

SUPREME COURT OF QUEENSLAND

CITATION: *James v Maxwell & Anor* [2015] QSC 149

PARTIES: Mark David James
(Plaintiff)
v
Edwin Stanford Maxwell
(First Defendant)
And
AAI Limited
(Second Defendant)

FILE NO/S: SC No 658 of 2014

DIVISION: Trial

PROCEEDING: Trial

ORIGINATING COURT: Supreme Court at Mackay

DELIVERED EX-TEMPORE ON: 14 April 2015

DELIVERED AT: Mackay

HEARING DATE: 13 & 14 April 2015

JUDGE: Henry J

ORDER:

1. Judgment for the Plaintiff in the sum of \$615,000.00; and
2. Unless otherwise agreed by the parties, the Defendants pay the Plaintiffs' costs to be assessed on the indemnity basis.

CATCHWORDS: TORTS – NEGLIGENCE – ROAD ACCIDENT CASES – LIABILITY OF DRIVERS OF VEHICLES – GENERALLY – where the plaintiff seeks damages flowing from serious injuries occasioned to his right leg in a traffic collision between the motorcycle he was riding and a Toyota Land Cruiser utility driven by the first defendant – where the collision occurred on a bend on a dirt road – where the first defendant was negligent - whether the plaintiff was contributorily negligent.

COUNSEL: G Crow QC for the plaintiff
R Green for the defendants

SOLICITORS: Macrossan Amiet Solicitors for the plaintiff
 Jensen McConaghy Solicitors for the defendants

- [1] HIS HONOUR: The plaintiff seeks damages flowing from serious injuries occasioned to his right leg in a traffic collision between the motorcycle he was riding and a Toyota Land Cruiser utility driven by the first defendant, Mr Maxwell. Quantum is agreed inclusive of interest at \$615,000. Liability is in issue.
- [2] Many of the facts in this relatively simple case are not in dispute.
- [3] The collision occurred at about 5 pm on Sunday 13 November 2011. The plaintiff, Mr James, who then lived at Sarina, was driving from there south to Gladstone via inland roads chosen by him to avoid the Bruce Highway. He was planning to overnight at Gladstone in readiness to provide workplace training there the next day to Queensland Rail staff. He had completed a substantial majority of his journey, was enjoying the ride and was not pressed for time. He is a well-experienced motorcycle driver. He was safely outfitted for motorcycle riding. His clothing was admittedly dark, though much of his motorcycle was bright orange. His motorcycle was a KTM Tower, which has a hybrid suitability for on and off road use.
- [4] The first defendant, a grazier from Julia Creek, is unlikely to have been driving for more than an hour, having commenced his journey from Cooper Downs, near Rannes, north of Banana. He was aiming to drive to Townsville on an inland route, needing to be there by the following morning, so quite a drive still awaited him. He had not driven the subject stretch of road before.
- [5] The road on which the collision occurred was a gravel road between Kokotungo and Duaringa. Its speed limit was said to be 100 kilometres per hour, although, being a gravel road, it would have been self-evidently unsafe to traverse some sections of the road at that speed, particularly its bends.
- [6] The collision here occurred on a bend in the road. From Mr James' perspective the bend swept to the right so that his vehicle's momentum would have been towards the

edge of his side of the road. From Mr Maxwell's perspective the road swept to the left so that his vehicle's momentum would have been towards Mr James' side of the road.

- [7] Mr James and Mr Maxwell each testified to the road having two discernible tracks, occasionally referred to as "ruts", down the middle of the road, consistent with the most common path taken by motorcars and trucks in the absence of oncoming traffic. Those tracks, which are better referred to as "tracks" than "ruts" in my view, are not discernible in police photographs taken on the afternoon of the collision or, at least, not as discernible as they apparently were to Mr James and Mr Maxwell.
- [8] Mr Maxwell said that from his perspective the tracks shifted more to the left through the subject bend in this case; that feature assumes a greater significance in the case than might initially have been perceived on the face of the pleadings. It is a topic to which I will return.
- [9] It is significant that the gravel road surface was, on any view of where the tracks were, wide enough to accommodate the width of two passing motorcars or trucks. It follows it was well and truly wide enough to accommodate the two vehicles in this case: only one of them being a motor car and the other being a motorcycle and their collective width being less than two passing motorcars.
- [10] The driving conditions at the time of the collision were good. The police photos show the road surface was dry and probably dusty but was well graded. It did have visibly heavy deposits of loose gravel on its fringes, as some gravel roads develop when often used. That said they were not as obviously heavy as is encountered in rarely maintained roads. It is likely there was more loose gravel towards the edges than the middle of the road and that towards the middle of the road was generally a smoother, firmer, more consistent surface to drive upon than near the edge. That inference is consistent with all of the evidence from Mr Maxwell and Mr James.
- [11] It was a sunny afternoon. The only impediment to visibility was the bend in the road. In the collision's aftermath Mr Maxwell estimated the straight distance across the curve of the bend was about 50 metres. Nearly three months later an engineer called by Mr James, Mr McDougal, measured the sight distance through the curve to a minimum

