



Neutral Citation Number: [2017] EWHC 3209 (QB)

Case No: HQ15P04414

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/12/2017

Before :

HIS HONOUR JUDGE CURRAN QC
(Sitting as a High Court Judge)

Between :

**MIHAELA BRUMA (A Protected Party, by her
husband and litigation friend ION BRUMA)**

Claimant

- and -

(1) SERHAN HASSAN
(2) ESURE SERVICES LIMITED

Defendants

Ms Jane McNeill QC (instructed by Thompsons) for the Claimant
Mr James Medd (instructed by Kennedys) for the Defendants

Hearing dates: 16, 17 and 18 October 2017

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.

.....
HIS HONOUR JUDGE CURRAN QC

His Honour Judge Curran QC :

Background

1. Mrs Mihaela Bruma is a lady who is now 31. She is married to Mr Ion Bruma, and they have one child. She came to the UK from Romania in 2012 to join her husband who had found work here. Not long after arriving Mrs Bruma herself found work as a waitress in the employment of a Mr Algul. Mrs Bruma, like her husband, was required to work night shifts on occasion. Mr and Mrs Bruma lived in Walthamstow.
2. On 1 November 2012 Mrs Bruma suffered catastrophic injuries in a road accident in Holloway Road, London, close to Highbury Corner. She was crossing the road on foot when she was struck by a motor car being driven by Mr Hassan, the first defendant. The undisputed evidence as to that is as follows.

Accepted facts

3. Just before 6 a.m. on 1 November 2012, Mrs Bruma was returning home from work. Her employer, Mr Algul, was giving Mrs Bruma a lift from his business premises in Willesden, where Mrs Bruma worked, to Highbury & Islington Underground Station. Mr Algul drove south along Holloway Road and stopped his car, a large Audi multi-purpose vehicle (“MPV”) at a bus stop on the east side of the road just across the road from the station, no more than about 50 metres north of the station entrance.
4. Mrs Bruma alighted from the car from the rear offside door, stepping into the road, but she then walked behind the car and stepped onto the pavement at the bus stop. It was dark and there was light rain. There were three or four pedestrians at or near a bus stop on the opposite side of the road. The road at the location was a red route.
5. Mrs Bruma was intending to go to the Underground station to take a Victoria Line train to her home in Walthamstow, and so she needed to cross the road. There was a Pelican pedestrian crossing further down the road, but Mrs Bruma did not walk along the pavement on which she was standing to cross the road there, but instead walked across the southbound lanes of Holloway Road towards the station entrance. Mr Algul meanwhile had started to drive south down Holloway Road.
6. At about the same time, Mr Hassan was driving north in the offside lane of Holloway Road. As Mrs Bruma reached the centre white line, Mr Hassan noticed her for the first time. She was, he said, already in the middle of the road, on the white line just to his right. Within a second or so there was a collision between Mrs Bruma and the centre of Mr Hassan’s car.
7. Mrs Bruma was treated at the scene by paramedics and helicopter-lifted to hospital. She has suffered catastrophic injuries as a result of the accident. This hearing concerns the issue of liability only.

Police evidence

8. One of the first officers to attend was PC Catanach. He made a witness statement later that day and in his witness statement for the civil proceedings stated that he had no further recollection of the incident beyond that original statement "owing to the passage of time." He said in the statement made on 1 November 2012 that he had arrived at the scene at 0600 just behind a paramedic's vehicle. He described Mr Hassan's vehicle as being stationary in the middle of the road and continued,

"[j]ust in front and slightly to the left of the vehicle I could see a small group of around 3 to 4 people huddled around a female who was lying on the floor. We got out of the car along with the LAS [London Ambulance Service] paramedic and approached the group. The group of people parted and let us settle down next to the female on the floor. I could see that her left leg was extremely deformed and facing the wrong way. Someone had attempted to place a jacket over her to keep her warm."

PC Catanach said that Mrs Bruma was,

"... not responsive but her eyes were open and closing very slowly. I could see that she was still breathing. One of the group was still holding her hand and I asked him what [her] name was. He told us and then I asked what had happened. He explained that he had just dropped [Mrs Bruma] off for work, she had then ran [sic] across the road and got hit by a car."

9. PC Catanach's witness statement then reads as follows:

"[t]he paramedic asked how fast the car was travelling that hit [Mrs Bruma]. I looked around and saw the driver of the silver Daewoo. I asked how fast he was going and he said '30 mph.' I could see the front of his vehicle had a few dints [sic] on the bonnet and the front bumper and the windscreen was totally smashed but still intact. I was helping the paramedic by holding [Mrs Bruma] still. He then asked to move [Mrs Bruma's] body so that she was laying [sic] flat on the floor she was twisted. The paramedic held her head whilst I moved her body. I took hold of her left leg and it felt limp and soft. It almost felt as though there were sharp bones floating around inside."

10. In cross-examination by leading counsel for the Claimant, PC Catanach was asked about whether Mrs Bruma had shown any signs of movement and whether he was sure that he had been told that Mrs Bruma had run across the road. His evidence was as follows.

"I arrived at scene at same time as paramedic. I involved myself in first aid. She was moaning and groaning but not responding. I didn't see her move at all. I was told that she

ran across road. If [the person who told me that] told someone else she walked I can't account for that."

It was quite clear that the officer had no independent memory of what had been said, and that his answers were entirely based upon his contemporaneous witness statement.

11. PC Noonan arrived at the scene at 0645. His contemporaneous report recorded (at trial bundle p. 140) that the road surface was 'wet/damp' and the lighting conditions were "darkness: streetlights present and lit." He drew a sketch plan (trial bundle p. 136) from estimated measurements taken at 0745 which shows the position of Mrs Bruma as being on the ground directly in front of the bonnet of Mr Hassan's car.
12. PC Armstrong, who was then a collision investigator with the Metropolitan Police, arrived at the scene at 0700. He saw the Daewoo in the northwestbound lane of Holloway Road, 47 metres beyond the pedestrian crossing. It appeared to be in its post-incident position. There was no evidence to identify the point of contact on the road. Mrs Bruma had by then been taken to hospital. He was given some information by PS Calveley, who was the officer in charge of the scene, but who was not called by either side as a witness at the hearing. In his witness statement at page 82 of the trial bundle PC Armstrong said this:

"I was told that a man travelling in the southeastbound lane of Holloway Road had pulled over and dropped off a passenger. The passenger had then walked across from the east of Holloway Road towards the tube station and had been hit by a car in the northwestbound lane."

