in the absence of any other causes, was rendered acutely symptomatic by this sudden braking incident. In evidence he explained that this was a classic acceleration/deceleration type mechanism which triggered rapid symptom onset. Professor Lenehan's view is that, unfortunately, once the plaintiff's symptom constellation started, a cascade followed, requiring intensive and invasive treatment. He emphasised that there had been no rush to treatment and that he would not lightly perform a decompression/discectomy procedure, which is a serious surgical intervention under general anaesthetic. Although, as a result of this decompression/discectomy the plaintiff has had some relief from her leg pain, her back pain remains unremitting.
61. Professor Lenehan's view was that the plaintiff's prior medical history, which demonstrated difficulties with her neck, shoulders, arms and hands, and was related solely to problems in her cervical spine at the level of C6 and C7 and was entirely unrelated to her lumbar spine. He was therefore of the view that these past symptoms were not in any way contributing to the plaintiff's current back pain and leg. Mr. Lenehan's opinion was that, if the plaintiff had not experienced this incident, she would not have developed her current level of symptomology or required to undergo the extensive treatment with which she has engaged.
62. The defendant's medical expert, Professor Masterson, orthopaedic surgeon, examined the plaintiff in August 2015, almost 18 months post-accident. He found her to move slowly and stiffly, with extremely limited lumbar spine movements and apparent guarding. No forward flexion was possible. Professor Masterson's opinion was that the plaintiff "*apparently*" had severe low back pain and some leg pain. There were, his report stated, three possible causes for this. First, the plaintiff's back pain could be entirely due to a pre-existing disc prolapse and not in any way related to the incident. Second, the plaintiff's back pain could be caused by a pre-existing disc prolapse which was rendered symptomatic by an acute traumatic event. Third, the plaintiff's back pain could be due to damage to the disc which had itself been caused by a sufficiently violent acute event.
63. On subsequent review by Professor Masterson in August 2016, the plaintiff still complained of significant central back pain, central sometimes radiating into the left thigh. Professor Masterson's report states that he felt there were some inconsistencies in

the plaintiff's physical examination and that she was somewhat exaggerating her symptoms, although he accepted that she might well have some ongoing reasonably mild symptoms into the future.

64. Professor Masterson re-examined the plaintiff in October 2019, over five years post incident. On this date, the plaintiff continued to complain of constant central and left sided low back pain varying in severity. Surgery had been apparently successful in addressing the numbness in the plaintiff's leg and she had no leg symptoms at that time. Professor Masterson noted a 5cm midline scar to the lower back from the surgery. In this report, Professor Masterson opined that the plaintiff's mechanical back pain could be secondary to facet joint arthritis at the L4/L5 and L5/S1 levels.
65. In his oral evidence, Professor Masterson did not dispute that the plaintiff was a bad candidate for a soft tissue injury to her back. He clearly accepted this event caused some soft tissue injury to the plaintiff's back. Critically, Professor Masterson's opinion was that the most likely explanation for the plaintiff's current symptomology was the second possibility outlined above; that she had a previously asymptomatic disc prolapse which had been rendered symptomatic by an acute traumatic event. Professor Masterson agreed with Professor Lenehan's opinion that, in the absence of any other cause or event, and bearing in mind the temporal relationship between incident and symptom onset, the reasonably sudden braking of the bus was the relevant triggering event. Furthermore, when asked whether he differed significantly from the views expressed by Professor Lenehan in relation to either causation or prognosis, Mr. Masterson confirmed that he could not divert from same.

#### **Findings on liability and quantum**

66. I was referred by counsel for the plaintiff to the Rules of the Road and to provisions of the Road Traffic (Traffic and Parking) Regulations, 1997 and the Road Traffic (No. 2) Act, 2011 all of which confirm that a driver of a vehicle shall stop in advance of a stop sign and that a driver approaching a road junction and intending to turn right shall yield right of way to a vehicle approaching on the same road from the opposite direction and intending to proceed straight through or turn left at the junction.
67. There will be occasions in which it is not practical to stop a vehicle at a stop sign and where it may be acceptable to stop instead at the mouth of the junction for better visibility. I would not criticise the bus driver for failing to stop exactly at the stop line. In addition, as a bus is a large and cumbersome vehicle to manoeuvre out of a junction, it may well be acceptable for a bus to proceed forward at a slow crawl, rather than stopping at the mouth of the junction. In such a scenario, provided there is not a yellow box, it may also be acceptable for the bus to proceed across the near carriageway to the centre line and to stop there to allow traffic from its left to pass. However, for the bus to approach and then cross the white line in the face of, and in the path of, an oncoming vehicle which ought to have been clearly visible to the bus driver, cannot be acceptable.
68. Having heard all of the evidence and having examined the CCTV footage and stills, I find that, for an unexplained reason, the driver did not observe the black car approaching until

it was almost too late, requiring him to suddenly brake and the car to suddenly swerve. It is irrelevant that the bus driver was not, as contended by the plaintiff, counting change. Furthermore, irrespective of whether the bus driver reacted quickly and braked when he saw the black car approaching, this situation should never have arisen in the first place. Whilst I accept that it was not necessary to apply a full emergency slam down of the brakes, it is abundantly clear that this was an emergency of the defendant's own making which in turn required a very abrupt deceleration of the vehicle.

