**IN THE NOTTINGHAM COUNTRY COURT Claim No: D82YJ641**

**B E T W E E N:**

**SUSAN CLARE HARRIES**

**Claimant**

* **and –**

**MR KEVIN JOHN BAGULEY**

**Defendant**

**JUDGMENT ON THE ISSUE OF LIABILITY**

***Summary and Introduction***

1. At about 5.30 p.m. on 27 December 2016 a collision occurred on Blake Street, Sutton Coldfield between two cars: an Audi driven by the Claimant and a Honda that either had been or was being (depending on whose version of events is accepted) driven by the Defendant.
2. Happily, no-one was hurt in the collision but despite this the claim still has a high value, principally because (I was told) although the accident was some 2 years 9 months ago the Claimant is still hiring a replacement vehicle and has done throughout that entire period. I was informed that the claim for hire charges alone amounts to a substantial six figure sum. By his Defence the Defendant raises issues in relation to this head of loss, amongst others, but I am not concerned with quantum, merely liability.
3. The Claimant claims that the accident was the fault of the Defendant because he reversed out into the road and into collision with her car when it was patently unsafe to do so; the Defendant raises issues of contributory negligence but, perhaps more pertinently, claims that the accident was solely the fault of the Claimant because his car was stationary at the side of the road and he was not even in it. The issue for me are therefore:
   1. How did the accident happen? More particularly:
      1. Did the Defendant reverse out into Blake Street and into the path of the Claimant; or
      2. Was the Defendant’s car in fact stationary and lawfully parked; and
   2. Was there any degree of shared blame?

***The Factual Evidence***

1. I heard from 5 factual witnesses:
   1. The Claimant;
   2. The Defendant and Ms Gemma Bailey, his then wife. They were, or in the case of Mr Baguley in his case had been, in the Honda with their two children;
   3. Mr Roger and Mrs Elizabeth Bailey, Ms Bailey’s parents, who had been at the same family function as the Defendant and Ms Bailey and were travelling in convoy with then back to the area they all lived in.
2. In addition, the Claimant asks me to have regard to the contributions of four other witnesses, none of whom was called before me. Their evidence takes the form of contemporaneous questionnaires expanded upon in one case by a later witness statement. In the case of one witness there is no questionnaire but there is a witness statement. I shall deal with their evidence at a later stage of this judgment.

**The Site in of, and Background to, the Accident**

1. Based on evidence that is not controversial I make the following findings of fact:
   1. At 5.30 p.m. on 27 December 2016 it was dark and cold;
   2. At the point of the accident Blake Street is a single-carriageway road approximately 7.5 metres in width;
   3. It is divided into two carriageways separated by an interrupted white line;
   4. The two carriageways are not exactly the same width but may without unfairness be treated as such;
   5. At the point of the accident there is good forward visibility for a considerable distance;
   6. Clearly, therefore, if a car is parked half on and half off the pavement on the nearside a car coming up behind it ought to be able to avoid it without leaving its own lane.
2. It is necessary to set out the position of both cars after the accident. It is shown by the photographs contained at pages 251 and 253 of the Bundle. The Audi is to be seen towards the centre of the road pointing slightly towards the offside carriageway; the Honda is shown mostly on the pavement (certainly more than half on half off) and it is pointing into the road. Both cars are facing in the same direction.