PC Armstrong said in his witness statement that there was no evidence to suggest that the Daewoo had been travelling above the speed limit, and in his opinion the collision damage suggested a speed below that, which he estimated at 15 mph. He added the following observation.

"I would also say that the driver of the car had little opportunity to see the pedestrian who was wearing dark clothing and that the driver's view of the pedestrian may have been concealed by the glare of oncoming headlights. Therefore the driver may have been unable to avoid this collision."

In cross examination by leading counsel for the Claimant, his evidence was as follows:

"I did have some information from Sgt Calveley. He was at the scene when I arrived."

The officer then made reference to a briefing note from PS Calveley to be found at trial bundle page 152:

"Apparently a woman was dropped off by a car that was travelling south in Holloway Road. She got out of the car onto

the east footway outside the old Highbury and Islington tube and the car drove off. The woman crossed the road walking west towards Highbury and Islington station and was struck by a car that was being driven North in Holloway Road.”

“That ...” (continued PC Armstrong) “... was all the factual evidence I had. I carried out skid tests. ... Antilock braking working. Exactly how firm braking was and when applied I could not say. No detailed investigation into driver’s view of scene ahead. As to my estimate of 15 mph, I would defer to the experts and accept that it could have been 20- 30 mph.”

He was then asked,

“Q You said that “the driver may have been unable to avoid this collision” but do you agree that one could equally say the driver may have been able to avoid the collision?

A Yes.”

13. At 0705 PC Fotheringham spoke to Mr Hassan at the scene. He cautioned him in the usual terms, and then asked him what happened. Mr Hassan replied,

“[c]oming round this corner, nice and steady, all of a sudden this woman appeared. I think she was behind a car. She came out from behind the car. Just by the white line. I went for the brake. She was still trying to run across. I stopped suddenly. I don't know if I skidded. Then I screamed. I agree that this is a correct record of what was said.”

14. At 0730 PC Madgley (another officer who was not called as a witness at the hearing) spoke to the driver of a vehicle with the registration number OE 57 AZG: see his evidence and accident book entries at page 144 of the trial bundle. That vehicle is the blue Audi which can be seen parked at the scene on the opposite side of the road in a number of the contemporaneous photographs (for example, in the photograph at page 89 of the trial bundle) and which was being driven by Mr Algul. It seems as though the officer did not recall Mr Algul's name, as he is described as an “unknown witness” in the typed version of the statement which PC Madgley took from him at the time. That statement reads as follows.

“Shortly before 0600 hours I was giving one of my members of shop [sic] a lift from Willesden and I was going to drop her off outside Highbury and Islington station. I pulled up in Holloway Road on the left, shortly before you get to Highbury Corner. She was sat behind me. I was stopped at the bus stop. She got out of the car from the rear driver's side door. I then saw her walk across the back of my car and stand in the bus stop. It was dark and raining. I then pulled off and started driving towards Highbury Corner. I drove about 50 metres before I heard a loud bang I stopped straightaway and looked behind me. I saw a

silver car stopped in the middle of the road. I noticed that I could not see the girl I had dropped off. I ran down the road and saw her on the road in front of the car. I covered her up with my coat. I called the ambulance and police. I stayed with her until the police arrived. I was then told to back my car up and park it on the pavement which I did.”

Visibility and Lighting

15. I have already noted the evidence of PC Armstrong that the street lighting was adequate at the scene.
16. The evidence of Mr Hassan in cross-examination was as follows.

“Q Do you accept that the view as you come around the corner is a good clear view?

A Yes.

Q The road is well lit?

A Only on the left hand side – right hand side is darker.

My memory is it was light on the left, but dark on the right.

Judge: Are you saying that there was a noticeable difference?

A Yes.

Q Look at the photograph at p. 89 – that shows a well-lit road on both sides of road?

A Not on the day.

....

Q p. 234 shows that the street lights are in exactly the same configuration on both sides of the road?

A Yes, but there were none at accident site.”

A short piece of film shot many months after the accident was produced in evidence by Dr Coley and appeared to show that the road was well-lit. It was not suggested that there was any material difference in its appearance on the day of the accident. I asked Dr Coley to confirm this in evidence.

“Judge: Both sides of the road seem to be equally well-lit by street lamps.

A: Yes, they are.”

The expert evidence

17. Experts were called to give evidence on each side. Mr Peter Davey, a forensic road collision investigator with the firm Viewpoint Investigative Services, was called by the claimant. The defendants called Dr Gary Coley of TRL Investigations Group, whose specialist field is pedestrian safety and the mathematical modelling of the 'kinematics' involved in cases where injuries are caused to pedestrians and car occupants. On some major points the experts were in almost complete agreement. Such differences as arose between them concerned fine detail of analyses of crash data and the extrapolation from such analyses of details which might enable a reconstruction of the mechanics of the accident. I found both experts equally impressive. Mr Davey was the more confident of the two. Mr Medd, for the defendants, challenged his objectivity, and sought to characterise part of his evidence as advocacy. In my judgment Mr Davey's responses to such criticisms in cross-examination were measured, calm and convincing. On balance, where there were differences between the two experts I found the reasoning of Mr Davey more persuasive.
18. Having said that, however, an illustration of the objectivity of both experts was to be found in the fact that Mr Davey, at page 208 of the trial bundle, gave an estimate of Mr Hassan's speed as being between 20 and 25 mph at the point of impact, whereas Dr Coley considered that it might have been up to 30 mph. Mr Davey said that following discussion with Dr Coley he was inclined to be less specific although he still thought the speed was probably in the region of 25 mph rather than 30 mph, while Dr Coley, for his part, was not attempting to minimise the speed at which he estimated Mr Hassan's car had been travelling.
19. The experts had prepared a joint statement (p. 262ff trial bundle). I have selected a number of points from that as being the more significant matters in respect of the issues that the court has to resolve, and upon which the experts were largely in agreement. I mention such reservations as they gave for completeness.
 - i) The street lighting was high-pressure sodium lighting which, if illuminated (as the police evidence confirms) they agree would have provided a good standard of illumination of the scene on both sides of the road.
 - ii) Damage to the Daewoo consisted of a crack to the top edge of the front registration plate towards its offside, a series of dents centrally on the bonnet from its leading edge towards the windscreen and a black scuff mark between the two water jet nozzles. The windscreen was cracked in two places.
 - iii) There was no physical evidence which assisted them in assessing the point of impact on the road.
 - iv) The probable range of speed of the Daewoo at the point of impact was between 20 and 30 mph, but any braking applied before impact (if it occurred) would raise the approach speed of the vehicle above this range.
 - v) The minimum distance which Mrs Bruma travelled on foot to the point of impact would have been approximately 7.4 metres. However, if the path

