

SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH
IN THE ALL-SCOTLAND SHERIFF PERSONAL INJURY COURT

[2019] SC EDIN 42

PIC-PN2982-17

JUDGMENT OF SHERIFF KENNETH J MCGOWAN

in the cause

DANIELLE WEDDLE

Pursuer

against

GLASGOW CITY COUNCIL

Defender

Pursuer: Bain, QC; Wray, Advocate; Bonnar & Co
Defender: Smith, QC; McDougall, Solicitor-Advocate; BLM

Edinburgh, 30 April 2019

NOTE

Introduction

[1] This case concerns the recovery of damages for psychological or psychiatric injury, usually referred to as 'nervous shock' in the older cases. At the risk of over simplifying the position, where a person suffers physical injury as a result of an accident, then he or she falls into the class of persons entitled to claim for damages for that injury. Where a person suffers physical injury *and* a recognised psychological or psychiatric injury as a result of an accident, then the person injured may make a claim for both the physical *and* mental effects of the accident. In cases of either of these types, the question as to whether a claim for damages is

successful will depend on showing that the person who caused the accident – and hence the consequent physical or physical and mental injury – was at fault.

[2] But what does the law say about cases where no physical injury is suffered but a person affected (to use a neutral term) by an accident develops only mental harm in the form of a recognised psychological or psychiatric condition, but suffers no physical injury?

[3] Claims for ‘mental harm only’ arise most often, though not exclusively, in the context of bigger incidents, involving large numbers of people. Examples are the incidents on the Piper Alpha oil-rig and at the Hillsborough football ground. In this area of law, the classes of persons entitled to pursue a claim for damages are limited by the law for policy reasons. Essentially, there are two classes of persons who are entitled to pursue claims where mental harm, but no physical injury, has been suffered.

[4] Put broadly, the first class comprises persons directly involved in the accident. They are known as primary victims. So a person who has been directly involved in an accident, and who suffers mental harm but no physical injury as a result of that involvement, will be entitled to damages (subject to establishing fault on the part of the person who caused the accident). The second category comprises persons who were witnesses or by-standers and who suffered mental harm as a result of what they observed. They are known as secondary victims and ordinarily they will not be entitled to damages, unless they satisfy additional criteria, such as having witnessed at close hand the death of a close family member.

[5] This case arises from the notorious ‘bin-lorry’ incident which occurred in central Glasgow in December, 2014. The pursuer seeks damages for mental harm attributable to that incident. The case came before me for proof. It was a matter of admission by the defender that the driver of the bin-lorry, Clarke, had been negligent and that it was vicariously responsible for his actions. It was not disputed that the pursuer had suffered mental harm in

the form of a recognised psychological injury, namely post traumatic stress disorder (“PTSD”). The issue between the parties was whether the pursuer was a primary victim.

[6] The pursuer’s case is that she was a primary victim and, as such, falls within that class of persons entitled to recover damages. The defender’s position is that she was not. The decision on that matter depends on an analysis of the evidence and facts in the case and an application of the legal principles developed by the superior courts – particularly the Supreme Court – as to how the task of identifying primary victims should be carried out. This is set out in more detail below.

[7] I heard evidence from the pursuer; her father, David Weddle; Mrs Michelle Wade, a pharmacy employee; and Dr Fraser Morrison, a Clinical Psychologist. Certain other matters were agreed in two joint minutes.

[8] The following authorities/sources were referred to or mentioned:

- i. *Alcock v Chief Constable of South Yorkshire* [1991] 1 AC 410
- ii. *Campbell v North Lanarkshire Council and Another* 2000 SCLR 373;
- iii. *Collins v First Quench Retailing Ltd* 2003 SLT 1220;
- iv. *King v Phillips* [1953] 1 QB 429;
- v. *Leigh v London Ambulance Service NHS Trust* [2014] 2 WLUK 650; 2014 EWHC 286 (QB);
- vi. *McLoughlin v O’Brian* [1983] 1 AC 410;
- vii. *Page v Smith* [1996] AC 155;
- viii. *Robertson v Forth Bridge* 1995 SC 364;
- ix. *Wallace v Kennedy* (1908) 16 SLT 485;
- x. *White v Chief Constable of South Yorkshire* [1999] 2 AC 455;
- xi. *Young v McVean* 2014 SLT 934;

- xii. “Nervous Shock and Negligent Conduct”, F.A.Trindade, LQR 1996, 112 (Jan) 22-27; and
- xiii. *McEwan and Paton on Damages for Personal Injuries in Scotland*, Chapter 9.

[9] I also considered the cases of *Bourhill v Young* 1942 SC (HL) 78; *McFarlane v EE Caledonia Ltd* [1994] 2 All ER 1; *Duliu v White & Sons* [1901] 2KB 669.

[10] Both parties lodged written submissions which were supplemented by oral submissions. I have taken account of these and have sought to summarise the relevant parts below.

[11] Having made avizandum and considered the evidence and submissions, I made the following findings in fact.

Findings in fact

[12] On 22 December 2014, the pursuer was in the 4th and final year of her degree studies at Stirling University. She was studying economics. She was on her Christmas break. She had been staying overnight with a friend in Edinburgh and had returned to Glasgow by train, arriving at Queen Street Station (“the station”) at about lunchtime. She was on her own. The weather was freezing cold and she purchased a hot chocolate from an outlet within the station. She was heading to Jamaica Street and planned to walk there.

[13] She left the station by the south exit. This took her onto the north pavement of West George Street, just outside the Camperdown Public House. She went to the pedestrian crossing with the intention of crossing to the south pavement of West George Street at its corner with George Square. She stood on the north pavement waiting to cross, facing south, but looking at her mobile phone while she sent a text to her friend in Edinburgh.

[14] The Millennium Hotel was to the pursuer's left (i.e. to the east). To the south east was George Square gardens. To the south was the road forming the west side of George Square. That road runs roughly north/south. The pursuer could see a portion of the northern end of it, but her view of the westmost pavement of George Square and the area further south was obscured by the buildings opposite her.

[15] At the south western corner of George Square there is a junction with St Vincent Place (to the west); Queen Street (to the south); and the road forming the south part of George Square to the east ("the St Vincent Place junction").

[16] Queen Street is a one way undivided carriageway extending generally north and south. From its junction with Argyle Street to the south, the carriageway has two lanes for traffic travelling north. This expands to three lanes after the junction with Ingram Street. Queen Street terminates at the St Vincent Place junction.

[17] The western roadway of George Square (the part forming a continuation of and north of Queen Street) has three traffic lanes. At its northern end, there is a traffic light (with pedestrian phase) controlled T-junction, with West George Street to the west (left) and the northern roadway of George Square to the east (right).

[18] As at December 2014, there was, to the north of the T-junction, a vehicular access road to an area allowing traffic to drop off and pick up passengers for the station¹.

[19] Unbeknown to the pursuer, while she was standing at the pedestrian crossing on the north pavement of West George Street outside the station, a large DAF goods vehicle of standard chassis construction with an HEIL refuse body attached ("the bin lorry") owned

¹ The precise configuration at this part of the locus has changed since 2014 as a result of re-development.

and operated by the defender was being driven around parts of central Glasgow by their employee, Henry Clarke ("Clarke").

[20] About 14:30 hours, Clarke was driving the bin lorry north on Queen Street. The bin lorry mounted the west footway and travelled north on the footway. It struck a number of pedestrians before striking a black metal bin which was pushed north on the footway causing scratches thereto. The bin lorry continued north and struck more pedestrians. The front nearside wheel struck the wall of the Virgin Money building damaging the wheel studs and creating gouges in the stone wall of the building. The bin lorry continued north and the front nearside of the cab struck the Virgin Money placard sign and the Pizza Express placard sign and another pedestrian.

[21] The bin lorry thereafter struck and damaged various sign poles and struck more pedestrians. It struck the traffic pole at the corner of Queen Street and St Vincent Place (at the St Vincent place junction) causing the yellow pedestrian button control box fitted thereto to be detached and projected northwest into St Vincent Place. The bin lorry then re-joined the carriageway and travelled north on George Square. As it did so, it moved laterally east towards the pavement at the western edge of George Square gardens.

[22] Near the junction of George Street and West George Street, the bin lorry struck and damaged a black Nissan car, a silver Mitsubishi car registration mark and a silver Skoda Octavia ("the silver taxi") which was sitting stationary at the junction. At that stage, the bin lorry was travelling at about 19mph. The bin lorry crossed the north carriageway of George Square pushing the silver taxi in front of it. Both vehicles were travelling at about 5 mph. The bin lorry mounted the north footway and came to a halt against the wall of the Millenium Hotel damaging same and damaging the vehicle.

[23] Prior to the collision between the bin lorry and the silver taxi, the pursuer was looking at her phone. When the bin lorry collided with the taxi, there was a loud bang. The pursuer looked up. At that stage, the bin lorry was about 40m away from her. Both vehicles moved forward to a position about 32m away from her. The pursuer quickly looked back at her phone and immediately back across to her left towards the bin lorry and silver taxi. The bin lorry travelled roughly north east. The silver taxi travelled in more or less a straight line from its starting position. It ended up about 12m from where she was standing. At no stage was either the bin lorry or silver taxi coming directly towards the pursuer. At no stage was she at risk of being struck by either vehicle. The pursuer showed no physical reaction to what she had seen occur.

[24] The pursuer saw the passenger and driver get out of the taxi. She thought it was just a road accident and that everyone was okay. The collision had caught the attention of other pedestrians in the vicinity and patrons in the Camperdown Pub, some of whom looked over. Pedestrians continued to walk east along the north pavement towards the position of the bin lorry and silver taxi.

[25] The pursuer proceeded to cross West George Street in a southerly direction as she had intended to do while waiting to cross and before the collision between the bin lorry and the silver taxi. As she made her way south along the west pavement of the western carriageway of George Street, she saw a black car which was scraped. There was a family with kids hugging each other. She could not relate that to what she had just seen.

[26] When she got to the St Vincent place junction, she saw a girl on the ground wearing a black dress. She did not relate that to what she had seen. Given that it was near Christmas and it was the centre of Glasgow outside a pub, she thought the person might be drunk. A

man kept trying to pick her up. The pursuer initially just stood there and then realised that the girl on the ground was dead.

[27] The pursuer began to walk south onto the west pavement of Queen Street. She heard a man on the phone saying something about “lots of dead people”. He was crying. The pursuer wanted to get away.

[28] She then saw a second body – a girl. There was white stuff on the floor. The pursuer could not process it. She realised it was real and that it looked like intestines. The pursuer panicked. She took several steps back and then turned left along St Vincent Place towards Buchanan Street. She saw a dad with a young son and tried to tell them not to go to where she had been. She could not form any proper words but she thought he understood.

[29] The pursuer then tried to telephone her mum. When she could not reach her, she called her dad. Her dad asked what was happening and she tried to explain. She tried to tell him what had happened. She tried to be coherent. She was crying a lot. She thought he understood. Mr Weddle’s impression when he spoke to the pursuer was that she was suffering extreme distress. She told him “something horrible had happened”. She was almost incoherent. He wanted to know if she was physically unhurt and she confirmed that she was not hurt but said “there has been a horrible accident”. He told her to call her mum.

[30] Mr Weddle contacted his wife who telephoned the pursuer. Mrs Weddle told her to go to hospital, but the pursuer just wanted to go home. Her mum persuaded her to go to a pharmacy. She went to Jamaica Street and got a bus. When she got off the bus she went to a pharmacy in Cardonald. She did not want to go into the pharmacy but did so.

[31] The pharmacy assistant, Mrs Wade, noticed the pursuer when she came into the shop, which was very busy. She was crying and trembling and seemed unable to calm down. Mrs Wade had recognised that the pursuer needed help and spoke to her. The

pursuer was not making much sense and Mrs Wade could not get anything out of her. The pursuer did not know where she was.

[32] She was taken into a private room and given some water. She said that she had seen an accident and had then got on a bus. She did not know how she had got to the pharmacy. She told Mrs Wade a girl had been knocked down; she had been very close to it; and she had left the scene quickly to get on a bus.

[33] Mrs Wade arranged for the pursuer to see a doctor from a practice which was local to the pharmacy. She had to be signed up because this was not her GP. She was distraught and was given Diazepam. The doctor was concerned about her and called her that night.

[34] A day or so later, the pursuer went home to her parents' house in France as planned. While there, she was agitated and emotional. She suffered nightmares. She went for a walk with her father in a local forest and told him how she felt.

[35] After her return to Scotland, the pursuer continued to suffer psychological symptoms such as intrusive thoughts, flashbacks, anxiety and depression. She consulted her GP about her ongoing symptoms.

[36] In January 2015, as a result of her ongoing symptoms, the pursuer's GP referred her for counselling.

[37] In due course, she was referred to the Wellbeing Service, Glasgow for psychological treatment. She was diagnosed as suffering from PTSD. She received counselling and underwent Eye Movement Desensitisation Reprocessing and Cognitive Behaviour Therapy. During her counselling sessions, the pursuer did not mention that she had been in fear for her safety when she witnessed the collision between the bin lorry and the taxi.

[38] The pursuer was unable to attend university due to anxiety about travelling through Glasgow city centre. Her studies were disrupted.

[39] By August 2015, she had completed 11 CBT sessions with a Primary Care Mental Health Therapist at the Wellbeing Services.

[40] By October 2015, the pursuer was feeling better after counselling and was contemplating a return to university. She had resumed her part time job.

[41] In November, the pursuer's PTSD symptoms returned and she was very stressed and unable to work. She was prescribed anti-depressants. She found the anniversary of the accident a difficult time. She was unable to attend university.

[42] By January 2017, the pursuer's anxiety symptoms remained prominent. She struggled to get out the house.

[43] During 2017, the pursuer continued to be prescribed anti-depressants. There was no improvement in her anxiety symptoms.

[44] By August 2017, the pursuer's PTSD symptoms continued and she was keen for further psychological input. She had applied to return to university to resume her studies but did not know if she would be accepted for that September.

[45] The pursuer was not able to resume her studies in 2017. Her symptoms deteriorated again towards the end of 2017. She was thinking of going to live with her boyfriend in Manchester.

[46] In about mid-November 2017, the pursuer moved to Manchester. Her mood at that point was better, but she still became tearful easily and suffered poor sleep. She continued to be prescribed anti-depressants.

[47] On 30 November 2017, the pursuer was seen by Dr Morrison for the purposes of preparing a psychological report. She presented as extremely upset and appeared to experience significant symptoms of psychological distress. Her presentation was consistent with the range of symptoms which are ordinarily observed in cases of PTSD. She gave Dr

Morrison a detailed description of what had happened and what she had witnessed. She did her best to give an accurate account. She did not mention being in fear for her own safety.

[48] After moving to Manchester, the pursuer initially worked in a number of short term jobs. She then gained a place at Manchester Metropolitan to study economics. She resumed her studies. Her attendance at university went relatively well although she did experience some difficulties due to stress, linked to having to attend further medico-legal appointments and more generally with regards to the effects of her upcoming Court case.

[49] In June 2018, the pursuer was seen by Dr Jacqueline Scott, Consultant Psychiatrist for the purposes of a medico-legal report commissioned by the defender. The pursuer did not say to Dr Scott that she had been in fear for her own safety at the point when the collision between the bin lorry and taxi occurred.

