**OUTER HOUSE, COURT OF SESSION**

**[2015] CSOH 5**

**PD604/14**

OPINION OF LADY STACEY

In the cause

MARY STEEL

Pursuer;

against

McGILL'S BUS SERVICE LTD

Defenders:

**Pursuer: McCaffrey; Digby Brown**
**Defender: Marney; BLM**

20 January 2015

[1] This is an action for reparation in which the pursuer, Mrs Steel, alleges that she fell due to the negligence of a bus driver employed by McGill's Bus Service Ltd.

[2] Mrs Steel's date of birth is 12 March 1932. The incident with which the court is concerned happened on 31 May 2013. I heard evidence from Mrs McGill, from her niece Mrs Strathdee, her great niece Mrs McCartan, her son Mr Robert Steel, Mr Harry Davidson, a security guard and first aider, Mr James McAvoy, bus regulator, Mr John Bell, bus driver, and Mr Pat Quigg, insurance coordinator employed by the defender. Mrs Steel retired from her job as a shorthand typist she thought about 10 years ago, that is when she was about 70. She lives alone in Dunoon.

[3] Mrs Steel's evidence about the way in which the accident happened was that she boarded the number 907 bus for Dunoon at stance 1 at Braehead Shopping Centre in Glasgow shortly after 6.30pm on Friday 31 May 2013. She had been on holiday, visiting her daughter, in Gibraltar and had returned to Scotland the day before. She had stayed the night with her son and he had driven her to Braehead in order that she get the bus home. She was familiar with the McGill's bus service, which she had used before to take the trip between her home in Dunoon and Braehead where her son worked as a foreign currency adviser.

[4] The pursuer said that her son drove her to Braehead, parked the car, and walked with her to the bus stance. There were about six other people waiting for the bus which was a little bit late. She and her son let others board the bus and then her son indicated to the driver that he would put her luggage into the hold compartment. He then helped her up the steps of the bus. She had a concession card which she put onto the machine, she told the driver where she wanted to go and he issued her with a ticket. She moved up the bus noting that there were people sitting in the seats,

until she found an empty double seat. Mrs Steel was carrying a handbag. When she got to the empty seat she put the handbag down on the seat and turned round with a view to getting into the seat. At that the bus moved off, jerking, and causing her to lose her footing. She never got the chance to sit down, as the bus moved off. She was opposite stairs to an emergency exit and toilet. She fell head first down the stairs. She could not get up. Two young men came and with some difficulty pulled her up. They asked the bus driver to stop but he did not do so. They then shouted for him to stop and he did so.

[5] Mrs Steel said that a 'person from the office' came onto the bus and took her to the office in a wheelchair. That person was very kind and sat and spoke to her. He took some details of what had happened to her. It was agreed that the person was Mr Davidson, a security guard and first aider. Mrs Steel accepted that Mr Davidson's entries in an accident form produced as 6/8 of process were made at least partly as a result of what she told him. Those entries include the time of the incident as 1838, a note of Mrs Steel's name address and phone number, with two narratives as follows:-

> "Lady fell down stairs on bus as it was turning at amenities building."
>
> "Lady was on bus going to Dunoon and she told me she fell down stairs as bus was turning round at amenities. Lady unable to wright (sic) statement."

Mrs Steel did not know what the reference to "amenities" meant. Mr Davidson confirmed in his evidence that he wrote down what she told him but he used the word "amenities" to refer to the travel centre where they were when he took the statement, although Mrs Steel had not used that word. Mrs Steel accepted that she did not tell Mr Davidson that she fell before she got a chance to sit down. She said it happened when the bus was just ready to go round the corner. She was in terrible pain, and in shock. She maintained that she never saw the bus driver after she fell. An ambulance was called but it took some time to come. When the first ambulance man came he gave her morphine for the pain that she was in. She was taken to the Southern General Hospital in Glasgow where she was told that she had broken her collarbone. Her suitcase ended up in the hospital with her, but Mrs Steel did not know who had retrieved it from the bus. She could have been discharged from hospital but as she had no way of getting back to Dunoon that night she was admitted overnight. In the morning her niece, Mrs Strathdee, came and took her home to Dunoon.

