In The Supreme Court of Bermuda

CIVIL JURISDICTION

2015: No 98

BETWEEN:-

EVELYN KIM REWAN

Plaintiff

-and-

AIR CARE LIMITED

First Defendant

-and-

LUKE DAVID ARMSTRONG

Second Defendant

RULING

(In Chambers)

Application to strike out claims for negligence and breach of statutory duty – RSC Ord 18, r 19 – whether breach of s 74(1) of Motor Car Act 1951 gives rise to claim for breach of statutory duty

Date of hearing: 18th January 2017
Date of ruling:[1] 24th February 2017

Ms Arisha Flood, AAF & Associates, for the Plaintiff
Mr John Cooper, Williams, Barristers & Attorneys, for the First Defendant
The Second Defendant did not appear and was not represented

Introduction

1. On 5th April 2005 the Plaintiff ("P") was injured in a collision between a motor car in which she was a passenger and another motor vehicle belonging to the First Defendant ("D1") and driven by the Second Defendant ("D2"). D2 was D1's employee. P's injuries were quite serious and continue to affect her. The driver of the vehicle in which she was travelling died in the accident.

2. D2 was charged with various offences relating to the accident. He was convicted of driving without the appropriate licence. The vehicle which he had been driving was a Ford Ranger truck ("the Ford Ranger truck"). In order to drive it lawfully he was required to have a heavy truck licence but did not have one. He was also convicted by a jury of one count of causing death by dangerous driving and two counts of causing injury by dangerous driving, but was acquitted of these more serious offences on appeal.

3. P has brought an action against D1 for negligence and breach of statutory duty and against D2 for negligence. She seeks to recover damages for the personal injuries and consequential loss which she has sustained as a result of the accident.

4. D1 applies to strike out the Plaintiff's claim against D1 pursuant to Order 18, rule 19 of the Rules of the Supreme Court 1985 and/or pursuant to the

[1] Following the hearing, Mr Cooper was off island for several weeks. Handing down of the judgment was delayed until his return.

inherent jurisdiction of the Court on the ground that it is scandalous, frivolous, and/or vexatious, or that it is otherwise an abuse of process, in that the claim is said to be hopeless.

Pleadings

5. D2 did not enter an appearance and P has obtained a default judgment against him. Her case against D1 was pleaded in the Statement of Claim as follows.

> "*3. On the evening of 4th April, 2009 and into the early hours of 5th April, 2009, the Second Defendant, was in the company of Mr. William Rouse [sic], a Manager and higher-ranking employee. The Second Defendant was allowed to drive the vehicle Licence number HA366, by the higher ranking employee and for the higher-ranking employee's purposes. The Second Defendant, as the subordinate, remained in the course of his employment in obeying the orders of the superior and higher-ranking employee. Alternatively, the Second Defendant was the agent of the First Defendant, as the Second Defendant was driving the vehicle with the owner's consent, partly for his own purposes and partly for the owner's purposes.*
>
> . . . . .
>
> *5. The First Defendant permitted use of their vehicle by the unlicensed and uninsured Second Defendant, thus in breach of the statutory duty in section 74(1) of the Motor Car Act 1951 and Motor Car Insurance (Third Party Risks) Act 1943, section 3(2).*
>
> *6. By reason of the matters set out above, the Plaintiff has suffered severe injury, loss and damage.*"

6. D1 filed a Defence which addressed these allegations thus:

> "*12) The First Defendant denies each of the first four sentences of Paragraph 3 of the Claim and puts the Plaintiff to strict proof thereof. The First Defendant also denies the first alternative allegation that the Second Defendant was its agent at the time of the collision as stated in the fifth sentence of this paragraph.*
>
> . . . . .

14) The First Defendant reiterates that at all relevant times the Second Defendant was not acting in the course of his employment by the First Defendant so as to cause it to be vicariously liable for his conduct at any time during the several hours of the evening of Saturday April 4th or the early hours of Sunday April 5th 2009. The First Defendant states that during these several hours the Second Defendant had left his home in Southampton Parish and drove the Ford Ranger vehicle from there into the City of Hamilton where he visited several bars or night clubs. The collision later occurred when the Second Defendant was returning home to Southampton Parish at about 1.30 a.m. on the Sunday morning of April 5th 2009.