[50] On 9 January 2019, Dr Morrison saw the pursuer again for the purposes of preparing an up-to-date report. Although somewhat anxious during the interview, the pursuer's presentation had notably improved. During this assessment, the pursuer told Dr Morrison that when she later considered the accident, she recalled being extremely worried that one of the vehicles would strike her and that she would either be seriously injured or killed.

[51] The pursuer continues to experience nightmares about once or twice per week. The nightmares are related to death and the circumstances of the bin lorry incident. She is reluctant to fall asleep due to worry about experiencing vivid nightmares.

[52] She remains 'super aware' when walking in public. Loud bangs make her extremely anxious and she is hypervigilant when she sees large vehicles or bin-lorries on the road. This hypervigilance is somewhat reduced when she returns to France to visit her parents as they live in a more rural location.

[53] The pursuer is currently being prescribed medication to manage her sleeping difficulties and takes Sertraline for anxiety.

[54] Whilst the pursuer's psychological symptoms have improved between November 2017 and January 2019, she continues to meet diagnostic criteria for PTSD, by reference to DSM-V (*Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition, American Psychiatric Association*).

[55] The pursuer's ongoing involvement in litigation is likely to be contributing to her overall level of stress and leading to a temporary deterioration in terms of her general mental health, which should improve when the process of litigation is concluded.

[56] The pursuer should undergo a further fifteen sessions of trauma focused Cognitive Behaviour Therapy and/or Eye Movement Desensitisation Reprocessing. Her condition should improve over a period of around six months from the start of psychological treatment. The pursuer is due to commence this treatment shortly after the proof.

[57] The pursuer was doing well in her studies at Stirling University. But for the accident she would have earned about £1,500 from part time work during her final months at university. It is likely that she would have graduated with a 2:1 degree. She intended to pursue a career as an Independent Financial Adviser. It is likely that she would have done so, commencing as a graduate trainee. As such she would have earned a salary of about £25,000 in the 12 month period ending 30 June 2016. She would have been likely to obtain salary increases as her training proceeded, giving her earnings of about £27,333 in the year to 30 June, 2017; £29,667 in the year to 30 June 2018; and, based on a £32,000 per annum salary, £26,667 in the 10 months from 1 July 2018 to the date hereof. Since 2015, she has in fact earned £6,971.93 from other work.

[58] The pursuer would have continued to earn a salary of at least £32,000 in the years ending 30 June 2019, 2020 and thereafter. Her earnings would have been likely to increase to a figure in the range £37,000 to £46,000 over time.

[59] The pursuer has returned to university and is expected to graduate in 2020. She still intends to pursue a career as an IFA. She is likely to start work around 1 July 2020. Her commencement salary will be at least £25,000 in the 12 month period ending 30 June 2021. She is likely to obtain salary increases as her training proceeds, giving her earnings of at least £27,333 in the year to 30 June, 2022; at least £29,667 in the year to 30 June 2023; and at least £32,000 per annum thereafter, with the opportunity to earn more as time passes.

[60] The pursuer has incurred university fees of £18,500 as a result of her move from a Scottish university to one in England.

Submissions for pursuer

[61] The law was as helpfully stated *McEwan and Paton* at Chapter 9 and in *Campbell*.

[62] There is a need to distinguish between primary and secondary victims: *Page*.

[63] A primary victim is someone who is involved, either mediately, or immediately, as a participant or who is within the range of foreseeable injury. A secondary victim is someone who is not a participant, but is a passive and unwilling witness of injury caused to others. Recovery of damages by a secondary victim is limited not only by the reasonable foreseeability test but also, and perhaps more importantly, by policy considerations.

[64] In disaster cases, at least three categories have been identified: (i) those who are caused to fear physical injury to themselves; (ii) rescuers who are exposed to the danger of physical injury or who reasonably believe themselves to be so exposed; (iii) those who participate in the incident in some way, and believe that they are the involuntary cause of

another's death or injury. If a primary victim suffers some identifiable psychiatric or psychological disorder or condition caused by the negligent act, he is entitled to damages, whether or not he has suffered any physical injury. In this case it is the pursuer's case that she is a primary victim.

[65] In *Campbell*, Lord Reed, after a review of the authorities, explained that in considering whether a primary victim is entitled to recover damages for psychiatric injury, one has to identify the range of foreseeable physical injury. The range of foreseeable injury includes not only situations in which the pursuer was in fact objectively exposed to danger but also to situations in which he could reasonably believe he was exposed to danger.

[66] If a pursuer was within the range of foreseeable injury then he can recover for psychiatric injury. Being within the range of potential physical injury, or the reasonable apprehension of such injury, is relevant at the stage of deciding whether the defender owed the pursuer a duty of care; it is not necessary to prove that the psychiatric injury was caused by the perception of personal danger.

[67] Lord Reed quoted from *Wallace* at 486:

“But there is one limitation that must not be lost sight of – the nervous shock must be occasioned by the reasonable apprehension of immediate and personal bodily injury. If the shock is occasioned by the apprehension for the safety of another or is occasioned by horror rather than terror, that does not justify action.”

[68] Lord Reed referred to *Bourhill* and explained that the House of Lords appear to have regarded the critical question as being whether injury by shock was reasonably foreseeable – an approach adopted in later cases such as *King*, where it was stated “the test for liability for shock is foreseeability of injury by shock”. That is to say, a duty of care to avoid causing the pursuer psychiatric injury could only arise where damage to the pursuer in the form of

psychiatric injury was reasonably foreseeable by the defender as a consequence of his conduct: see also *McLoughlin*.

[69] At page 378 Lord Reed turned to the case of *Alcock* and explained that the effect of this case was summarised in the case of *White* as follows:

“...the decision established that a person who suffers reasonably foreseeable psychiatric illness as a result of another person’s death or injury cannot recover damages unless he can satisfy three requirements, viz; (i) that he had a close tie of love and affection with the person killed, injured or imperilled; (ii) that he was close to the incident in time and space; (iii) that he directly perceived the incident rather than, for example hearing about it from the third person.”

[70] At page 379, Lord Reed highlighted what Lord Oliver of Aylmerton observed in cases of liability for nervous shock, quoting that he explained that:

“Broadly they divide into two categories, that is to say, those cases in which the injured plaintiff was involved, either mediately or immediately as a participant, and those in which the plaintiff was no more than the passive and unwilling witness of injury caused to others.”

[71] Lord Reed points out that Lord Oliver did not attempt any further definition of victims in the first category whom he referred to as “primary victims” and went on to say that “the distinction between primary and secondary victims has been developed in the subsequent case law.”

[72] Thereafter in pages 380-381, Lord Reed examined the cases of *Page* and *White* and provided further guidance on the circumstances in which primary victims can advance a claim for psychiatric injury. He highlighted that:

“Foreseeable injury in this context appears to mean potential physical injury or reasonable apprehension of such injury. This statement was founded on in the present case to support the argument that the pursuer cannot succeed unless (1) he was in physical danger, or (2) he fulfils the *Alcock* requirements as summarised by Lord Steyn.... ‘It should be noted that being within the range of potential physical injury, or the reasonable apprehension of such injury is relevant at the stage of deciding whether the defender owed the pursuer a duty of care; it is not necessary to prove that the psychiatric injury was caused by the perception of personal danger,

see per Lord Steyn at p 1546 H...For my part the limitation of actual or apprehended danger is what proximity in this special situation means.”

[73] At page 381F, Lord Reed concluded that:

“Accordingly Lord Steyn’s approach, as I understand it, is that one has to identify the range of foreseeable physical injury. This includes not only situations in which the pursuer was in fact objectively exposed to danger, but also to situations in which he could reasonably believe he was exposed to danger (if there is a difference between the two on the facts of a particular case: in this regard the judgment of Stuart-Smith LJ in *McFarlane v EE Caledonia Ltd* at page 10 is helpful). If the pursuer was within the range then he can recover for psychiatric injury. If he was not within the range, then he can recover for psychiatric injury only if he meets the *Alcock* requirements.”

[74] In *Campbell* the pursuer contended he was a primary victim. He had been working in the switch room shortly before an explosion and had been participating in the work that brought about the explosion. He was 30 to 40 yards away from where the explosion took place (36.5 metres) and ran back to the switch room while the explosion was still in progress, with flashes continuing. The explosion was extremely frightening. He was afraid that the puddle outside the switch room was live, and went into the switch room by another way, when smoke was still belching from the room. In entering the room he placed himself in a position of potential danger.

[75] In resolving the question as to whether the pursuer had pled a case sufficient to merit and examination of facts at proof, Lord Reed at page 384A - D stated:

“Approaching the matter in the way which appears to have commended itself to a majority of the committee in *White*, the issue is whether I can determine at this stage that the pursuer is bound to fail to establish that he was within the range of foreseeable physical injury. I do not consider that I can make such a determination. It is true that the pursuer was outside the switch room when the explosion occurred, and that he escaped physical injury. It does not however necessarily follow that his sustaining physical injury was not reasonably foreseeable; nor does it follow that he could not reasonably have been in fear for his own safety. At the most straightforward level, I could not reach such a conclusion without having evidence before me as to the risks which the explosion posed to his physical well-being both at the time he returned to the switch room, which is said to have been belching smoke. ... Approaching the matter in the way in which I understand Lord Hoffmann to have

addressed the issues in *White*, I arrive at the same conclusions. It may turn out after evidence has been led that the pursuer's psychiatric injury was caused in part at least not by his horror at witnessing the injuries of others, but rather by his own direct exposure to a frightening explosion. In that event it cannot be dismissed merely because he does not fulfil the *Alcock* requirements. In that event there will again be a question whether he was within the range of foreseeable physical injury (in which case he will fall within the principle applied in *Page v Smith*)."

The pursuer's case

[76] The pursuer's case is that she is a primary victim, and that when she was positioned at the traffic lights at Queen Street station and the events of the bin lorry accident unfolded before her eyes, she reasonably believed she was exposed to the danger of physical injury and reasonably believed she was in fear for her own safety. In such a situation, she is an individual who falls within the range of foreseeable physical injury and is an individual to whom the defender owed a duty of care. In these circumstances, she can recover for the psychiatric injury she has sustained.

[77] The pursuer's evidence was powerful and compelling. The circumstances described by the pursuer of what she witnessed and how she felt are entirely reasonable. She heard a loud bang and looked up to see a HGV – a bin lorry – travelling up Queen Street towards her, she felt as though it was coming directly towards her, she then saw it propel a taxi along in front of it and thought she was going to be struck. Both vehicles eventually came to rest a short distance from her. In a state of shock, she then walked down Queen Street and discovered the devastation that is described below. As a direct consequence of the circumstances described the pursuer has developed PTSD.

The accident and the locus

[78] The locus of the accident is fully described in the Police Collision Investigation Report: 6/13. This report and to the to-scale plans that are incorporated of the locus – including a detailed plan of the resultant position of the lorry and the taxi that the pursuer witnessed being propelled along Queen Street by it is agreed as accurate.

[79] The accident as described in the police report can be seen on the CCTV footage played during the pursuer's evidence in the court.

The pursuer's evidence

[80] On exiting the station and while waiting to cross at the traffic lights situated on West George Street, the pursuer was witness to the bin lorry accident. Her position is marked by her with an 'x' on the to-scale plan that is agreed as accurate in no. 5/13 of process.

[81] The pursuer was texting her friend on her mobile phone and heard a bang – like a gunshot. She looked up and saw the bin lorry on Queen Street travelling towards her. The position of the bin lorry at this point was marked by her at '2' on the plan. Based on the scale of the plan, this was about 40 metres away from her. She then saw the bin lorry pushing the silver taxi marked at '3' on the plan. Based on the scale, this was about 32 metres away from her. The bin lorry and taxi then continued towards her. The taxi was out of control and could have gone anywhere. Both vehicles crossed the hatched yellow crossing near to the Millennium Hotel and came to rest, the bin lorry driving directly into and striking the wall of the Millennium Hotel. The taxi came to rest about 12 metres from her and the bin lorry was further away from her. The pursuer explained that she felt really scared and thought she was going to be hit by the bin lorry or the taxi, using phrases in her evidence such as "I felt really scared"; "I did not know if taxi or bin lorry going to hit me"; "the taxi hit the

pillar”; “it took a few seconds to think what had happened”; “I thought the taxi was going to hit me”; “after taxi and bin lorry came to rest I was in shock”; “I saw passenger coming out”; “I thought ‘am I actually still here?’”; “it could have hit me”; “I was just really scared”; “I saw everyone got out of vehicles and I realised it hadn’t hit me”; “‘I’m actually still here’”; “I was convinced it was going to hit me – it was going quickly”; “when taxi/bin lorry stopped and realised not physically hit, I couldn’t believe it”; “I was scared, I wanted to get away and I walked straight down Queen Street”.

[82] Evidence is not what counsel suggests in questioning to the witness, or in statements made about the evidence – an important point to make in the context of this case in which no evidence has been led for the defender to contradict the pursuer’s case. Under cross examination, the pursuer said that when she saw the vehicles, she felt like they were driving straight towards her and was fully able to see the bin lorry. She explained the footage of the CCTV from the pub was not a good depiction of what had happened, and events were closer to her than appeared from the CCTV footage. (There is no evidence to contradict the pursuer on this and the defenders lead no evidence to suggest that the pursuer was in fact wrong or that her belief of imminent physical danger was unreasonable.)

[83] She also explained in cross examination that the silver taxi had no control over what was going on as it was being pushed by the bin lorry.

[84] The pursuer explained that when she walked away from her position at the traffic lights that she walked down Queen Street and came across the devastation that the bin lorry had caused. Her description of events was clear and consistent with the agreed findings of the police in the report. Her account of events of the aftermath is also detailed in the reports from Dr Morrison. The defender suggests that the pursuer is not reliable in her account of her sense of fear and from questions posed may rely on the content of consultation notes

that do not reflect the fact of this report during the pursuer's initial and unsuccessful therapy.

[85] The consultation notes were not spoken to by the counsellor who prepared these and the circumstances and the focus of the pursuer's earlier unsuccessful treatment can only be speculated upon. As Dr Morrison explained there may be good reasons why therapy was focussed on the way it was in the early stages of the pursuer's recovery from her severe PTSD.

The evidence of David Weddle and Mrs Michelle Wade

[86] The pursuer's reaction to the events is supported by the evidence of her father and by Mrs Wade from the pharmacy on Paisley Road West, neither of whom was challenged. Both witnesses spoke of the pursuer's obvious and profound trauma after she had witnessed the events in George Square.

[87] The pursuer's father confirmed that the pursuer had telephoned him immediately after she came away from St Vincent Place. He explained that his daughter phoned in a state of extreme distress: "my impression was that she was in shock and a state of fear"; "She was crying..."; "I can't stay I have to get to a place of safety"; "I need to get away".

[88] At home in France she was plainly traumatised, screaming at night – her father did not know what to do – and a few days after her arrival she spoke to her father about the events and said:

"She said she got off the train, she exited the station, I was waiting to cross the road ... the lorry was coming straight towards me... I was terrified frozen in fear and rooted to the spot."; "She said when she left the scene she said to a father and child not to go there it is a horrible place".

[89] In her evidence Mrs Wade said:

“The pursuer was not making sense. She was very shaky, crying and a terrible colour. She didn’t know where she was”; “She said she had seen an accident”; “She did not know how she’d got to the pharmacy”; “I got the impression she was in fear for herself and that she had been very close to the scene and had left quickly”; “It was as if she was worried for her own safety”.

The pursuer’s psychiatric injury

[90] The pursuer’s psychiatric injury was spoken to by Dr Morrison by reference to his report no. 5/2 of process.