[6] Mrs Steel accepted the accuracy of ambulance records showing that the call for the ambulance was made at 1836 and that the crew arrived at the scene at 2013, left at 2031 and arrived at hospital at 2039. She also confirmed that an entry in the ambulance records (6/3 of process, page15) in the following terms:

> "PT fell downstairs of bus after it moved off before she was seated"

was an accurate record of what happened, and was what she would have told the ambulance man.

[7] Counsel for the defender explained to Mrs Steel that he expected to lead evidence to the effect that the bus driver watched her moving up the aisle of the bus. She said she could not comment on that. He explained that he expected to lead evidence that the bus driver saw her sitting down, and did not move off until he saw that she was seated. She took issue with that, saying that he could not have seen her seated because she never got the chance to sit down. She

maintained that the bus did not pull away smoothly; rather it jerked and she fell down. Counsel suggested that she spoke to the driver afterwards and said she had heart trouble and felt dizzy. Mrs Steel denied that they had any conversation after she fell. She was asked if it took her a while to tell the driver her destination, to which he replied that it did not, as she knew she was going to Dunoon.

[8] Mrs Steel was adamant that the bus moved while she was still standing. It was suggested to her that she had been confused in the past and that she might be confused about that. She said that she occasionally had difficulty remembering a name but that she was generally well. It was suggested to her that her medical records told a different story and that she had presented at her doctor with confusion both before and after 31 May 2013. She denied that. It was also suggested to her that she had been at the doctor in connection with falls. In particular it was suggested that in July 2013 she had been found sitting in a chair and had not known how she had got there. It was suggested that she had told the doctor that she was worried about losing her memory. Mrs Steel denied that. She said that the falls that she had had were for reasons such as lying too near the edge of the bed, and falling out of bed. On another occasion she had slipped in the bathroom. On another occasion she had been using her computer and had dropped her pen and on bending down to retrieve the pen had brought her head up and hit the mantelpiece. She did not accept that she had been found in a chair with no idea how she had got there. Counsel went through a report obtained for the proof by the pursuer from Dr Livingstone, a psychiatrist, which the parties had agreed represented the view of the doctor. Mrs Steele did not recall being concerned about memory and language deterioration in 2008, although Dr Livingstone had reported that. Mrs Steele agreed she had had a check-up from the doctor in connection with her memory, which the doctor said was fine. When it was suggested to her that the report showed that she had told her doctor in 2011 that her memory was getting worse and she had difficulty recognising people, difficulty cooking and that she forgot conversations, Mrs Steele was vague. She said that she did forget things sometimes but had no really bad memory problems. She explained that she had hereditary conditions connected to her heart, and had had a pulmonary embolism, all of which necessitated taking medicines. Any dizzy turns she had suffered were when she got out of bed and stood too quickly. She accepted that after the accident she had had falls and had been referred in September 2014 to the prevention of falls clinic. She was certain that her memory for the events on the bus was good and that she was correct in what she said. She denied having taken her seat on the bus and then having got up again. She denied any confusion either on the day of the accident or since. She was certain she had not said to the driver that she had a bad heart and took dizzy turns.

[9] When she was giving evidence Mrs Steel appeared to me to be cooperative with the court and to be attempting to answer questions thoroughly and truthfully. She seemed to understand all that was put to her and did not seem to be confused. She was reluctant to acknowledge that her medical records showed she had consulted her doctor before and after the accident about memory loss, and was keen to point out that the doctor had found her to be all right when she did a memory test. At one stage she needed a short break to take medication for angina.

[10] The bus driver, Mr Bell, stated that he arrived at the stance at Braehead at 1827 which was about two minutes late. He could not recall if there were people at the stance beyond an elderly lady and a younger man whom he remembered because an incident had occurred. The man

indicated that he would put luggage in the hold, by gesturing. The lady got onto the bus and the driver asked her where she wanted to go. She had a concession card but she just looked at him vaguely when he asked where she wanted to go. He gave two different versions: he said that she looked out of the bus at the man, who said that she wanted to go to Dunoon; he also said that she eventually told him herself, having been asked, that she wanted to go to Dunoon. The driver therefore issued her with a ticket. He then watched her, via his rear view mirror, walking slowly up the aisle of the bus. She chose a seat about four or five seats back from the front of the bus, which was not so far up the bus as to be opposite the steps to the emergency exit. When she was seated he set off.