range of 75 to 85 metres. I did not discern any real significance in this inconsistency. Mr Maxwell had merely done an estimate and it is unknown whether his line of sight points were on the same line at the same stage of the bend as chosen by Mr McDougal. Mr Maxwell candidly accepted that if 75 metres had been measured, as it was, that it would be accurate.

- [12] The more material point in this context is that while this was not a hair pin bend its extent still called for extra care. It was, on Mr McDougal's evidence, a sufficiently gradual bend that drivers could traverse it without loss of traction if travelling at the low speeds each driver here claimed they were driving at. I do not place determinative weight on that assessment. Mr McDougal's evidence involves inherent imprecision, particularly given the visible difference in the condition of the road shown in photographs contained in exhibit 2 as against exhibit 5.
- [13] However, by the time of Mr McDougal's inspection the bend's angle obviously had not changed. Whether the limits of line of sight around it were 50 or 75 metres its consequence should have been self evident to a driver complying with his or her duty to take reasonable care in the manner and speed of driving to avoid injury to fellow road users. Assuming, neutrally, that passing drivers traversed that bend at a modest 50 kilometres per hour each means their combined convergence would occur at 100 kilometres per hour or about 28 metres a second. I do not suggest they were the speeds I am concerned with in this case but that example underscores the limited reaction time available and the consequent need for the plaintiff and first defendant to have adjusted their manner and speed of driving preparatory to the possibility of encountering oncoming traffic on the bend.
- [14] This country road was obviously not as busy as a major highway but nonetheless it was a public road and the risk of encountering and colliding with oncoming traffic was foreseeable and not insignificant. If care was not taken to cater for that risk the probability of harm was not insignificant and the likely seriousness of such harm, should it eventuate, was high.
- [15] The burden of taking precautions to avoid the risk of harm was not at all onerous. It merely involved adjusting the speed and manner of driving. The road rule that drivers

drive to the left of oncoming traffic provides predictability in anticipating the adjustments to speed and manner of driving which are necessary on a gravel road. It reflects itself day-in-day-out on gravel roads throughout Australia in drivers using the smoothest part of the gravel surface to drive on, which will not always be to the left, but slowing and moving and staying a safe distance to the left to pass oncoming traffic.

[16] On a straight stretch of road this may mean a driver can drive safely at high speed in the middle of the road because there is ample opportunity to see and react to the presence of oncoming traffic and adjust the speed and lineal position of the vehicle on the road accordingly. However, in taking a bend a driver cannot see and cannot safely assume there is no oncoming traffic. It follows such a driver ought make adjustments to vehicle speed and lineal position on the roadway in anticipation of the possibility of encountering oncoming traffic which, because of the bend, may otherwise be come upon without sufficient time or room to react safely.

[17] In this case it is readily apparent the plaintiff did take reasonable care in adjusting his manner and speed of driving to meet the prevailing circumstances. That is, before entering a bend on a gravel road where any oncoming traffic would be unsighted until the last few seconds, he was generally riding on the left-hand wheel track in the middle of the road. He was on the lookout for dust, I infer as an obvious indicator of the potential presence of other traffic, and on the straight prior to the subject bend he saw dust ahead. By the time he entered the bend he had slowed to a speed between about 30 and 40 kilometres per hour and moved out of the left-hand wheel track to near the left-hand edge of the road, as he put it, "as far as I could to the left". I find he slowed down to that extent not merely because he would be taking a bend but because he would be taking a bend towards the edge of the road where, as he explained, the build up of loose gravel present would reduce grip.

[18] Mr James impressed as a reliable witness. I pause to deal with one criticism made of him in respect of an account attributed to him by someone who made some hospital notes. That account was:

"States was riding on a dirt road, approached a blind corner, saw an oncoming ute, hit brakes and slid across road to collide with oncoming ute. Both drivers started on own respective sides of the road gravel being the confounder."