which Mrs Bruma took across the road was a diagonal one the distance would be greater than that.

- vi) As to whether Mrs Bruma was walking or running, Mr Davey's opinion was that the lack of lateral spread of damage across the front of the Daewoo was consistent with her walking at the point of impact: had she been running a greater lateral spread of damage might be expected. For various other reasons (of which he gave details) he was of the view that not merely was Mrs Bruma probably walking, but also probably walking slowly. Dr Coley agreed that there was lateral offset to the damage, but pointed to research, by simulations of accidents to pedestrians involving vehicles, which showed that there is a wide variation in offset damage: "... *being stationary, walking or jogging slowly [when struck] can result in very similar offsets.*" Dr Coley did not think it was possible to distinguish between a slow walking speed and an average walking speed. Both experts agreed that if the court were to find that Mrs Bruma walked the distance of 7.4 metres to the point of impact, it would have taken her between 3.7 and 5.4 seconds to have done so. Were the court to find that she ran, the experts agreed that at some unknown point she would have been likely to have slowed or changed position prior to impact.
- vii) As to the suggestion by Mr Hassan that Mrs Bruma was running (or "*sprinting*" as he put it in cross examination) both experts agreed that it was unlikely she was running at the moment of impact. At most, Dr Coley believed her speed could be "*in the range of walking or jogging speed*". Mr Davey disagreed with the suggestion that she could have been jogging.
- viii) For a normal motorist paying due attention it is generally accepted that the perception-reaction time to a hazard is between one and two seconds. This period of time starts (in this case) with the first perception by Mr Hassan of the presence of Mrs Bruma in the road. The experts point out that that may not be the same time that she physically stepped out into the road from the pavement. Indeed, Mr Hassan's own evidence was that Mrs Bruma was close to the central white line when he first noticed her.
- ix) The experts agreed that it is a matter for the court to decide on the appropriate perception-response time, taking into account the "*hazard-rich nature of the location*" (as the court finds it to have been.) The hazards referred to include other moving vehicles, the presence of pedestrians, and the prevailing lighting and weather conditions. (The Highway Code mentions bends, pedestrians, cyclists, weather conditions and driving at night as hazards: see p. 274z trial bundle.) The more complex the environment "... *with multiple potential hazards, the more likely the driver's perception-response time will be longer. In such an environment, the slower the speed of a vehicle the more time its driver is likely to have to assess the potential hazards. It will be for the court to decide if Mr Hassan's speed was appropriate for the circumstances.*"
- x) If the court found that there was an oncoming car (*i.e.* a car driving in the opposite direction from Mr Hassan's vehicle) such a car could to some extent mask a pedestrian crossing behind it. "*However, if the court finds that there*

was an oncoming vehicle..., as that vehicle passed Mr Hassan, his view of the road ahead would no longer be directly obscured by this vehicle, although the effect of its headlights on Mr Hassan's view might continue for a short period after passing.”

- xi) An agreed range of perception-response times of 1 to 2 seconds was set out by the experts in a table at paragraph 56 of the joint statement (page 273). The total stopping distance for Mr Hassan's car would be between 15 and 24 metres if travelling at 20 mph; 21 to 32 metres if travelling at 25 mph and 28 to 41 metres if travelling at 30 mph.

Mr Hassan's credibility as a witness

20. The burden of proof is upon the claimant to show upon the whole of the evidence that a material contribution to the cause of the accident (at least) was negligence on the part of Mr Hassan. There is no burden upon Mr Hassan to prove that he was not negligent, nor indeed to prove anything at all. Nevertheless, his evidence is part of the whole of the evidence in the case, and his counsel invited me to draw certain positive conclusions from it. As I note below, Mr Hassan's candour in certain respects in his answers to the police immediately after the accident demonstrates truthfulness, and, perhaps, a degree of shock.
21. His evidence at the hearing, however, years after the accident, was in my view not shown to be reliable. In cross examination there were the following exchanges.

“Q What do you say about the position Mrs Bruma was in immediately after the accident?”

A Immediately after the accident I got out of driver's door and walked behind my car and Mrs Bruma was on the ground near the bus stop in between the 'P' in the word 'Stop' of Bus Stop painted on the road and the manhole [in the photograph at p. 95]– no way forward of my vehicle.”

Mr Hassan then said that Mrs Bruma had appeared to “walk” a little from one position to another. When counsel asked whether he really meant to say that she was walking, Mr Hassan said that,

“... it wasn't actually walking but struggling to get to her feet. I didn't help her - I was too scared I was shouting at her 'why did you run?' - I was in shock.

Q Are you saying she was conscious?

A Semi-conscious. She was making noises to the man I think was Algul. I called the police.

Q Did you notice anything about her legs?

A Afterwards I noticed the position of her foot was not natural. She was trying to get up and he was helping her. I said “don't

move her” and he stopped and lay her down and I think that (indicating clothing shown on the ground in the photograph at p. 95) was her coat and he took it off and put it under her head. He moved her from the position I described to where the ‘U’ of ‘Bus’ is on p. 95. She was moving and he was moving with her and I said ‘Stop.’

