Judgments

Stewart v Glaze

[2009] EWHC 704 (QB)

QUEEN'S BENCH DIVISION

Coulson J

7 April 2009

Road traffic – Accident – Negligence – Liability – Claimant walking into road after consuming alcohol and being hit by car driven by defendant – Claimant sustaining catastrophic head injuries as result of accident – Claimant commencing proceedings against defendant in negligence – Whether defendant liable.

Judgment

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.

MR JUSTICE COULSON:

1. INTRODUCTION

1. At about 2.12am in the early hours of the morning of Saturday, 25th September 2004, the claimant, Michael James Stewart ("Mr Stewart") was hit by a BMW motorcar being driven by the defendant, David William Glaze ("Mr Glaze"). Mr Stewart, who was 28 at the time, suffered catastrophic head injuries and is now in a persistent vegetative state. By proceedings commenced on 10th January 2008 through his Litigation Friend, Mr Stewart brings a claim for damages arising out of that accident.

2. By an order dated 1st May 2008, the District Judge ordered that liability should be tried as a preliminary issue. The trial on liability took place on 9th and 10th March 2009 at the Civil Justice Centre in Manchester. I am extremely grateful to Mr Braithwaite QC (for Mr Stewart) and Mr Turner QC (for Mr Glaze) for the efficient way in which the trial was conducted.

3. I set out at Section 2 below some general principles as to the proper approach to cases of this kind, including the appropriate parameters of the evidence of accident reconstruction experts, and the need for medical evidence when considering the physical effect of hypothetical events. At Sections 3 and 4 below, I set out the factual background to the relevant events, and the sequence both before and after the accident. At Section 5, I then deal with certain aspects of the

expert evidence.

4. Having considered the factual and expert evidence I then set out at Section 6 my findings of fact; at Section 7 my findings in relation to Mr Glaze's liability to Mr Stewart; and, at Section 8, my conclusions on the issue of contributory negligence. There is a short summary of my conclusions at Section 9 below.

2. APPLICABLE PRINCIPLES OF LAW

2.1. The Reasonable Driver

5. I have to apply to Mr Glaze's actions the standard of the reasonable driver. It is important to ensure that the court does not unwittingly replace that test with the standard of the ideal driver. It is also important to ensure, particularly in a case with accident reconstruction experts, that the court is not guided by what is sometimes referred to as '20-20 hindsight'. In *Ahanonu v South East London & Kent Bus Company Limited* [2008] EWCA Civ 274, Laws LJ said:

> "There is sometimes a danger in cases of negligence that the court may evaluate the standard of care owed by the defendant by reference to fine considerations elicited in the leisure of the court room, perhaps with the liberal use of hindsight. The obligation thus constructed can look more like a guarantee of the claimant's safety than a duty to take reasonable care."

6. In that case, the judge at first instance had found the defendant's bus driver negligent, although the damages were reduced by a finding of 50% contributory negligence. The Court of Appeal concluded that the judge's findings could not stand and they held that the bus driver was not negligent at all. In his judgment, Lawrence Collins LJ disagreed with the judge's finding that the bus driver should have carried on keeping an eye in his nearside mirror to look for pedestrians on a particular part of the carriageway at the entrance to Peckham Bus Station. He said that this was a "counsel of perfection and it ignores the realities of the situation". He concluded that an overall evaluation of the circumstances lead inevitably to a finding that there was no negligence. His conclusion of paragraph 20 was in these terms:

> "I accept the submission for the defendants that, taking into account human reaction times for responding, the reality of the situation where the turn takes only seconds is that, given the driver's concentration on the vehicle in front, even if he had by chance looked up and seen the claimant in his nearside mirror after pulling away, it would have been just as the accident was taking place."

7. By the same token, it is also important to have in mind that a car is "potentially a dangerous weapon" (Latham LJ in *Lunt v Khelifa* [2002] EWCA Civ 801) and that those driving cars owe clear duties of care to those around them. Compliance with speed limits and proper awareness of potential hazards can often be critical in such situations.

2.2. Accident Reconstruction Evidence

8. Cases such as the present action often feature accident reconstruction experts. There is no doubt that their expertise can sometimes be of considerable assistance to the court. In the present case, both Dr Searle, who gave evidence on behalf of the claimant, and Mr Jennings, who gave evidence on behalf of the defendant, provided some very helpful evidence on a variety of matters. But in the past, the courts have sometimes had cause to comment upon the accident reconstruction evidence exceeding its proper parameters, when the experts themselves have engaged in what was little more than an advocacy exercise with little or no expertise involved.

9. In *Liddell v Middleton* [1996] P.I.Q.R P36, Stuart Smith LJ said:

> "In such cases the function of the expert is to furnish the judge with the necessary scientific criteria and assistance based upon his special skill and experience not possessed by ordinary laymen to enable the judge to interpret the factual evidence of the marks on the road, the damage or whatever it may be. What he is not entitled to do is to say in effect 'I have considered the statements and/or evidence of the eye-witnesses in this case and I conclude from there evidence that the defendant was

> going at a certain speed, or that he could have seen the plaintiff at a certain point'. These are facts for the trial judge to find based on the evidence that he accepts and such inferences that he draws from the primary facts found. Still less is the expert entitled to say that in his opinion the defendant should have sounded his horn, seen the plaintiff before he did or taken avoiding action and that in taking some action or failing to take some other action, a party was guilty of negligence. These are matters for the court, on which the expert's opinion is wholly irrelevant and therefore inadmissible…. We do not have trial by expert in this country; we have trial by Judge. In my judgment, the expert witnesses contributed nothing to the trial in this case except expense. For the reasons that I have indicated, their evidence was largely if not wholly irrelevant and inadmissible. Counsel on each side at the trial succumbed to the temptation of cross-examining them on their opinions, thereby lengthening and complicating a simple case…. In road traffic accidents it is the exception rather than the rule that expert witnesses are required. "

For the reasons developed in greater detail in Section 5 below, I consider that some, but by no means all of those criticisms are applicable to the accident reconstruction evidence in the present case. However, unlike in *Liddell*, there was one particular matter, namely the issue of reaction times, stopping distances and the like, on which the expert evidence was of some assistance to the court.

10. In my judgment, it is the primary factual evidence which is of the greatest importance in a case of this kind. The expert evidence comprises a useful way in which that factual evidence, and the inferences to be drawn from it, can be tested. It is, however, very important to ensure that the expert evidence is not elevated into a fixed framework or formula, against which the defendant's actions are then to be rigidly judged with a mathematical precision.