[91] Dr Morrison concluded that Ms Weddle met the diagnostic criterion for PTSD (DSM-V-309.81). Her symptoms continued to persist at a level which is significantly disabling for her and had had a considerable impact on her ability to function in her day to day life. It was likely that on the balance of probabilities Ms Weddle’s decision to stop attending university was directly related to the severity of her (then) current psychological symptoms.

[92] Dr Morrison had examined a variety of medical records which recorded the pursuer’s attendance at psychological therapies for treatment of PTSD. Despite this, she continued to present with significant symptoms in this area. Individuals ordinarily experienced a recovery within approximately fifteen sessions of the recommended psychological treatment (i.e. trauma focused Cognitive Behaviour Therapy and/or Eye Movement Desensitisation Reprocessing). In clinical experience, individuals could often present with symptoms of PTSD for more prolonged periods and Dr Morrison’s opinion was that the pursuer’s symptoms were towards the top end of the severity spectrum.

[93] Dr Morrison had recommended thirty sessions of trauma focused Cognitive Behaviour Therapy and/or Eye Movement Desensitisation Reprocessing, delivered by a clinical psychologist (as opposed to psychological therapist). This was likely to be sufficient

for her psychological symptoms to resolve to below diagnostic levels, which should occur over the course of the next eighteen to twenty-four months from the start of treatment.

[94] Dr Morrison had reflected the foregoing in his conclusions.

[95] Dr Morrison met with the pursuer again. He reported that the pursuer presented in a pleasant manner during the assessment and answered all questions posed towards her. She was somewhat anxious during the assessment, but there was a notable improvement in terms of her presentation and level of psychological wellbeing in comparison to the previous assessment he had completed with her. The pursuer told him that she found the process of continuing to attend medico-legal assessments to be stressful due to the fact that this required her to discuss the index incident and acknowledged that this increased her level of stress.

[96] Included in the additional material provided to him was a statement given by the pursuer on 22 March 2018.

[97] In his report he has explained that:

“I have examined a Supplementary Statement provided by Ms Weddle. I note that she states with regards to the circumstances of the accident (that) ‘I heard a loud bang and I looked up. I saw a silver taxi coming towards me with a bin lorry behind it. I could see the taxi was being propelled by the lorry. The taxi was facing forwards. The lorry was going quite fast. It all happened very quickly. I was in shock. I froze. It was a massive lorry. It was out of control. I was scared. I panicked as the taxi and lorry were coming towards me. I was in fear for my own safety.’ During the earlier assessment I completed with Ms Weddle, she had reported that at the time of the accident she had witnessed a taxi being pushed by a bin lorry into a wall and stated that she had assumed that it was a road accident. Ms Weddle later clarified that she felt that she was in shock at the time and was unable to process events. She stated that when she later considered the accident she recalled being extremely worried that one of the vehicles would strike her and that she would either be seriously injured or killed.”

[98] Dr Morrison recorded the pursuer’s move to Manchester to live with her boyfriend and her return to and attendance at university.

[99] Dr Morrison had discussed with the pursuer her recollection of the index incident and reported:

“She told me that she can recall hearing a loud bang before looking up as she had been paying attention to her mobile phone. She reported that she saw a bin lorry pushing a silver taxi. Ms Weddle stated that she felt that she was ‘in shock’ at the time and was worried that the bin lorry or taxi may hit her. When I questioned Ms Weddle about this in further detail, she stated that she ultimately felt that if she was hit by one of those vehicles then she would have been killed. I discussed with Ms Weddle about her self-report during the first assessment I completed with her whereby she had neglected to mention this in detail. She reported that she felt that at that time she was experiencing considerable symptoms of guilt as she had been unable to help a person at the scene of the accident who had been seriously injured (whom Ms Weddle referred to as ‘the second girl’). She stated that due to this she had been unable to focus on her own feelings as found that this led to her experiencing difficulties with guilt due to the fact that she had survived the accident and had been unable to help ‘the second girl’. Ms Weddle was extremely upset during the first assessment and it was not surprising that she did not mention all details of the index incident when asked, most likely as this would have triggered her symptoms of guilt as noted above.”

[100] Dr Morrison reported on the pursuer’s current presentation and condition and carried out a formal assessment of post-traumatic symptomology.

[101] Dr Morrison concluded that the pursuer continued to meet diagnostic criteria for PTSD which despite improvements in her psychological symptoms warranted the psychological treatment recommended.

Quantum of damages

Solatium

[102] The pursuer suffered and continues to suffer from PTSD. The pursuer’s symptoms have had a considerable impact on her ability to function in her day to day life and continue to persist at a level which is significantly disabling. She is currently signed off as unfit to attend university by her GP. She has difficulty sleeping. When she does sleep she has nightmares. Her difficulties sleeping cause her to constantly feel exhausted. She has become

fearful of leaving the house. She suffers extreme anxiety if she hears a loud noise. The pursuer put on weight. She felt unable to go out socially. She suffered “survivor’s guilt” – negative emotions that she was not as badly injured as others who were killed. The pursuer would benefit from further psychological treatment. She will be vulnerable in future to relapses if she suffers another trauma in her life. The pursuer’s symptoms were originally towards the top end of the spectrum in terms of severity but four years later, in January 2019, her symptoms have improved to moderate.

[103] The Judicial College Guidelines for Psychiatric and Psychological Damage for (B)

Post- Traumatic Stress Disorder say: set out below:

“(B) POST-TRAUMATIC STRESS DISORDER Cases within this category are exclusively those where there is a specific diagnosis of a reactive psychiatric disorder following an event which creates psychological trauma in response to actual or threatened death, serious injury or sexual violation. The guidelines below have been compiled by reference to cases which variously reflect the criteria established in the 4th and then 5th editions of *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV-TR and DSM-5). The symptoms may include nightmares, flashbacks, sleep disturbance, avoidance, mood disorders, suicidal ideation and hyper-arousal. Symptoms of hyper-arousal can affect basic functions such as breathing, pulse rate and bowel and/ or bladder control.

(a) Severe

Such cases will involve permanent effects which prevent the injured person from working at all or at least from functioning at anything approaching the pre-trauma level. All aspects of the life of the injured person will be badly affected.

£47,720 to £80,250 (with 10% uplift £52,490 - £88,270).

(b) Moderately Severe

This category is distinct from (a) above because of the better prognosis which will be for some recovery with professional help. However, the effects are still likely to cause significant disability for the foreseeable future. While there are awards which support both extremes of this bracket, the majority are between £22,930 and £29,590 (£25,220 and £32,550 accounting for 10% uplift).

£18,450 - £47,720 (with 10% uplift £20,290 - £52,490).”

[104] The pursuer fulfilled the “severe” criteria for at least three years. Dr Morrison’s evidence is that the pursuer’s symptoms had improved by January 2019, although she is presently signed off by her GP because of the stress of the court proceedings and having to

relieve the trauma with medical experts. Further she still requires additional psychological treatment. The lower "Moderately Severe" bracket would now be appropriate.

[105] In *Leigh*, the plaintiff who was 45 years old at the date of the incident and 50 at the date of trial, developed severe PTSD following an incident on a bus in 2008. As she went to sit down she dislocated her right kneecap. She was trapped between the seats, unable to move and experienced severe pain. A number of telephone calls were made for an ambulance. Members of the public were told by the emergency operators to prevent the plaintiff from moving. She felt trapped and helpless to end the pain. She was informed that an ambulance was on its way on several occasions but no help arrived until 50 minutes after the incident. As a result she went on to develop PTSD. That primarily characterised itself through flashbacks where she felt she was back on the bus and trapped, nightmares and a high level of anxiety and depression. Within a few months, the plaintiff also began to suffer dissociative seizures where she would physically collapse and be unable to move or speak, but she could still hear and see her surroundings. Those symptoms occurred most days but over time their frequency and intensity varied. The seizures were not diagnosed by psychologists until around 18 months after the incident. Having previously worked and lived in London, the plaintiff was forced to leave her job working at a museum, which she described as a job that she loved doing, and relocate with her family to Wales. She was unable to travel outside on her own and was largely housebound. When she went out with her family she might suddenly collapse in the street. She found it difficult to concentrate, plan and action ordinary activities such as housework and mentally tended to go round and round in circles. She became easily overwhelmed. The psychiatric evidence was that her PTSD should be categorised as severe in accordance with the JC Guidelines 12th Edition Chapter 4(B)(a). The psychiatrist was of the opinion that there were permanent effects that

would prevent the plaintiff from working at all or at least from functioning at anything approaching her pre-trauma level. He concluded that all aspects of her life were badly affected and only a small response to additional psychological therapy was expected.

General Damages : £60,000.

[106] In this case, solatium was properly valued at £40,000. Interest on two thirds @ 4% to 12th February 2019 (215 weeks) would add £4,412.

Past loss of earnings

[107] After the accident the pursuer was unable to return to her part time pre-accident employment with Pole to Win. She was given a fixed term contract in December 2015 but was unable to return after the accident. But for the accident she would have worked with Pole to Win until she completed her degree in June 2015.

[108] She was earning £18,000 per annum *pro rata* at Pole to Win working part time during term time and full time during holidays. Allow £2,000 on a broad axe basis for loss of earnings to June 2015.

[109] But for the accident the pursuer would have obtained her degree in June 2015 and would have sought employment in business, banking or finance to become a Financial Consultant or Investment Analyst.

[110] The pursuer returned to University to study economics at Manchester Metropolitan University in October 2018 and will qualify in June 2020.

[111] She will lose 5 years of earnings at her peak earning capacity as a result of the delay to her career development.

[112] Her peak earning capacity is £37,012 - £46,681 net per annum. Allow £40,000 net per annum. Past loss of earnings from June 2015 to February 2019 (3 years and 8 months) is £146,667.

[113] Gross loss of earnings to February 2019 is £148,667, less the pursuer's actual earnings January 2018 - September 2018.

[114] From January 2018 - August 2018 the pursuer in fact earned £4,946.01 with Emirates Airlines and between August and September 2018 £2,025.92 with Carlson Wagonlit, giving total actual earnings of £6,971.93.

[115] The net total past loss of earnings is therefore $£148,667 - £6,971.93 = £141,695$. Interest @ 4% to 12th February 2019 (215 weeks) would add £23,434.

Future loss of earnings

[116] The pursuer will complete her degree in June 2020. Her future loss of earnings from February 2019 - June 2020 (1 year and 4 months) on her peak earning capacity of £40,000 net per annum is £53,333.

Expenses

[117] The pursuer's University fees for two years to complete her degree are £9,250 per annum - £18,500.

Conclusion

[118] The court should grant decree for £281,374.00.

Submissions for defender

Introduction

[119] To succeed, the pursuer must establish that she was, at the time of the accident, in state of fear and alarm and reasonably believed that she was at risk of suffering physical

injury as a result of the negligent conduct of the driver of the lorry. She must have been “terrified” and not merely “horrified”.

[120] The modern analysis is this: if it was not reasonably foreseeable by Clarke that the pursuer could be physically injured by his conduct and manner of driving, then the pursuer fails in her claim. The defender submits that the court should judge the immediate actions of Clarke, not the general build up. And the immediate actions are that the truck is clearly and obviously driving in a direction *away from* the pursuer; and not towards her.

[121] The defender accepts that if there is an objectively reasonable belief in physical harm, then pure psychiatric injury is a valid claim and damages should therefore be assessed and awarded.

[122] But the defender submits that it is not enough for the pursuer to say that she was generally exposed to injury or even that she felt threatened. They submit that it must be an immediate and real risk to her: not a general risk of injury to persons in the vicinity.

The law

[123] At the outset, it is clear that the law is generally not entirely straightforward historically: however the position is far better understood and defined since the House of Lords ruled in *Page*.

[124] Rules limiting the liability for pure psychiatric injury are rules of policy – to prevent the uncontrolled potential liability for damages just by the establishing of a causal connection to a negligent act. It is an attempt to use floodgates to stop possibly unlimited claims arising from negligent acts.

[125] The jurisprudence has developed over the years, but a number of themes still remain from the older cases. These submissions will attempt to outline the position as the law

developed, but concentrate upon the useful definitions which remain. It may also assist to look at the facts of some of the older cases prior to *Page*, to allow the court to understand why the rules have developed, in an effort to indicate how they apply to the present case.

The distinction between primary and secondary victims

[126] As will be seen, there has been a now well established set of definitions, compartmentalising alleged victims into 'primary victims' and 'secondary victims'. This categorisation arises originally from tentative observations in the judgment of Lord Wilberforce in *McLoughlin* (whose analysis was subsequently adopted in *Alcock* and in *Page*).

[127] In essence, a primary victim is one who is personally exposed to risk. A secondary victim is one who knows of another who was or is exposed to risk of physical injury and through fear and alarm also suffers from (psychiatric) harm. Control mechanisms are built into each category: for primary victims, it is necessary that (according to *Page*) there is a reasonably held fear of physical harm derived from the reasonable foreseeability of the wrongdoer; for secondary victims, relationships of closeness are required (e.g. parent and child, or rather creatively as in *Robertson*, close working colleagues) and that there was a proximity to the tragedy by being on the scene shortly afterwards or similar.

[128] It is clear that the pursuer in this case claims primary victim status and it is that aspect which is concentrated on below.

[129] Some context is required to the *McLoughlin* case. In that case, the mother of children who were in a road accident – one dying in hospital – was taken to hospital after being told of what had happened. She suffered a pathological grief reaction, and claimed for that damage. It appears to have been accepted that she was at the margins of where claimants

could bring a claim, but had been taken to the hospital shortly after the accident when the matter was still “fresh”. Lord Wilberforce said this:

“But, these discounts accepted, there remains, in my opinion, just because “shock” in its nature is capable of affecting so wide a range of people, a real need for the law to place some limitation upon the extent of admissible claims. It is necessary to consider three elements inherent in any claim: the class of persons whose claims should be recognised; the proximity of such persons to the accident; and the means by which the shock is caused. As regards the class of persons, the possible range is between the closest of family ties - of parent and child, or husband and wife - and the ordinary bystander. Existing law recognises the claims of the first: it denies that of the second, either on the basis that such persons must be assumed to be possessed of fortitude sufficient to enable them to endure the calamities of modern life, or that defendants cannot be expected to compensate the world at large. In my opinion, these positions are justifiable, and since the present case falls within the first class, it is strictly unnecessary to say more. I think, however, that it should follow that other cases involving less close relationships must be very carefully scrutinised. I cannot say that they should never be admitted. The closer the tie (not merely in relationship, but in care) the greater the claim for consideration. The claim, in any case, has to be judged in the light of the other factors, such as proximity to the scene in time and place, and the nature of the accident.”

[130] Accordingly, the plaintiff was successful but because she was a close relative, and engaged in the immediate aftermath: the control mechanism was effective on the facts, to permit her to claim. It was felt that it would be splitting hairs to suggest that a mother who was just around the corner from a catastrophe to her children could claim; but one who was a few minutes away by car, could not. It was of course highly fact dependent and a “secondary victim” case.

[131] Each of the categories of primary and secondary victim have control mechanisms applicable to them which limit the circumstances to prevent potentially unlimited numbers of claimants. These are discussed in *Alcock*, in particular by Lord Oliver.

[132] The facts in *Alcock* were that numerous spectators claimed for damages for pure psychiatric injury, after having witnessed the 1989 Hillsborough disaster unfold. (The subsequent case of *White* considered claims by police officers for pure psychiatric injury, and

decided that the relationship of employer to employee gave sufficient proximity for the claim to succeed).