[11] In order to do so he required to apply a right hand lock to his steering wheel as the layout of the bus stance was such that he had to turn right to get out of the layby and then further right in order to avoid a double decker bus which was in front of him. He did so and approached a pedestrian crossing. At that stage he was travelling at three or four miles per hour. The road was narrow and there was a lamppost which had to be borne in mind. He watched a family cross the pedestrian crossing and when they were safely across he proceeded onwards. He came to a halt sign and while there he heard someone in the bus shouting for the driver to stop the bus. He did not regard that as a safe place to stop and so he drove on, turning right and heading towards the travel centre. He stopped the bus, still within the precincts of the Braehead shopping centre, close to the travel centre.

[12] He did not know why he had been asked to stop and could see nothing happening in his rear mirror. He got out of his seat and walked up the aisle. He came to the elderly lady sitting in the window seat with a young man sitting beside her in the aisle seat. She was several seats further back than the seat which he had seen her take. The young man said something like she had fallen, and the bus driver asked her what had happened. She said that she was on medication for her heart and that she had felt dizzy. He took the view that she looked very unwell, describing her as rather grey. She said something about having pain in her chest and going down her left arm. Mr Bell decided that he should obtain help for her as he thought that she was ill. He did not ask the young man where she had fallen and no information was volunteered to him. He could see from his bus that Mr McAvoy, whom he did not know by name, but whom he knew as a regulator or inspector of buses was at or around the door of the travel centre and so he motioned to him and told him that first aid was needed. He understood that Mr McAvoy radioed for first aid and a first aider came onto the bus. He took Mrs Steel off the bus into a wheelchair and into the travel centre. Mr Bell said that after that he asked Mr McAvoy to let him know how the lady got on and then proceeded on his journey.

[13] There is an issue between parties as to whether Mr Bell moved the bus while Mrs Steel was still standing. None of the passengers in the bus except Mrs Steel were called as witnesses. Mrs Steel said that she thanked the two young men who helped her but did not think to get their names. Mr Bell said that he did not take the names of any passengers because he thought that he was dealing with a case of illness rather than an accident in which there would be a requirement to get names of any witnesses who were available. He did not report the matter to his employers as he did not regard it as an accident which he would have to report; rather it was a matter of a person becoming ill when on the bus.

[14] Mr Bell was adamant that the bus had not jerked. He stated that it was an automatic and that it could not jerk. He accepted that the forward motion of the bus depended on his putting his foot on the accelerator and that the strength with which he pressed the accelerator affected how the bus moved. He said however that he was an experienced bus driver and that it was not possible to move the bus quickly from the stance as an accident would be caused. On this occasion no accident was caused and he moved off smoothly doing only three or four miles per hour, as was his normal practice and as was safe. He said that he could see Mrs Steel moving slowly up the aisle of the bus and that he did not move off until he was sure that she was sitting down.

[15] Mr Steel gave evidence about taking his mother to the bus and seeing her on to it. He walked away once she was aboard, and said he heard the bus setting off. He thought that it started up very soon after she had got onto it, and he hoped she had found a seat. He had walked only a few yards when the bus drew away. He could see the outline of passengers sitting in the first few front seats and so knew his mother would have to move up the bus to get a seat. Mr Steel explained that his mother had been sent photos of the bus stance which were productions in the case a few weeks before the proof and he had looked at them with her. He had gone back to the site (which is close to his place of work) and paced out distances so as to be sure of his own evidence. While he was asked what he and his mother had discussed it was not suggested that he either told her what to say, or had been told by her what he should say. I did not find anything sinister in the pursuer and her son, a witness, seeing the productions in advance.