2.3. Medical Evidence

11. The overall position with regard to medical expert evidence in the present case has been unsatisfactory. Originally, neither party sought to rely on medical evidence for the purposes of the liability hearing. Then, ten days before the trial, the issue as to whether Mr Stewart was walking or running into the road, was belatedly thought to be a matter on which medical evidence would be of assistance. I granted permission for that evidence to be given. However, the point came to nothing because Professor Redmond (claimant's expert) and Mr Lovell (defendant's expert) agreed that "the nature of the fracture sustained by the claimant does not assist as to whether he was walking or running at the point of impact with the defendant's vehicle".

12. Unhappily, late on the first day of trial, Mr Turner applied for permission to call Professor Redmond, not on that issue, but on a new issue, namely whether the medical evidence was consistent (or otherwise) with Mr Stewart standing or moving in the road at the point of impact. A short report was prepared overnight by Professor Redmond. It was said that this was necessary to counter Dr Searle's view that Mr Stewart was standing at the moment of impact. On behalf of Mr Stewart, Mr Braithwaite objected to this short report being admitted into the evidence so late. I accepted his submission that, if it was allowed in, it may cause irredeemable prejudice to Mr Stewart, because his medical expert, Mr Lovell, was not able to deal with the matter in time. But more significantly, I concluded that the point was, ultimately, a complete red-herring, because there was no cogent evidence from Dr Searle, or indeed anybody else, to suggest that a consideration of the nature of the injuries sustained by Mr Stewart assisted one way or the other in resolving the issue as to whether or not he was standing or moving at the time of the impact.

13. However, there was a potentially more significant matter on which there was also no medical expert evidence. It was said on Mr Stewart's behalf that his head injuries would have been less severe - and may not have occurred at all - if the impact had occurred at a lower speed. That view was advanced orally by Dr Searle, the claimant's accident reconstruction expert (although it was not in his report). It was not something that Mr Jennings felt comfortable about addressing beyond broad generalisations. Mr Turner took the point that, by reference to the recent decision of Cox J in *Stanton v Collinson* [**2009**] **EWHC** 342 (**QB**), the issue of causation in respect of head injuries "can only properly be determined with the assistance of specialist medical evidence". In that case, although the expert engineers had apparently agreed that the injuries would have been less severe if the claimant had been wearing a seatbelt, at paragraph 139 of her judgment Cox J concluded that this was an issue that could only be determined with the assistance of medical evidence.

14. A similar point also arose recently before Griffith Williams J in *Smith v Finch* [**2009**] EWCH 53 (**QB**). In that case, the claimant cyclist had suffered severe head injuries and one of the points taken by the defendant was that he was not

wearing a helmet. In the absence of medical evidence, Griffith Williams J ruled out a finding that the injuries may have been reduced or limited by the wearing of such a helmet. At paragraph 55 of his judgment he said:

> "Both Dr Chinn and Dr Mills made the point that they are not medical doctors and that is a fundamental omission. If a party seeks to persuade a Court that an injury would not have occurred or would not have been so serious, only a medical practitioner can speak to that. There was no evidence to prove that any particular injury and residual disability was or may have been avoided had a helmet been worn."

15. I accept of course that these judges were dealing with issues - the effect of the claimant's failure to wear a seatbelt or to wear a cycling helmet - on which the burden of proof was on the defendant. I also accept that considerations of this sort can be a matter of degree. But I respectfully agree with the general approach taken. Whilst, as a matter of generality, it might be said that the lower the speed of the car on impact, the lower the chances of a severe head injury, it is impossible without expert medical evidence to reach any meaningful conclusion on that issue if the speed of the car was still more than minimal (say, greater than 10mph). In addition, in cases of head-on impact, there is also the pedestrian's own speed to be considered. Accordingly, it does seem to me that medical evidence will usually be required if it is to be argued that, on the facts of a particular case, a car striking the claimant at a lesser speed, but more than, say, 10 mph, would probably not have caused the injuries actually sustained. How that approach fits into the facts of the present case is set out in detail in Section 5 below.

3. BACKGROUND

16. There were only two eye-witnesses to the collision who could give oral evidence: Mr Stewart's friend, Mr Marfleet, who accepted that he was drunk at the time, and the defendant, Mr Glaze. In addition, there was a report produced subsequently by the Accident Investigation Officer, Police Sergeant Lloyd. Both this report (and accompanying statement), and the statement from the reporting officer, Police Constable Hamnett-Steen, were agreed following rulings that I made on the first day of the trial as to the admissibility of specific passages in both documents.

17. The background to the accident was this. On the night of 24/25th September 2004, Mr Stewart and Mr Marfleet had been out drinking. Mr Marfleet estimated that they had each drunk between 5-7 pints. He said that, although they were both drunk, they were not so drunk that they could not walk: his description was that they were "mobile but stumbling." They got the bus up the Sale Road and got off at the edge of Northern Moor. That was the bus stop closest to their homes. For reasons which Mr Marfleet was unable to explain, they then sat down at the bus stop, talking, and did not immediately make their way home.

18. The weather was fine and the road surface was dry. There was street lighting. The road curves as it comes up the slight incline towards Northern Moor. The bus shelter was visible to a motorist at about 95 metres away and remained visible for about 20 metres until it was blocked out for 10 metres or so by a large Yew tree. Thereafter, the bus shelter was visible again to a driver coming up the incline. The speed limit was 30 mph and that speed limit was painted onto the carriageway in the location of a traffic island immediately before the bus stop.

19. The defendant, Mr Glaze, lived in Stockport. He had spent the early part of the evening with his wife and young daughter and had then gone to visit his sister. He was driving back along Sale Road at about 2am on that morning. It was a road that he knew reasonably well; he said that he had driven it regularly. He said that he was aware that there might be "stragglers" in the area at this time of a Friday night/Saturday morning. He said he was aware that, potentially, this was an area where people who had been drinking might be. There was, however, no pub or bar on this stretch of the Sale Road. Mr Glaze rejected the suggestion put to him in cross-examination that the area was 'potentially tricky' or that he should have viewed it as 'a hazard'.

20. Mr Glaze said that, as he came round the corner, and had a view of the bus stop, he saw people at the bus stop but was unable to see more. He could not say whether they were sitting or not. He had his foot of the accelerator and it was hovering over the brake because, he said, he might need to brake in the vicinity of the bus stop. He believed that he was travelling at about 30mph.

4. THE ACCIDENT AND THE AFTERMATH

21. Mr Marfleet and Mr Stewart were sitting at the bus stop talking about money. Mr Marfleet had some of Mr Stewart's money in his bank account. Mr Stewart needed access to the cash but Mr Marfleet could not go to his to his bank the following day because he was going to play rugby. In the end he offered Mr Stewart his cash card in order that Mr Stewart could endeavour to access the cash himself.