[133] The House of Lords in *Alcock* rejected all the “pure psychiatric injury” claims by spectators and laid down a number of rules which they said would be the appropriate control mechanisms for the future. Lord Oliver described the Wilberforce categories as primary and secondary victims:

“Broadly [the cases] divide into two categories, that is to say, those cases in which the injured plaintiff was involved, either mediately or immediately, as a participant, and those in which the plaintiff was no more than the passive and unwilling witness of injury caused to others.”

[134] He proceeded to refer to these two categories of plaintiff respectively as “primary” and “secondary” victims. In the case of secondary victims, the starting point is whether psychiatric injury caused to the claimant was a reasonably foreseeable consequence of the defendant's negligence; and in addition to the requirement of reasonable foreseeability of psychiatric illness, there must be a relationship of proximity between the claimant and the alleged tortfeasor. The control for primary victims was said to be that to create the duty of care, there had to be reasonable foreseeability of injury (physically) to the claimant.

[135] The statement of principle by Lord Lloyd (in the majority, Lords Keith and Jauncey dissenting) was as follows:

“In conclusion, the following propositions can be supported. 1. In cases involving nervous shock, it is essential to distinguish between the primary victim and secondary victims. 2. In claims by secondary victims the law insists on certain control mechanisms, in order as a matter of policy to limit the number of potential claimants. Thus, the defendant will not be liable unless psychiatric injury is foreseeable in a person of normal fortitude. These control mechanisms have no place where the plaintiff is the primary victim. 3. In claims by secondary victims, it may be legitimate to use hindsight in order to be able to apply the test of reasonable foreseeability at all. Hindsight, however, has no part to play where the plaintiff is the primary victim. 4. Subject to the above qualifications, the approach in all cases should be the same, namely, whether the defendant can reasonably foresee that his conduct will expose the plaintiff to the risk of personal injury, whether physical or psychiatric. If the

answer is yes, then the duty of care is established, even though physical injury does not, in fact, occur. There is no justification for regarding physical and psychiatric injury as different 'kinds of damage.' 5. A defendant who is under a duty of care to the plaintiff, whether as primary or secondary victim, is not liable for damages for nervous shock unless the shock results in some recognised psychiatric illness. It is no answer that the plaintiff was predisposed to psychiatric illness. Nor is it relevant that the illness takes a rare form or is of unusual severity. The defendant must take his victim as he finds him." (Emphasis added.)

[136] To apply the law to the present case, it is submitted that the following proposition can be stated: unless Clarke knew or ought to have known that his conduct could have exposed the pursuer to the risk of physical injury, then the pursuer cannot succeed. There is no duty of care.

[137] There is a certain logic to the test and it is this: if physical injury is unforeseeable, it being even harder to predict psychiatric injury, then why should a duty of care arise when the wrongdoer could not have taken steps to avoid that wrong? Or to put it another way: as psychiatric injury is difficult to predict and thus difficult to avoid, it is only if at least you could predict physical injury that you could be responsible for injury even if that injury turns out to be pure psychiatric injury.

[138] A problem may arise, though, in the categorisation of what it is that Clarke did, which might give rise to that risk.

[139] On the one hand, it could be said – and probably will be said – that if I know I am going to drive a large truck down Queen Street in Glasgow at speed and on the pavement, a whole host of people could be injured (and of course were injured) physically, then is the pursuer not just one of them? And therefore if it turns out that she simply suffers psychiatric injury, that she should claim?

[140] The defender submits that one must consider the *immediate* circumstances, rather than the *general*, otherwise the control mechanism regarding primary victims is denuded of

content. If the above proposition for the pursuer is correct, then where does it stop? In theory the truck might have turned the corner, and continued on its way through Glasgow causing mayhem. Would every person seeing it have a claim? Would every person anywhere on the streets of Glasgow have a claim? The answer must be no. There has to be some immediacy in the conduct, rather than the general. The complaint about Clarke is that he drove across the junction near to where the pursuer was standing. Ought he to have known that that driving might cause *the pursuer* injury? We submit that the answer is 'no' for the reasons indicated below.

[141] Lord Reed, in *Campbell*, agreed with the observations contained in the article "*Nervous Shock and Negligent Conduct*", F.A. Trindade, as to the problems in identifying how there could be reasonable foreseeability in certain circumstances. That article considers what *Page* decides, and points out the problems with the control mechanisms *inter alia* in the issue of primary victim status.

[142] The facts in *Page* were that the plaintiff was in a road accident. He suffered no physical injury, but went on to develop an ME type illness which was considered to be psychiatric in nature and causally related to the accident. The House of Lords considered that as physical injury was foreseeable, there was no reason why in principle pure psychiatric injury was not something that could be claimed for.

[143] The difficulty with *Page* is that it is obvious that a person in a car involved in an accident is reasonably foreseeably going to suffer some kind of physical injury. But where is the line drawn when considering whether physical injury is possible? It is this very problem identified by Trindade and considered by Lord Reed to be important. As is observed, if a car runs into a bus, can it really be suggested that everyone on the bus was at risk of physical injury by the collision, justifying a pure psychiatric injury claim?

[144] It is submitted that to give the control mechanism content, the court must consider the immediate actions of Clarke, not the generality. It must consider it as though Clarke was conscious and sentient at the point when the pursuer looked up and became an observer. And ask this question: what can be said about the foreseeability of injury at that point in time? And the answer is clear from the CCTV: no reasonable driver would think he was going to collide with the pursuer.

The facts in the present case

[145] The court should address the question of whether the pursuer in fact was a person who was reasonably capable of suffering physical injury from the actions of the bin lorry driver.

[146] One useful piece of evidence in the search for whether the driver knew or ought to have appreciated the danger from his actions, is the perception of the pursuer herself. The old test – “horrified or terrified” referred to by Lord Reed in Campbell – is probably overtaken by *Page*. But, in assessing *Page*, if the pursuer was not herself actually terrified of physical injury, why should Clarke have been so cognisant?

[147] On the facts, the defender submits that the pursuer simply was not in fear for her own safety. Ultimately the most crucial evidence is that of the CCTV, and the court is invited to consider it with care. What the defender submits is that the pursuer’s version of events as told originally to Dr Morrison is corroborated: that she was on her phone, that she heard a bang (which was clearly the truck hitting the silver private hire car and moving it forward). However, her actions are simply not indicative of someone in a state of terror.

[148] There is a consistent body of evidence that she was not in fact in fear for her physical safety. The most important points are as follows:

- i. she did not mention the fear to Dr Morrison on the first occasion he saw her.
It can be assumed – for what it is worth – that the precognition available to Dr Morrison, at this time, did not mention it;
- ii. she did, however, manage to provide a statement in which for the first time she stated that she was terrified;
- iii. but, she failed to mention any such factor to her counsellors or GP – a matter of surprise to Dr Morrison;
- iv. when examined by Dr Scott, the pursuer accepted that she did not mention being terrified to her.

[149] It is submitted that her explanation as to this is unconvincing and should be rejected. Although her father supported her, the court is invited to reject this evidence too on the basis that it simply does not fit with the other evidence in the case. Equally the lady from the pharmacy was vague; and of course it is clear that the pursuer was herself clearly and justifiably distressed after the accident.

[150] The defender does not invite the court to hold that the pursuer is being dishonest. It is plain that this event has been playing in her mind for years, and it is certainly conceivable that she has simply misremembered what happened.

[151] That said, all of the above is but one aspect of the case. Even if she was terrified, that is far from an end of it. It is accepted if she was not terrified, that is not an end of it either. It is but an adminicle.

[152] The question which the court must consider is this: looking at the CCTV, what findings in fact can be made?

[153] The following findings should be made:

- i. the pursuer left the station and moved to the pedestrian crossing to the west of the box junction;
- ii. she was looking at her phone;
- iii. the collision occurred between the lorry and the silver car near to the stop line on the southern edge of the box junction;
- iv. she looked up on hearing the bang of the collision;
- v. at the point she looked up, the truck was moving diagonally across the junction in a roughly north easterly direction from a position near to the middle of the road – in other words, it was moving away from the pursuer to the northeast corner of the junction, when the pursuer was at the north west;
- vi. at no time was the truck or the taxi moving towards her: in fact, if anything it was moving away from her;
- vii. no person viewing the scene could have reasonably concluded that she was ever in any danger of being struck by the vehicles.

[154] We further seek a finding in law that the driver of the truck would not have reasonably foreseen that his driving in the approach to the junction would have given rise to the risk of physical injury to the pursuer. Accordingly, the pursuer does not qualify as a primary victim and she cannot therefore obtain damages for any psychiatric injury suffered by her.

Quantum

[155] The pursuer claims for:

- i. solatium (past and future);
- ii. past loss of earnings;

- iii. future loss of earnings or loss of employability;
- iv. psychological Treatment
- v. university Fees

[156] Each head of claim will be dealt with in that order.

Solatium

[157] The pursuer has suffered PTSD. Initially the symptoms were severe. There have been fluctuations where the symptoms have improved then come back but by late 2018/early 2019 they are classified as being moderate symptoms (when seen by Dr Morrison). At this stage the prognosis is reasonably good in that once the litigation process is over there is likely to be a further improvement in her mental health. She will improve further with treatment. She is in a position to return to University and she is doing well there. At the moment she is able to function far better based in Manchester.

[158] She is generally not at risk of there being a worsening of her condition although there was evidence that she may have a relapse if exposed to another traumatic event, such as the death of a partner. Hopefully, there will be no such level of trauma for the pursuer in her later life.

[159] JCB Guidelines Chapter 4B(b) and (c) are relevant. Due to her likely continuing level of recovery and likely prognosis that she will have sub-clinical symptoms with further treatment, and with the ending of the litigation process, a figure at the lower end of “moderately severe” level is considered reasonable. An appropriate range is between £20,000 and £25,000.

[160] In *Collins*, an employee (female, age unknown) sustained moderate to severe symptoms of PTSD with phobic anxiety following a robbery having a knife held to her

throat by two masked men. While treatment was considered to be helpful it was held that the pursuer was likely to have some residual diminution of social function at her work and was awarded £24,000, which is after inflation an award of £37,200. It is submitted that this was more severe (there was more than just PTSD involved) with more lasting symptoms.

[161] In *Young*, the decision was appealed (the pursuer, a mother of a 26 year old son killed in an RTA, was not a secondary victim) but not on the level of solatium for personal injury. The pursuer sustained very severe PTSD. Her quality of life had been permanently affected and she also had a continuing abnormal and complex grief response and a major depressive order. It is submitted that this is also more severe than the current pursuer. She was awarded £35,000 which amounts to £38,150.

[162] These cases show awards for pursuers who have had far more significant symptoms where the prognosis is significantly worse. While there is no doubt that the pursuer's initial symptoms were severe they have now improved to a moderate level and will improve further to a level where any continuing symptoms are at a mild and sub-clinical level. As such, the band proposed of somewhere between £20,000 and £25,000 is, it is submitted, reasonable. It is submitted that the midpoint is appropriate in that range, being £22,500.

[163] 75% of the award is considered to be to the past and interest is submitted to be at 4% from the date of the accident.

Past loss of earnings

Pole to Win

[164] This seemed to be a "cash in hand" employment where no tax was paid. It was holiday work taken while the pursuer was at University. There was no vouching.

Assuming that there would be some loss of income a figure of £1,000 is considered reasonable, inclusive of interest, on a broad brush approach.

Loss of Years in Employment

[165] It is accepted that the pursuer's graduation for her degree has been delayed by 5 years. However, there are still many uncertainties here. There are almost too many to mention.

[166] Peter Davies's view is to use the upper quartile and highest decile (net figures of £37,406 and £46,681). That assumes that the pursuer would reach that level of pay. The median net figure is £27,529 so using that over five years would make a figure of £137,645 for a 5 year period.

[167] It is submitted that there should be a discount given to this figure to reflect the fact the pursuer has been given 5 years of salary in one lump sum, as opposed to it coming in monthly amounts over a 5 year period.

[168] The court is invited to take a very broad brush approach here to reflect the fact that there are many uncertainties about what period of time the pursuer would have worked, how easily she could find employment, how much time she would be off her work for reason and if she ever chose to work part time.

[169] There can be no scientific formula here but an adjustment (reduction) of a third is, it is submitted, reasonable making a figure of £91,763.34.

[170] This figure represents wages that, according to the pursuer, would be being earned around the present time. It is therefore a future but delayed compensation and no interest applies.

Wages actually earned

[171] She had post-accident jobs and it is agreed that she earned a net figure of £6,971.93.

Suggested figure for Wage Loss

[172] Taking all of the above into consideration, and empathising that a very broad brush approach must be taken, a figure of £85,791.41 is considered reasonable.

Future loss of earnings or loss of employability

[173] It is submitted that nothing should be awarded for this head of claim.

[174] On the basis that it is accepted that the pursuer should recover her 5 lost years of employment (see above) and that there is no evidence that the accident has rendered it less likely for the pursuer's career to be further shortened or compromised, no award is justified.

University costs

[175] The pursuer seeks two years additional tuition fees of a total sum of £18,500.

[176] It is accepted that this is a reasonable valuation for 2 years of study but there has not been lodged any invoice nor any vouching showing a request for payment from the University.

[177] The pursuer has the onus to show that this has been paid but has not done so. She started the course in autumn 2018 so if she did need to pay she should be able to evidence that.

[178] There are all sorts of reasons why a University may not insist on payment and none of these have been explored in evidence.

Conclusion

[179] The defender's motion is for absolver with expenses.

Grounds of decision

Structure

[180] I have adopted the following structure:

- i. Part I – a review of the relevant parts of the evidence
- ii. Part II – the applicable law summarised
- iii. Part III – duty of care - was the pursuer actually at risk of physical injury at the relevant time?
- iv. Part IV – duty of care - did the pursuer reasonably believe she was at risk of physical injury at the relevant time?
- v. Part V – did the pursuer in fact fear physical injury at the relevant time?
- vi. Part VI – quantum

Part I - the evidence

[181] In reviewing the evidence relevant to the issue of liability, I have found it useful to analyse the sources which provide information about the accident circumstances in chronological order by reference to the date when they were recorded, created or given relative to the date of the accident. Thus, I begin with the video evidence as it was contemporaneous and end with those portions of the pursuer's evidence where she speaks directly about the accident and its immediate aftermath as perceived by her.

[182] However, where I am dealing with the accounts of the accident which the pursuer gave to other people (e.g. to her father, Mrs Wade, Dr Morrison and so on) I have placed the

relevant parts of the pursuer's evidence about what was said by her and in what circumstances on these occasions alongside the evidence of the persons to whom she was speaking about what they recall being said to them, to aid with comparisons.

[183] I should also make clear that the focus of this examination is on the evidence relevant to determining the questions bearing on liability. The evidence bearing on quantum was largely unchallenged or agreed and thus I need say little about it.

CCTV evidence: no. 5/12 of process

[184] The images from camera A054 show the view looking north along Queen Street to the west side of George Square up towards the eastern end of West George Street where the pursuer was standing on the north pavement.

[185] The bin lorry is first seen fully on the west pavement of Queen Street. When it reaches the St Vincent Place junction, it continues north but begins to veer eastwards and thus travels broadly northeast. By the time it reaches the northwest corner of George Square it appears to be fully across to the east side of the road where it collides with a silver saloon car (the taxi) pushing it forward. The bin lorry continues to travel northeast and collides with the corner of the hotel building. The taxi comes to rest slightly to the west of the bin lorry but adjacent to it: see also no. 16/4 of process, photograph 1156.