[16] Mr Steel was going on holiday to America the day after the accident. He discussed with his sister whether or not to go, and decided he should go. He knew that his mother was staying with his cousin and he phoned her frequently while he was away. He spoke to his cousin on the phone and was told that his mother had said that the bus jerked and she fell down steps. He spoke to his mother about the accident and she told him the same thing. Mr Steel stated at the beginning of the evidence that he was not impressed by the attitude of the bus driver when Mr Steel asked if he could put his mother's case in the luggage compartment. The driver just said "aye" and seemed a bit off hand, which Mr Steel said was "rude and typical of a bus driver today". He was not asked if he had told the driver his mother's destination.

[17] Mr McAvoy is employed as a bus regulator or inspector at Braehead. He is in charge at the travel centre and described his duties as making sure that buses were at the right stance, and running properly, and to give information to the public. He had been a driver earlier in his career. His employer as at 31 May 2013 was McGill's which gave him authority over drivers from that company. He recalled seeing the bus that day, as it was the last one to Dunoon, which meant he had to be sure to check it did run. The driver stopped the bus and beckoned him over. The driver said an old lady had fallen. He thought that the driver said she had slipped off the seat and fallen down stairs. Mr McAvoy radioed for a first aider to attend, and went to get a wheelchair. He saw her walking down the stairs, and thought the driver was helping her. Once the pursuer was off the bus the driver drove off. Mr Davidson and Mr Stevenson, both security guards and first aiders, dealt with the pursuer.

[18] The 'man from the office' who helped her was Mr Davidson, a security guard employed at the shopping centre. She was in a wheelchair when he responded to the call for a first aider. She told him she had fallen down stairs in a bus and that she was in pain. He phoned for an ambulance and waited with Mrs Steel for its arrival. During that time she explained to him that a

taxi was ordered to meet her off the ferry and she asked him to phone to cancel it, which he did. He completed an accident form later that day from information given to him by Mrs Steel, and from hearing the paramedic who examined her say that she had broken her clavicle. The pursuer said it happened when the bus was going round a bend. She did not use the word "amenities" but he used it because that is the name by which the building they were in was known. He was sure she had said she had fallen downstairs, not just that she had fallen. She did not say that the bus was going too fast, that it jerked, or that she did not get a chance to sit down.

[19] Mr Pat Quigg is an insurance coordinator with the defenders. He has the duty of dealing with reports of accidents made by drivers. On this occasion no report was made. Mr Quigg got a letter from the solicitor for the pursuer, dated 28 08 13. He sought and obtained a report from the driver. It is produced within 6/9 of process. It was written shortly after 28 08 13. In it Mr Bell states that he arrived at the bus stance at 1822. He saw the pursuer and her son, described by him as an elderly lady and a younger man among a group of passengers waiting for him. When he asked the lady her destination she seemed unsure where she was going but after a few minutes stated her destination. He then says:

> "The lady then moved down the bus. At this point I observed that she was a little unsteady on her feet. I checked my rear view mirror and I continued to monitor her progress. She eventually decided to sit in the fourth or fifth set of seats on the nearside of the coach. Once she was seated I closed the door of the coach and started to pull out of stance 1. …."

He went on to say that a passenger asked him to stop. He did so and walked up the aisle. A young man said that the elderly lady had fallen. Mr Bell noticed that she was sitting on the row of seats opposite the emergency exit, which was not the row he had seen her sit down in. He asked her what had happened and

> "she replied that she had a bad heart and that all she could remember was feeling dizzy. I asked her if she was injured and she stated again that she was on medication for her heart, her chest was painful and also her left shoulder."

[20] I found the pursuer to be a credible witness. I think she was wrong to say that the bus driver did not speak to her after the fall. I accept his evidence that he did, and I accept that she told him about her heart condition and that she said she had felt dizzy. As counsel for the defender submitted, the driver could not know of her heart condition unless he was told; there was no other person who could have told him. However I accept that Mrs Steel had just fallen and broken her collar bone, and been pulled upright by two men; it seems to me understandable that she did not realise that the bus driver was one of the people talking to her. Therefore it is not fatal to her credibility that she did not berate the driver for having pulled away, causing her to fall. Nor is it fatal that she spoke of her heart condition and dizziness. If Mrs Steel thought that the people around her had seen her fall she may well not have told them she had fallen, thinking there was no need to do so. Mrs Steel did tell the ambulance men, though not the first aider, that she fell downstairs on the bus after it moved off before she was seated.