22. Mr Marfleet gave Mr Stewart the cash card but it fell onto the floor. Mr Marfleet picked it up and offered it again. All through this exchange, Mr Marfleet accepted that an oncoming motorist would think that the two of them were sitting there waiting for the bus. That is what Mr Glaze said he thought as he approached the bus stop.

23. At this point, in the middle of the conversation, without saying anything or giving any warning of any sort, Mr Stewart got up and walked from the bus stop to the kerb (a distance of about 2 metres) and on into the road. Mr Marfleet agreed in cross-examination that his behaviour was “inexplicable”.

24. Mr Marfleet got up to follow Mr Stewart. He said that Mr Stewart stepped into the road, and that he appeared to look up and see Mr Glaze's car 'at the last minute'. Mr Marfleet was adamant that Mr Stewart did not stop in the road. He said “he [Mr Stewart] just looked up and was hit... he saw the vehicle at the last minute.” Mr Glaze agreed that Mr Stewart had not stopped at any point; indeed, as we shall see, he believed Mr Stewart was running towards him at the point of impact.

25. Mr Glaze's evidence about the accident itself can be found in three places. The first in time comprises his detailed answers to the questions at his police interview on 15th November 2004. The second is his witness statement dated 1st July 2008. And thirdly, of course, there was his oral evidence during the trial itself. Given the fact that this accident happened 4 ½ years ago, I consider that Mr Glaze was right when he said that the most detailed and accurate record of his recollections could be found in that police interview. I set out below some of the critical passages from his interview.

26. His description of the accident was in these terms:

> “I came round the corner just adjacent to Kirscott Road and passed the traffic island in the middle of the road, approaching a bus stop and I could see there were people at the bus stop and as I got a very short distance, it can't have been more than a car length or so from the bus stop, the gentleman came out of the bus stop at sort of 45 degrees straight at my car, still, still now he ran at the car, he did not run across the front of it, he actually ran out at it, I dragged the car as far away to the right as I could, and was in contact with the gentleman then which really, to the best of my recollection would be sort of events at the time…. I was very shaken at the time because the gentleman had run straight at the car there was no, straight flat 90 degree across the road, this guy had run straight at the car and my recollection was that he had run into the car…”

27. As to his speed, Mr Glaze said that he thought he was doing about 30 mph (“just for the fact that I had seen the bus stop and I knew the bus stop is there”.) He reiterated that he was making allowances for “the possibility of drunk people in the area”. As for Mr Stewart and Mr Marfleet, he said that they did not look like they were going to cross the road. He said:

> “The first sight I got of the gentleman… would be in him basically lurching in the road, or running into the road… I can't tell you what the guy was thinking but I know that if I had run into the road at that point I wouldn't have carried on running straight at cars swerving out of your way… and he hit the side of the car, he didn't contact the front of the car, he hit the wing of the car as you can see from the damage on the vehicle… he hit it, from my recollection, with his shoulder down and his leg up which is a very odd way to hit a car, it still freaks me out to see that and how he ran, I mean I know this is a taped interview, but he hit at a 45 degree angle so the car was bearing down on him, he didn't actually bore down on the car, he didn't try to hesitate and run away he was out straight into it, there was no distance to do much with it and the distance he had he closed down, he took half of whatever time I would have had probably had off me anyway, if I had pulled the car as far to the right and slammed the brakes but I had probably already contacted him by the time I slammed the brakes on….”

28. He was asked the sort of time/distance that Mr Stewart had to travel to get to the point of impact from leaving the kerb. Mr Glaze said:

> "I would say…. It can't have been more than about a second, if it really wasn't a blink of the eye or certainly two blinks of the eye if you…. From him leaving the stop…if I was, a car length away when he left the bus stop that would probably be about right, maybe two at the most at the absolute most… it felt to me as if it was the length of my car when he actually left the bus stop because the amount of stopping distance that I actually got and swerving distance I didn't get a lot of chance to get out of his way, or even to slow the car…."

29. In the interview, Mr Glaze was clear that he first saw Mr Stewart when he stepped into the road, and was equally clear that he did not register Mr Stewart until that moment. In cross-examination, he appeared to accept that he had not seen Mr Stewart actually step into the road, but had seen him immediately afterwards. He said in his oral evidence that he became aware of Mr Stewart when, by his reckoning, he was about two car lengths away. He said that Mr Stewart was turned towards the car. He swerved to try and avoid Mr Stewart but Mr Stewart was hit by the nearside front of Mr Glaze's car. At the moment of impact, the experts have calculated that Mr Stewart was just 1.7m into the road.

30. There were two relevant matters of fact on which Mr Marfleet and Mr Glaze disagreed. First, Mr Marfleet's said that Mr Stewart walked straight into the road at a 90 degree angle to the bus stop (i.e. straight into the road). It was Mr Glaze's clear recollection that Mr Stewart was moving towards the car (i.e. crossing the road at an angle). He said that it was at about 45 degrees. That is a matter on which the accident reconstruction expert evidence was of assistance: the experts agreed that the evidence caused by the collision demonstrated beyond doubt that Mr Stewart did indeed walk into the road at an angle and, if it was slightly less than 45 degrees, it was very close to it. The expert evidence therefore bore out what Mr Glaze said, and contradicted Mr Marfleet.

31. The second matter on which Mr Marfleet and Mr Glaze differed was what Mr Stewart was doing at the point of impact. As already noted above, Mr Marfleet said that Mr Stewart did not stop immediately prior to impact, but he was also clear that Mr Stewart was walking and not running when he was hit. It was Mr Glaze's recollection that Mr Stewart was running at the point of impact and that his left leg was someway of the ground – "in the air" - at the moment that the car struck. That is a more complex issue on which the expert evidence, which is examined in Section 5 below, is rather more equivocal.

32. Mr Glaze stopped the car and rang 999. He parked in a side street. Mr Marfleet tended to Mr Stewart. It was immediately clear that Mr Stewart had been seriously hurt and there was a significant injury to the back of his head. There was also a lot of blood. The ambulance service and arrived and Mr Stewart was taken to hospital.