[186] The footage from the Camperdown Pub shows the pursuer standing about a metre from the button for the pedestrian crossing on the north pavement of West George Street. She is looking at her phone. The silver taxi can be seen waiting at the junction. About nine seconds later, the bin lorry collides with the silver taxi and they both move forward. The bin lorry is moving away from the pursuer and the silver taxi is moving in more or less a straight line. Neither vehicle is heading straight towards the pursuer.

[187] A couple of seconds later, the pursuer looks back at her phone and then immediately looks back across. It is evident that the collision or the sound thereof has captured the attention of a number of people in shot. The pursuer does not step back or show any other signs of agitation or fear. Pedestrians continue to move about in the area and in particular pedestrians are seen walking east along West George Street which would take them towards the immediate vicinity of the taxi and bin lorry.

Police report

[188] At about the time the bin lorry was going along the pavement at Queen Street it was travelling at 22 mph. While travelling north at George Square it was travelling at 19 mph. By the time it reached George Square at West George Street it was travelling at 5 mph and it was then stationary: no. 5/13 of process.

Pursuer's telephone conversation with her father

Mr Weddle's evidence

[189] Mr Weddle said that he had received a phone call from the pursuer on the day of the accident. His impression was that she was suffering extreme distress. He had the impression that it was extreme "shock, panic, fear". She said "something horrible had happened". She was almost incoherent. He had wanted to know if she was physically unhurt and she had confirmed that she was not hurt but had said "there has been a horrible accident". He had told her to stay where she was and she had said "I can't stay I need to get to a place of safety."

Pursuer's evidence

[190] The pursuer had called her dad. She tried her mum first. Her dad asked what was happening and she tried to explain. Her dad could tell she was distraught. He told her to call her mum. She thought her dad had contacted her mum. Her mum phoned her. They were trying to figure out what was happening.

[191] She then went to Jamaica Street and got a bus. Her mum had told her to go to hospital. She just wanted to go home. Her mum persuaded her to go to a pharmacy. When she got off the bus she went to a pharmacy in Cardonald.

[192] She had tried to tell her dad on the phone what had happened. She had tried to be coherent. She was crying a lot. She thought he had understood as he knows her.

Discussion

[193] I think that Mr Weddle was doing his best to tell the truth but there are issues as to how much reliance can be placed on parts of his evidence.

[194] It is apparent from the evidence of Mr Weddle and the pursuer that she was having difficulty explaining what had happened.

[195] Mr Weddle did suggest she was suffering from "fear", but in my view, there must be serious limitations as to how much reliance can be placed on his evidence as to the pursuer's emotional state. At that stage he had little idea of what had happened and no idea of the context. He was speaking to the pursuer on the phone, rather than seeing her face to face. He obtained an impression that she was suffering fear and grouped "fear" with "shock" and "panic". Thus, the question must be posed – how is one to tease out which emotion(s) the pursuer was actually experiencing or evincing at that stage? Mr Weddle formed the

impression that the pursuer was suffering “extreme distress”. But that could be a manifestation of “horror” rather than “terror”.

[196] Furthermore, there is significance in the words which he attributed to the pursuer. According to him, she had said she was not hurt but that “there has been a horrible accident”. But my view is that the collision and its immediate aftermath at the West George Street junction could not properly be described as “a horrible accident” (as distinct from the aftermath which the pursuer discovered as she walked south away from the scene of the collision between the bin lorry and the silver taxi.)

[197] Given the account given by the pursuer and her father about her emotional state, I think it is unlikely that the pursuer used the phrase “I can’t stay, I need to get to a place of safety.” But even if she did, that is at best indicative of her suffering fear not at the point when she witnessed the collision between the bin lorry and the taxi, but later and further away after she had witnessed the scene as it unfolded to her as she headed south along the west footway of George Square. Her evidence was redolent of increasing realisation and increasing horror.

[198] Thus, my view is that what the pursuer was reporting to her father was based on the later part of the incident i.e. the aftermath south of the West George Street junction; and her emotional state was attributable to that, rather than the collision she had directly witnessed albeit allied with a realisation that both were linked; and that emotional state did not amount to fear of physical injury to herself arising at the time when she witnessed the collision.

*The pursuer's conversation with Mrs Wade in the pharmacy*Mrs Wade's evidence

[199] Mrs Wade described the pursuer's arrival in the shop when it was very busy. The pursuer had caught her eye. The pursuer seemed unable to calm down. She was crying and trembling and said that she had witnessed an accident. Mrs Wade had noticed the pursuer because she was "not herself and very shaky". Mrs Wade had recognised that she needed help and spoke to her. The pursuer was not making much sense and Mrs Wade could not get anything out of her. The pursuer was very shaky, crying, a terrible colour and did not know where she was. She was tearful and trembling. She was taken into a private room and given some water. The pursuer had said that she had seen an accident and then got on a bus. She did not know how she had got to the pharmacy. A girl had been knocked down. She had been very close to it. She seemed more scared for her own safety. She may have mentioned "decapitated" – Mrs Wade was not sure. The way she was speaking Mrs Wade had the impression that the pursuer was very close to the scene. She had left the scene quickly to get on a bus.

Pursuer's evidence

[200] She did not want to go into the pharmacy but did so. She didn't know the people there. She spoke to somebody and explained that she had been in the bin lorry accident. She had started crying. She was put in the "sick room" because she couldn't stop crying. The pharmacy had advised her to go to the doctors and in fact they took her there.

Discussion

[201] I found Mrs Wade to be a credible witness. But her evidence has limitations and in my view is not reliable as to the pursuer's precise emotional state at that time or the reason for it.

[202] The pursuer was in a highly distressed state and, it appears, not reporting matters clearly. As with Mr Weddle, how was Mrs Wade to distinguish between fear and other strong emotional reactions, such as horror or shock?

[203] In addition, Mrs Wade's impression was that the pursuer had seen an accident and been very close to it – but that is incorrect. The pursuer was close to the aftermath. Mrs Wade's view that the pursuer seemed more scared for her own safety is inevitably impressionistic and in my view, even if it is correct, cannot be attributed to the collision between the bin lorry and silver taxi, given the weight of the other evidence about her reaction to that aspect of events discussed elsewhere.

Discussion with GP

The GP record

[204] There is an entry dated 22/12/14 which records the pursuer being prescribed medication (Diazepam). Adjacent to the word 'History', the following is recorded:

“Not registered with the practice. At University here and lives with flat-mate. Was in George square (*sic*) this afternoon and was a witness to the bin-lorry crash. Saw a couple of dead bodies and a woman impaled. Anxious, tearful, panicky. States she was horrified. Traumatic scenes. Didn't know what to do, couldn't calm down. Flatmate at work till 5pm. Parents live in France. Going to them for Christmas on Christmas eve.”

[205] The entry then goes on to record the pursuer as being “tearful, a bit hysterical at times. HR 110” and the advice given.

Pursuer's evidence

[206] The pursuer saw a doctor from a practice which was local to the pharmacy. She had to be signed up because this was not her GP. She was put in the back area. She saw a doctor who was shocked because she had not heard about the accident. The doctor saw how distraught she was. She was given Diazepam. The doctor was concerned about her and called her that night.

Discussion

[207] I have had some difficulty from a strictly evidential point of view knowing to what extent I should attach weight to this entry, because although in the first joint minute, no. 15 of process, no. 5/1 is identified as the pursuer's GP records and the copies produced are held as equivalent to principals, my notes suggest that other than the reference to Diazepam, the pursuer was not otherwise taken to the other parts of that entry at any stage during her evidence. On the other hand, the pursuer did describe meeting with the GP and this entry was referred to by Dr Morrison in his first report, no. 5/2 of process.

[208] Nevertheless, since the content of the entry was not spoken to by the pursuer and the GP was not called, I think I am bound to proceed on the basis that this entry is not proved. On that basis, I leave it out of account.

[209] If I am wrong in that approach, the content of the entry does not assist the pursuer. Although it describes the pursuer as being anxious and panicky, she does not seem to have said she was, or had been, fearful for her physical safety. Moreover, she appears to link her emotional state to what she saw of the aftermath, not what happened at West George Street junction when she was there and she specifically says she was "horrified".

The pursuer's conversation at home a few days later

Mr Weddle's evidence

[210] Mr Weddle explained that he and the pursuer had gone for a walk in a local forest. He had been frightened to broach the subject for fear of making matters worse but had done so and the pursuer had opened up a little bit. She had said "I fear I have got survivor's guilt". She told him that she had got off the train and had exited the station. She had been wanting to cross the road. The lorry had come straight towards her. She had said to him that she was terrified and frozen with fear. He had asked her about survivor's guilt and she had said "I didn't think I would survive". She felt guilty that she had survived and others had not.

The pursuer's evidence

[211] The pursuer explained how, a day or so after the accident, she had gone to stay with her parents in France for one to two weeks. She confirmed having had a discussion with her father, but was not specific about what was said or discussed.

Discussion

[212] I think that Mr Weddle is mistaken his evidence as to the content of this conversation.

[213] First, the pursuer herself did not say she had said these things to him.

[214] Secondly, the pursuer had not had any treatment or therapy at all (other than her visit to the GP), thus I think it is unlikely that she would have been using phrases such as 'survivor's guilt'.

[215] Thirdly, the pursuer's own evidence about why she had not mentioned feeling "fear" on other occasions (most notably during her first meeting with Dr Morrison – see below) was because of her inability to focus on (or discuss) what she had really felt at the time (i.e. fear that she was going to be struck by the bin lorry or silver taxi) and was *because* she had been suffering survivor's guilt. But according to Mr Weddle, the pursuer was able to discuss her own feelings within a few days of the accident. Thus, there is an apparent contradiction between the evidence of the pursuer and that of Mr Weddle.

[216] Accordingly, I think little weight can be attached to Mr Weddle's report of what the pursuer is supposed to have said on this occasion.

[217] In any event, even if Mr Weddle's account of what the pursuer said is to be accepted, the pursuer's reported version of events as to what gave rise to her fear is not accurate. It is clear from other evidence in the case that the bin lorry did not come straight towards her.

Counselling records

Pursuer's evidence

[218] Under cross examination, the pursuer was asked why there was nothing in the records, no. 5/5 of process, about her reporting that she had been terrified and asked whether she had said anything like that.

[219] She said that this was a few months after the accident happened and at that stage she was focussed on how guilty she felt and put all her feelings to one side. The treatment was to deal with that side of things. In the process, she had realised that she was also a victim. She remained terrified of bin-lorries when she is walking down the street. That had nothing to do with how she feels now (at the time of giving evidence) about what happened to her.

She realises now that her reaction was because she was so scared. She thought that what happened to other people was worse than what had happened to her.

Discussion

[220] I was not taken to the detail of what was discussed during the counselling sessions and as Ms Bain pointed out, as nobody spoke to the records, it was not possible to understand the context in which any discussions took place. Nevertheless, while accepting that it would be wrong to attach too much weight to the absence of fear being mentioned during these sessions as a fact by itself, it is a piece of evidence which is not helpful to the pursuer.

The pursuer's first meeting with Dr Morrison

The pursuer's account of the accident as recorded in the report

[221] The pursuer's account of the accident as recorded by Dr Morrison is in the following terms:

“Ms Weddle told me that she was a witness to the ‘Glasgow bin lorry accident’ which occurred on 22/12/2014. Ms Weddle told me that she had been travelling back from Edinburgh after visiting a friend. She stated that she recalls that she had purchased a hot chocolate due to the cold weather on the day of the accident. Ms Weddle told me that she had been passing a large ‘Wetherspoons’ type pub that was near Queen Street Station and heard a loud bang. She stated that she looked up and witnessed a taxi being pushed by a bin lorry into a wall. Ms Weddle told me that following the collision a number of men got out of both vehicles and she assumed that this was a road accident and that all parties were okay. She told me that she continued walking towards George Square and witnessed a family huddled together, who were comforting each other. Ms Weddle told me that she had seen a black car with a number of scratches on it and had assumed that the family were involved in the event somehow but were not injured. She stated that she crossed the road at the other side of George Square and saw a woman lying on the floor. Ms Weddle told me that, due to the fact that it was the Christmas period, she had assumed that the person was perhaps drunk and that she was being assisted by a man. Ms Weddle told me that she subsequently experienced significant feelings of guilt (*sic*) due to the fact that she had

made this assumption about this person. She stated that she then witnessed a man trying to pick up the woman, who appeared to be unconscious. She told me that a number of persons around her began crying and she became aware that 'something was wrong.' Ms Weddle told me that she recalls seeing a man in his fifties on a telephone, who was crying uncontrollably. She stated that this was extremely unusual and was concerned that something awful had occurred. She told me that she continued on her journey walking and saw a young woman who was lying on the ground with her intestines in view. Ms Weddle told me that she had difficulties making sense of this due to the fact that she had not encountered a dead person before. She told me that the thought that she experienced at the time was that the colour of the lady's intestines was 'wrong' as the only exposure that she had had prior to this with regards to internal organs had been watching the television 'Zombie' drama, 'The Walking Dead' where the internal organs of persons would be exposed in the content of the show. Ms Weddle told me that she was aware that she was standing and looking at this young woman for a considerable period of time although reported that in reality this was likely to have only been a number of minutes. She told me that she changed her journey and walked towards the Buchanan Street area of Glasgow. Ms Weddle told me that she became extremely emotionally distressed and attempted to warn a father and child about stopping on their journey to this area of the city due to the fact that they would also be exposed to the aforementioned dead bodies. Ms Weddle told me that she had difficulties with regards to speaking as telephoned (*sic*) her father but was unable to speak on the telephone to him. She stated that she then telephoned her mother, who stayed on the phone with her as she walked towards another part of the city centre and got a bus to her home in the Cardonald area of Glasgow. Ms Weddle told me that she visited a pharmacy to advise them of what she had witnessed and that she was extremely upset about this. Ms Weddle told me that she was then accompanied to a GP surgery and explained that she was assessed whereby she was given Diazepam to calm her emotional state. Ms Weddle told me that she then went home and was contacted by the GP later that day. Ms Weddle stated that she was a student in Stirling at the time and did not have a GP surgery in Glasgow. She explained that her parents lived in France and several days later she left Glasgow to visit them for the Christmas period." : no. 5/2/2 of process.

Dr Morrison's evidence

[222] Asked about the terms of the report, Dr Morrison explained that a patient's presentation is recorded to provide context. It can indicate difficulties which a patient is experiencing and informs clinical judgment and allowed for planning of any treatment recommended e.g. if a patient was showing non-engagement. In the pursuer's case, he described her as very tearful and agitated. She was rubbing her face and putting her head into her hands. An important feature in PTSD cases was that when people are asked about

events giving rise to them, this can trigger an emotional response. They feel under threat when they are being asked to talk about events and feel as if they are back in the event. The patient's self-report is obtained by interview. The patient is asked for their version of events and a narrative is provided. It is not written verbatim and there is a tendency to summarise.

[223] After that self-report there would be a review of the records. The clinician is looking for consistency.

[224] The report of the effects of an incident can be misleading in that Dr Morrison prepares a "standard narrative". Typically somebody who is being interviewed would jump around and tend to describe their current problems. Patients tend to talk about symptoms and Dr Morrison tries to clarify these points.