**The Claimant’s Factual Evidence and Case**

1. The Claimant in her witness statement and oral evidence described how she was driving along Blake Street at about 35 mph, the speed limit on this section of the road being 40. She said that as she drove along, she saw a stationary car on her nearside, parked partly on the pavement and partly on the road. It had its lights on. She moved slightly over towards the centre of the road to pass the stationary car safely.
2. She said that as she was passing the stationary car the Defendant’s Honda, *“reversed out from the left-hand side, directly into my path”*. She said she had no time to avoid the collision. After the collision her car continued to move forward and the airbags were activated. She stayed in the car until someone came to help her out.
3. She was cross-examined on the basis that there was no “third car” and that the stationary car was in fact the Defendant’s Honda, which she had carelessly hit. She had, it was suggested, simply misjudged the situation, perhaps because her windscreen had not sufficiently cleared, especially on the nearside, before the start of the journey.
4. In support of this last contention she was referred to a photograph of her and her car taken at the scene by Mr Bailey. This is the photograph to be found at page 270 of the Bundle. As with many images in the bundle, the photocopy is in fact not clear enough to be particularly useful but I was able to view the original at trial. It shows that the offside front windscreen was clear, the offside front window was obscured and there was some obstruction to visibility through the front nearside windscreen. The Claimant’s explanation for this was that it was possibly smoke as she is a smoker and in the immediate aftermath of the crash, before the picture was taken but whilst she was still in the car, she had indeed smoked a cigarette.
5. Separately but in the support of the same point the Claimant was referred to the photograph at page 284 of the Bundle, marked photograph 28. This in my judgment shows that visibility through the rear windscreen was affected at the time the photograph was taken. An iced up rear window would be cleared by the heating of horizonal strips embedded into the screen itself. The photograph shows that the bottom two of those strips had had some effect, clearing the screen somewhat, but the remainder of the rear window was obscured. It is of course true that in no way by itself could an obscured rear window have played a part in this accident.
6. The Claimant was adamant that she would not ever set off to drive with obscured vision and had not done so on this occasion. She was equally adamant that she bore no blame for the accident. She said that she had only seen the Honda shortly before the accident and that whilst she saw its rear lights she saw no white braking light.
7. The Claimant accepted that her car had been recovered to Prestige Cars of 255, Birmingham, Road, Lichfield. It was they who put her in touch with the company, Direct Accident Management, that arranged her replacement hire car. There is some potential significance in these otherwise mundane details.