- [19] It is inevitable that this account was not correctly recorded or, alternatively, was given at a time when Mr James was so suffering from the adverse impacts of either his injuries or urgent medication or both that he was not capable of giving a cogent account. I anticipate it is more likely than not that the notes did not reflect the account he gave. In any event it is plain it could not be an accurate account. Even accepting the defence case at its highest there is no suggestion whatsoever that it was Mr James' motorcycle that hit the brakes and slid across the road to collide with an oncoming vehicle. Indeed, as I shall later reference, the account of Mr Maxwell is that it was his car that went into a skid. In my view the hospital notes do not bear materially at all upon the reliability of the evidence of Mr James given in this court.
- [20] Mr James testified, and I accept, that he had moved to the left so far that there was enough of a linear gap for the oncoming vehicle to actually stay in the tracks in the middle of the road and continue around the corner without incident, albeit that Mr James may have been showered in dust and gravel. However, as Mr James explained, as the vehicle converged upon him it crossed beyond the lineal path of the middle tracks towards him.
- [21] The area near the front drivers side corner of the land cruiser collided with Mr James. Mr Maxwell believed the impact was at the front of his vehicle, a short distance from the front driver's side corner, whereas Mr James felt it was actually at the side of the vehicle, a short distance from the front driver's corner, against the side or brushbar of the vehicle's bullbar. Mr James is more likely to be reliable in this aspect given it was his body, specifically his upper and lower left leg, which bore the brunt of the impact. I also hold that view by reason of the relatively modest state of damage done to Mr James' motorcycle.
- [22] Ultimately, not much turns on the point. On any view, Mr Maxwell's vehicle took a trajectory beyond the middle wheel tracks and collided with Mr James and his motorcycle. Not even Mr Maxwell contradicted Mr James' evidence that at the point of impact, Mr James was beyond the lineal path of the middle wheel tracks, towards Mr James' side of the road.

- [23] Mr James had in the past said that Mr Maxwell's vehicle had skidded when headed towards him (see exhibit 6). He likely did not repeat that assertion in evidence because it was an inference he had drawn, rather than an actual observation made. However, it was a reasonable inference to have drawn and, it transpires, an entirely correct inference. Mr Maxwell testified that indeed his vehicle did skid when he braked, yawling directionally towards Mr James.
- [24] Mr Maxwell's sketch of the scene which he made on the day of the collision after everyone had left is instructive. Nonetheless, it needs to be approached with some caution. It is obviously only a sketch and one cannot place too great a weight upon the precision of markings. By way of illustration, the location of the bike purportedly in the immediate aftermath is marked by an X on a line representing the edge of the gravel road. Photographs taken at the scene by police showed that the bike, indeed, was left standing up by the edge of the road at a later stage, but it is plain that the bike would not have been in that position after impact. Mr James' account is that the bike careered off the road surface, into the grassed area beyond it. That is an unremarkable assertion given all of the other known facts.
- [25] There are, however, other features of the sketch which are of more material use. The position of Mr Maxwell's vehicle is shown with an arrow saying "point of impact", pointing to the front passenger side corner. There was some debate about whether that point as it appears on the plan is intended to represent where the vehicle was on the road at the time of impact with the motorcycle or not. Mr Maxwell explained, in effect, that it was more intended to represent the point where his vehicle came to rest. This, it seems to me, is as a matter of fair inference consistent with other features of the plan, most particularly the fact that he says he measured out the skid marks which led to his vehicle in the aftermath, and he found that they were approximately 15 metres long. His plan shows the distance of 15 metres attributable to those marks, which he explains on the plan are represented as lines leading to the various sections of the vehicle.
- [26] Even accepting, though, that I ought not interpret his plan as representing, through its use of the term "point of impact", the point on the road surface where impact occurred, it is readily apparent, when one follows the trajectory of the road as represented by him, that the skid marks started, generally speaking, in the middle, perhaps ever so slightly to

the left of middle of the road surface and traversed in a direction to the right-hand side of the road. This has significance in considering a submission urged upon me that Mr Maxwell was travelling to the extreme left-hand side of the road, a topic to which I will shortly return.