33. Thereafter, the police investigated the circumstances of the accident, which investigation culminated in the report by Police Sergeant Lloyd, to which I have previously referred. Amongst other things, Police Sergeant Lloyd concluded from the forensic evidence that, at the moment of impact, the defendant was travelling at between 24 and 31 mph. He said that the marks suggested that Mr Stewart was stationary at the time of the impact "although this may have been affected by the impact being towards the nearside corner of the vehicle. It could also be as a result of a pedestrian turning around to try to get out of the vehicle's way". In a subsequent statement he also referred to the possibility that Mr Stewart was "marginally in line with the vehicle, directly towards or directly away from it. The damage to the vehicle is inconsistent with movement across the vehicle." He concluded that Mr Stewart had only crossed a short distance into the road before the impact and that there was nothing wrong with the vehicle.

34. As a result of the conclusions in this report, no proceedings were brought against Mr Glaze. P.C. Hamnett-Steen, who was the reporting police officer for this accident, carried out a separate investigation and conducted the interview with Mr Glaze on 15th November 2004. He produced a summary of the accident characteristics, and a recommendation to his superiors. From his recollection, he said, the summary was in these terms: "'Drunken male staggered out in front of BMW brought about by significant intoxication; Recommendation - no further action; pedestrian at fault due to alcohol', or words to that effect."

5. THE EXPERT EVIDENCE

5.1. The Accident Reconstruction Experts Joint Statement

35. Although both Dr Searle and Mr Jennings produced lengthy reports, the focus of their cross-examination was on their Joint Statement, signed on the morning of the trial. The Joint Statement identified a number of matters on which they agreed, and a number of matters on which they disagreed. The important agreements and disagreements are set out below.

36. The experts agreed that:

a) The glass debris was found in line with the northern end of the bus shelter, and the collision occurred between 4 and 6 metres back down the road (answer to question 1);

b) The impact occurred about 1.7 metres from the kerb out into the road (answer to question 2);

c) The probable path of Mr Stewart had been at an outward angle from the kerb in the direction of the car. A straight line path, from the corner of the bus shelter to a point 5 metres back down the road and 1.7 metres from the kerb, would be about 6 metres in length. A 45 degree path from the same point in the bus shelter would correspond with the diagonal distance of 5.5 metres (answer to question 4).

37. In many ways the most useful agreement that they reached was the table in answer to question 7 within the Joint Statement. This table is reproduced below. It uses two alternative distances: 5.5m, which is the distance from the seat to a point about 1.7 m beyond the kerb, measured at a 45 degree angle, and 6m, which is the distance from the seat to the (averaged) likely impact point back down the road. It identifies the various time periods in which the relevant events might have occurred. It will be seen at once that everything happened in a matter of, at most, a very few seconds:

For 5.5 metres

Manner of Travel	Stopping before Impact	Time on Footway	Time in Road	Total Time
Walking reaching 3½ mph	Yes	2s	2½ s	4½ s
	No	1½s	2s (PJ) 2s (PJ)	3½s (PJ) 4s (JS)
Running Reaching 8½ mph after 2 ½ mph	Yes	1½s	1½s	3s
	No	1¼ s	¾ s	2s
Running reaching 11mph after 2 ½ m	Yes	1s	1s	2s
	No	About 1s	About ¾ s	About 1¾ s

For 6 metres

Manner of travel	Stopping before impact	Time on footway	Time in Road	Total time
Walking	Yes	2s (JS)	2½s (JS)	4½s (JS)

reaching 3½ mph				4½s (PJ)
	No	1¾ (PJ)	2s	4 (JS) 3¾ (PJ) s
Running reaching 8½ mph after 2½ m	Yes	1.5 s	1.5s	3s
	No	1 1/3 s	About 0.9s	About 2¼ s
Running reaching 11mph after 2½ mph	Yes	1s	1s	2s
	No	About 1s	About ¾ s	About 1¾ s

38. It is important to stress that this table does not set out a series of fixed durations, depending on which permutation is chosen. Indeed, at different times during the cross-examination and in their closing submissions, both counsel identified ways in which, depending on the changed parameters, these times might be reduced or increased. It is unnecessary to identify each of those variables, which were numerous, and included whether the collision occurred 4 or 6 metres from the bus stop, the precise speed of the car, and so on. It is important to realise that these times are based on averaged and 'best-guess' data, and must therefore be regarded as indicative only.

39. One of the most important variables was the speed of the car. Dr Searle thought that the likely range of speed on impact was between 29 and 35 mph. Mr Jennings thought that the range was between 22 and 40 mph. They identified Mr Glaze's probable speed as 32 mph (Dr Searle) and 31 mph (Mr Jennings). All of the times in the table were based on the averaged figure of 31.5mph. That figure is broadly consistent with the speed at which Mr Glaze thought he was driving. No more accurate identification of Mr Glaze's likely speed is possible.

40. Similarly, there was a broad range of agreement as to 'normal' reaction times. The range was between a minimum of 0.5 seconds to a maximum of in excess of 1 second. 1 second was identified as a normal reaction time to an action occurring entirely unexpectedly, although Mr Jennings said that the reaction time could be longer than 1 second if the motorist was not looking towards the source of the hazard when the incident arose. He agreed that it might be less than 1 second if the observer was pre-alerted to the pending situation. Dr Searle believed that, if the driver was alerted, the reaction time could be reduced to 0.7 seconds and, if the brakes were covered, to 0.5 seconds. Importantly, Dr Searle accepted in cross-examination a point also made by Mr Jennings, that these reaction times “were not universally applicable.”

41. The experts also dealt expressly in the Joint Statement with stopping distances. They said, in answer to question 14:

> “We agree that with a reaction time of 1 second, the total stopping distance from 31.5 mph is 26.7 metres. With the reaction time of 0.5 seconds, the corresponding difference is 19.7 metres, assuming that maximum deceleration is achieved. With swerving, that must extend to 23.5 metres”.

42. There were a variety of matters which the experts did not agree. These included:

> a) Whether or not Mr Stewart was stationary at the moment of impact. Dr Searle believed that he was; Mr Jennings said there was nothing by reference to the damage to the car to suggest that he was not moving.
>
> b) Although the experts were agreed that there was a lack of progression of marks across the car, they disagreed as to whether this meant that Mr Stewart was stationary or, as Mr Jennings believed, that it was more likely than not that Mr Stewart was moving towards the car at the moment of impact.

> c) Dr Searle believed that the 1994 government leaflet, 'Speed Kills' demonstrated that a speed of 20 mph was likely to lead to much less significant injury. Mr Jennings did not accept that the leaflet was relevant and said that it had been quickly withdrawn by the Department of Transport after concerns had been expressed about the validity of its data. It was, in any event, 15 years old.