**The Absent Witness: Hearsay Considerations**

1. In addition to her own oral evidence the Claimant also relied upon evidence from witnesses who had not been called to give evidence. They were:
   1. Ms Josie Mercer [questionnaire and witness statement];
   2. Mr Daniel Farnell [witness statement only];
   3. Mr Keith Robinson [questionnaire only];
   4. Ms Molly Mclaughlin [questionnaire only].
2. Ms Mercer said in her questionnaire that she was walking along Blake Street when she, *“saw a parked car on the left hand side of the road with its lights on and a car reversing off the drive in front of it, cars where over taking* [sic] *the parked car, and then the vehicle that pulled off the drive pulled out in front of an overtaking grey saloon car”*. Asked whether she blamed anyone for the accident, she said she blamed, *“the black car that was pulling off the drive”*.
3. In her witness statement she gave substantially the same account but added in relation to the parked car that people were either getting into or out of it. She stated further that the Honda had *“suddenly reversed out from behind the car”*. She said that she had in fact been waiting for her brother to pick her up from the station but had decided to leave and walk home.
4. Mr Farnell in his witness statement said that he had been on his way to collect his sister from the station when he saw an oncoming car. Nothing about its speed or the way it was being driven caused him concern but he then saw the Honda, *“reverse really quickly from my right-hand side, encroaching into the oncoming line of traffic. As it did so, it collided with the oncoming vehicle”.* He blamed the Defendant for the accident. He gives his date of birth in the witness statement as 28 December 1981.
5. In relation to the evidence of Mr Farnell there is in the bundle a Civil Evidence Act statement. It is not entirely reassuring that it gives the wrong name for the witness, Darrell instead of Daniel. It asks for his evidence to be considered in his absence because *“*[Mr Farnell] *is due to leave England permanently in January 2019 and the costs of and associated with his returning to England to attend Trial would be disproportionate.”* When I asked whether any consideration had been given to allowing Mr Farnell to give evidence remotely Counsel was not able to tell me.
6. Mr Robinson said in his questionnaire that he had only come on the scene after the accident and did not therefore see it. He, however, said that from what he saw *“it appeared to me that from what I saw a car had reversed off a drive on the left-hand of the road and a car had hit it”*. He does not explain how he could possibly have reached this view given a) the end positions of the cars, which in my judgment does not in and of itself show that the Honda had reversed at all, let alone *“off a drive”* and b) the fact that he had not seen the accident.
7. In her questionnaire Ms Mclaughlin said that she saw a car *“pulling off a drive way, it pulled out in the path of an oncoming vehicle”*. She blamed the driver of the car that pulled out *“100%”.*
8. In relation to all of the above save Mr Farnell no explanation for their absence from trial, either before the trial or to me when I asked.
9. It will be seen that three of these absent witnesses use a very similar phrase to describe the path of the Honda: “*off the drive“* (Ms Mercer), *“off a driveway”* (Ms Mclaughlin) and (*“off a drive”* (Mr Farnell).
10. I have to say that when I read this evidence in advance of trial I thought that the witnesses were describing the Honda reversing out of the driveway of a house, and number 26 Blake Street is the best candidate for the relevant drive given the rough location of the accident, and into the path of the Audi. I am not alone in thinking that that was what the witnesses were describing. The Defendant’s counsel and expert also thought so up until the day of trial. But I was told by the Claimant’s counsel that it was not and *“never had been”* the Claimant’s case that the Honda had come from a driveway. Rather the Claimant’s suggested mechanism for the accident is that Honda may indeed have been parked on the pavement in front of the third car, parallel to the road and facing the direction of travel, but had used the driveway to get back on to the road, reversing rather than going forwards and straight on to road because of the height of the kerb and concern for its tyres.
11. In relation to the evidence of all these witnesses the Defendant says that I should take no account of it at all. One of the grounds it says this is that, at least in relation to the evidence of Mr Farnell, Ms McLoughlin and Ms Mercer, it has doubts as to the integrity – not merely reliability – of this evidence. Counsel for the Defendant said that if they had attended, he would have thoroughly explored with them whether in fact they were witnesses for hire and whether they had actually been at the scene at all. Given their non-attendance he limited himself to suggesting that given that there were serious doubts about the integrity of the evidence it should be accorded no weight at all.
12. The basis for this submission is as follows:
    1. On 18 March 2013 a claim was submitted for compensation via the portal for low value road traffic accidents. In that claim:
       1. The first claimant was a Daniel Mercer, whose address was given as 255 Birmingham Road, Lichfield and whose date of birth was given as 28 December 2018;
       2. A second claimant was Molly McLaughlin;
       3. The solicitors through whom the claim was made were the same firm as makes the present claim, albeit that the name of the firm has changed;
       4. The claim was referred to the solicitors by Direct Accident Management, the same company as referred the present case and hired the car to the present Claimant;
       5. The actual owner the car was a Steven Mercer who also lived at 255 Birmingham Road.
    2. The Mr Daniel Mercer who made the claim in 2013 is clearly the Mr Farnell who gave a witness questionnaire in this case. That can be ascertained from the date of birth, first name and the fact that Mr Farnell has a sister called Mercer;
    3. 255 Birmingham Road (where the Mercers claimed in 2013 to be living) is of course the address of the garage to which the car was recovered in December 2016, see paragraph 14 above;
    4. No relationship with that garage was disclosed by Mr Farnell;
    5. In her witness statement in the present case Ms Mercer gave her address as 257, Birmingham Road, Lichfield, right next door to a property where (at one point) Steven and Daniel Mercer lived;
    6. This property is the headquarters of Prestige Cars, which has or had a role to play in both sets of litigation, as did Direct Accident Management;
    7. No witness in this case discloses any connection, past or present, with Prestige Cars;
    8. The near-identical descriptions of the accident, see paragraph 24 above, are suspicious to say the least.
13. The Claimant was slightly hampered in responding to this case at trial because it and not been foreshadowed at all in correspondence or the statements of case but instead emerged on the first day of trial. But she said that coincidences do happen and there is nothing sinister in any correspondence between the 2013 and 2016 claims.
14. The Claimant said in her witness statement that Mr Robinson secured details of the witnesses (Mr Farnell, Ms Mercer and Ms Mclaughlin) and gave them to her on the night. If she is right about that then it rebuts any suggestion of absence from the scene of the witnesses and fundamentally dishonest evidence. It seems agreed that Mr Robinson was there at the time and he could not possibly have known in advance that an accident would happen where and when it did. If he did give details of the witnesses it is reasonable to suppose that he took them at the scene from those very witnesses.
15. I do not, however, think that the Claimant is right about this. I think that in the shock off the aftermath of the accident she may have thought that the details of all the witnesses had been given to her by Mr Robinson, who does not mention this in his questionnaire, but that this probably did not happen in the case of Mr Farnell, Ms Mercer and Ms Mclaughlin. I also have in mind that we are now 2 years 9 months after the accident and that the Claimant’s witness statement, in which she for the first time mentions being given details by Mr Robinson, was signed on 30 November 2018, already over 2 years post-accident.
16. The question of how Mr Farnell, Ms Mercer and Ms McLoughlin came to be involved in this litigation remains to my mind unanswered.
17. When I asked what the reason for not calling Mr Robinson, Ms McLoughlin and Ms Mercer was I was given no answer.
18. The Claimant says I should accept the evidence and in particular the evidence of Ms Mercer. She claims to have seen the third car. Neither Mr Farnell nor Ms McLoughlin mention this car, in itself a surprising fact if they did indeed see the accident as it happened.
19. The evidence is of course hearsay, I did not invite and therefore did not receive submissions on the law in this regard and I approach the task of deciding how much reliance to put on the evidence applying the usual principles.
20. I take into account in particular the following:
    1. The evidence is very important. If, for example, Ms Mercer is right then the Claimant succeeds;
    2. It has not been tested before me;
    3. No, or in the case of Mr Farnell no good, reason has been given for the non-attendance of the witnesses. In 2019 it is in my judgment not acceptable simply to say that the evidence cannot be called because a witness is overseas in an unspecified location. Global communications are good. It is not, I note, said that Mr Farnell was unwilling to give evidence;
    4. Given the matters set out at paragraphs 25 and 26 above I think there are real and substantial grounds for supposing that cross-examination of the witnesses would have been significant in this case. I emphasise that I make no findings adverse to any absent witness. I have not heard from them, they are and were not on notice that serious challenges might be made to their integrity and it would be quite wrong to make any findings of fact in this regard. However, there are reasons that cross-examination was particularly called for in relation to their evidence.
    5. In relation to Mr Robinson I do not understand how he could have reached the conclusion he did on blame for an accident he on his own account did not witness. This is wholly unexplained.
21. In the result I am not prepared to place any weight at all on what the absent witnesses have said.