Q You are making this up as you go along, aren't you? Look at your statement at p. 73 #15-16 “15. I got out of the car. The claimant was on the ground and her left leg was twisted at a funny angle. People gathered round to see how the claimant and I were. I called the emergency services and I think someone else did too. 16. A couple of minutes later a man appeared calling the claimant's name. He went to comfort her. I spoke to him. He said that the claimant had got out of his car just before the accident.” Do you accept that nowhere in that have you mentioned Mrs Bruma walking or even moving?

A I wasn't asked.

Judge: You also seem to put events in a rather different order?

A:[no reply]

Q Look at PC Catanach's witness statement (pp.79-80) he described seeing just in front and slightly to the left of your vehicle a small group of 3 to 4 people huddled around a female who was lying on the floor. “At first I could see that her left leg was extremely deformed and facing the wrong way. Someone had attempted to place a jacket over her to keep warm. [She] was not responsive but her eyes were open and closing very slowly I could see that she was still breathing. One of the group was still holding her hand.... I was helping the paramedics by holding [Mrs Bruma] still. He then asked to move [her] body so that she was lying flat on the floor as she was twisted. The paramedic held her head whilst I moved her body.” Given that, do you accept that there was no way that she was trying to get up, still less walking?

A I remember her moving like that.

Q Look at your supplemental witness statement p. 75B - #7 “I have been shown the police photographs taken after the accident. The clothes that are in the road do not show where the claimant fell. She landed to the nearside of my car where the letters “bus stop” are painted on the road. She hit the windscreen and went over the car to my left and hit her head on the road.” Do you accept that nowhere in that supplemental witness statement do you say she tried to move?

A I wasn't asked."

22. These answers seemed to me to demonstrate a degree of unreliability. It may be such unreliability arises from simple loss of memory given the passage of time. It may be the result of attempts at reconstruction of events long ago which occurred in a matter of seconds. It would be an entirely normal human reaction for anyone in Mr Hassan's position to reconstruct events, rather than to remember them. However, the inconsistencies which counsel exposed in cross examination were such as to make it difficult to regard Mr Hassan as a reliable witness.

Findings of fact

(1) Mr Hassan's speed

23. Whilst his evidence at trial may have strained credulity in certain respects, as just mentioned, Mr Hassan was frank in his immediate responses to the police. He volunteered to the police at the scene that he had been driving at 30 mph. He said in his witness statement that as he approached the traffic lights controlling the pelican crossing at the Highbury Corner roundabout he saw that the lights were red and so slowed down by taking his foot off the accelerator, with his "foot over the brake" ready to come to a complete stop. However, as he came closer to the crossing the lights changed to green and so he carried on through the traffic lights and around the corner, going at about 15 mph. He said that he accelerated "*a little*" as he drove up the road.
24. The experts' evidence as to the speed at impact cannot be precise but it was accepted to have been within the range of 20 mph to 30 mph, given the damage they observed on the photographs of the Daewoo and the research literature which is available to them for assessment of such matters. Neither of them was able to dismiss the possibility of Mr Hassan's own estimate of speed, 30 mph.
25. Counsel for the claimant made the persuasive point that a motorist in the position of Mr Hassan, when giving an estimate of his speed to police officers following a serious accident, is most unlikely to overestimate it.
26. In the circumstances, I find on the balance of probabilities that Mr Hassan was travelling at or about 30 mph when he first became aware of Mrs Bruma's presence. He attempted to brake, and may have reduced his speed to some extent by the moment of impact. He did not swerve, however, and struck Mrs Bruma almost "head-on".

(2) Did Mrs Bruma walk or run across the road?

27. The only independent evidence that Mrs Bruma ran across the road was the hearsay account provided to PC Catanach by an unknown person at the scene. The person concerned may or may not have actually witnessed the accident.
28. That hearsay evidence, however, is balanced by the hearsay evidence which PS Calveley recorded, from another unknown person at the scene, containing the

unequivocal description of Mrs Bruma “walking” across the road, the terms of which suggest that the person was an eye-witness.

29. Mr Hassan’s first words on the subject, as noted above, were,

“She was still trying to run across.”

It is to be noted that whilst he used the word “still” he had made no previous mention of her running. There is an obvious distinction, relied upon by leading counsel for the Claimant, between seeing a person actually *running* and seeing someone “trying to run”, especially when sight of that person is momentary.

30. Mr Hassan's evidence in his witness statement dated 14 April 2016 made greater reference to Mrs Bruma running. At paragraphs 12 and 13 he said,

“I saw a woman in the road. She was running from my right to left. I was shocked to see the claimant in the middle of the road and running into my lane. She did not stop. She just carried on.... From the time I saw her, the claimant only took one more step, maybe two, before she was right in front of my car. She was running all the time.”

31. If the claimant was only able to take one step or two from the moment Mr Hassan first saw her to the moment of the impact, it is difficult to see how Mr Hassan could say he had seen her “running into” his lane, or that she was “running all the time”. Mr Hassan was plainly surprised at what he regarded as the sudden appearance of the claimant in front of him, and such suddenness might very well have given him the impression that she was “trying to run.” It is in my view extremely difficult to judge the speed of anyone who is suddenly seen in such circumstances, and who takes only one or two steps before impact.
32. Counsel for the defendants submitted that the inherent probabilities were that Mrs Bruma ran across the road because she was in a hurry to get home, was not prepared to walk down to the pelican crossing, and because people crossing roads, where they are aware of traffic and are trying to judge an opportune moment to cross in front of it, are likely to run and not walk.
33. In terms of generalities those propositions are perfectly reasonable. In this case, however, there is the evidence of the account taken immediately after the accident by the police from Mr Algul which is not consistent with those propositions or the reasoning behind them. Of course, the evidence was not capable of being tested in cross-examination, but I see no reason to doubt its accuracy or reliability on this point. If Mrs Bruma had been in a hurry to cross the road as soon as she was dropped off near the underground station, why did she not walk across immediately at the point at which the Audi stopped? Why, instead, should she have walked behind the Audi -- an action which Mr Algul can hardly have imagined -- thereby going in the opposite direction, and stepped onto the pavement at the bus stop? Those are the actions of someone who is taking appropriate care. They are not the actions of someone who is in a hurry.

34. Then there is the evidence of the experts which (however theoretical it may be) does not in my view support any suggestion that Mrs Bruma was running, still less "*sprinting*" at the moment of impact. In cross examination Dr Coley's evidence was as follows.