15) On this return trip, the Second Defendant was accompanied in the Ford Ranger pickup vehicle by a visitor to Bermuda, Peter Mumby, who had no relationship whatsoever with the First Defendant. William Rowse was never in that vehicle either on the Saturday of April 4th or during the early hours of the following day. At the time of the collision William Rowse was in fact approaching Gatwick airport in London England having left his home in Warwick Parish at about 6:30 pm on April 4th 2009 to board a British Airways flight leaving Bermuda at approximately 8:10 pm that evening.

. . . . .

17) Paragraph 5 of the Claim is denied and the First Defendant puts the Plaintiff to strict proof thereof. The First Defendant states that no one employed by it permitted or knew that the Second Defendant proposed or intended to drive its vehicle for personal purposes on that occasion. Furthermore, the First Defendant states that the Ford Ranger vehicle was insured for third party risks for the period April 1st 2009 to March 31st 2010 by an authorized insurer as required by Section 3(1) of the Motor Car Insurance (Third-Party Risks) Act, 1943."

7. P filed a Reply which averred:

"*As to paragraph 14 of the Defence, the Plaintiff once again repeats paragraph 3 of the Statement of Claim, and in the premises, states that witnesses and former employees of Air Care Ltd. have stated that the Second Defendant was out with Mr. William Rowse, on the 4th of April 2009, and that it was common knowledge that Mr. Rowse would allow the Second Defendant to use the vehicle, and as the subordinate, The Second Defendant remained in the course of his employment in obeying the orders of the superior and higher-ranking employee. And alternatively, the Second Defendant was the agent of the First Defendant, as the Second Defendant was driving the vehicle with the owner's consent, partly for his own purposes and partly for the owner's purposes.*"

8. D1 requested Further and Better Particulars of P's allegations. P responded as follows:

> "*1. Please identify the name of the afore-said higher-ranking employee if it is alleged that it was a person other than Mr. William Rowse.*
>
> *Response*
> *We have only alleged that the higher ranking employee was Mr. William Rowse.*
>
> *2. Please specify the general nature of the Orders given by the superior and higher ranking employee.*
>
> *Response*
> *The higher ranking employee Mr. William Rowse allowed the Second Defendant to drive the vehicle, thus the Second Defendant was obeying Mr. Rowse's directive that he was allowed to drive.*
>
> *3. Please identify by name all those persons described as 'witnesses and former employees of Air Care Limited' that have stated those matters alleged in this paragraph.*
>
> *Response*
> *The name provided at this time is Mr. Warren Vincent, a former employee of Air Care Limited.*
>
> *4. Please identify for each of those persons both the times and places that it is stated that the Second Defendant was out with Mr. William Rowse on that date.*
>
> *Response*
> *... As stated by Mr. Vincent, it was common knowledge that Mr. Rowse and Mr. Armstrong used to go out drinking and socializing and that the Second Defendant was allowed to use the Company van. It is stated by Mr. Vincent that he heard Mr. Rowse state that they were out together and that Mr. Armstrong dropped him off."*

Applicable principles

9. The principles governing a strike out application were summarised by the Court of Appeal in Broadsino Finance Co Ltd v Brilliance China

Automotive Holdings Ltd [2005] Bda LR 12. Stuart-Smith JA, giving the judgment of the Court, stated at 4 – 5.

"*Where the application to strike-out on the basis that the Statement of Claim discloses no reasonable cause of action (Order 18 Rule 19(a)), it is permissible only to look at the pleading. But where the application is also under Order 18 Rule 19(b) and (d), that the claim is frivolous or vexatious or is an abuse of the process of the court, affidavit evidence is admissible. Three citations of authority are sufficient to show the court's approach. In Electra Private Equity Partners (a limited partnership) v KPMG Peat Marwick [1999] EWCA Civ 1247, at page 17 of the transcript Auld LJ said: 'It is trite law that the power to strike-out a claim under Order RSC Order 18 Rule 19, or in the inherent jurisdiction of the court, should only be exercised in plain and obvious cases. That is particularly so where there are issues as to material, primary facts and the inferences to be drawn from them, and where there has been no discovery or oral evidence. In such cases, as Mr Aldous submitted, to succeed in an application to strike-out, a defendant must show that there is no realistic possibility of the plaintiff establishing a cause of action consistently with his pleading and the possible facts of the matter when they are known….. There may be more scope for an early summary judicial dismissal of a claim where the evidence relied upon by the Plaintiff can properly be characterised as shadowy, or where the story told in the pleadings is a myth and has no substantial foundation. See eg Lawrence and Lord Norreys (1890) 15 Appeal Cases 210 per Lord Herschell at pages 219–220'. In National Westminster Bank plc v Daniel [1994] 1 All ER 156 was a case under Order 14 where the Plaintiff was seeking summary judgment, but it is common ground that the same approach is applicable. Glidewell LJ, with whom Butler-Sloss LJ agreed, put the matter succinctly following his analysis of the authorities. At page 160, he said: 'Is there a fair and reasonable probability of the defendants having a real or bona fide defence? Or, as Lloyd LJ posed the test: "Is what the defendant says credible"? If it is not, then there is no fair and reasonable probability of him setting up the defence'.*"