[225] In the present case, the pursuer's presentation throughout was highly distressed. A clinician has an ethical duty not to over traumatise a patient. The aim is to get enough information to form a view. In the pursuer's case, Dr Morrison was concerned for the pursuer.

[226] Dr Morrison then explained how the diagnosis was effected and what that was in the pursuer's case and how it had affected her. He agreed that the pursuer was suffering a significant disability and that she had been very traumatised.

[227] He had recorded that she had had some treatment and although she had quite a lot of attention that did not appear to have been successful.

Pursuer's evidence

[228] Cross-examined about Dr Morrison's first report, no. 5/2 of process, the pursuer agreed Dr Morrison had asked for her description of the accident and that she had done her best to tell him that accurately and that she had seen his report. She accepted that there was

no record in his report of her being terrified for her safety. She was asked whether she had told Dr Morrison that. She did not give a direct answer to that question saying that at the time she felt so disgusted about how she reacted and how she felt.

[229] She was pressed on why she had not said she had been terrified. She replied:

“In this sort of situation, I didn’t see myself... how terrified I was as relevant. What had happened to me was not as bad as had happened to other people. I got it so in my head that I was a horrible human being. That I wasn’t a victim. This was just... I had to say I wasn’t a victim of what happened”.

Discussion

[230] Neither the pursuer nor Dr Morrison suggested that the pursuer’s account as recorded was, insofar as it went, not accurate. Rather, their evidence appeared to me to be at best a possible explanation for an omission.

[231] The pursuer sought to give an explanation for not mentioning fear and Dr Morrison seemed to support this to some extent by suggesting that what he noted may not have been a full account. But the difficulty with that evidence is that the account was a detailed one and specifically recorded the pursuer’s reaction at various points in time.

[232] First, she begins by saying what happened initially and describing her reaction to it:

“...(she) heard a loud bang. She stated that she looked up and witnessed a taxi being pushed by a bin lorry into a wall. Ms Weddle told me that following the collision a number of men got out of both vehicles and she assumed that this was a road accident and that all parties were okay.” (Emphasis added.)

[233] Second, her account as given contains more detail of what she saw and how she reacted to it i.e. a growing realisation as she walked south along the pavement at George Square (away from the scene of the collision she had witnessed directly) where she came upon the aftermath of the bin lorry’s progress northwards that all was not right and that what she was seeing was related to the collision she had seen:

“She told me that she continued walking towards George Square and witnessed a family huddled together, who were comforting each other. Ms Weddle told me that she had seen a black car with a number of scratches on it and had assumed that the family were involved in the event somehow but were not injured. She stated that she crossed the road at the other side of George Square and saw a woman lying on the floor. Ms Weddle told me that, due to the fact that it was the Christmas period, she had assumed that the person was perhaps drunk and that she was being assisted by a man. Ms Weddle told me that she subsequently experienced significant feelings of guilt due to the fact that she had made this assumption about this person. She stated that she then witnessed a man trying to pick up the woman, who appeared to be unconscious. She told me that a number of persons around her began crying and she became aware that ‘something was wrong.’ Ms Weddle told me that she recalls seeing a man in his fifties on a telephone, who was crying uncontrollably. She stated that this was extremely unusual and was concerned that something awful had occurred. She told me that she continued on her journey walking and saw a young woman who was lying on the ground with her intestines in view. Ms Weddle told me that she had difficulties making sense of this due to the fact that she had not encountered a dead person before. She told me that the thought that she experienced at the time was that the colour of the lady’s intestines was ‘wrong’ as the only exposure that she had had prior to this with regards to internal organs had been watching the television ‘Zombie’ drama, ‘The Walking Dead’ where the internal organs of persons would be exposed in the content of the show. Ms Weddle told me that she was aware that she was standing and looking at this young woman for a considerable period of time although reported that in reality this was likely to have only been a number of minutes. She told me that she changed her journey and walked towards the Buchanan Street area of Glasgow.” (Emphasis added).

[234] Third, her account is consistent with the proposition that it was at this (later) stage that the pursuer had an emotional reaction and this was a reaction primarily to what she had seen of the aftermath:

“Ms Weddle told me that she became extremely emotionally distressed and attempted to warn a father and child about stopping on their journey to this area of the city due to the fact that they would also be exposed to the aforementioned dead bodies.” (Emphasis added.)

[235] So, to accept that the pursuer suffered fear of physical injury to herself in response to seeing the collision between the bin lorry and the silver taxi would involve not simply adding that detail to her account, but would entail a complete re-framing of her entire account.

The pursuer's meeting with Dr Scott

[236] The pursuer was asked about her meeting with the defender's psychologist, Dr Scott. She agreed that she had been seen by Dr Scott in January 2018; that she remembered the meeting; and that she understood why she was being seen. The pursuer said that Dr Scott had asked her all the same questions and why she had kept going down that road. The pursuer then said "I then realised that it was because I was so terrified."

[237] It was put to the pursuer that there was no record of her suggesting to Dr Scott that she had been terrified and she was asked whether she had told Dr Scott that. The pursuer responded: "It is quite clear I was suffering from survivor's guilt. I didn't think about how I felt."

[238] The pursuer agreed that she knew the report was for the claim and she knew that she had a claim. It was suggested to her that it would have been easy for her to say something like "I was terrified" or "I thought the truck was going to kill me" and was asked why she had not said anything of that nature. The pursuer said that:

"It was kind of hard to say how I felt after seeing other people. I got so stuck on how I had reacted towards these other people. It was easier to focus on that than on when the truck was coming towards me. It made it easier for me to focus on this."

Discussion

[239] I did not find the pursuer's explanation to be very clear about why she had not mentioned a feeling of terror to Dr Scott.

[240] I do not suggest that the pursuer did not suffer feelings of guilt or that these were not dominant. What I was unable to follow was why those feelings prevented the pursuer from mentioning other feelings such as fear at all, especially in the context of a meeting which she knew was for the preparation of a report related to her claim and when she had already

given an account of how she felt at the relevant time to Dr Morrison (although she had not mentioned fear or terror to him either).

[241] In my view, the more likely explanation standing the other evidence in the case is that the pursuer has convinced herself looking back that she did experience fear for her physical safety when she saw the collision between the bin lorry and the silver taxi when in fact her reaction – which no doubt encompassed severe shock and anxiety – manifested itself only once she had witnessed the aftermath of the bin lorry's progress north before it had come into her line of sight.

The pursuer's second meeting with Dr Morrison

Pursuer's evidence

[242] The pursuer's position was that when she saw Dr Morrison for the second time, she had told him what she had told the court in evidence.

Dr Morrison's evidence

[243] Dr Morrison was taken to his second report, no. 5/6/8/2 of process. He said that for a patient to talk about things could still be difficult and that that was not unusual. It could trigger the symptoms of PTSD. It tended to lead to high levels of arousal and the patient feeling that they were reliving the event. In the pursuer's case her presentation had improved and she was more able to answer questions. She was calmer.

[244] Dr Morrison had had access to the pursuer's supplementary statement.

[245] During Dr Morrison's first assessment he had been trying to establish the pursuer's symptoms which were very clear. He was looking at the diagnostic criteria. The pursuer had described seeing the bodies immediately after the accident. She met the criteria for

PTSD and Dr Morrison did not need to go any further. There was no need to go over the incident in detail which risked traumatising the pursuer unnecessarily. It would not be ethical to ask more questions than were necessary.

[246] During the second consultation, Dr Morrison had wanted to understand why fear had not been mentioned before. The pursuer's explanation – that she was focusing on guilt rather than on her own personal feelings – was put to Dr Morrison. He said that the pursuer was embarrassed about feeling lucky to have survived and the severity of her symptoms because other people had died. She appeared to feel that having focussed on her own symptoms was difficult because it had been somebody else who had died. He was asked if he could label that as a survivor's guilt and he replied "Yes. Her sense of guilt about not being able to help this person and feeling symptoms (herself) given that she had actually survived." Dr Morrison said he understood that thought process. In psychological treatment, that would be a thing to focus on. Having survived but seeing a dead person – how that makes one feel. That could be called survivor's guilt but in the pursuer's case her guilt was about experiencing legitimate emotions when she considered that she was not that badly injured compared to those who were killed. Dr Morrison said that that was not surprising in his clinical experience.

[247] Under cross examination, he was taken back to his first report and asked whether he had formed any impression that the pursuer was holding back or having trouble discussing aspects of the incident. He said that she was very distressed and that time had to be taken to frame questions in a manner which would allow her to respond to him. The last sentence of page 2 of no. 5/2 of process (his first report) was accurate and the latter part meant that she was not refusing to answer questions. He had not formed the impression that she was

deliberately holding anything back but had done so “maybe” in answering some questions as these were triggering symptoms.

[248] Asked whether she was inadvertently holding something back Dr Morrison’s impression was that discussion about the incident and her symptoms was difficult and that as result she was reluctant to discuss matters in a lot of detail because of that. He was asked to confirm that his impression then was that the pursuer was inadvertently holding something back and he said “yes” he accepted that it was not recorded in his report. What he was reporting at that stage was the level of distress.

[249] He was asked how that fitted with the last sentence on page 2 of his report. There was no qualification that the pursuer was holding back or misremembering or misreporting something so how did he reconcile all of that?

[250] His position was that his concern at that stage was to discuss the nature of the symptoms. Diagnostic indicators included not being able to remember certain things. It was put to him that he had not identified that and he said that it was not a particular symptom apparent at that time.

[251] Dr Morrison agreed that the initial self-report was to the effect that the pursuer was horrified at what she had seen and was reporting a then unfolding horrific set of circumstances. He accepted that there was no mention of her being terrified. He also accepted the phrase “became distressed” suggested that it was not immediate. He accepted that that was fair.

[252] He accepted that his record of what the pursuer said to him contained a high level of detail and she reported a number of specific things that had happened. Dr Morrison said “I don’t imagine it is a full narrative.” Nevertheless he agreed that there were some important highlights. He said that the specific nature of recall was a characteristic of PTSD.

[253] It was put to him that the pursuer appeared to be reporting a vivid recollection with a lot of detail about certain aspects focussing on the traumatic events? Dr Morrison agreed that she seemed to be reporting the events which caused her a high level of distress. Dr Morrison said that when he saw the pursuer her symptoms mostly seemed to relate to the girl she saw who was very seriously injured.

[254] Over the course of fifteen therapy session, he imagined that the question of distress would have come up. He agreed that if it had not been mentioned that was significant. He agreed that as at 22 March 2018 the pursuer due to her improvement was in a position to discuss being terrified.

[255] Dr Morrison also agreed that when he first saw the pursuer she had not mentioned terrified but the horror of things unfolding and that he had been able at that stage to diagnose PTSD.

[256] Dr Morrison agreed that he had not seen the CCTV footage.

Discussion

[257] I accept as a general proposition that persons who have suffered PTSD and/or 'survivor's guilt' may find it difficult to talk about an incident which may have been the cause of that/those conditions; and that a treating psychologist will tend to concentrate on obtaining only enough information to inform diagnosis and treatment. I also accept that there is a point at which it would not be ethical to press for more detail if that causes the patient too much distress.

[258] The question here is whether the explanation given by the pursuer and to some extent supported by Dr Morrison for fear not being mentioned during the latter's first

assessment is sufficient to undermine the weight to be attached to the pursuer's first account.

[259] In my view, they are not. First, I have already observed that the addition of fear or terror attributable to the bin lorry and silver taxi collision would involve not a simple addition to the first account recorded by Dr Morrison, but a complete re-writing of it. Second, Dr Morrison made important concessions under cross examination e.g. the original account was detailed; it could fairly be said to describe a delay in onset of an emotional reaction (distress) rather than an immediate one.

[260] Furthermore, the pursuer's first account fits better with other evidence about accident circumstances, especially the CCTV footage.

The pursuer's evidence in court about the accident circumstances and matters relevant thereto

[261] The pursuer explained that she was on her Christmas break from her studies at Stirling University. She had been staying overnight with a friend in Edinburgh and had returned to Glasgow by train arriving at Queen Street station at about lunchtime. She was on her own. The weather was freezing cold and she purchased a hot chocolate from an outlet within the station. She was heading to Jamaica Street and planned to walk there.

[262] She exited the station onto George Square. This took her down steps next to the Millennium Hotel and there was a pub to her right, she wanted to cross to George Square. She went right down the steps and walked up to the zebra crossing. She thought she stood at the pavement. The hotel was on her left. She was just texting a friend in Edinburgh. She heard a big bang and looked up from her phone. It had been really loud. She saw the bin lorry pushing the taxi forward. She thought "oh my goodness, what is going on". She felt really scared. She didn't know if the taxi or the bin lorry was going to hit her.

[263] The taxi smacked into a pillar. That took a few seconds.

[264] After the vehicles came to rest, she felt in shock. The passenger and driver got out of the taxi. She thought "he has not hit me". She was really scared. She just wanted to get away from the situation. She walked forward across the crossing. She saw a black car which was all scraped. There was a family with kids hugging each other. She couldn't relate that to what she had just seen. She went to the crossing at the bottom of George Square and that is where she saw the first body. There was a girl on the floor with a black dress. She didn't relate it to what she had seen. It was the centre of Glasgow outside a pub. She thought the person might be drunk. A guy kept trying to pick her up. She just stood there. She then realised that the girl was obviously dead. She moved forward again. She heard a guy on the phone saying something about "lots of dead people". He was crying. She had wanted to get away.

[265] She then saw the second body. There was white stuff on the floor. She couldn't process it. She realised it looked like intestines. She realised it was real. This was a girl. She panicked; she took several steps back and then went towards Buchanan Street. She saw a dad with a young son; she tried to tell them not to go to where she had been. She couldn't form any proper words. She thinks he understood.

[266] [Evidence about phone calls to Mr and Mrs Weddle].

[267] No. 5/16/6 of process, photograph 1161 showed the area where she was standing. Under reference to no. 5/16/7, photograph 1162, she identified the pedestrian crossing which she was proposing to use as being 'at the police car'.

[268] Under reference to no. 5/13/26 of process (produced as Appendix hereto) the pursuer marked with an 'x' where she was standing when she saw the accident between the bin lorry and the silver car. The collision had happened about one third of the way into George Square.

[269] On the same document, the pursuer identified with the number '2' the location of the bin lorry when she had first seen it. It was pushing the taxi forward. She was unable to say if it had been on the roadway or pavement. It was just going forward. The taxi then hit the pillar and the lorry hit the hotel. The taxi was only a few metres away from her. On the same document, she identified with the number '3' where she had seen the bin lorry and taxi together.

[270] The pursuer had assumed that the loud bang had come from the lorry hitting the taxi, but it could have been anything.

[271] She agreed that a number of people were shown lying injured in Queen Street.

[272] She agreed that she had been facing towards the bin lorry as it had been coming towards her.

[273] Under reference to no. 6/13/26 of process, she had walked down Queen Street on the west pavement, heading south.

[274] As she went along, she had seen evidence of what had been shown to happen in the image at CCTV footage at 14:29:33. The bins were still on the road. George Square was to the right of the lorry.

[275] The images taken from camera 10 at the Millennium Hotel showed West George Street looking towards George Square. At 14:29:36 a taxi could be seen on the road between the island and the hotel. The images from camera 8 were taken from the Camperdown Pub. They were looking east towards George Square. The pursuer herself was visible at 14:29:29. She passed the pub and could be seen standing just to the left of the pedestrian crossing button at 14:29:52.