43. In the answers to question 15 in the Joint Statement, the real dispute between the two experts became apparent. It appeared that Dr Searle believed that Mr Glaze should have braked as soon as, or just after, the bus stop came into view after the Yew Tree and that, if had he done so, the accident would have been avoided. In the Joint Statement that point is put in these terms:

> “A motorist does not need 65 metres, as Mr Jennings appears to suggest, to stop from 31 or 32 mph.”

Mr Jennings agreed with the maths but disputed the premise of the question. He said: “If Mr Glaze reacted as soon as he could see the bus stop and the people at it, as presupposed by the question, he could have stopped well before reaching the impact point, if he immediately saw a need to do so.”

44. Thus, the point between the experts was really a matter for the court, namely: in applying the standard of the reasonable driver, when should Mr Glaze have applied the brakes? The point is summarized on the last page of the Joint Statement:

> “In Mr Jennings opinion, if the pedestrian walked into the roadway, or ran in a moderate way then stopped, before the collision, then a timely and hard braking application by Mr Glaze would have enabled him to stop before impact, if he started to react before Mr Stewart started to move. However, if Mr Glaze started to perceive a need to brake after Mr Stewart had started to move, but before he had entered the roadway, and if Mr Stewart was running, then the collision would have been unavoidable by braking alone.”

5.2. The Accident Reconstruction Experts' Oral Evidence

a) Dr Searle

45. Although both experts were vigorously cross-examined, I was not sure that their oral evidence took the case very much further forward from the opinions expressed in the Joint Statement. Nor did it do anything other than emphasise the overriding significance of the point noted in the preceding paragraphs. In particular:

a) In his examination in chief, Dr Searle expanded on a point briefly noted within the Joint Statement, which was itself only signed on the first morning of the trial. This was concerned with time and distance. Dr Searle said that the question was not whether the car could stop in time but whether it could stop in the distance. He used a traffic light as an illustration, explaining that the amber light comes up 2 seconds before the red. He said that it was not difficult to stop within the distance, but the question was whether it was difficult to stop in 3 seconds. He said that it was the same with a pedestrian in the road: 'It does not matter if you took 3 seconds to stop. What matters was the distance in which you stopped'. In cross-examination it was pointed out to him that this was a different situation, because in the present case Mr Stewart was moving towards the claimant, unlike a traffic light which was stationary. Dr Searle appeared to accept this difference, but said that if Mr Glaze had braked, it would have taken him longer to reach Mr Stewart and in that time Mr Stewart might have cleared out of his path all together. He reiterated that what mattered is whether Mr Glaze “could have stopped”.

46. In cross-examination, Dr Searle accepted that his report and his approach to the case were based on the assumption that Mr Stewart was standing at the moment of impact. It was pointed out to him that he had on a number of other occasions expressed the view that Mr Stewart was in fact walking rather than standing still. Dr Searle attempted to say that there was little difference between walking and standing still but it seems to me that, given the different times (depending on which I find) shown in the table at paragraph 38 above, that was plainly incorrect.

47. There was a good deal of debate about whether the injuries to Mr Stewart's right leg, and the lack of injury to his left leg, as well as the nature of the damage done to the car, assisted on the issue as to whether Mr Stewart was running, walking, or stationary. It seemed clear from that that there was agreement that Mr Stewart's right leg was load bearing at the time of the collision (which was, in truth, consistent with all three options), but beyond that, it seems to me that this evidence was inconclusive.

48. Much of the rest of Dr Searle's evidence was taken up with his contention that, if the collision had occurred at a lower speed, say 20 mph, it was very probable that the catastrophic injuries would have been avoided. Beyond some general statistics taken from the 'Speed Kills' booklet, Dr Searle was unable to be specific as to the medical or statistical basis of this opinion. He said that he did not know that the booklet had been withdrawn. He was adamant that the nature and extent of Mr Stewart's particular injuries in this case were irrelevant to this question. I am bound to say that, in this passage of his evidence at least, I considered that Dr Searle was advocating a line of argument which had little or no connection with his engineering expertise as an accident reconstruction expert.

b) Mr Jennings

49. On the whole, I preferred the evidence of Mr Jennings. He refused to engage in speculation or generalised theorising, and was rather more thoughtful as to the circumstances of this particular accident. He was quite prepared to make concessions where they were due, which had not been a feature of Dr Searle's approach.

50. Mr Jennings accepted in cross-examination that if Mr Glaze had seen Mr Stewart standing on the kerb in the act of stepping off, he could probably have stopped before impact. But he disputed that Mr Glaze should have stopped, pointing out that this would only have been a possibility if Mr Glaze had been looking at Mr Stewart at the precise moment he stepped off the kerb. He said that if he had not been looking at that particular spot at that particular moment, then the average reaction time would have been longer than the half a second or so alleged by Dr Searle, and would instead have been in the order of one second or so. He reiterated that reaction times were not an exact science so that, whilst he accepted that the 0.5 second reaction time might have been possible, he emphasised that the actual reaction time would have depended on a variety of factors.

51. Various different permutations were put to Mr Jennings. He accepted that, if the car had been travelling at 31 mph, and if the brakes had been applied when it was between 28-42 metres away, the car could have stopped before the collision. But he pointed out that, if the distance had been 28 metres, the first 14 metres was reaction time, so that there was only 14 metres left in which to stop. He said that it was unlikely that the collision could then have been avoided (although he accepted that it might have been possible) but he also stressed that it certainly would not have been possible if, as he put it, 'the pedestrian forecloses the distance', namely by walking or running towards the car. Again, Mr Jennings reiterated that stopping within the distance depended on Mr Glaze seeing Mr Stewart on and stepping off from the kerb and braking immediately; if, as Mr Jennings maintained, the first second was reaction time, then he said that, in his view, the collision could not have been avoided.

52. Mr Jennings was also cross-examined about what might have happened if the impact speed had been less. It was put to him that the chance of significant brain injury would have been small if the speed had been about 5 mph. Mr Jennings rejected the use of the word 'small': he said that, beyond the general statement that the chances of significant brain injury would have been lower if the impact had occurred at lesser speed, he was not qualified to comment further. He reiterated that what actually caused the brain injury was usually the closing speed: if the car was going more slowly then that of course reduced the closing speed but, in a case where the pedestrian was moving towards the car, the closing speed was increased.

53. There was also some cross-examination of Mr Jennings dealing with the damage to the car and the extent to which that was consistent with running/walking/standing still. For the same reasons as noted above, I did not consider that this evidence advanced the case very far: it seemed to me that there were a number of anomalies with the physical evidence of damage to the car, whichever theory was postulated.

