

MacDonald v MS Amlin Corporate Member Ltd



No Substantial Judicial Treatment

Court

King's Bench Division

Judgment Date

1 March 2023

Where Reported

[2023] EWHC 526 (KB)

[2023] 3 WLUK 180

[Judgment](#)

Subject

Personal injury

Other related subjects

Negligence

Keywords

Apportionment; Causation; Contributory negligence; Heavy goods vehicles; Motorcycles; Obstruction; Parking; Road traffic accidents; Standard of care; Tunnels

Judge

[Judge Salmon](#)

Counsel

For the claimant: D Sanderson.

For the defendant: J Watt-Pringle KC, Mr Arney KC.

Solicitor

For the claimant: Stewarts Law.

For the defendant: DAC Beachcroft LLP.

Case Digest

Summary

A road traffic accident in a tunnel involving a lorry driver and a motor scooter rider had been caused by the negligence of both parties, and the appropriate apportionment of liability was a 60/40 split respectively. The lorry driver, in stopping his vehicle in a slip lane in the tunnel to investigate a noise, had caused a dangerous and unjustified obstruction. The scooter rider, in colliding with the lorry, had moved across two lanes into the slip lane without ensuring that it was safe to do so.

Abstract

The court was required to determine preliminary issues concerning liability for a road traffic collision.

- The claimant was a motor scooter rider who had collided with a stationary lorry in a tunnel. The defendant was the insurer of the lorry driver.
- The tunnel contained two lanes for traffic running in the same direction and a slip road for an exit junction part-way through. The tunnel was subject to a 30-mph speed limit.

- The lorry driver was travelling in lane 1 when he heard a noise from his lorry. He switched on the vehicle's flashing orange lights and moved into the slip lane, where he stopped the lorry and got out to investigate.
- Moments later, the claimant was riding in lane 2 and wanted to exit at the slip road. He moved across to lane 1 then onto the slip road in one continuous movement at around 30-35 mph. He did not realise that the lorry was stationary and was unable to avoid crashing into it. He sustained a severe brain injury and a spinal injury.

The claimant argued that the lorry driver was wholly liable for the accident by dangerously obstructing the highway.

The defendant contended that the lorry driver had acted reasonably in stopping and investigating whether something was wrong with the lorry. It further contended that the claimant's riding had been so grossly negligent that his actions were the sole cause of the accident, because if he had entered the slip road at the beginning of the slip lane he would have seen the lorry in time, recognised that it was stationary and taken evasive action.

Held

Preliminary issues determined.

Whether lorry driver was negligent - The lorry driver had acted negligently in that he had created a dangerous and unjustified obstruction:

- He had parked in a position where the lorry blocked the entire slip lane, creating a risk of a collision with the potential for very serious injury. Turning on the lorry's orange lights had created an element of visibility, but the rotating lights flashing off the tunnel walls could easily have been confused with movement and did not assist a driver with realising that there was a stationary vehicle ahead. In addition, it was entirely foreseeable that vehicles might not necessarily join the slip lane at its commencement but further along, and that they might seek to move across from lane 2 into the slip road. Therefore, it was foreseeable that vehicles might join the slip road in circumstances where their drivers had little or no opportunity to react to the obstruction ahead of them.
- A reasonably prudent motorist would have appreciated that they were not permitted to stop in the tunnel, and that doing so had the potential to cause serious danger to other road users. Although the lorry driver heard a noise he believed had come from his vehicle, a reasonably prudent motorist would not have reacted by parking in the tunnel as he did. They would have exited the tunnel slowly and cautiously with potentially the addition of illuminating their lights. Even if the court was wrong in that conclusion, the lorry driver should have stopped further along, where the slip road widened into two lanes. Doing so would still have created an obstruction, but the danger caused would have substantially less such that the claimant would have been able to avoid the collision (see paras 54-60 of judgment).

Whether claimant was contributorily negligent - Once the claimant pulled into the slip road, his reactions were within the bounds of a reasonable motorist, both in terms of reaction time and his actions. However, a reasonable competent and prudent motorist would not move from one lane to another until they were in a position to see and assess what was in front of them. The claimant should have seen the flashing lights of the lorry when in lane 1, which should have alerted him to a potential hazard ahead: either a stationary or slow-moving vehicle in accordance with the Highway Code. Even in the absence of lights, he should not have commenced his move into the slip lane until he was in a position to see and assess what was in front of him and, if necessary, stop in his range of vision. Therefore, in moving from lane 2 to lane 1 to the slip lane in one continuous manoeuvre, without ensuring it was safe to do so, the claimant had failed to take reasonable care. Contrary to the insurer's contention, the claimant's failure was not gross negligence so as to break the chain of causation, but it amounted to contributory negligence (paras 71-75).

Apportionment of liability - In the circumstances, the lorry driver had created the obstruction and bore the greater blame for the accident. The appropriate apportionment of liability was a 60/40 split in favour of the claimant (para.77).