(Counsel made reference to Mr Hassan's evidence that he had seen the claimant for the first time when she was at the centre line, and to the distance from that point to the point of impact, and asked,)

Q Do you therefore agree that it is wholly unrealistic to suggest she was jogging?

A I agree.

(Counsel then made reference to the document D1, an illustration from the literature referred to by both experts, which gave a comparison of head impact positions projected onto the top of the windscreen among some 41 simulated cases of collisions between a pedestrian moving into the path of a moving car.)

Q Does that illustration show that the impact damage at the two fastest speeds (item 40 -- 3 m/s; and item 21-- 2.54 m/s) are at the most extensive range or 'offset' – i.e. the two highest impact points which were also offset to the left of the centre line of the windscreen?

A Yes

Q Would you agree that the damage to Mr Hassan's vehicle was entirely consistent with Mrs Bruma having been walking?

A Walking or jogging. I can't say.

35. I have come to the conclusion that on the balance of probabilities Mrs Bruma was walking across the road from the moment she stepped off the pavement until the moment she was struck by the Daewoo.

(3) Was Mr Hassan's speed appropriate for the conditions?

36. Upon the basis of my finding of fact as to his actual speed, Mr Hassan was driving at or very close to the maximum speed permitted. Counsel for the defendants made the point that this is a main road out of London, which connects with the Great North Road. I accept that point: it is plainly a major arterial road and not, for example, the sort of road which serves a housing estate where children's playgrounds are likely to be found at any point, or where children may be playing on the road. I bear those points in mind.

37. However, the Highway Code is quite explicit and uncompromising in dealing with the appropriate speed for any car driver, within the maximum limits which are set for any given piece of road.

“Rule 125 The speed limit is the absolute maximum and does not mean it is safe to drive at that speed irrespective of conditions. Driving at speeds too fast for the road and traffic conditions is dangerous. You should always reduce your speed when the road layout or condition presents hazards, such as bends; sharing the road with pedestrians ...; weather conditions make it safer to do so; driving at night as it is more difficult to see other road users.”

A number of the points referred to in that rule are engaged in this case: darkness; weather; and the possibility of pedestrians in the road.

“Rule 146 adapt your driving to the appropriate type and condition of road you are on. In particular, do not treat speed limits as a target. It is often not appropriate or safe to drive at the maximum speed limit. Take the road and traffic conditions into account. Be prepared for unexpected or difficult situations Be prepared to adjust your speed as a precaution. Try to anticipate what pedestrians... might do. If pedestrians ... are looking the other way, they may step out into the road without seeing you.”

38. It is not in my view a counsel of perfection, nor anything like one, to say that a motorist driving, as Mr Hassan was, in the hours of darkness in early November, on a wet main road close to a major London Underground station, should not be driving at the maximum permitted speed, even if there are not as many people about as there would be during the rush-hour. 30 mph, as the Highway Code puts it, is “the absolute maximum” for any car at any time, even in broad daylight, on a dry road, and early on a summer morning with no other traffic or pedestrians in sight. The contrast between such conditions and those in this case, a wet road in the month of November during the hours of darkness, with other traffic and pedestrians in sight, requires no emphasis.
39. To that extent at least it seems to me that Mr Hassan’s speed was probably excessive. In my view the maximum speed at which he should have been travelling would have been in the region of 20 mph.

Vehicles on the opposite side of the road to Mr Hassan

40. Mr Hassan’s evidence was that he saw only *one* moving vehicle on the other side of the road at the material time. That vehicle he described as a green estate car.
41. Mr Algul’s car is shown in the photographs at the scene. It is an Audi Q7, which was described in the evidence as an “SUV” (meaning “*sports-utility vehicle*”). It is blue in colour. Is it a reasonable possibility that Mr Algul’s car was seen by Mr Hassan in a

few seconds as it passed him with lit headlights, and, under the light from sodium street lamps, might have been mistaken by him for a green estate car?

42. Mr Medd submitted that the court should not substitute its own views of what is or may be an estate car for those of Mr Hassan. One difficulty with that point is that neither side asked Mr Hassan himself to give any more detailed description, nor to explain what he meant by the term “estate car.” Dr Coley was not asked if he would call it an estate car. Mr Davey called it “*an SUV estate.*”
43. For my own part, I understood the witness’s reference to an estate car to mean a car which is so designed as to have side windows which extend along the whole length of the vehicle aft of the windscreen, and which has an open carrying space behind the rear passenger seats, accessed by a tailgate or hinged rear door, instead of a boot and boot-lid.
44. My immediate impression of the Audi, as it is shown in the photographs in the trial bundle, was that it was an estate car. In order to check whether my own understanding diverged from common parlance, I have noted that the (online) Encarta Dictionary of UK English gives the definition “... *a car with extra carrying space behind the seats, a rear seat that folds down, and a hinged rear door.*” The Shorter Oxford Dictionary definition is: “... *a car designed to carry both passengers and goods usu. with folding rear seats and a rear door in place of a boot.*” The Oxford Dictionaries Thesaurus provides the following synonymous phrases for “*estate car*”: “*shooting brake*” “*station wagon*” and “*SUV*”.
45. In the circumstances I do not think I would be substituting my own view of the concept of an estate car for that of Mr Hassan’s in regarding it as at least a reasonable possibility that the car he saw approaching him with headlights lit was Mr Algul’s Audi.
46. A more significant question is whether on the evidence it is not merely a possibility, but a probability, that the car which Mr Hassan saw approaching was indeed the Audi.
47. In considering the answer to that question the following points are of significance. Counsel for the defendants relied upon evidence given by Mr Hassan that the Audi was a parked car that he said he had seen at the bus stop. However, as to that car he was asked,

“Q You say that the dark car was next to the bus stop on the other side of road – was it sufficiently light to see?”

A Not really. I did see a car there but it was dark. It was a parked car.

Judge: Was the car showing any lights?

A That I don’t know.”

He was then asked if he was saying that the parked car was the Audi and agreed that he was. It was accepted by the witness that the road at that point is a “red route” *i.e.*

one on which stopping to park, load, unload, or to board and alight from a vehicle is prohibited, save for exceptions irrelevant to this case.