6. FINDINGS OF FACT

6.1. Mr Stewart's Walk To The Kerb

54. I find that Mr Stewart suddenly got up in the middle of his conversation with Mr Marfleet about the credit card and, without any warning, began to walk towards the road. Mr Marfleet confirmed that Mr Stewart walked to the road. There was no evidence, either factual or forensic, that suggested that Mr Stewart had run to the kerb.

55. I also find that there was no reason for Mr Glaze to react to Mr Stewart's walk to the kerb. Mr Stewart was a pedestrian at a bus stop. The obvious inference, as Mr Marfleet accepted, was that they were both waiting for a bus. Whilst he remained on the pavement, Mr Stewart was not a hazard or even a potential hazard for Mr Glaze. His walk to the kerb was an entirely ordinary event (he could have been looking to see if a bus was coming) and it cannot now, despite the impending tragedy, be invested with any greater significance. Accordingly, I discount as immaterial the 2 seconds which the experts have agreed it would have taken Mr Stewart to walk from the corner of the bus stop to the kerb.

56. This is obviously an important finding in the context of the case as a whole. In the context of the issue at paragraphs 44 and 45 above, it means that I conclude, in accordance with Mr Jennings' views, that Mr Glaze had no reason to brake at any moment before Mr Stewart stepped off the kerb.

6.2 Mr Stewart's Angle Into The Road

57. Contrary to Mr Marfleet's recollection, I find that it was much more likely than not that Mr Stewart moved into the road at an approximate 45 degree angle (i.e. diagonally). The experts agreed that the damage to the car was only consistent with Mr Stewart moving into the road at an angle. Furthermore, that is borne out by Mr Glaze's recollection of the collision.

6.3 Walking Or Running?

58. In many ways, the principal difference between Mr Glaze and Mr Marfleet was as to whether Mr Stewart was walking or running into the road and towards the car. I have concluded that I should prefer Mr Glaze's evidence, to the effect that Mr Stewart was running. There are three principal reasons for that, as follows:

> a) First Mr Marfleet was, by his own admission, drunk, and was therefore an inherently more unreliable witness than Mr.Glaze.
>
> b) Secondly, although it was a wholly irrational thing to do, Mr Stewart was clearly drunk enough to act in such a way: his conduct was, even according to Mr Marfleet, “inexplicable”.
>
> c) Thirdly, and most importantly, Mr Glaze's evidence on this aspect of the collision was compelling. It had been the thing that had most shocked him at the time (see paragraph 27 above, where he said that this aspect of the accident “still freaks me out”.

59. It has been demonstrated that Mr Glaze was right about a number of other matters, such as his speed up the Sale Road, and the angle at which he was being approached by Mr Stewart. Therefore, unless the expert evidence pointed to the contrary, there was no reason to believe that Mr Glaze was not also right about Mr Stewart running into the road and towards the car.

60. The forensic evidence was inconclusive. The signs of damage to the car did not suggest that Mr Stewart had progressed across the front of the BMW, which he might have done if he had been running full pelt into the side of the car. On the other hand, as Mr Jennings noted, the signs of damage were consistent with Mr Stewart, at the point of impact, being roughly head-on to the car. And that was exactly as Mr Glaze had described him: at paragraph 26 above, I note him saying, “he did not run across the front of it, he actually ran out at it.”

61. Accordingly, I find that on balance of probabilities, Mr Glaze was right and that Mr Stewart was running when he was in the road. I consider that the signs of damage to the car are consistent with that, particularly if one considers that, at the

point of impact, Mr Stewart may have been turned head on to the car. However, it also seems to me that it would have been quite impossible for Mr Stewart to reach the speed of 11mph, the “sprinting” speed identified as the third option in the table set out in paragraph 30 above. In my judgment, Mr Stewart's pace was greater than walking pace but certainly not more – and perhaps a little less - than the 8 ½ mph identified as the middle option in the table replicated at paragraph 38 above.

6.4 Was Mr Stewart Moving Or Stationary At The Point Of Impact?

62. For the avoidance of doubt, I find that Mr Stewart was not standing still when he was hit by Mr Glaze's car. My principal reason for that finding is this: it was a matter on which both of the two principal witnesses of fact were agreed. Mr Marfleet was adamant that Mr Stewart did not stop, as was Mr Glaze. In addition, there was no forensic evidence which suggested that Mr Stewart had stopped. The highest Dr Searle can put it was that, in his experience, pedestrians in Mr Stewart's position did often stop the moment before impact. However, given the amount Mr Stewart had had to drink, and Mr Marfleet's clear recollection that Mr Stewart did not appear to notice the car until it was almost on him, I find it more likely than not that Mr Stewart was continuing to run when he was struck. However, I also find that, in accordance with the evidence of Mr Glaze and Mr Jennings, the probability is that just before impact, Mr Stewart was turned so that he was head-on to the car.

6.5 The Speed Of The Vehicle

63. The experts have agreed that Mr Glaze was driving at about 31mph at the time of the collision, although this was a compromise figure based on a range of possible speeds, from below the speed limit to a fair bit above it. I find that 31mph was the approximate speed that Mr Glaze was driving at as he came round the corner towards Northern Moor, and up to the moment that he saw Mr Stewart in the road. In other words, Mr Glaze maintained roughly the same speed at all times. I note that the speed agreed by the experts was broadly consistent both with the speed with which Mr Glaze believed he was driving at, when interviewed in November 2004, and the speed calculated by Police Sergeant Lloyd.

64. For these reasons, I accept Mr Turner's closing submission, on behalf of Mr Glaze, that there is nothing to say that Mr Glaze was speeding at the time of the accident.

65. At no time until immediately prior to the impact did Mr Glaze use his brakes. Mr Glaze did not say that he used the brake at any point until immediately prior to impact. There were no skid marks, although Mr Jennings said that he would not have expected to see any.

6.5 Mr Glaze's Reactions

66. On the balance of probabilities, I conclude that Mr Glaze saw Mr Stewart just after he had stepped off the kerb. Although in his interview he referred to seeing him step off the kerb, in his cross-examination he expressly accepted that he did not see him in the act of stepping off and I think, given the very short periods of time and the very small distances involved, it is more likely than not that Mr Glaze saw Mr Stewart just after he had stepped off the kerb.

67. I turn to the agreed table at paragraph 38 above. I find that the relevant table was the one for 6 metres, the agreed distance between the seat and the (averaged) point of impact. By reference to that table, if – as I have found - Mr Stewart was running, then there was a period of just 0.9 seconds between Mr Stewart stepping off the kerb and being struck by Mr Glaze. It may be necessary to increase that period marginally to reflect any doubt that he could have been running at as much as 8.5 mph and my finding that he did not run to the kerb. But even then, on these agreed times, Mr Glaze had a maximum of just over 1 second to avoid hitting Mr Stewart. For the reasons noted above, any time before stepping of the kerb I consider to be irrelevant for this purpose.