10. A strike out application is not an appropriate vehicle for determining controversial points of law in a developing area. See eg Altimo Holdings v Kyrgyz Mobil Tel Ltd [2012] 1 WLR 1804 *per* Lord Collins at para 84:

"*The general rule is that it is not normally appropriate in a summary procedure (such as an application to strike out or for summary judgment) to decide a controversial question of law in a developing area, particularly because it is desirable that the facts should be*

found so that any further development of the law should be on the basis of actual and not hypothetical facts: ..."

11. On the other hand, there will be cases where the Court has heard full argument on the question and where the facts necessary to resolve it are not in dispute. In such cases, absent a compelling reason to the contrary, the Court should in my judgment grasp the nettle and decide the question at the strike out stage. See Mehta and MFP 2000 LP v Viking River Cruises Ltd and others [2014] Bda LR 99 SC *per* Hellman J at para 18 in the analogous case of an application for summary judgment.

Negligence

12. P, as stated in her Further and Better Particulars, relies solely upon the evidence of Mr Vincent to prove the allegations of negligence against D1 as pleaded in para 3 of the statement of Claim and the Reply. In order to succeed in her claim of negligence against D1, she would also have to prove that the collision was caused or contributed to by the negligence of D2, but for present purposes I am not concerned with the evidence upon which she would rely to do that.

13. Mr Vincent has sworn two affidavits in these proceedings. In his First Affidavit, which was made before the Defence was served, he stated:

"*4.On the Monday morning after the accident I was in the office and I heard Mr Rowse state that: 'We were out together last night and he dropped me off'.*

5. Craig Stevenson, the Sales Manager, said to me, 'Wasn't that guy a junkie?' This was said about Mr Winston Burrows [the driver of the vehicle in which the Plaintiff was a passenger]. I knew Mr Burrows and knew that he had been clean for quite a while."

[Emphasis added.]

It is clear from the context that the reference to "*he*" in para 4 is a reference to D2.

14. In his Second Affidavit, which was made after both the Defence and the Further and Better Particulars were served, Mr Vincent gave a different account of the office conversation on the Monday morning after the accident:

"*4. When I got to Air-Care, everyone on the job was talking about the accident and asking questions. I also asked what happened. Craig Stevenson, the sales manager and my direct manager, told me that, 'Wasn't that guy a junkie?' I replied to Mr Stevenson, 'Well I heard the guy who was driving the Air-Care truck, left the scene because he was drunk.' Craig Stevenson told me, 'No. They were all out with the Boss'. The Boss was Mr. William Rowse.*"

[Emphasis added.]

15. Mr Rowse has sworn two affidavits contradicting Mr Vincent in which he confirmed the contents of paras 14 and 15 of the Defence insofar as it related to him. He stated that on 4th April 2009 he travelled from Bermuda to the United Kingdom with his wife for a 12 day holiday. Mr Rowse exhibited corroborative evidence in the form of:

(1) An email from British Airways dated 3rd April 2009 thanking him for using British Airways Online Check-in, to which was attached his boarding pass for British Airways flight BA2232 from Bermuda to London Gatwick on 4th April 2009. The flight time was 20:10 and the gate closed at 19:55.

(2) A boarding pass for his wife for the same flight, which was presumably attached to the same email.

(3) Car rental documents showing that on 17th March 2009 he had made a reservation with Auto Europe to collect a rental motor car from London, Gatwick on 5th April 2009, which he was to drop off in Birmingham on 10th April 2009. He had paid for the hire of the car when he made the reservation.