[21] Counsel had very properly agreed the medical records and report. Thus no oral evidence was led from any doctor to explain any of the entries or opinions given. Mrs Steel was vague about her medical history; I got the impression she was keen on her independence and did not want to

concede that she had problems associated with old age beyond some difficulty in memory occasionally, and falls which she regarded as explicable. The defence position was the fall on the bus was not caused by the driver setting off and the bus jerking, but was caused by Mrs Steel being unsteady on her feet, or by her taking a dizzy turn. There was no evidence to support that theory. I was not persuaded that the medical records showed any pattern of health which made that course of events more likely than the pursuer's own explanation given in evidence. I noted that Mrs Steel and her family were content that she travel alone; she lived alone; and she was sufficiently alert after her fall to give her details to the first aider, including remembering to ask him to cancel her taxi booking. It did not seem that Mrs Steel was confused that day. While Mrs Strathdee said the pursuer did have health issues, she indicated she was able to look after herself, and did so well.

[22] I found some support for Mrs Steel's evidence in the evidence of her son. I accept that the bus pulled away when he was walking away but had not gone very far. I do not put much weight on his evidence that he reflected to himself that he hoped she had got a seat by then; I do not think he sought to mislead but as he has been told that his mother had fallen before sitting down it may be difficult for him to avoid some re-construction after the event in his thinking. I had that impression of his evidence that the bus driver had been rude.

[23] I accept Mr Bell's evidence in part. He did speak to the pursuer and he did decide this was a case of a person taking ill on the bus rather than a person being injured in an accident. I am not in a position to decide if his employers' directions to drivers would have entailed his making a report or not; but I accept that he thought at the time that it was a case of illness. I did not find him a reliable witness as to the timing of events. He thought that the ambulance arrived when he was still there, which it did not according to records which I accept. He thought that he waited for twelve minutes; I prefer Mr McAvoy's evidence that the bus left as soon as the pursuer was taken off it. I found Mr Bell to be unreliable in his account of the destination being given him by the pursuer's son. I prefer Mrs Steel's evidence that she told the driver her destination. I accept that Mr Bell realised that Mrs Steel was elderly and a little unsteady on her feet. I do not accept his evidence that he waited until Mrs Steel took a seat in the fourth or fifth row before setting off. It was accepted by the defenders that Mrs Steel did fall down the stairs. If she had sat down on the fourth or fifth row, then she would have had to do so, then rise and walk further down the aisle of the bus before falling. She denied doing that. I could see no reason why she should do so. Mr Bell denied the possibility of the bus jerking. I do not accept that denial. Taking all of the evidence together I found that the pursuer's evidence gave the most likely explanation of her fall.

[24] The pleadings for the pursuer are to the effect that the driver manoeuvred the bus at speed and that he manoeuvred the bus around a corner in the carriageway. As a result the pursuer lost her footing. No case of excessive speed was pled nor was any attempt made to suggest that the speed of the bus was excessive. Counsel for the defender took no objection to the evidence from the pursuer that the bus jerked; he accepted, correctly in my opinion, that the averments were sufficient in this procedure to enable the evidence to be led.

[25] The defenders aver that their policy is that passengers must be seated before the bus can commence travel. They aver that the driver watched the pursuer's progress up the aisle of the bus and observed her taking a seat. Mr Bell gave evidence to that effect, although I did not accept that evidence. Counsel submitted that if I did accept Mr Bell's evidence that he saw the pursuer sit

down, then no case in negligence was made against the defender. There was no duty on a driver to watch the passengers when he was driving to make sure they did not stand up; passengers were free to change seats or to go to the toilet. If I did not accept that evidence, then I understood counsel to argue that it was not proved that the bus jerked forward. If I found that was proved, then counsel accepted that in the circumstances of the case, that is an elderly and unsteady passenger moving slowly where the policy of the defender is to see passengers seated before moving off, there would be liability.