69. The defendant relies upon the judgment of Peart J. in *Margaret McGarr v. Dublin Bus* [2016] IECA 366, in which the plaintiff failed to establish negligence on the part of a bus driver whom she alleged moved off suddenly from a bus stop causing her to fall backwards down the stairs. The Court of Appeal held that it would be unreasonable and unrealistic to expect that before moving away from a bus stop on each occasion, the driver must make sure that all passengers are secured. To impose such a duty upon bus drivers would be to completely ignore the realities of modern day bus travel. Peart J. observed that the defendant was entitled to assume that it is common knowledge, and the experience of everybody who uses a bus, that because of their sheer size and the volumes of traffic in which they typically travel in the city, buses tend to sway and lurch a bit, even when driven with great care. Passengers therefore know that they need to hold onto the rails provided when standing or moving around when the bus is in motion.

70. At paragraph 31. Peart J. outlined a bus driver's general duty of care to passengers as follows:

*"The duty of the defendant is to take what in all the circumstances is reasonable care for the safety of the passengers.*

*This will naturally involve driving with reasonable care and at a speed that is both within the permitted limits and which is appropriate to the road conditions.*

*With reference to the facts of the present case the duty of care extends to the driver taking care as he moves away from the bus stop not to do so by negligently causing the bus to lurch forward or jerk abruptly... there will always be cases where, for one reason or another, the driver encounters an emergency situation caused perhaps by another road user's negligent driving, and it may not be negligent on his/her part if the bus must be brought to a halt abruptly."*

71. Applying the above observations to the present case highlights the following features: first, the driver was unfortunately not driving with reasonable care; second, the requirement to bring the bus to a sudden halt arose out of a wholly avoidable emergency of the defendant's own making and third, the plaintiff was seated and no contributory negligence has been alleged against her. I therefore find that the defendant acted in breach of its duty of care to the plaintiff.

72. In these circumstances, I think that it is entirely foreseeable that the occupants of the bus may experience an acceleration/deceleration type injury. It appears to be the accepted

medical evidence that, due to some weakness or predisposition, the plaintiff suffered a much more severe injury than one would expect from such a relatively innocuous incident. However, if personal injury is a foreseeable consequence of whatever wrongdoing is concerned, and I find that it is, then the fact that those injuries may, in the peculiar circumstances of the case be much more severe than might have been expected, does not deprive the injured party of an entitlement to recover compensation appropriate for those injuries (see Clarke J. in *Walsh v. South Tipperary County Council* [2011] IEHC 503).

73. Turning therefore to quantum, the plaintiff's GP, Dr. Hannon, is familiar with her, having treated her for a long period of time both before and after the accident. I fully accept his assessment and findings that the accident has had a significant effect upon the plaintiff's life. This indeed is evidenced by the fact that Dr. Hannon referred the plaintiff to specialists under whose care she has undergone extensive and invasive treatments in an attempt to alleviate her symptoms, which has no doubt been painful and distressing for her. The plaintiff has undergone numerous pain management procedures under the care of various specialists all of which have unfortunately provided no more than transient relief. The plaintiff has also undergone a spinal decompression/discectomy surgery which, although relieving her leg symptoms to some extent, has left her with unremitting back pain. All of the medical experts are of the view that it is likely that the plaintiff will continue to experience her current level of pain indefinitely and that she will require ongoing medication and potentially pain management treatment into the future.
74. Having watched and listened to the plaintiff give evidence, the court is satisfied that she did not attempt to exaggerate her level of disability. She gave evidence in a calm and rational manner. In summary, this young woman has had her life substantially disrupted for almost the last eight years. She has undergone very extensive treatment and yet it appears will be left with some degree of pain and limitation of function indefinitely.
75. Taking all of these matters into account, I award to the plaintiff general damages to date in the sum of €75,000. I also award the plaintiff general damages for the future in the sum of €50,000. I therefore award the plaintiff a sum of €125,000 general damages together with agreed special damages in the amount of €1,550.