

Chan v Peters: The Principles Governing Liability in Road Traffic Accident Cases

Posted On: 29/07/2021

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In the High Court case of *Chan v (1) Peters (2) Advantage Insurance Company Ltd* [2021] EWHC 2004 (QB), Cavanagh J took the opportunity to carefully distil the main principles at play when considering liability and contributory negligence in a road traffic accident case.

The case concerned a 17-year-old Claimant who was struck by a car as he was crossing a road near his school. Due to his significant injuries and inability to recall the incident, the Claimant was unable to give evidence, but other eyewitnesses were called. CCTV from a nearby bus was obtained, enhanced and analysed; collision reconstruction experts were called to give oral evidence at trial; and vehicle examiners and the police took part in the proceedings.

Whilst recognising that it was a 'back to basics' discussion, the Judge comprehensively set out the legal principles to be applied to a case such as this:

1. The Defendant will be liable in negligence if she failed to attain the standard of a reasonable careful driver and if the accident was caused as a result.
2. The burden of proof rests with the Claimant.
3. Stating the obvious, it is for the Claimant to establish on the balance of probabilities that the Defendant was negligent.
4. The standard of care is that of the reasonably careful driver, armed with common sense and experience of the way pedestrians and particularly in this case, children, are likely to behave: *Moore v Pointer* [1975] RTR.
5. If a real risk of a danger emerging would have been reasonably apparent to such a driver, then reasonable precautions must be taken.
6. If the danger was no more than a mere possibility, which would not have occurred to such a driver, then there is no obligation to take extraordinary precautions: *Foskett v Mistry* [1984] 1 RTR 1.
7. The Defendant is not to be judged by the standards of an ideal driver, nor with the benefit of "20/20 hindsight": *Stewart v Glaze* [2009] EWHC 704 (QB).
8. Drivers must always bear in mind that a motorcar is potentially a dangerous weapon: *Lunt v Khelifa* [2002] EWCA Civ 801.
9. Drivers are taken to know the principles of the Highway Code.
10. In the decision of the Court of Appeal in *Lambert v Clayton* [2009] EWCA Civ 237, Smith LJ cautioned trial judges against making findings of fact of unwarranted precision when that was not justified by the evidence. To do so might be turning "guesstimates" into secure findings of fact, which could easily lead to an unjust result either way. At [39], Smith LJ said this: "If there are inherent uncertainties about the facts, as there were here, it is dangerous to make precise findings. This may well mean that the party who bears the burden of proof is in difficulties. But that is one of the purposes behind a burden of proof; that if the case cannot be demonstrated on the balance of probabilities, it will fail."
11. Trial judges must also exercise caution in relation to the evidence of accident reconstruction experts. In *Stewart v Glaze (ante)* Coulson J warned of the danger of: (i) such experts giving opinions on matters beyond their expertise and acting as advocates seeking to usurp the role of the judge; and (ii) elevating their admissible evidence about reaction times, stopping distances and the like into a "fixed framework or formula, against which the defendant's actions are then to be rigidly judged with a mathematical precision".
12. The assessment of whether the Defendant's driving fell below the requisite standard cannot be conducted in a vacuum; it must be done by reference to the actual circumstances of the actual collision against which the

standard is to be judged: per May LJ in *Sam v Atkins* [2005] EWCA Civ 1452.

13. As for contributory fault, in *Jackson v Murray* [2015] UKSC 5, when giving the judgment of the majority of the Supreme Court, Lord Reed said at [28] that "*the apportionment of responsibility is inevitably a somewhat rough and ready exercise.*"
14. The age of a Claimant is not in itself a relevant factor for the determination of the extent of contributory negligence.

Whilst regretting the effect his decision would have on the Claimant, the Judge found the Defendant was not negligent in her driving in the circumstances of this case and the claim was therefore dismissed.

Comment

Whilst bread and butter for most civil practitioners, the principles of negligence in road traffic accident cases have developed through the common law. The summary and cases cited in this decision are helpful reminders of those fundamental principles.

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