[276] She had seen the bin lorry for the first time at point 2 marked on no. 5/13/26 of process. Her own position was marked with a cross. There was a row of four vehicles. The

point in the road adjacent to the front of the third car in that row of four vehicles (counting down from the top of the plan) was where she first saw the bin lorry.

[277] She first saw the bin lorry and car together towards the rear of the first car in the same row of vehicles. Asked whether the bang could have been earlier she said that she had heard the bang; looked up and saw the bin lorry and taxi. The lorry was going very fast. She agreed that she had heard the bang and looked up and the bang could have been before the lorry hit the taxi.

[278] She had come down the steps and stood at the position marked 'x'. She had heard the bang. Q. She had looked up and she had seen the bin lorry at position 2? A. Yes. Q. She had then seen the taxi and bin lorry together? A. Yes. The CCTV images at 14:29:42 showed the taxi moving slowly. 14:29:48 showed the lorry stopped.

[279] No. 5/7/11/1 of process showed an image (taken from the CCTV) of the pursuer with the silver taxi beyond her and then the bin lorry behind it. No. 5/7/11/2 of process showed the pursuer standing just beside the lights. No. 5/7/11/3 of process was a close up of the same view. No. 5/7/11/4 of process showed the lorry up against the hotel and to the right of it, the taxi the pursuer had been talking about. No. 5/7/11/5 of process showed the bin lorry against the hotel but did not show the taxi.

[280] No. 5/17 of process was a street plan of the locus and she had been standing on the pavement just up (north) of the lettering saying "W George St". Under reference to no. 5/13/26 of process she confirmed that having crossed West George Street she then walked down the west side of George Square. She had crossed at the junction with St Vincent Place. She then turned back and away from George Square along St Vincent Place.

[281] [Evidence pertaining to quantum.]

[282] Under cross examination she agreed that no. 5/16/6 of process, photograph 1161 showed her standing on the pavement with the pedestrian light to her right. She thought she had pushed the button. No. 5/16/4 of process, photograph 1156 was an image looking north. She agreed that from that view because the pedestrian crossing was off to the left it was not possible to see the pedestrian light.

[283] She was asked what kind of view would she have had up towards Queen Street even if she had been looking up. She said that she felt that what she had said she could see was pretty accurate. It was put to her that a lot of what had happened had been obscured and that there was some restriction in her view. She said that she was fully able to see the side of George Square and she could see the statue.

[284] She was unable to recall if there was noise from the fair which was shown in the photographs. She had heard the bang, looked up and saw the lorry and the taxi.

[285] She was taken to the images in no. 5/12 of process, camera A054 at 14:29:43. She accepted that there seemed to be one or two cars waiting to go through the junction at the north end of George Square. She was taken to the images at CCTV 9 and it was put to her that the bin lorry was moving to its right as it crossed the junction and she said "yes, I guess". She accepted that it was not going straight ahead.

[286] It was put to her that it was not driving directly towards her and she said "it felt like it". She accepted that the bin lorry was not in fact going directly towards her. It was put to her that the silver taxi had not at any time been coming towards her and she said "In my head it was. It had no control. I thought it was going to come towards me".

[287] Under reference to no. 5/12 of process CCTV 8, she agreed that at 14:29:31 nothing untoward was happening. At 14:29:35 there was a white taxi and then at 14:29:45 it was possible to see the point at which the pursuer had looked up.

[288] It was put to her that the bin lorry was pointing away from her across the junction and that it was about six car lengths away. She disagreed and said that the video showed a bad angle and that it was nowhere near as far as that.

[289] It was put to her that it was clear that the silver taxi was going straight ahead and was not moving towards her. She said "Maybe not. That's what I remember. Looking at the position it looks pretty bad. From where I was standing you would think it was coming towards you". She said that the taxi "...would have gone into me; on this it looks stretched out, it looks further than it is."

[290] [Evidence about her first meeting with Dr Morrison and the account she had given to him.]

[291] [Evidence about meeting with Dr Scott].

[292] The pursuer then self-posed the question saying "Why would I keep walking (in that direction) unless I was not thinking rationally? I just kept walking." It was put to the pursuer that if she thought it was just an accident there was no reason for her not to walk up George Square to which the pursuer said "I don't think so. It was still the street I was going down." It was suggested to her that she could have been walking away from the scene and she was asked where the lady was that she thought was drunk. The pursuer confirmed that this was St Vincent Place at the box junction where St Vincent Place, George Square and Queen Street meet.

[293] She was asked whether she got there before she realised anybody had been injured and she said that was the first dead body. She had seen the scratched car with a family outside it. She agreed that she had not seen any person with any apparent illness or injury until she saw the first dead body. She was asked when she was first aware of the dramatic outcome and she said that the bin lorry was dramatic and so was the family.

[294] The pursuer said "I just focussed on that until I realised how bad I felt." She disagreed with the suggestion that she was misremembering and had not actually been terrified at the time until she saw the horror afterwards. She said "I convinced myself it was easier to focus on other people. I remember how terrified I was. Most of my symptoms are due to being terrified when it was coming towards me."

[295] Under re-examination she was taken back to the CCTV and in particular the sequence showing the bin lorry and the taxi to the east of the pursuer as she was standing at the pedestrian crossing at West George Street outside the station. She said that these did not properly represent the distances because of the angle. The distances looked a lot longer than they actually were.

[296] She agreed that she had seen Dr Morrison twice and said that the second time she had told him what she had told the court today and had given the explanation recorded at production 5/6/8/4.

Discussion

[297] As discussed more fully below, my view is that a combination of the CCTV footage and the terms of the agreed police report taken along with the pursuer's evidence about distances demonstrates that the pursuer is in error in suggesting that either the bin lorry or the silver taxi was coming towards her or ever placed her in physical danger.

Part II – the applicable law, in summary

[298] The parties were largely agreed on the applicable law. Both parties accepted that the primary question in this case was whether the pursuer fell within that class of persons who having suffered psychiatric injury, but no physical injury, was nevertheless entitled to

recover damages. In other words was she a primary victim? (It is not part of the pursuer's case here that she was a secondary victim and I need say nothing more about that.) The parties were also agreed that the law on how that question was to be approached and resolved was helpfully summarised in *Campbell*. Before dealing with that issue in more detail, there is one matter which I wish to comment on more specifically.

[299] Ms Bain submitted that the pursuer could properly be treated as a primary victim if she could show that either (a) she was objectively exposed to danger (which it was argued she was) or (b) if she could show that she reasonably believed she was exposed to danger.

[300] Mr Smith did not argue otherwise but submitted that the point in time at which the driver of the bin lorry Mr Clarke's actions should be judged was 'the immediate circumstances', which I took to mean those when the pursuer was broadly in the vicinity of it, rather than a more general approach, encompassing some earlier point in time when the lorry was in Queen Street itself (i.e. south of the junction with St Vincent Place) rather than near the station. His argument was that if the latter rather than the former approach was taken, any control mechanism would be rendered devoid of content.

[301] I can see that in cases where there is a more complex sequence of events over a period of time which could be regarded as negligent (such as in the present case) compared to more straightforward factual situations such as found in the case of *Bourhill*, there could be an issue about when the question of duty falls to be examined. In the event, no contrary submission was made on behalf of the pursuer. For what it is worth, my view is that the approach suggested by Mr Smith must be correct when the matter is examined from the point of view of foreseeability. The duty is owed to somebody who was placed in danger, or reasonably believed themselves to be so. In my view, that test could never be satisfied by somebody who was separated physically and temporally from the occurrence and effects of

negligence. Put another way, the pursuer could only ever be a primary victim in relation to the negligence of Mr Clarke when the lorry was relatively near her. She could not be a primary victim in relation to the occurrence and effects of his negligent driving in (say) Queen Street itself, since she was not in or close to Queen Street at the time. Even if she was caused fear because of what she witnessed of the aftermath in Queen Street, that would not be because of fear of physical injury to herself, because no such danger existed by the time she reached that area: the danger, in the form of the bin lorry, was by that time behind her, both in space and time.

[302] Thus, the question of the extent of Clarke's duty, if any, towards the pursuer must be evaluated by reference to events as witnessed by the pursuer as she stood at the pedestrian crossing on the north pavement of West George Street, just outside Queen Street Station ("at the relevant time"). This is consistent with the pursuer's position on Record and the submissions of senior counsel for the pursuer.

Part III - duty of care: was the pursuer actually at risk of physical injury at the relevant time?

[303] This is a question of fact, to be evaluated objectively. (At this stage, as I am considering the issue of foreseeability in the context of existence of duty, I leave aside the issue as to whether the pursuer did in fact suffer fear of physical injury. The evidence about her state of mind is more fully dealt with below.)

[304] It is evident that the bin lorry was a large vehicle and that it collided with the silver taxi, as a result of which the taxi was propelled more or less north across the West George Street junction. That apart, it appears to me that this question falls to be answered by considering physical factors such as location, speed, distance and direction.

[305] The findings in fact about the speed of the bin lorry come from the police report, no. 5/13 of process, the information therein being agreed to be accurate by paragraph 12 of the first joint minute, no. 15 of process.

[306] The issue of location and direction comes from:

- i. the CCTV footage showing (a) the view from Queen Street past the St Vincent Place junction towards George Square, showing the route of the bin lorry as it travelled north and (b) the view south east from the Camperdown Public House towards George Square, showing the pursuer standing at the crossing on the north pavement of West George Street and the bin lorry traversing the West George Street junction;
- ii. the plan no. 5/13/26 of process, appended hereto, with the pursuer's annotations added;
- iii. photograph 1161 in no. 5/16/6 of process;
- iv. photograph no. 5/11/4 of process; and
- v. the map, no. 5/17 of process.

[307] It is clear from the CCTV footage taken from the Camperdown Pub that the pursuer only looked up when the bin lorry collided with the taxi – no doubt in response to the noise: see footage timed at 29:35:47. Beyond looking up and across, back down at her phone and then back across, she exhibits no other physical response to what she sees. She does not step back, put her hand up to her face or react in any other way indicative of fear.

[308] The same footage when compared to the plan no. 5/13/26 of process and the photograph 1161 in no. 5/16/6 of process also suggests the pursuer was mistaken in her evidence as to where she was standing. Rather than being close to the corner of the north pavement of West George Street, she was further south west, standing close to the

pedestrian crossing signal situated at the south edge of the north pavement of West George Street.

[309] An examination of the plan, CCTV footage (both segments); the photograph; and the map make it clear that the bin lorry, which was already on a north easterly trajectory as it approached the West George Street junction, continued in that direction and collided with the south corner of the Millenium Hotel. At no stage can it be said to have been 'coming towards' the pursuer.

[310] The silver taxi did travel in a slightly more northerly direction than the bin lorry, and although in absolute terms it was getting closer to the pursuer, it was not 'coming towards' her.

[311] In relation to distance, the position is less clear. I accept that the video footage on its own would be an unreliable source of evidence for calculating or perhaps even estimating distances. On the basis of the footage alone, I go no further than to say that the bin lorry and taxi do not appear to be close to the pursuer.

[312] Ultimately, I understood the pursuer's position to be that she heard a bang, looked up and saw the bin lorry pushing the taxi forward and that at that stage the distance between where she said she was standing and the vehicles was 40m (i.e. her annotations 'x' and '2' on no. 5/13/26, respectively). As the vehicles moved forward, they reached a point about '3' on no. 5/13/26, which was 32m away from her: interlined handwritten paragraph at beginning of second joint minute, no. 16 of process. (Mr Smith emphasised that it was not agreed that her evidence about the positions of these two vehicles relative to her were accurate. Simply that the positions given by her, if scaled up, produced the figures agreed.)

[313] So far as the distance from where she was standing when she looked up in response to the 'bang', the pursuer was asked where the bin lorry was. She said "It was further back"

from which I took her to mean further away from her than the taxi (which is correct – the lorry was behind the taxi). It was suggested to her that it was about 6 car lengths away to which she said “No. This is a bad angle. It was nowhere near that.”

[314] But if the pursuer did not see the bin lorry at all before its impact with the taxi and if she is correct about how far away it was from her at that time, it was 40m away which is a considerable distance – nearly half the length of a football pitch.

[315] Even if the vehicles were only 32m away, it is within judicial knowledge that a car (at least in the UK) is typically about 14 – 15 feet long. 14.5 feet is about 4.4m. On the pursuer’s figures, the vehicles were at least 32m (or about 7 car lengths) away from her after the initial collision. Thus, on her own estimates, she is incorrect in thinking it was “nowhere near” 6 car lengths.

[316] It was also a matter of agreement that the silver taxi, in its final stationary position was approximately 12m away from the pursuer: paragraph 1, second joint minute, no. 16 of process. This does not sit easily with the pursuer’s own evidence that when the silver taxi hit the pillar (at the Millenium Hotel) it was “...only a few metres away from me.”

[317] On my assessment of the evidence, it is clear that neither the bin lorry nor the silver taxi were moving fast. They were not heading towards her: if anything, their trajectory was away from her. They did not come very close to her. On no view could this be regarded as a ‘near miss’.

[318] The point can perhaps best be evaluated by asking the hypothetical question: what would have happened if the physical barriers which the lorry and taxi struck, bringing them to a halt, had not been there? The answer is that they would have carried on into the distance past the pursuer, causing no injury or danger of same to her.

[319] Accordingly, the question as to whether the pursuer was at risk of physical injury at the relevant time must be answered in the negative.

Part IV - duty of care: did the pursuer reasonably believe she was at risk of physical injury at the relevant time?

[320] While both parties were agreed that this was an issue to be determined, it is worth examining a little more closely what it might entail. (Again, I leave the pursuer's actual state of mind to one side meantime.)

[321] In my opinion, it is helpful to start with a comparison of some cases which respectively fall either side of the line.

[322] In *Hegarty*, the statutory duty was established to be that every person while on or near an offshore installation had a duty not to do anything likely to endanger the safety or health of himself or other persons on or near the installation.

[323] The facts were that the plaintiff was employed as a painter on the 'Piper Alpha' oil platform which was owned and operated by the defendant. The plaintiff was aboard a support vessel on the night that there were explosions and serious fires on the platform which resulted in many deaths. The vessel moved close to the platform in an attempt to rescue survivors but it pulled back after a further explosion. There was no damage to the vessel and no one on board was physically injured. Following the incident, the plaintiff claimed he was suffering from post-traumatic stress. He began proceedings against the defendant for personal injury and loss both at common law and for breach of statutory duty.

[324] It was held by Popplewell J that at no time did the fire reach the vessel or cause any danger or damage to anybody or to the vessel itself. Although the plaintiff was genuinely in fear of his life and safety, that was not a reasonable fear. It was clear that the plaintiff did not

come within the categories of participant, whereby psychiatric injury through fear of physical injury might be sustained, as a result of being in the actual area of danger created by the event or because of the sudden and unexpected nature of the event, nor could he come into the category of rescuer. Although he was aboard a vessel which was seeking to rescue people from the platform, the plaintiff's position was that of non-essential personnel.

[325] The relevant facts as found by the court are set out in the judgment at page 420:

"Findings on disputed questions of fact

I am quite satisfied that the fireball came as a result of the rupture of MCP-01. I accept the evidence of Captain Letty supported by the absence of damage to the Tharos that at no time did it actually reach Tharos nor cause any danger or damage to anybody or to the vessel itself. Equally I accept that for a number of those on the Tharos it must have been very frightening. I am not satisfied that there ever were two underwater explosions the next morning. Tharos never got closer than 50 m to Piper. This was undoubtedly a horrific event. Further west came close to being in danger but was not in my judgment ever in danger. I do not accept the suggestion that Capt Letty should have done more to assist those on Paper Alpha.