“Q Did it cross your mind that the car might have stopped because it was dropping off a passenger?”

A No

Q In Mr Algul’s statement (at p149) he said that Mrs Bruma got out of the rear driver’s side door of his car – did you see anyone do that?

A No.

Q Did you see anyone walk around the back of the car?

A Not that I remember.

Q At p. 73 para.11 you said there was no car immediately in front of you in your lane but you saw a dark car which was parked at the offside bus stop -- did you see that car moving?

A No.

Q You only refer in your witness statement to seeing the green estate car coming towards you?

A Yes.”

48. In identifying the parked car as Mr Algul’s car, Mr Hassan was adopting an option suggested to him as a possibility in cross examination. I did not understand cross-examining counsel to be suggesting that as a positive proposition, since it is the claimant’s case that the car approaching him was the Audi.
49. It seems to me to be clear, and for the avoidance of doubt I find as a fact, that any parked car (if indeed Mr Hassan’s recollection is correct and there was one) cannot have been the Audi. In the statement taken from Mr Algul at the scene, he described seeing the claimant walk across the back of his car and stand at the bus stop, and then made immediate reference to his pulling off and driving towards Highbury Corner. He said that he drove only about 50 metres before hearing a loud bang. In other words he would have driven the distance from the bus stop to the pelican crossing before hearing what must have been the sound of the impact between Mr Hassan’s car and Mrs Bruma.
50. The inferences I draw from that evidence are as follows. During the time that the Audi was moving towards the pelican crossing it is likely (if not obvious) that the claimant must have stepped off the pavement and started to walk across the road. During the same period of time Mr Hassan must have been driving from the pelican crossing towards the bus stop, and the two vehicles (his and the Audi) must have crossed each other. I make allowance for the submission by counsel for the defendant that the statement made by Mr Algul was made by the time he had had the opportunity to see

that his employee had been very badly hurt, so that (counsel implied) he may subconsciously have wished to absolve her of blame.

51. Nevertheless, given those facts, on the balance of probabilities Mr Hassan simply could not have seen any car other than the Audi approaching him on the opposite side of the road. As Miss McNeill put it, given that Mr Hassan's evidence was that there was only one car which was moving in the opposite direction, and the undoubted fact that the Audi did move in that direction immediately before the accident, it is clear that the moving car which Mr Hassan saw must have been the Audi.
52. Moreover, the Audi is a vehicle which from its general appearance could easily be regarded as an estate car, although it was blue rather than green. In terms of inherent probabilities, the coincidence of another vehicle with the general appearance of an estate car suddenly appearing on the scene, and then effectively vanishing, is not one I can readily accept. In the circumstances, the presence of any parked vehicle is irrelevant.

(4) When should Mrs Bruma have first been visible to Mr Hassan?

53. Since I have concluded that Mrs Bruma first walked behind the Audi and onto the east pavement, and then, as the Audi drove off, stepped into the road and began to cross it at walking pace, there seems to me to be no reason why she should not have been visible to Mr Hassan for a considerable time. The circumstances were that, although it was still dark, the area of road was well-lit. There was light rain and the road surface was wet. There were three or four pedestrians in the vicinity.
54. The experts proceeded upon the basis that Mrs Bruma walked directly across the road, following the shortest path across it, and therefore the distances which formed the basis of their calculations should be considered as minimum distances (see Mr Davey at p. 203, para 6.1.23, and Dr Coley at p 245, para 7.1.7 and his Figure 10.) Plainly if Mrs Bruma took a diagonal path across the road she would have had to travel a greater distance and would have been visible for a correspondingly longer period. In the absence of any other evidence, the experts' premise is an appropriate way in which to proceed.
55. Mr Hassan was then entering the northbound offside lane in Holloway Road. He had had a clear view from the Pelican crossing up a long straight section of the road. Miss McNeill QC submitted that on his own clear evidence there was only one car at any point which could have obstructed Mr Hassan's view. That, counsel submitted, can only have been the Audi, and such obstruction as it may have caused was likely to have been momentary. Reference was made to Dr Coley's evidence in cross-examination, as follows:

Q By reference to the table JES 1 at p. 272 what is the fastest speed at which Mrs Bruma could have been going?

A 4.24 metres per second is the fastest jogging speed: that is almost twice the speed of fast walking pace. In my opinion the Claimant was not going at that speed at time of impact: her

speed is likely to have been anywhere between 1.37 and 3.54 metres per second.

Q If Mr Hassan was going at 30 mph and started braking 14 metres before impact, and Mrs Bruma was travelling at walking speed then he would have had her in his sight for about 2.8 seconds from the moment she left the kerb?

A At that speed it would have taken him 2.8 seconds to cover the 38 metres, and if there was no oncoming vehicle she would have been in his sight.

Q If he had gradually accelerated up to 30 mph Mrs Bruma would have been potentially have been in his sight for significantly longer?

A Yes. Because then his average speed would have been lower. At a normal rate of acceleration, the period would have been 3.9 seconds.

Q If he had been going at 20 mph and began emergency braking 6 metres before the final position of the car – then Mrs Bruma would have been in his sight for 5 seconds?

A 5.1 seconds. If there was gradual acceleration it would have been longer.

....

Q On the issue of perception/reaction time: working from the table JES1 in the joint statement at p. 272, is it correct that if Mrs Bruma was walking at a speed (in the mid range for walking speed given in that table) of 1.65 metres per second, then walking from the kerb to the centre of the road, a distance of 7.4 metres, would have taken her 5.4 seconds?

A Yes

At a later stage in cross-examination Dr Coley was asked,

Q On the basis that there was a single vehicle coming towards Mr Hassan, then at most it could only have blocked his view momentarily?

A I think there are far too many variables to say – but she was certainly not obscured for 4.5 seconds

Q Nor for less than 2.5 seconds?

A Seems unlikely.