(4) A police witness statement dated 9th April 2009 from one Peter Mumby. The relevant part of the statement was as follows. Mr Mumby was D2's best friend and had arrived in Bermuda at the end of March to visit him. On the day of the accident they spent most of the day together at D2's residence. At about 10.30 pm they went to Docksiders. It was quiet there and they didn't see anyone who knew D2. Mr Mumby drank seven or eight beers before they went there and maybe two or three beers once they arrived. D2 had drunk considerably less. After about 1½ hours they left to get a burger from a mobile burger bar in a nearby car-park. Then D2 set off for home in the motor vehicle which he had been using that week with Mr Mumby as the front seat passenger. The motor vehicle belonged to D2's employer. It was during the homewards journey that the collision occurred. Mr Mumby was injured in the collision and taken to hospital, where he was arrested on suspicion of being the driver of the vehicle but later released.

16. Mr Rowse further stated that he received an email from Craig Stevenson, the sales manager mentioned by Mr Vincent, which stated that paragraph 4 of Mr Vincent's second affidavit was "*completely fabricated*" and that he, ie Mr Stevenson, was aware that Mr Rowse was on vacation at the time, making it impossible for Mr Vincent's claims to be true. However Mr Stevenson, who left both D1 and Bermuda last year, has not sworn an affidavit and Mr Rowse has not exhibited the email. P submits that this is a case of D2 and its former staff closing ranks, but has not produced any evidence to corroborate his account of the alleged conversation with Mr Stevenson.

17. I am satisfied on the papers that there is no realistic possibility of P establishing a cause of action consistent with her pleaded allegations that on the evening of 4th April 2009 and into the early hours of 5th April 2009:

(1) D2 was in the company of Mr Rowse;

(2) D2 was driving the Ford Ranger truck partly or wholly for the purposes of Mr Rowse or D1;

(3) D2 was driving the Ford Ranger truck partly or wholly in the course of his employment;

(4) D2, in driving the Ford Ranger truck, was obeying the orders of Mr Rowse; or that

(5) D2 was driving the Ford Ranger truck as the agent of D1.

18. Accordingly, I direct that those allegations should be struck out.

19. In so finding, I am satisfied on the strength of the boarding passes and the prearranged car rental that on the evening of 4th April 2009 Mr Rowse left Bermuda to travel to the UK and that he was present in the UK on the following Monday. I regard the allegation that on the evening of his flight he was out socialising with D2 to be wholly implausible and the allegation that he was present in Bermuda on the Monday to be demonstrably incorrect. Thus I reject both accounts given by Mr Vincent of conversations which he supposedly heard on the Monday without any need to hear from him in person. His evidence about them is simply not credible.

20. P relies upon the affidavit evidence of Mr Vincent to support her averments that Mr. Rowse and D2 used to go out drinking and socializing and that D2 was allowed to use the Ford Ranger truck. Mr Vincent specifically stated on affidavit, presumably by way of inference, that Mr Lowe met D2 on 4th April to give him the keys to the Ford Ranger truck. Mr Vincent further stated on affidavit that the Ford Ranger truck was Mr Rowse’s work vehicle. To corroborate this contention he stated that at the material time Mr Rowse was the only employee of D1 who had a heavy truck driver’s licence, and drew the Court’s attention to the fact that a police photograph showed a bottle of prescription anti-smoking tablets in the name of Mr Rowse which was retrieved from the wrecked Ford Ranger Truck after the accident.

21. Mr Rowse stated on affidavit that he did not used to go out socializing with D2 and pointed to the 19 year age difference between them. He accepted that he had a heavy truck driver's licence but was unable to say whether at the material time he was the only employee of D2 to have one. He further accepted that he used to drive the Ford Ranger truck but stated that he turned over the use of the vehicle to D2 at least 4 weeks prior to the accident. He stated that he did not meet D2 on Saturday to give him the keys to the Ford Ranger truck, and that he did not see or speak to D2 on Saturday.

22. Robert Platt, the former CEO of D1, exhibited the company's Staff Guide, dated April 2009. On 10th March 2009 D2 signed a form confirming that he had received a copy. Notwithstanding that D2 received the Staff Guide in March, I understand Mr Platt's evidence to be that, apart from one amendment made subsequent to the accident, the document which he exhibited is the same as the one supplied to D2.

23. The section in the Staff Guideline on "*Company Vehicle Policy*" states that anyone operating a company vehicle must *inter alia* drive with utmost care and courtesy, obey all local traffic laws, refrain from carrying unauthorized passengers (ie persons other than employees on company business), and "*carry a valid driver's license at all times that covers the class of vehicle you are driving*". However, as set out in an internal memorandum dated 2nd September 2003, company policy did permit the use of company vehicles for transportation between work and home.