- [27] That the skid marks would be 15 metres long on a gravel road in respect of a vehicle that Mr Maxwell claims was travelling at about 60 kilometres per hour is somewhat surprising. However, I do not find that a determinative consideration. I accept it is unsafe to make particular predictions about how far a vehicle might slide on a gravel road, dependent on speed, without there being some expert assistance on the topic. Whilst Mr McDougall provided some expert assistance in this case, it was, frankly, limited by the variation in the state of the scene by the time he inspected it.
- [28] Turning more specifically to Mr Maxwell's account of events, he struck me as a generally credible witness, but his assessment of his vehicle's speed and its position in the bend was not reliable in my view. He mentioned that before an earlier bend, he had been doing about 100 kilometres per hour on the stretch of road, but realised that was a problem and he then compensated by lowering his speed. He swore that in entering the subject bend, he had slowed from about a speed of 80 kilometres per hour to one of about 60 kilometres per hour. He later conceded his speed may have been 65 kilometres per hour. He doubted it was as high as 70 kilometres per hour and outright rejected that it would have been as high as 80 kilometres per hour. These are all, of course, no more than hindsight estimates of speed and Mr Maxwell acknowledged he had not looked at his speed for five to 10 minutes before the collision.
- [29] The evidence does not allow me to reach a specific conclusion as to what Mr Maxwell's numeric speed was. However, the evidence of what actually happened, which is that his vehicle travelled and skidded beyond his side of the road into an oncoming vehicle, compels the inference that he was travelling too fast to safely and successfully manoeuvre his vehicle around the bend without encroaching into the path of oncoming traffic.
- [30] His counsel's submissions implicitly urged that Mr Maxwell's loss of control of his vehicle should be considered, in effect, as an occurrence which was no one's fault, just

something which occurred in the agony of the moment when the vehicles were converging.

- [31] However, this is to ignore that Mr Maxwell's driving path and speed - for each must be considered in combination, not in isolation - put his vehicle in the situation where he could not successfully avoid an oncoming vehicle which was travelling well to its left, allowing ample room for Mr Maxwell's vehicle to traverse the bend if being driven with adjustments to speed and manner of driving appropriate to the prevailing circumstances. Had he been going slower, he might have had more time to react and adjust his path without braking so severely as to skid. Had he tracked around the bend more to the left in the first place, he is unlikely to have needed to brake suddenly to unsuccessfully try and avoid an inevitable collision. The conclusion flowing from the facts is that he was travelling too quickly and too far to the right, that is, that he did not, as he was duty bound to do, adjust his speed and manner of driving to meet the prevailing circumstances.
- [32] The defendant's counsel sought to avoid this, in my view, obvious conclusion by submitting that I ought conclude on the whole of the evidence that the vehicles in fact collided more towards Mr Maxwell's correct side of the road. I reject that submission. It was, given the state of the pleadings and the fact it was not even put to Mr James, a surprising submission. However, I set those features to one side and satisfy myself by concluding that the submission is simply at odds with the facts.
- [33] The submission's main plank was the urging of an inference that the two tyre tracks generated by vehicular patterns of driving on the road, which were ordinarily about in the middle of the road, were more towards Mr Maxwell's left-hand side of the road in going around the bend. The submission went further though and urged that the two tracks were towards the extreme left-hand side of the road in going around the bend, such as would have placed an oncoming motorcycle travelling, from the point of view of the motorcyclist in the left-hand wheel track, not just in the middle of the road but actually slightly to its right from the perspective of the motorcycle driver, that is, on the wrong side of the road if one imagines the presence of a dividing line down the middle.

[34] Such an extreme view of the location of the tracks is simply unsupported by the evidence, even Mr Maxwell's evidence.

[35] Mr Maxwell was asked this question and gave this answer (T1-44, L45-T1-45, L3):

From your perspective as you approached the bend and in relation to the sides of the road, where did the wheel tracks or the ruts go?---As you came up to the bend, they were in the centre of the road and as they went around the curb, they went around to the inside of the bend, which was to my left.

[36] Later, these questions and answers occurred (T1-46, L30):

Are you able to say, imagining a dividing line in the middle of the roadway, where the motorcycle's positioned? On the middle or towards your side or towards his side when you first saw him?---Yeah. I imagine it would have been in the middle of the road. The – that's – when I say the middle of the road, between the – the two very outside verges of the road.

Question:

Yeah. Okay. But in the right wheel track for you?---In my right wheel track, yes.

[37] These questions and answers occurred in cross-examination (T1-51 L41 – T1-52 L5):

You see, there were – there – you've told us there were these two definite wheel tracks in this gravel road?---Yes.

And the wheel tracks were in the middle of the road?---They were in the middle of the road. Yes.