56. Mr Davey's evidence at para. 6.3.3.1 of his report (trial bundle p 214) was that, taking the premise that "the green car" described by Mr Hassan would to some extent have obscured his view of the claimant, but that it then continued to travel southbound as illustrated in his figure 18, then in his opinion any obstruction of the claimant caused by the green car would have been momentary, and it would have been highly probable that Mr Hassan would have been able to have gained a view of her while she was still crossing the southbound bus lane (*i.e.* the nearside lane on the opposite side.) Thus although it was possible that the presence of the southbound car may momentarily have obstructed the view of the claimant afforded to Mr Hassan, there should still have been a significant opportunity for the defendant to have identified her as she crossed the road.
57. Counsel for the defendants criticised Mr Davey's evidence in this and other respects for going beyond the proper limits of expert evidence and amounting to some extent to advocacy. Counsel for the claimant criticised Dr Coley for his "grudging acceptance" that any obstruction of Mr Hassan's view of the claimant by the car travelling in the opposite direction would only have been momentary. In my view Mr Davey was giving a perfectly permissible expert opinion upon the basis of a hypothesis of fact placed before him for his comment. Dr Coley, for his part, was cautious and perhaps understandably reluctant to agree to any definite concept of a "momentary" obstruction of view, given the obvious reality that on any view the periods of time contended for by each side (whether upon the basis of speeds for the movement of the vehicle or for the movement of the claimant) were very short indeed. I should add, for the sake of completeness, that no evidence was given by either side to suggest that any "parallax effect" may have been of relevance in respect of the time during which Mr Hassan may have had visibility of the claimant.
58. In my judgment, whilst both experts were entirely genuine in their attempts to assist the court, the evidence of Mr Davey was more confidently given, and in a significant respect was confirmed by Dr Coley when he said that Mrs Bruma was certainly not obscured for as much as 4.5 seconds (the time it would have taken Mrs Bruma to walk from the kerb to the point of impact), and it was unlikely that she was obscured for less than 2.5 seconds.
59. I have come to the conclusion that whilst it is impossible to give a precise period of time during which the claimant would have been visible to the first defendant as he approached her, the probability is that the claimant would have been visible to him for a few seconds before he actually registered her presence on the road. The only explanation for his failure to make the observation until the very last moment is that he cannot have been keeping a sufficiently good lookout, and, probably, that he was simply driving too fast for the conditions. I reject his evidence that the side of the road from which Mrs Bruma was walking was darker than it was on his side of the road. There is simply no reason at all why that should have been the case. Accordingly I reject the submission that Mrs Bruma might have been walking a short distance from the kerb across the road but might not have been visible to Mr Hassan because of poor lighting, before (it was submitted) then being obscured by the Audi.

Perception/reaction times

60. Some time was spent at the hearing in considering the range of perception/reaction times available to Mr Hassan given a variety of possible approach speeds for both parties, and given a variety of different positions in which the claimant might have been when first visible to him. Counsel for the defendants warned me against making findings of “unwarranted precision” upon the basis of the evidence of accident reconstruction experts. Having done so, however, he submitted with considerable ingenuity that the only safe conclusion which the court could reach, on the basis of Dr Coley’s evidence was that Mrs Bruma was visible to Mr Hassan only when she reached a point 3 metres from impact (discounted from 3.3 metres to take account of the “many uncertainties.”) Upon that basis, “even if the claimant was walking at a speed of 1.65 m/s” and “even if D was travelling at 25 mph” and even allowing a perception/reaction time of one second, Mr Hassan could not have stopped in time to have avoided a collision.
61. I have already made it clear that I have found as a fact that the speed at which Mr Hassan was driving was 30 miles an hour or very marginally below that speed. I see no reason to find that he was driving as slowly as 20-25 mph, for the reasons I have already given.
62. On the evidence (see Mr Davey’s report at p. 221; Dr Coley’s report at p. 257; and the joint report at p. 268) a reasonable perception/reaction time for a normal motorist would be no more than 1.5 seconds. The table “JES1” shows that taking a distance of 1.7 m as the agreed distance between the centre white line and the point of impact if the claimant were walking at 1.65 m/s, it would take (obviously) 1 second for her to cover that distance, whereas if she were walking at a speed of 1.37 m/s it would take 1.2 seconds.
63. The table “JES2” and the commentary in the joint statement at p. 273 of the trial bundle shows that a perception/response time of 1 to 2 seconds gives a range of total stopping distance of 15 to 24 metres at 20 mph; 21 to 32 metres at 25 mph and 28 to 41 metres at 30 mph. Had Mr Hassan been driving at 25 mph it appears from the table that he would have been able to stop if he had seen Mrs Bruma when she was stepping off the kerb or when she was 3 metres from the kerb or even 4.4 metres from the kerb.
64. Making all allowance for the degree of “glare” caused by dipped headlights on an oncoming vehicle, and its momentary obstruction of view, and also for the smear effect of intermittent windscreen wipers in conditions of drizzle, I have reached the conclusion that on a long straight stretch of road with proper street lighting, the Claimant, who was crossing two lanes of the road ahead of him, would have been visible to Mr Hassan, despite the dark clothing on her upper body, for several seconds before the impact. I agree with counsel for the claimant that the estimate of 2.5 seconds given by Dr Coley is probably the minimum period. Had Mr Hassan been (a) keeping a proper look out and (b) driving at 20 or even 25 mph, he would probably have been able to stop.
65. Dr Coley said at p. 248 of his report, at para. 7.2.14 that in his opinion the damage to the car was likely to indicate an impact speed of at least 15 mph, although the speed

could be significantly greater. He could not rule out an impact speed as high as 30 mph. Taking Mr Hassan's own estimate of speed, i.e. up to 30 mph, if he managed to brake for one second in the agony of the moment, he would (on the agreed expert evidence) have been likely to have been able to have reduced his speed by up to 15 mph. Had he been driving at 15 mph, he could have stopped.

Conclusion on primary liability

66. The degree of fault on the part of Mr Hassan may not have been very great, in the sense that it did not amount to anything like an episode of dangerous or reckless driving. It did, however, in my judgment, fall below the standard to be expected of a reasonably competent motorist in the conditions which prevailed at the time. Had Mr Hassan been driving at a significantly lower speed, and keeping a more alert lookout, it seems to me that it is probable that the accident could have been avoided. Given the conditions, he should have been driving at a lower speed. He should also have been keeping a better look out. It therefore follows that in my view the claimant succeeds in establishing primary liability.