24. D1 submits that Mr Vincent has been so thoroughly discredited by his evidence as to the conversations which allegedly took place on the Monday following the accident that the Court can safely reject the rest of his evidence regarding the relationship between Mr Rowse and D2. But at this stage I cannot properly go that far. Certainly, Mr Vincent's evidence is to be treated with caution. But I cannot dismiss out of hand the possibility that on the night of the accident D2 was driving the Ford Range Rover with the consent of Mr Rowse, whenever given. This is a matter that can properly be explored at trial.

25. That fact alone, if established, would not render D1 liable to P in negligence. However it is in my judgment properly arguable that D1 owed a duty of care to road users in general, including P, to ensure that its drivers were licensed to drive the company vehicles which they were permitted to drive, and that, in the case of D2, D1 failed to take adequate steps to satisfy this duty. This common law duty of care would be coextensive with, but separate and distinct from, D1's statutory duty under the Motor Car Act 1951 ("the 1951 Act"), which is considered in the next section of this judgment, and would arguably arise even if there were no such statutory duty.

26. Thus, if – and it is a big if – P were to establish (i) that on the night of the accident D2 was driving with D1's permission and (ii) that D2's negligent driving caused or contributed to the accident, then it would be properly arguable that D1 was liable in negligence to P for her injuries.

27. In my judgment this aspect of P's claim can be discerned from the pleadings, but if P wishes to amend her pleadings to articulate it more clearly she has liberty to do so.

<u>Breach of statutory duty</u>

Licence

28. Section 74(1) of the 1951 Act provides:

"*Subject to this section, a person shall not drive any motor car unless he holds a valid driver's licence and a person shall not cause or allow another person to drive any motor car unless that other person holds such a licence.*"

29. Schedule 1 to the Traffic Offences (Penalties) Act 1976 provides that breaching section 74(1) of the 1951 Act is a summary offence with a penalty of up to six months imprisonment and/or a fine of up to $300, plus an endorsement of 7 – 10 points on the offender's licence.

30. Section 76(2) of the 1951 Act provides that in connection with the issue of driver's licences motor cars shall fall into one of a number of different classifications. One such classification includes "*heavy trucks*". These are defined in section 40(7) of the 1951 Act read in conjunction with Schedule 1 to that Act. Section 76(4) of the 1951 Act provides that a driver's licence shall be valid only for the class or classes of motor car specified therein.

31. The Ford Ranger truck was classified under the 1951 Act as a heavy truck but D2 did not have a licence permitting him to drive heavy trucks. P submits that accordingly she has a claim against D1 for breach of statutory duty for allowing D2 to drive the Ford Ranger truck on the night in question.

32. D1 submits that section 74(1) does not give rise to an action for breach of statutory duty: the 1951 Act does not expressly provide for one and there is no case law or public policy consideration to suggest that one was intended. Thus he submits that as the legislature has expressly provided for a criminal penalty for breach of the section, it may reasonably be inferred that they intended that the legal consequences of such breach should be exclusively criminal.

33. The applicable principles were summarised by Lord Browne-Wilkinson in <u>X (Minors)</u> v <u>Bedfordshire County Council</u> [1995] 2 AC 633 HL at 731 – 732:[2]

> "*This category comprises those cases where the statement of claim alleges simply (a) the statutory duty, (b) a breach of that duty, causing (c) damage to the plaintiff. The cause of action depends neither on proof of any breach of the plaintiffs' common law rights nor on any allegation of carelessness by the defendant. The principles applicable in determining whether such statutory cause of action exists are now well established, although the application of those principles in any particular case remains difficult. The basic proposition is that in the ordinary case a breach of statutory duty does not, by itself, give rise to any private law cause of action. However a private law cause of action will arise if it can be shown, as a matter of construction of the statute, that the statutory duty was imposed for the protection of a limited class of the public and that Parliament intended to*

[2] Although the case was not cited to me in argument, the principles which it summarises formed the basis of the submissions made by both parties.

