[2019] All ER (D) 87 (May)

Podesta v Akhtar and another

[2019] EWHC 1245 (QB)

Queen's Bench Division

Judge Melissa Clarke (sitting as a judge of the High Court)

16 May 2019

Personal injuries – Road traffic accident – Contributory negligence

Abstract

Personal injuries – Road traffic accident. The first defendant had failed to exercise the standard of care to be expected of a reasonable driver, so that he had been negligent when he had struck the claimant with his car. The Queen's Bench Division further held that the fair and equitable share of the claimant's blame was 30%, as there had been no sudden movement into the path of an oncoming vehicle.

Digest

The judgment is available at: [2019] EWHC 1245 (QB)

Background

The present personal injury claim arose out of a road traffic accident in the early hours of the morning of 19 December 2015 in which the claimant pedestrian was struck by a car driven by the first defendant.

Claim allowed.

Issues and decisions

(1) Whether the first defendant had been negligent.

On the balance of probability, the first defendant had failed to exercise the standard of care to be expected of a reasonable driver, so that he had been negligent. That was because the claimant had been there to be seen by him, standing on a

traffic island, from the moment that he had an unobstructed view of the traffic island. He should have seen her and he had not. If the first defendant had seen the claimant, as the reasonable driver would have seen her, he should have identified her as a potential hazard at least five seconds before the impact (see [66]-[68] of the judgment).

The reasonable driver would consider that a pedestrian standing in a safe island in the centre of a road late at night would be there in order to complete crossing the road and would have anticipated the possibility that the pedestrian might walk into the road (see [69] of the judgment).

Accordingly, the first defendant should have seen the claimant, identified her as a potential hazard and anticipated the possibility of her stepping into the carriageway. If he had, he would have been ready to react to her doing just that at three seconds before the impact. The first defendant had breached his duty in failing to see the claimant, in failing to identify her as a potential hazard, in failing to keep a proper look out for her movement into the carriageway and for failing to avoid colliding with her. Those breaches had been causative of the accident (see [70] of the judgment)

Stewart v Glaze [2009] All ER (D) 112 (Apr) distinguished.

(2) Whether the claimant had been contributorily negligent.

The claimant had simply attempted to complete an ordinary crossing of the road, albeit without noticing the first defendant's car, which she should have done. At the time she had done so, she had been an identifiable hazard. The claimant had had some degree of intoxication and impaired judgment, but the defendants fairly accepted that there was no evidence that she had been staggering around or had had any difficulty in walking. There had been no sudden movement into the path of an oncoming vehicle (see [79] of the judgment).

The key factors were the length of time that the claimant had been standing on the traffic island and available to be seen, but not seen, by the first defendant; that the first defendant accepted the road had been well-lit and that he had been aware at 3am in that part of town just before Christmas there were likely to be pedestrians the worse for wear; that although the claimant had been drinking and had undoubtedly been under the influence of alcohol, there was no evidence that she had been excessively intoxicated in a way that made her unduly careless or blameworthy; and that although she had stepped into the nearside lane in which he had been driving, that was only after she had crossed 1.3m of hatchings after stepping off the kerb. Still the first defendant had not seen her until she had collided with his car (see [80] of the judgment).

Accordingly, the claimant's share of the blame a little higher than she submitted. The fair and equitable share of her blame was 30% (see [81] of the judgment).

Stewart v Glaze [2009] All ER (D) 112 (Apr) distinguished; *Eagle (by her litigation friend) v Chambers* [2003] All ER (D) 411 (Jul) considered.

Charles Woodhouse (instructed by Irwin Mitchell) for the claimant.

Niall Maclean (instructed by DWF LLP) for the defendants.

Karina Weller - Solicitor (NSW) (non-practising).