Contributory negligence

67. It is accepted on her behalf that Mrs Bruma should have seen Mr Hassan's vehicle approaching. The probability is that she misjudged the speed of his approach. However, it is submitted that this is not a case which bears any similarity to *Belka v Prosperini* [2011] EWCA Civ 623, which is relied upon by the Defendant. In that case the claimant took a deliberate risk in running across the road in front of the taxi being driven by the defendant when, as the judge found, "unless the defendant took some avoiding action an accident was likely." Counsel for the claimant pointed out that Mr Belka had not crossed two lanes, as Mr Bruma had, before running (not walking) into the path of the taxi – he had crossed one lane from a central refuge. He ran into the path of the approaching car and took a deliberate risk while his companion remained on the central refuge. Hooper LJ, with whom the other members of the court agreed, said that in his view it was a case where the conduct of the claimant in deliberately taking the risk of trying to cross the road in front of the taxi contributed more immediately to the accident than anything that the respondent did or failed to do. The judge's finding of contributory negligence to the extent of holding that the claimant was two-thirds to blame for the accident was upheld. The finding of liability against the defendant taxi driver was made upon the basis that had he kept a better look out, and slightly eased his speed, the accident could have been avoided.
68. Counsel for Mrs Bruma relied on the cases of *Eagle v Chambers* [2003] EWCA Civ 1107 and *Sabir v Osei Kwabena* [2015] EWCA Civ 1213. In *Eagle v Chambers*, the claimant was a 17-year-old girl whom the judge found to have been drinking, and who was in an emotional state and had deliberately chosen to place herself in a dangerous position on a main road. Her conduct was such that others were so concerned for her safety that they attempted to warn her: one eyewitness who had tried to persuade the claimant to get off the road was sworn at. Hale LJ (as she then was) referred (at para. 15) to the 'destructive disparity' between the parties which could 'readily be taken into account' as an aspect of blameworthiness and at para. 16 to the rarity of a pedestrian being found more to blame than a driver. The Court of

Appeal allowed the claimant's appeal against the judge's finding of 60 per cent contributory negligence and substituted 40 per cent.

69. In *Sabir*, the claimant was crossing the road on foot when she was run over by a car driven by the defendant. She had stepped into the road 19 metres beyond the traffic light -controlled junction where there was a pedestrian crossing. The defendant was travelling at 30 mph and did not see the claimant until she was three or four metres in front of him. The claimant clearly misjudged the position of the defendant's car and the time available for her to cross the road. She suffered very serious injuries. The judge found that the claimant was to blame to the extent of one quarter by having made "a slight misjudgement". The defendant's appeal was dismissed upon the basis that the causal potency and blameworthiness of his conduct was very substantially greater than that of the claimant. Although the claimant had been unwise to cross the road when she did, a collision should not have happened because it was relatively easy for the defendant to have avoided it. The court made reference to the fact (para. 16) that the pedestrian in that case did not suddenly emerge into the road creating a situation of urgency. She had been in the direct field of vision of the Defendant for 2.6 seconds. Counsel for the claimant submitted that that period was even less than the time that Mrs Bruma was in Mr Hassan's vision, whatever his speed may have been within the range of 20-30 mph.
70. In the current case, it is submitted by Miss McNeill that the appropriate deduction is 20 per cent bearing in mind relative blameworthiness, the period for which Mrs Bruma should have been visible to Mr Hassan, and the speed at which he was driving.

Conclusion on contributory negligence

71. In my view there are a number of important features of the evidence which bear upon the issue of relative blameworthiness. Adopting the approach of the Court of Appeal in the case of *Eagle v Chambers*, I propose to set out the matters which are significant in terms of causative potency for each of the parties.
72. So far as the defendant's conduct is concerned, the following matters are relevant.
- i) This was a wide, nearly straight, and well-lit road. The visibility was as good as it could have been during the hours of darkness, but the weather was wet, and the effects of intermittent windscreen wipers and reflections of light from street lamps and oncoming headlights can cause obvious handicaps to vision.
 - ii) There was very little traffic, and I have found that the only vehicle that could have obstructed the defendant's view was the Audi, which would have obstructed it only momentarily.
 - iii) The defendant was driving at the maximum permitted speed despite the fact that it was during the hours of darkness and the weather was wet.
 - iv) This was not an unrestricted dual carriageway in the country, but a restricted road, with only one lane in each direction for traffic other than buses and taxis, in a built-up area. It is very much the main road in that area, with bus stops on either side of the road and the Underground station to one side.

- v) Car drivers have to be on the lookout for pedestrians in the road. It is a road upon which pedestrians are likely to cross, and it is a common experience that pedestrians do so even where there is a dedicated crossing point nearby.
 - vi) There was nothing unusual or untoward in the claimant's behaviour. On the contrary, she had taken steps for her own safety in crossing behind the Audi car onto the pavement, before venturing out into the road to cross it.
 - vii) I have found that the claimant was walking, and had crossed two lanes before attempting to walk into the lane in which the defendant was driving. I have dismissed such evidence as there was that the claimant made any sudden movement, for the reasons I have already given.
 - viii) There was nothing to prevent the defendant from taking avoiding action.
 - ix) I have found that he failed to keep a proper lookout.
73. On the other hand, the following matters must be accepted as being factors which give rise to some blame on the part of the claimant.
- i) She put herself needlessly at risk by walking across a four lane road, and not making use of the pedestrian crossing.
 - ii) She undoubtedly misjudged the presence and approach of the defendant's car, and its speed in particular.
 - iii) She was wearing some dark clothing on her upper body, when crossing a road in the hours of darkness.
 - iv) She failed to wait until Mr Algul had driven out of sight before attempting to cross.
 - v) She failed to stop at the centre line, but attempted to complete her crossing and so walked into the path of the defendant's car.
74. Having taken all those matters into account, and having considered the authorities referred to by both sides, it seems to me that an appropriate division of responsibility would be to find that the defendant was 80 per cent to blame with contributory negligence to the extent of 20 per cent on the part of the claimant.
75. Upon that basis in terms of the outcome on liability, I shall await counsel's further submissions, or alternatively an agreed order, to finalise these proceedings in respect of the quantum of damages and all other consequential matters.