The plaintiff is a man of ordinary fortitude and he was genuinely in fear of his life or safety. At no time was he ever closer to Piper Alpha than 100 metres. I do not find that there was a reasonable fear."

[326] Further down the same page, Popplewell J turns to the legal principles to be applied and goes on to consider the case of *Duliu* as an example of a situation where the court was satisfied that the plaintiff, although not actually being in danger, because of a sudden and unexpected nature of the event, reasonably thought that she was.

[327] In that case, the plaintiff was behind the bar of her husband's public-house, when the defendants by their servant so negligently drove a pair-horse van as to drive it into the said public-house. The plaintiff was not physically injured, but sustained a severe shock, becoming seriously ill. The plaintiff claimed damages and the defendants sought to have the claim struck out, on the basis that the damage was too remote.

[328] The issue which the court had to decide was whether, if it was proved at

"...the trial that the defendants' servant did negligently manage a pair-horse van, and by reason of his negligence drove it into the part of the public-house where the plaintiff was, and did thereby cause her such a nervous shock as to make her ill in body and suffer bodily pain in the way alleged, the plaintiff has a good cause of action for damages..." : page 671.

[329] The court held that the plaintiff was entitled in principle to damages for nervous shock, if she could prove those allegations and thus the attempt at strike-out failed and the plaintiff was entitled to a trial.

[330] The case of *Campbell* was referred to by both parties. Like *Duliu*, the limitation of that case is that the judgment followed on discussion of the case on its pleadings, rather than an evidential hearing. But for what it is worth, it is perhaps indicative of the type of case where a claim based on "reasonable fear of injury" might succeed.

[331] Finally, there is the well-known case of *Bourhill* where the pursuer who heard but did not see a fatal accident – but did see the some of the aftermath. In that case, it was held that the pursuer did not fall within that class of persons to whom a reasonable person in the position of the deceased motor cyclist could foresee as being affected by the way in which he was riding his motorcycle.

[332] Returning then to the present case, the starting point is that the pursuer was not in fact in danger of physical injury.

[333] Neither the bin lorry nor the car was ever heading straight towards her. They did not come particularly close to her. The initial collision took place over 30m away (at least) from her. Thereafter, both vehicles were moving relatively slowly and came to rest at least 12m away from her. There was no explosion, fire or other such risk: c.f. *Campbell*. What she was aware of at that stage was of relatively small scale: c.f. *Hegarty*. It was a road accident involving a collision between two vehicles. At that stage, she did not see – and in my view was not yet aware of – any pedestrians being injured or worse. She saw people get out of the

car, assumed they were okay and she left the vicinity. In my opinion, assuming that she did believe that she was in danger, I am not persuaded that that was a reasonable belief.

Part V: Was the pursuer in fact in fear for her physical safety at the relevant time?

[334] As the pursuer has not proved that at the relevant time the driver of the bin lorry, Clarke, should have had her in contemplation as somebody who was at risk of injury, it follows that no duty of care was owed to her by him in the circumstances. That is sufficient to dispose of the case.

[335] Although the legal arguments as presented focussed primarily on the scope and existence of the duty on Clarke, if the pursuer cannot show that she was in fact in fear for her physical safety at the relevant time, her case cannot succeed. As this issue on its own is potentially determinative of the case, I should give my views on it.

[336] I emphasise that there is no dispute that the pursuer did *in fact* develop PTSD. The issue here is a narrower one: was she in fact in fear for her safety at the relevant time (i.e. when, or just after, she witnessed the collision between the bin lorry and the silver taxi and the immediate aftermath of *that* collision whilst she was at the West George Street junction)?

Analysis

[337] My analysis of the evidence and my findings in relation to the issue of duty set out at Parts III and IV are relevant here also and are adopted.

[338] In summary, those points are that

- i. at the relevant time, the pursuer did not see and was not aware of the earlier line of travel of or mayhem caused by the bin lorry;
- ii. the collision took place a substantial distance from her;

- iii. neither vehicle was ever “coming towards” her;
- iv. the bin lorry and taxi were not moving very fast;
- v. they both came to a halt some distance from her;
- vi. the pursuer showed no significant physical response to what she had seen, such as stepping back or putting her hand up to her face; and
- vii. other pedestrians continued to walk in the direction of the area where the crashed vehicles had finished up.

[339] In my view, there is other evidence which is also significant in this context. The pursuer said in evidence that after the collision she proceeded south along George Square heading towards Queen Street. That was, according to her, the route that she had intended to take anyway. That reinforces the view that she was unaware of what had already happened.

[340] Furthermore, there was an interesting piece of evidence which emerged when the pursuer was being cross examined about her meeting with Dr Scott.

[341] The pursuer seemed to be suggesting that the fact that immediately after she had witnessed the collision between the bin lorry and the silver taxi, she had crossed the road and continued on her intended route was evidence that she was not thinking rationally at that stage. But as Mr Smith suggested to her, the alternative explanation for proceeding south down George Square could be that at that stage she did not think anything was wrong.

[342] The pursuer was not willing to accept that, but in my opinion, that second explanation, as well as being simpler, fits better with the other evidence. The pursuer thought everyone involved in the collision between the bin lorry was ‘okay’ and did not know what awaited her further ahead, so she just continued the way she had planned to go.

Put another way, she set off in a state of innocence about what lay ahead and then gradually saw more things which at first she found inexplicable and then was eventually able to connect to the bin lorry.

[343] In my view, this is supported by her later reports to both her father and Mrs Wade where she spoke of having seen a horrible accident. The collision she saw at the relevant time could not be so described.

[344] So the actual accident circumstances and the pursuer's immediate reaction taken with what she said (and did not say) to Dr Morrison the first time she saw him; and the absence of any report of fear at the relevant time to her counsellors; or even to Dr Scott contradict the pursuer's own later assertions to that effect, even when taken with what might be regarded as the supportive parts of the evidence of Mr Weddle and Mrs Wade.

[345] As far as the pursuer's own evidence on this issue is concerned, her position was that because she was suffering from survivor's guilt she found it difficult to discuss her own feelings. However, she had been able to discuss at considerable length her own distress and how other matters had affected her. Dr Morrison had taken a fairly detailed description from her about what had happened and fear was not mentioned, yet he was able to (quite properly) make a diagnosis of PTSD at that time.

[346] On the pursuer's account to Dr Morrison, her initial reaction was that the collision between the bin lorry and taxi was just a road accident. She suffered a realisation of growing horror as she moved along Queen Street. It was only as she pieced it together that she realised that something terrible had happened, probably involving the bin lorry.

[347] Mr Weddell and Mrs Wade did not know what the pursuer had seen. They may have interpreted what they perceived as fear, but in my view they were not in a position to properly distinguish between that and other emotional reactions such as anxiety and shock.

[348] In any event, they both spoke of the pursuer having witnessed a “horrible accident”. As I have already noted that cannot be a description of what she saw when she was standing outside the Camperdown Pub.

[349] Drawing all these threads together, I am satisfied that the pursuer did suffer PTSD – this was not in dispute. However, I am not satisfied that she was in fear of physical injury at the relevant time. If she did suffer fear at some stage, that was attributable to the horror of the aftermath of the incident and not to the terror of the accident involving the bin lorry and the silver taxi.

[350] In view of the conclusions I have reached, the defender is entitled to decree of absolvitor. Lest I am wrong in the conclusions I have reached on liability, it is appropriate that I set out my views on quantum.

Quantum

Solatum

[351] There was little dispute about the nature and duration of the pursuer’s psychological injury. Putting it at its simplest, the pursuer developed PTSD which was seriously debilitating for periods, sufficient to disrupt her lifestyle and university education for a number of years. She has had to undergo treatment which has been of limited effect so far. She has improved and the prognosis now is for further improvement. My view is that solatium should be awarded on the basis that the pursuer had a material period during which she met the criteria for severe PTSD as identified in section (B)(a) of The Judicial College Guidelines for Psychiatric and Psychological Damage, except that the effects were not permanent; and currently meets the criteria for moderately severe PTSD, section (B)(b), but with the expectation that she will eventually make something close to a full recovery,

albeit with some residual risk of relapse. I assess solatium at £35,000.00 of which 80% is attributable to the past. Interest on the past element would be at 4% from the date of the accident to the date of decree which is $£7000.00 \times 4\% \times 3.83 \text{ years} = £1072.40$, giving a total including interest to date of £36,072.40.

Loss of earnings

[352] It was a matter of agreement that the vocational report, no. 5/3 of process, was equivalent to the author's oral evidence. As such, it was not challenged and I accept it. It was also agreed that the pursuer's career development had been delayed for 5 years as a result of the accident and that she had lost 5 years' earnings from her working career.

[353] Ms Bain approached loss of earnings in the traditional way i.e. by applying a 'but for' basis, making certain assumptions about what would have happened to the date of the proof and what will happen in the future; and calculating past and future wage loss on that basis.

[354] Using that method, she arrived at a figure for past wage loss of £141,695 with interest of £23,434 and a future loss of earnings (calculated on the hypothesis that she will complete her degree in June 2020) for a period of 16 months from the date of proof, giving a figure of £53,333.

[355] Mr Smith invited me to take a much broader approach on the basis that while it was accepted that the pursuer's graduation had been delayed by 5 years, there were still many uncertainties.

[356] His starting point was that Mr Davies' had used the upper quartile and highest decile (net figures of £37,406 and £46,681) in his calculations but that it could not be assumed that the pursuer would reach that level of pay. Instead, the median net figure of £27,529

should be multiplied by five years and the total of £137,645 discounted by 1/3rd to reflect that it would be paid in a lump sum.

General approach

[357] While there is no 'single way' of calculating damages, I prefer in the first instance to approach it in the way suggested by Ms Bain, albeit in a slightly different way.

[358] It is agreed that the pursuer has lost 5 years' earnings from her working career. In my view, it is useful compare two scenarios (i) that the pursuer would have started work in 2015 shortly after graduation and (ii) what has happened and what will happen now, assuming that she graduates in 2020.

[359] It is clear that the pursuer is intelligent and committed to both her studies and her part time work while studying. I proceed on the basis that the pursuer would have graduated in the summer of 2015 and would have pursued her intended career as an independent financial adviser ("IFA") or alternatively some similarly remunerated employment.

[360] I think it is likely that she would have obtained employment as a trainee IFA. I accept the limitations of using median and mean figures, but equally it would seem not to be right to start with a salary of £37,406 for the purposes of calculating past wage loss when the average rate for a qualified IFA is £33,050.00: production 5/3, Tables 4 and 11.

[361] I assume that as a graduate trainee IFA the pursuer would have earned more than a para-planner, but perhaps not more than a qualified para-planner: production 5/3, Tables 2 and 3. Thus, I think it is reasonable to assume a starting salary of about £25,000.00.

[362] As she progressed through her training, I think it is also reasonable to assume pay rises as she achieved her qualifications and that she would have completed her training in 3 years.

[363] In simple terms, the above process has been delayed by 5 years. Leaving aside for the moment the distinction between past and future loss and other issues such as interest, pay rises and actual earnings during the period to date, and assuming that the pursuer would have started as a trainee IFA on about 1 July 2015, but will not now do so until 1 July 2020, the following (simplified) comparison can be made, column 1 proceeding on the assumption that the pursuer would have graduated in 2015; column 2 proceeding on the assumption that she will graduate in 2020; and column 3 showing the difference in earnings.

		1	2	3
		£	£	£
Year ending 30 June	2016	25000	0	25000
	2017	27333	0	27333
	2018	29667	0	29667
	2019	32000	0	32000
	2020	32000	0	32000
	2021	32000	25000	7000
	2022	32000	27333	4667
	2023	32000	29667	2333
	2024	32000	32000	0
	2025	32000	32000	0
		306000	146000	160000

[364] This is indicative of the impact which the pursuer's illness and consequent delay in completing her studies and starting her career has had, the point being that the effects on her earning capacity are likely to continue well past her graduation date.

Past wage loss

[365] Using the approach set out above, but for the accident the pursuer would have continued to obtain some work from Pole to Win. Both parties suggested a broad approach. I assess the loss at £1,500.00.

[366] Using the figures from the table set out above as a base line, her past loss of earnings to date (as a trainee IFA) may be calculated thus:

<u>12 month period</u>	<u>Net earnings (£)</u>
2015 – 16	25,000.00
2016 - 17	27,333.00
2017 – 18	29,667.00
2018 - 19	<u>26,667.00</u> (based on £32,000.00 pro rata)
	108,667.00

[367] So her gross past wage loss is £1,500 + £108,667.00 = £110,167.00. From that must be deducted her actual earnings to date of £6,971.93, giving a net figure of £103,195.07.

[368] Interest thereon to date is £103,195.07 x 4% x 3.83 years is £15,809.48, giving a total past wage loss including interest to date of £119,004.55.

Future wage loss

[369] Continuing with the 'but for' approach, the effect of the pursuer's delayed career commencement will not end until June 2023: see paragraph [363]. So the proportion of lost earnings attributable to the period beginning with the date of this judgment and ending on June 2023 (i.e. her future wage loss) is £160,000 (see paragraph [363]) less £103,195.07 (see paragraph [367]) = £56,804.93.

Other approaches

[370] Using the traditional but for approach produces a total figure of £103,195.07 (net past wage loss) + £15,809.48 (interest thereon) + £56,804.93 (future loss) = £175,809.48

[371] It must be recognised that that calculation has limitations created by the assumptions that must be made. On the other hand, on one view it understates the wage loss, given that it does not fully compensate for the loss of 5 years from her working life, those potentially arising when her earnings potential is at its highest.

[372] Allowing a modest discount for uncertainties, I value loss of earnings at £160,000.00 including interest to date.

University fees

[373] I accepted the pursuer's evidence and would value this at £18,500.00. I was not invited to award interest on this head of claim.

Services

[374] This head of claim was not insisted in.

Treatment costs

[375] It was agreed that no award required to be made in respect of this head of claim.

[376] Accordingly, had I found for the pursuer, I would have granted decree as follows:

	£
Solatium (including interest)	36,072.40
Loss of earnings	160,000.00
University fees	<u>18,500.00</u>
Total	£214,572.40

Disposal

[377] In view of the conclusions I have reached, I make a finding in fact and law that the defender's employee would not have reasonably foreseen that his driving at the relevant time would have given rise to the risk of physical injury to the pursuer; and in any event, that the pursuer did not in fact suffer fear of physical injury to herself at the relevant time; that accordingly, the pursuer does not qualify as a primary victim and she cannot therefore obtain damages for any psychiatric injury suffered by her.

[378] I shall grant decree of absolvitor. All questions of expenses are reserved meantime.

Legend

- V1 - DAF Beulue truck reg. mark 8826NCD
- V2 - Nissan Juke reg. mark V1639GV
- V3 - Mitsubishi Lancer reg. mark DV672DF
- V4 - Skoda Octavia reg. mark 3J60VWN
- PV - parked vehicle
- sp - sign post
- fl - traffic light



Scale Plan Drawing

P.I. Ref: 8A142249/1 et al

Deceased: John Sweeney; Loraine Sweeney; Elin Macquade; Stephanie Toll; Gillian Ewing and Jackie Morton

Date: 22 December 2014

Locat: George Square, Glasgow

Scale Plan Drawing

Prepared by: PC Gray 15/16

Controlled by: PC Thomson 17/16

Scale: C.J.R.

1:100

221214.1