[26] Counsel provided the following cases as illustrative of the principles of law applicable. *Sutherland* v *Glasgow Corporation* 1949 SC 563 (upheld on appeal to the House of Lords), *Parkinson* v *Liverpool Corporation* [1950] 1All E.R. 367, *Azzopardi* v *State Transport Authority* (1982) 30 S.A.S. R. 434, *Fletcher* v *United Counties Omnibus Co. Ltd* [1998] P.I.Q.R. P154, *Phillips – Turner* v *Reading Transport Ltd* [2000] C.L.Y. 4207 and *Glarvey* v *Arriva Northwest Ltd* [2002] C.L.Y. 3263. In my opinion the defender's driver failed to ensure that a passenger who had been seen by him to be elderly and unsteady was seated before moving off. In doing so he acted contrary to the defenders' policy, and in breach of common law. The movement of the bus while the pursuer was not seated caused her to lose her balance and fall. I find the defenders are liable to the pursuer.

[27] Parties were agreed that medical reports by Dr Chappell and Dr Livingstone were accurate expressions of the doctors' opinions. I find that Mrs Steel sustained a soft tissue injury to her shoulder and fractured her left clavicle. The fracture healed at around eight weeks. During that period the pursuer could not use her left arm and required help in all household tasks as well as help with getting dressed. As a result of the physical injuries sustained in the accident, the pursuer developed an adjustment disorder with mixed anxiety and depressed mood. This was of moderate severity for about six months and then began to improve. Mrs Steel described the effect of the accident on her life. She was in pain at the time and for several weeks after that. She found that she lost confidence and lost interest in her previous hobby of baking. She had been in the habit of baking for charity groups and found that she could no longer carry out that activity.

[28] Mrs Strathdee and her daughter Mrs McCartan provided assistance to the pursuer after the accident. Mrs Strathdee collected her from the Southern General Hospital in Glasgow and had the pursuer to stay with her for about three weeks. The evidence from the pursuer and that contained in Doctor Livingstone's report was contradictory about what happened after that when Mrs Strathdee went on holiday. There seemed to be some confusion as to whether the pursuer went to stay with a neighbour or not. It was clear however that Mrs McCartan provided assistance to the pursuer for a matter of weeks once she had gone to her own home. She helped with housework and shopping.

[29] Counsel for the pursuer submitted that the range for the injury, not taking into account the consequential psychological condition suffered by the pursuer was £3800-£9000, according to the Judicial Studies Board guidelines. He submitted that the appropriate award for the pursuer was at the top end of that range. He referred to his valuation which suggested a figure of £12,000. As I understood him that was to take into account the fact that there was not only the injury to the clavicle but also the psychological injury. He sought a total payment of £2000 in respect of services and a further £350 in respect of taxi fares estimated at £100 and general inconvenience, at £250. He had calculated interest on past solatium, attributing £9000 to the past, at £360.

[30] Counsel for the defenders submitted that the range given in the Judicial Studies publication was £3800-£9000 for a fracture of the clavicle, and accepting that there was also psychological consequences he submitted that the appropriate award should be in the range £6000-£8000. Reference was made by him to the Scottish case of *Elliot* v *Kerr* 2006 G WD 04 – 80 in which a woman aged 58 at proof suffered a fractured chest bone and soft tissue injury. She required a blood transfusion and while she was able to return to work in a matter of weeks she suffered pain for about two years. She also suffered a persistent adjustment disorder which resulted in anxiety depression and panic attacks. She was awarded £7200 which when updated for inflation was £9432. Counsel submitted that that figure was in respect of a more serious physical injury and he submitted that the present case could justify a figure of £8000. I did not understand him to dispute the sum sought for taxi fares. Any sums for inconvenience were he argued included in solatium. So far as services were concerned, counsel submitted that Mrs Strathdee, who had assisted the pursuer when she first came out of hospital and had had her living with her should be awarded £500 and Mrs McCartan, who had assisted afterwards in the pursuer's own home should be awarded £250.

[31] I have decided that the appropriate award in respect of the physical and psychological injury is £10,000. I attribute £7500 to the past; while the pursuer has made a reasonable recovery she is still suffering a loss of confidence. Therefore interest is due on that sum. I award £100 in respect of taxi fares; general inconvenience is covered in the award of solatium. As regards services I award £1000 to Mrs Strathdee and £500 to Mrs McCartan.

[32] I was not addressed on expenses.