And you were driving your four-wheel drive in those wheel tracks?---Yes.

And after you observed the motorcycle rider, that's when you've hit the brakes?---That's correct. Yes.

And then your vehicle skidded about 15 metres?---Yes.

[38] At a later stage, I asked these questions and received these answers (T1-57 LL6-20):

Firstly, I may have misunderstood your evidence-in-chief. As the road went into the bend, the middle position of the two vehicle ruts or tracks moved more to the left of centre?---Yes. They move.

I thought you said something like that in evidence-in-chief. Did I understand you correctly?---Yes. The two tracks as they came up to the bend were in the centre of the road and then as they went around the bend, they went to the inside of the bend and then back.

So they edged a bit closer to the – from your perspective, the left-hand edge?---Yes. That's correct.

It's just that in the course of cross-examination you spoke about the ruts being in the middle of the road. I mean, was the movement from the middle to that – more towards the edge a significant variation? If you don't recall, just say so?---I recall it being fairly significant. It definitely wasn't to the left extremity, but, yeah, the way I recall it, any vehicle going around there still would have been probably more to the centre than completely to the – on their side of the road. I probably didn't explain that very well.

- [39] It seems to me those clarifying answers put paid to any submission that I ought infer the tracks really ran to the left-hand extremity of the road in a material departure from being generally around the centre of the road. In any event, in addition, some further cross-examination exposed that Mr Maxwell in completing his notice of accident form and giving a version of the incident said, inter alia:

The road was gravel and wide enough for two vehicles, but with one definite set of wheel tracks in the middle, where everyone has been driving.

- [40] Mr Maxwell did maintain in cross-examination that there was some veering of the wheel tracks from his perspective to the left of centre in going around the curve but he did not at any subsequent stage suggest that they encroached wholly towards the left-hand side of the road as in fact his counsel urged I ought infer was the case.

[41] I am prepared to accept that there may have been some slight deviation in the tracks made by regular traffic passing through that bend so that those tracks moved a little from generally the centre area of the road, from the perspective of Mr Maxwell slightly more towards the left than the right. However, I did not regard his evidence on the whole as conveying the impression that, from his perspective, the right-hand wheel track shifted through the bend so far as to get to the middle of the road, let alone to traverse it so that both tracks were wholly on his imaginary left-hand side of the road.

[42] Indeed, if it was such a material or extreme variation, it would be utterly remarkable that one had not heard about it prior to trial. It is not reflected in the pleadings and it is certainly not reflected in his account on the accident claim form. Further, it is not supported by any of the other evidence in the case.

[43] I might add finally that it is not supported by knowledge of ordinary human behaviour in two senses. Firstly, if it were the case that the wheel tracks in fact were wholly on the left-hand side of the road from the perspective of Mr Maxwell it would suggest that Mr James, the motorcyclist, would have been verging on suicidal for remaining in the left-hand wheel track from this perspective, effectively on the wrong side of the road going around a bend. It is an inherently implausible notion.

[44] Secondly, it is inherently implausible that road users generally would cut the corner to such an extent that the common track pattern would be to the extreme left-hand side. One need only reflect on normal human behaviour to realise that the majority of road users would regard that track as being too inherently risky. Even if they cut the corner slightly, it is inherently implausible they would to any great extent because of the very fact that the corner was blind and one could not see oncoming traffic until it was a relatively short distance away. Put differently, it is inherently implausible that there would have developed a pattern of two road tracks, being the most common course of travel, on the extreme inner side of the bend.

[45] The upshot then is that, whilst I am prepared to allow for the possibility of some slight variation, I do not accept that the deviation of the tracks as they went around the corner was so great as to see the right-hand track from Mr Maxwell's perspective actually make it to the imaginary centre line of the road or, for that matter, beyond it. Rather, I

readily conclude from the whole of the evidence that it still would have remained, from Mr Maxwell's perspective, to the right of the imaginary centre of the road surface.

[46] Further to all of this, another difficulty presenting itself to the submission of counsel for the defendants referred to above is that the plaintiff, Mr James, was not driving in one of the wheel tracks at the time of the collision. On his account, which as I have already indicated I find to be reliable, he had moved from what was, from his perspective, the left-hand wheel track in embarking upon the taking of the bend. It will be recalled he had explained that he had slowed and that part of the reason for the slowing was, as I have found, that he needed to cater for driving in an area involving a greater quantity of loose gravel, that being the area more towards the left-hand edge of the roadway from his perspective.