confer on members of that class a private right of action for breach of the duty. There is no general rule by reference to which it can be decided whether a statute does create such a right of action but there are a number of indicators. If the statute provides no other remedy for its breach and the Parliamentary intention to protect a limited class is shown, that indicates that there may be a private right of action since otherwise there is no method of securing the protection the statute was intended to confer. If the statute does provide some other means of enforcing the duty that will normally indicate that the statutory right was intended to be enforceable by those means and not by private right of action: Cutler v Wandsworth Stadium Ltd [1949] AC 398 *;* Lonrho Ltd v Shell Petroleum Co Ltd (No 2) [1982] AC 173 . *However, the mere existence of some other statutory remedy is not necessarily decisive. It is still possible to show that on the true construction of the statute the protected class was intended by Parliament to have a private remedy. Thus the specific duties imposed on employers in relation to factory premises are enforceable by an action for damages, notwithstanding the imposition by the statutes of criminal penalties for any breach: see* Groves v Wimborne (Lord) [1898] 2 QB 402 . *Although the question is one of statutory construction and therefore each case turns on the provisions in the relevant statute, it is significant that your Lordships were not referred to any case where it had been held that statutory provisions establishing a regulatory system or a scheme of social welfare for the benefit of the public at large had been held to give rise to a private right of action for damages for breach of statutory duty. Although regulatory or welfare legislation affecting a particular area of activity does in fact provide protection to those individuals particularly affected by that activity, the legislation is not to be treated as being passed for the benefit of those individuals but for the benefit of society in general. Thus legislation regulating the conduct of betting or prisons did not give rise to a statutory right of action vested in those adversely affected by the breach of the statutory provisions, i e, bookmakers and prisoners: see* Cutler's case [1949] AC 398 *;* R v Deputy Governor of Parkhurst Prison, Ex p Hague [1992] 1 AC 58 . *The cases where a private right of action for breach of statutory duty have been held to arise are all cases in which the statutory duty has been very limited and specific as opposed to general administrative functions imposed on public bodies and involving the exercise of administrative discretions.*"

34. In my judgment, whether section 74(1) gives rise to an action for breach of statutory duty is an issue which, although properly arguable both ways, can conveniently be resolved on this strike out application. The statute provides for criminal sanctions to enforce the duty and P has failed to show that the road using public was intended by the legislature to have a private remedy. I

am therefore satisfied that a breach of section 74(1) does not give rise to a private remedy.

35. I therefore direct that the claim for breach of statutory duty in relation to section 74(1) of the 1951 Act should be struck out.

Insurance

36. P alleges that D1 was in breach of a statutory duty imposed by section 3(1) of the Motor Insurance (Third-Party Risks) Act 1943 ("the 1943 Act") not to permit D2 to use the Ford Ranger truck unless there was in force in relation to the use of the truck by D2 an insurance policy in respect of third party risks which complied with the requirements of the 1943 Act.

37. It is well established that breach of this duty will give rise to a private law claim for breach of statutory duty. See Monk v Warbey [1935] 1KB 75.

38. Section 3(1)(i) provides:

> "*a person who causes or permits another person to have the control and use of a motor car shall be deemed to permit the use to which the motor car is put by that other person*".

39. It is common ground that D2 was permitted to drive the Ford Ranger truck for some purposes. P contends that he was permitted to drive it for recreational purposes on the weekend in question and D1 contends that he was permitted to drive it when on duty for purposes of his work. The question arises whether by reason of section 3(1)(i), even if the Court were to accept D1's account, D1 would nonetheless be deemed to have permitted the use to which the vehicle was put by D2 at the time of the accident.

40. During the course of argument I suggested that this is a question which would best be resolved as a trial of a preliminary issue. The Court would then hear evidence and resolve the issue on the basis of its findings of fact and with the benefit of full argument. Both counsel agreed.

41. I therefore direct that whether D2 was in breach of a statutory duty imposed by section 3(1) of the 1943 Act should be tried as a preliminary issue.

Summary

42. It is in my judgment properly arguable that D1 was negligent in that: (i) on the night of the accident D2 was driving with D1's permission; and (ii) D2's negligent driving caused or contributed to the accident. If P wishes to amend her pleadings to make the allegation more clearly she has liberty to do so. To that extent, D1's application to strike out P's allegations that D1 was negligent is disallowed.

43. D1's application to strike out the remainder of P's allegations that D1 was negligent is allowed and those allegations are ordered to be struck out.

44. D1's application to strike out P's allegation that D1 was in breach of the statutory duty relating to licensing imposed by section 74(1) of the 1951 Act is allowed. That allegation is ordered to be struck out.

45. D1's application to strike out P's allegation that D1 was in breach of the statutory duty relating to third party risk insurance imposed by section 3(1) of the 1943 Act is to stand as an application for trial of a preliminary issue.

46. By agreement of the parties, the costs of the application are reserved. I shall hear them as to any consequential directions that may be necessary.

DATED this 24th day of February, 2017

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Hellman J