68. Even if Mr Stewart had not been running, but walking, at 6 metres Mr Stewart's time in the road was not more than about 2 seconds. Again it is important to stress that these times are indicative only.

7. FINDINGS OF LIABILITY

7.1. The Claimant's Case

69. On behalf of Mr Stewart, the case was carefully opened by Mr Braithwaite on the basis that, when the hazard became or should have become clear, Mr Glaze was far enough away 'either to stop or to slow down very significantly'. The fact that the case was put on this alternative basis demonstrated that, even at the outset, the claimant's team realistically recognised that, even on their own case, it might be difficult to demonstrate that Mrs Glaze should have stopped completely. That explained the need for the alternative case, to the effect that Mr Glaze may not have been negligent to collide with Mr Stewart, but should have done so at a lower speed.

70. Accordingly, my findings on liability are separated into two parts. I deal first in Section 7.2 below with the claimant's case that Mr Glaze should have stopped completely, thereby avoiding the accident altogether, before going on the deal with the alternative case that the collision should have occurred at a lower speed.

7.2. Primary Conclusion

71. In my judgment, Mr Glaze was not negligent, and he was not legally liable for the accident. The reasons for that conclusion are set out below.

a) Practical Realities

72. It is important to bear in mind the principles noted in Section 2.1 above and, in particular, the emphasis that the court must have regard to the practical realities, rather than precise mathematical calculations, when considering the standard of the reasonable driver. The distances involved were extremely small. The distance between the seat at the bus stop and the point of impact was about 6 metres, and the distance between the kerb and the point of impact was just 1.7 metres. The former is a distance which the experts agreed was capable of being traversed by an adult male in 4 or 5 strides; the latter is no more than 2 strides. The time periods noted in the table at paragraph 38 above also demonstrate the exceptionally fine margins with which this case is concerned.

73. Mr Glaze was driving at about the speed limit. On his own evidence, he was driving carefully, and there is nothing to indicate otherwise. In particular, there was nothing to say that he had been distracted by anything at all. He had no reason to take any particular note of Mr Stewart until he stepped off the kerb. From then on, everything happened in a split second. It would, in my judgment, be wholly unreasonable on the evidence available to me to conclude that, immediately prior to the conclusion, Mr Glaze suddenly stopped being careful.

74. In this regard, there was a telling exchange during the cross-examination of Mr Glaze. He was asked why he had not seen Mr Stewart step out into the road at the precise moment that it happened, so that he could give himself the opportunity of braking in time. Mr Glaze said simply: “there is more than one thing you are looking at when you are driving. There are things like oncoming traffic. My focus was not on him at that specific time”. That was also the principal point made, albeit in a slightly different way, by Mr Jennings: that it was unreasonable to suggest that Mr Glaze only had to look out for Mr Stewart.

75. It seems to me that this evidence highlighted the fundamental weakness in the claimant's case. For the claim to have any prospect of success at all, it required Mr Glaze to see Mr Stewart the precise moment that he stepped off the kerb and to start taking defensive manoeuvres at that point, and not half a second or a second later. The case hinged on the proposition that Mr Glaze should have been looking out for Mr Stewart's inexplicable charge into the road. In all the circumstances, I regard that as untenable. I do not consider that a reasonable driver would necessarily have seen Mr Stewart at that precise split-second.

76. Of course, I accept that it was possible that Mr Glaze might have seen Mr Stewart at that particular split-second. That is the tragedy of this case. But the court must be careful not to elevate the possible into the standard of the reasonable driver. For the reasons which I have noted, the evidence demonstrates that Mr Glaze did not fall below that standard.

b) By Reference To The Table Times

77. If it is appropriate to approach the issue of negligence by reference to the table in paragraph 38 above, then for the reasons set out above, the most relevant figure is the 0.9 seconds, (time in road if running, for 6 metres). Even if that is marginally increased, to reflect the lower running speed that I consider is likely, it will be seen that this is still only slightly more than the relevant reaction time of 1 second identified by Mr Jennings. In other words, Mr Glaze only had time to start to react (which he did) and insufficient time to avoid the collision with Mr Stewart.

78. Of course, that conclusion is entirely consistent with Mr Glaze's evidence as to what actually happened. He saw Mr Stewart in the road only a couple of cars' length away. He swerved but was unable to stop the car hitting Mr Stewart at about the speed that he had been travelling. Mr Glaze was therefore right to say that it all happened very quickly: on these figures, it all happened in the space of about 1 second or so.

79. Even if I was wrong about Mr Stewart running, so that Mr Glaze had slightly longer in which to react, the margins that become relevant remain fractions of a second. It cannot seriously be suggested that, if Mr Glaze's reaction time had been 1 second rather than the 0.5 second contended for by Dr Searle, that he was negligent for failing to react ½ second earlier.

80. The high water mark of the claimant's case, as skilfully presented by Mr Braithwaite, was that, by reference to the 2 second period (identified as the time in the road way if Mr Stewart was walking), there might have been just about long enough for Mr Glaze to brake and avoid the collision. But there are, so it seems to me, a number of difficulties with that theory. First, it presupposes that, contrary to my finding and Mr Glaze's unequivocal evidence, Mr Stewart was walking rather than running towards the car when the impact occurred. Secondly, it presupposes that Mr Glaze was negligent because he did not slam his brakes on immediately Mr Stewart went out into the road. In other words it presupposes Mr Glaze seeing Mr Stewart and reacting at the very moment – the very split second - he stepped off the kerb. Mr Jennings did not accept that that was a reasonable assumption to make, and I accept that part of his evidence.

81. Thirdly, and perhaps most important of all, it presupposes the precise accuracy of all of these timings. For the reasons that I have already given, that is not an assumption that I can make. These timings are indicative only, because of the sheer volume of variables involved. Obviously, that can work both ways. But on this point, it would be wrong for the court to conclude that, because a car doing 31.5 mph might have been able to come to a halt in about 2 seconds, Mr Glaze must have been negligent because it did not.