[47] As to Mr Maxwell's evidence on this topic, he was asked these questions and gave these answers in evidence-in-chief (T1-46 LL36-45):

When you first saw the motorcycle, what did you do?---I applied the brakes, tried to pull up.

All right. And did you see the motorcyclist do anything at that point?---His – his speed reduced, so yeah. I'm assuming he applied the brakes and he – he continued – he didn't come around the bend to run into me. He continued on a – in a straight direction. So he was heading to my right – yes, to my right.

All right. And what happened to your vehicle?---When I applied the brakes, the wheels locked up and it skidded straight ahead.

[48] He was subsequently asked (T1-47 L20) whereabouts his vehicle had come to a stop and his response was:

I wasn't on the right – to the very right edge of the road. I wasn't off the road. My front driver's side tyre, the way I recall it, was still on the – on the wheel track, or – yeah. That's the way I recall it.

[49] My impression when he gave that evidence was he was endeavouring to convey that even when his vehicle stopped, his driver's side tyre was still on the right-hand wheel

track. I reject that evidence if that is what Mr Maxwell intended to convey. In fairness to him it may be, given some of his other evidence, that he did not quite mean what he said on that occasion.

[50] Moving to some of that other evidence, I asked him these questions and received these answers (T1-57 LL22-29):

The other matter I wanted to raise with you is you mentioned in your evidence-in-chief that the motorbike – this is in the lead-up to the final moments – continued straight. Do I understand by that you mean it didn't continue to take the bend?---No. He – it didn't continue to take the bend. It – it continued in a straight ahead direction, yes.

So had he left the wheel rut by the time your vehicle had struck him, do you recall? And again, if you don't know just say so?---I don't recall. Sorry.

[51] At best then, the only evidence as to whether the motorcycle had left the wheel rut was Mr James' evidence and his evidence is that he had left the wheel rut a significant period prior to impact and indeed in embarking upon the taking of the bend. It is in this context also noteworthy that the pleading of the Defence contained the following proposition at paragraph 3:

As to paragraph 5(b) of the statement of claim, the defendants deny the plaintiff was on the extreme left-hand side of the road on the grounds he was in the left-hand wheel track until just prior to the impact but otherwise do not admit the allegations contained therein ...

[52] Implicit in this pleading is an acceptance that the motorcycle had left the left-hand wheel track prior to impact.

[53] The real point of distinction in the two cases as I apprehend it is that the defendants' case is that it was only shortly before impact that the motorcycle left the left-hand wheel track from the motorcycle's perspective, whereas on Mr James' evidence, which as I have already indicated I accept, he had left it considerably sooner – more so when he was embarking upon the taking of the bend in the first place.

[54] I do not accept that Mr James only left what would have been from his perspective the left track in the last moment before the vehicles converged. I accept Mr James' evidence that he had set a wider course at the outset. It may very well be that at the last he traversed even more towards the left-hand edge of the road from his perspective and that is what Mr Maxwell perhaps perceived in some of the evidence I have referred to. However, I am easily satisfied Mr James was at least tracking somewhere within the outer left quarter of the road surface in taking the bend and in all probability shortly prior to impact had gone even closer to the outer edge.

[55] The collision was entirely the fault of the first defendant's negligent driving. Mr James' driving was without fault. Frankly, he could not have done more short of actually leaving the road's surface and it is not seriously suggested that his duty required that degree of overcompensation for the prospect of a breach of duty by an oncoming vehicle. He was not contributorily negligent. There is no dispute that the plaintiff's injuries and their consequences were caused by the negligence of the first defendant.

[56] Further, while the pleadings took some care to identify the proper basis upon which the second defendant is effectively liable, it is not disputed that the insurer second defendant is also liable in respect of any damages award. It is thus unnecessary to distinguish between the defendants in making my final orders.

[57] I will hear from the parties now as to the form of those final orders. I flag that, as presently advised, I envisage order 1 will be "Judgment for the plaintiff in the sum of \$615,000". Order 2 will be relevant to costs and, obviously enough, I have no knowledge as to whether or not there is any issue about any offers that have been made that bear upon that. My view generally otherwise is that costs should follow the event. I will hear the parties as to costs. ...

[58] My orders are:

1. Judgment for the Plaintiff in the sum of \$615,000.00; and
2. Unless otherwise agreed by the parties, the Defendants pay the Plaintiffs' costs to be assessed on the indemnity basis.