**The Defendant’s Factual Evidence and Case**

1. Mr Baguley said he had been driving home after a family function. He joined Blake Street after making a 90° right turn at a roundabout. This was very early in his journey home. As he made the turn he said that his then wife said that she was concerned that there may be a flat tyre as she felt there was a degree of understeer. As a result, he drove about 100 metres down Blake Street and pulled over to inspect the tyres. He was insistent that he parked “half on, half off” the pavement. He got out and began to inspect the tyres. Whilst he was inspecting the rear nearside tyre the car was hit by the Audi. He said that he had not seen the approach of the other car, e.g. its headlights, nor had he heard its engine. He said that after the accident he had checked on his family and went to see the Claimant, who was still in her car.
2. Mr Baguley said that he, perhaps with the help of another man, had moved the Honda physically as when it first came to rest it was too close to a hedge on the nearside for anyone to get out on that side.
3. Ms Bailey said essentially the same things. She corroborated the account that she had mentioned a possible flat tyre and that her then husband was not even in the car when the collision happened and that the car was therefore stationary.
4. In her witness statement Ms Bailey said that when she first heard the crash and felt the car moving forward she had reached for the handbrake to check that it was on and when he discovered it was she had further reached, from the front passenger seat, for the foot brake to try and stop the car moving forward. Before she could do this the car came spontaneously to a halt.
5. It was put to her that this aspect of her evidence was pure invention as neither the time between the impact and the Honda coming to a rest nor the physical layout of the Honda’s cabin made this possible. In support of this both she and I were shown a picture of the cabin of an identical car intended to show that reaching the foot brake was simply not possible.
6. Ms Bailey contradicted Mr Baguley in that she said that she had been able to get out of the car without it being moved and had in fact done so. She said that her initial reaction had been to get the children out of the car but then she realised that her husband was still outside and was concerned that he may have been injured, something she did not wish their children to see. So she delayed getting out of the car.
7. Both Mr Baguley and Ms Bailey were challenged and it was put to both that it was not true to say that the Honda was stationary and that Mr Baguley was not even in it at the time of the accident. They maintained their position under cross-examination.
8. It was put to Mr Baguley that his rear view had been obscured by two balloons that can be seen floating in the rear of the Honda in the photograph at page 254 of the bundle. There are indeed two such balloons. Neither Mr Baguley nor Ms Bailey could remember them but both accepted that such was the age of the children there were occasionally such things in the back of the car.
9. The balloons are floating free in an empty car in the photograph and are therefore clearly filled with a gas that is lighter than air, possibly helium. There is of course no-one in the car at this point to hold on to them and I simply do not know whether the children, or one of them, had hold of the balloons at the point of impact. I do, however, think it is very unlikely that Mr Baguley, with his two children in the car, would have reversed on to a main road in the dark if he could see nothing out of his rear window.
10. Mr and Mrs Bailey were in the follow-on car. They said they had left about 1 – 2 minutes after their son-in-law and daughter. Other evidence shows that the journey by car from where they had been to the point of the accident was between 2 and 3 minutes.
11. Mrs Bailey told me that as soon as her husband pulled over at the scene of the accident she got out and rushed to the Honda to check on those inside. She therefore got there before he did. She said in her witness statement and oral evidence that the first thing Ms Bailey said to her was, *“where’s Kevin, is he all right?”* or words to that effect. Mr Baguley was, she said, indeed outside the car and not in it when she arrived. She and Mr Bailey helped to get the children out.
12. Neither Mr nor Mrs Bailey then saw the accident but the significance of their evidence is as follows, says the Defendant:
    1. There was no third car present at the scene. They saw none and none is shown on the photographs taken by Mr Bailey do not show one;
    2. The words allegedly spoken by Ms Bailey about the whereabouts of her then husband make no sense if he was in the car and had been driving it at the point of impact;
    3. Only a short time elapsed between the accident and their arrival on the scene.