82. Finally on this point, I should say this. Throughout the presentation of the claimant's case, and in particular by reference to the table times, I felt that there was an elision between what Mr Glaze could have done and what he should have done. The mere fact that, depending on the permutations and adjustments adopted, Mr Glaze might have been able to stop does not mean that he should have stopped and was negligent because he did not do so. The claimant's case depended, as it had to, on the unspoken assumption that Mr Glaze should have been watching Mr Stewart as he walked towards the kerb and should have been watching him as he stepped off the kerb, essentially excluding all other considerations. In my judgement that is not a realistic scenario; it is not applying the standard of the reasonable driver; and it elevates what might have happened into an assumption of what should have happened.

c) Summary

83. I am mindful of the principles set out in Section 2.1 above. There can be no doubt that, in a case of this sort, an alleged breach of duty covering a period of about 1 second or so can fairly be described as “a fine consideration elicited in the leisure of the court room, perhaps with the liberal use of hindsight”: see *Ahanonu*. It is unrealistic to argue that, merely because Mr Glaze failed to avoid Mr Stewart for the 1 second or so that he might have had prior to impact, he can be liable in negligence.

84. It is trite but true that a pedestrian stepping out without warning into the path of a car is every driver's worst nightmare. Of course, drivers must keep to the speed limits and maintain an all-round lookout, but it is quite clear that Mr Glaze was doing both of those things: indeed, it has not really been suggested to the contrary. His reactions when he saw Mr Stewart were entirely adequate, but, because of Mr Stewart's inexplicable action in running into the road and at the car, he was unable to prevent the collision. For all the reasons set out above, I conclude that Mr Glaze cannot be criticised for failing to prevent his car from colliding with Mr Stewart in the road. I therefore dismiss the claim against Mr Glaze.

7.3. Secondary Conclusion

85. Now let us assume that I am wrong, and that Mr Glaze could have slowed down before he struck Mr Stewart. For the reasons explained above, given the necessary time that it would have taken to spot Mr Stewart in the road, the reaction time and then the braking, I consider that Mr Glaze would have had no more than about 1 second actually to brake and would therefore still have struck Mr Stewart. I asked Mr Jennings what speed the vehicle would have been doing if the brakes had been on for 1 second and he said that he thought that it would have been about 13 ½ mph. That seems consistent with the other timings and distances agreed in the Joint Statement.

86. In addition to that, there was the point which Mr Jennings stressed on a number of occasions, namely the speed at which Mr Stewart was moving towards Mr Glaze. Although of course in a case like this it is the car colliding with the pedestrian which causes the majority of the injury and damage, that injury and damage can be exacerbated, perhaps significantly, if the pedestrian is moving towards the car in the opposite direction. I have found that Mr Stewart was running, albeit probably at slightly less than 8 ½ mph. That is therefore a not insignificant factor in the light of Mr Stewart's injuries.

87. The question then becomes whether, on the balance of probabilities, if Mr Glaze had been travelling at about 13 ½ mph in one direction, and Mr Stewart had been travelling at just under 8.5 mph in roughly the opposite direction, Mr Stewart's injuries would have been any different.

88. The difficulty with that question is that there was no cogent evidence that might have assisted in formulating an answer. I was not helped by the generalisations from Dr Searle, an engineer. Indeed, for the reasons noted in Section 2.3 above, in the absence of any medical evidence, I was unable to reach a conclusion on that element of the secondary case. Clearly, there was a possibility that the injuries might have been less severe. But there was nothing to indicate any probability either way.

89. The documentary records of Mr Stewart's injuries identify two separate serious injuries to his head. I am unable to say, if Mr Glaze had been driving at a speed of say 13 ½ mph, and collided with Mr Stewart running towards him, that these injuries would not have occurred. Any other conclusion would amount merely to speculation without medical evidence, of the kind which the judgments in both *Stanton* and *Smith* warn against. Mr Jennings was careful to avoid becoming involving in that sort of speculation. Dr Searle was not, but his cross-examination revealed that he only had a hazy idea of the injuries that Mr Stewart had actually suffered. I felt that there was some force in Mr Turner's closing submissions to the effect that, on this part of the secondary case, Dr Searle had become an advocate rather than an expert.

90. For these reasons, therefore, I do not consider that any secondary case has been made out. Thus, even if my primary conclusions are wrong, such that Mr Glaze could have slowed down to a speed of, say, 13 ½ mph before impact, there was nothing to suggest that, even on the balance of probabilities, Mr Stewart (who I have found was running towards the car) would have suffered any different or lesser injuries.

8. CONTRIBUTORY NEGLIGENCE

91. Although, in view of my conclusions set out above, it is strictly unnecessary for me to consider questions of contributory negligence, in deference to counsel's submissions, I summarize briefly my conclusions if, contrary to my findings, Mr Glaze had been negligent.

92. The starting point must be, as noted above, that the driver behind the wheel of a car is in charge of a potentially dangerous weapon and that, in an ordinary case, any calculation of contributory negligence must always favour the pedestrian over the driver. Following the decision of the Court of Appeal in *Eagle v Chambers* [2003] EWCA Civ 1107, it is not uncommon for the starting-point for the assessment of contribution to be 60/40 against the driver.

93. As Hale LJ (as she then was) made plain in *Eagle*, "it is rare indeed for a pedestrian to be found more responsible than a driver unless the pedestrian has suddenly moved into the path of an oncoming vehicle." But that is exactly what happened here. Moreover, this is not a case of a young claimant or a claimant acting inadvertently. This is a case where the collision was the direct result of the claimant's deliberate actions. It was Mr Stewart who was drunk and acting inexplicably; it was Mr Stewart who got up from his seat and, without a word of explanation, walked to the kerb and ran into the road. He acted in a wholly unsafe and irrational way. On the other hand, even on the assumption of negligence, Mr Glaze fell below the relevant standard only in the last one or two seconds before the accident.

94. Accordingly, I conclude that the balance of responsibility between the parties is far from equal. The collision was the principal responsibility of Mr Stewart, and that would have had to have been reflected in the percentages for contributory negligence. In the light of all the evidence before me, I would have concluded that, had it been relevant, the proper apportionment of responsibility was 25% to Mr Glaze, and 75% to Mr Stewart.

9. CONCLUSIONS

95. For the reasons set out in Sections 6 and 7 above, I reject the claim in negligence against Mr Glaze. On the findings of fact that I have made, I do not consider that he fell below the standard of the reasonable driver. I consider that, given Mr Stewart's inexplicable conduct, the collision was all but inevitable. There is no evidence that, if the collision had occurred at a lower but not a minimal speed, Mr Stewart would not have suffered the injuries that he did.

96. For the reasons set out in Section 8 above, if I was wrong about that and there was a liability on the part of Mr Glaze, then there was overwhelming evidence of contributory negligence on the part of Mr Stewart, such that the split would be 25/75 in favour of Mr Glaze.

97. I am grateful to both leading counsel for their helpful submissions. I will deal with all subsequent matters, such as costs, at the handing down of this Judgment.