**The Expert Evidence**

1. I heard from two experts: Mr John Dabek for the Claimant and Adrian Stevens for the Defendant. Both are well qualified by experience and training to give an opinion on accident reconstruction. Both were in my view were trying to help the Court but both had, in my judgment, placed unrealistic and excessive reliance on the very limited physical evidence and produced views that were overly-definitive and insufficiently circumspect.
2. Neither expert had visited the scene on the night or examined either car himself. They are not to be criticised for that. At the time of the preparation of their substantive reports they had not seen, and thus did not comment on, the witness statements that were ultimately exchanged. Again they are not to be criticised for this. But when the witness statements were exchanged, neither was instructed to provide supplementary comments on whether they made a difference to their opinions and, if so, what their effect difference was. They should have been asked to do this. They both prepared for and attending a meeting of experts and produced a memorandum of matters agreed and not agreed. In addition, Mr Stevens answered part 35 questions posed by the Claimant.
3. The reports, memorandum of agreement and oral evidence canvassed a large number of issues: for example, the location of the actual crash, the state of the handbrake, reaction times, debris scattering and its implications, marks on the two cars to show orientation of the cars at the point of impact, post-collision travel of the cars, the final position of the cars and the conclusions to be drawn from the damage to both vehicles.
4. Before closing submissions were delivered, I invited both counsel to identify for me what findings of fact they wished to make based on the expert evidence and which of the many issues raised they wished me to deal with. In the result, the Defendant said that he sought no findings at all on the expert issues as he accepted that the evidence did not justify such findings. For her part, the Claimant argued that only one finding was required, the rest of the expert discussion being unhelpful to the issues in the case.
5. Those concessions, if I may call them such, did not surprise me. It seemed to me that most of the expert opinion involved well-intentioned speculation on the basis of vestigial, or in some cases no, physical evidence.
6. For example, I asked Mr Stevens how he could know where the accident happened and he said that the only evidence he relied upon was a mark on the road made, he said, by a tyre. He theorised that this was caused by “underrunning”, i.e. a process where on a rear to front collision the front of the second car goes under the rear of the first car lifting it and its rear wheels off the ground. It then travels for a while and when the vehicles detach themselves from each other the rear tyres of the car in front make contact again with the road and, no doubt because of speed and friction, leave a mark.
7. When I pointed out that whether this a useful finding would depend upon whether there was a mark at all, whether – if there was a mark – it was a tyre mark, whether it had been there before the accident, whether it was caused by underrunning and what the speeds involved were at the time he agreed.
8. Having looked again at the relevant photograph I agree with Mr Dabek that it is far from clear that this is a tyre mark at all. The photographs were taken in the dark and with standard equipment. I am certainly not satisfied that the remaining matters that must be proved have in fact been proved. I find that it is simply impossible to say precisely where the accident happened based on this or any other evidence.
9. At paragraph 10.2.2 of his report Mr Stevens estimates the speed of the Audi on impact at 10 – 20 miles per hour. At trial he was minded to accept the Claimant’s evidence that it was in fact 35 miles per hour. I asked him why he had changed his views in this regard and it seemed to me that he was saying that he now has access to better quality evidence. But the physical evidence (or rather the photographs) were in his possession at the time of his report. There is in my judgment a significant difference between these estimates and no good explanation for this change of position.
10. For his part Mr Dabek, at paragraph 6.13 Figure 14 of his report drew a diagram showing, *“The likely orientation of the vehicles at the point of impact”*. The effect of this, if it is right, is that the Honda was at a significant angle to the Audi at the point of impact corroborating the Claimant’s account that it had reversed into the road at an angle and rebutting the Defendant’s account that it had been parked parallel to the road, when it would have been hit more or less flush by the Audi.
11. However, Mr Dabek was compelled to admit in evidence that this diagram was not, and could never on any version of the facts have been, right. For if the impact on the Honda had been in this orientation it would have spun on its axis and would not have ended in its actual final position and orientation which was facing forwards with no witness saying that it had spun at all. In evidence Mr Dabek agreed that this diagram could not be right and ventured that the true angle was *“about half”* that which he had drawn in his report.
12. At paragraph 6.12 of his original report Mr Dabek said that in his opinion, *“the rest positions on the roadway combined with the likely directions of impact together with the nature and spread of the debris* ***can only be consistent with the Claimant’s account of events****”* [emphasis added to the original]. This was, in my judgment, far too emphatic a way to express the matter. Far more tentative opinions were required of both experts, bearing in mind the paucity of reliable physical evidence.
13. As noted above, only one issue is left for decision on the expert evidence and it is the Claimant who seeks resolution of it. The Claimant relies upon the opinion of Mr Dabek that the damage to the bonnet and front of the Audi shows contact at an angle. More particularly, he points to the fact that the bonnet can be seen to have distorted towards the offside. Thus, he says, there must have been a nearside to offside rotational force.
14. Mr Stevens for his part says that a rear to front impact could explain the buckling of the bonnet and the front offside misalignment. This damage does not, he says, show the type of force described by Mr Dabek.
15. On this occasion I accept the evidence of Mr Stevens. It does not seem to me that the evidence of significant nearside to offside rotational force is there or is shown by the photograph in question. In my judgment it is just as consistent with the direction of the force being as described by the Defendant, particularly when one appreciates that the natural and immediate, even if not always remembered, reaction of drivers encountering an obstacle in the road is to try and steer round them, imparting some degree of rotational force merely by this unsuccessful attempt. It is not necessary to find that this happened, though I suspect it did, it is I think enough to say that the evidence does not in my view support Mr Dabek’s view.
16. Given this finding, and the closing submissions as to the relevant arears of expert evidence, the conclusions in this judgment are not informed in any way by the areas of expert dispute and I consider that the matter must be approached on the basis of an analysis of the factual evidence only.

**Analysis of the Factual Evidence and Findings**

1. With great respect to the industry and thoroughness of counsel I consider this to be verging on a single issue case. The real matter for me to find is whether there was indeed a third car parked half on half off the road just behind the Defendant’s car. If there was, for his car to have collided with the Claimant’s car, which had right of way, he must have reversed out into the road when it was unsafe to do so and when much safer and easier alternatives, e.g. driving forwards, were available. If that were the case then he would be liable. By contrast if there was no third car then the Claimant must have driven into the Defendant’s car even though she had an unobstructed view of it on her approach to its location. Her account would have to be rejected and the Defendant’s account, supported by Ms Bailey and Mrs Bailey would, it seems to me, be almost bound to be accepted.
2. I find that there was no third car parked stationary on the side of the road and the only car in this position was the Defendant’s Honda. I say this for the following reasons:
   1. Even if the car had been occupied and on the point of driving off its occupants would have become aware of a sudden, very loud and wholly unexpected crash within feet of their car;
   2. They would have seen two occupied cars careering in front of them down the road, one coming to halt directly in the path they intended to take;
   3. They would I have no doubt have been shocked by this event;
   4. Within 1 – 2 minutes, the time it took for the Baileys to arrive on the scene - by which time the car, if it had ever been there, had gone - they would have had to decide to drive off rather than, for example, go and see if anyone was hurt or whether they could assist in any way;
   5. Having seen the accident they would have known it was the Honda’s fault, yet they did not stay and offer themselves as witnesses;
   6. This strikes me as an utterly implausible reconstruction of events;
   7. Additionally, I accept without reservation Mrs Bailey’s evidence that the first thing her daughter said to her was something to the effect of, *“Where’s Kevin, is he all right?”*. That makes no sense if he was in fact sitting in the driving seat and had been driving at the time of the accident;
   8. Whilst I attach no great weight to demeanour, on balance I was more impressed by the way the Defendant and his witnesses gave evidence. I do not for one moment accept, as would have to be the case given the nature of the account they give, that they have colluded to give a false picture. On the contrary, I accept the substance of what they say.
3. I therefore find as follows:
   1. The Defendant had indeed parked his car lawfully at the side of Blake Street to examine its tyres;
   2. He was not in his car at the point of impact, still less reversing;
   3. His car was in fact stationary;
   4. The Claimant drove into it through negligent driving. I do not need to find an explanation for this, for all or most drivers are from time to time inexplicably careless, but I suspect that her view was not as clear as she claims it was;
   5. The Defendant bears no blame for the accident.
4. I do not ignore the inconsistency highlighted in paragraph 41 above. I do not regard this as significant. It is precisely the type of detail that emerges when different people recall the same sudden and shocking event over two years later. I reject the challenge of Ms Bailey’s evidence as set out in paragraph 40. People can act very quickly in a crisis.

**Result**

1. There will be judgment on the claim for the Defendant as well as judgment on the part 20 claim for the Defendant.
2. I invite the parties to agree costs and any consequential directions for the trial of quantum in the part 20 claim. If they agree I will incorporate such agreement in the Court’s order. If they cannot agree I direct that:
   1. Any disagreement on costs will be the subject to written submissions to be exchanged mutually and served on the Court within 21 days of the receipt of this judgment. I shall reach my decision on costs based on those submission;
   2. Any required directions shall be the subject of an application for directions to this Court, to be dealt with by a District Judge.