Neutral Citation Number: [2023] EWHC 1671 (KB)

Case No: QB-2021-001453

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 5 July 2023

Before:

Dexter Dias KC
sitting as a Deputy High Court Judge

- -

Between:

FLR **(A child by her mother and litigation friend MLR)**	**Claimant**
- and –	
DR SHANTHI CHANDRAN	**Defendant**

- -
- -

Mr Mooney KC (instructed by **Boyes Turner, Solicitors**) for the **Claimant**
Mr Compton (instructed by **Clyde & Co.**) for the **Defendant**

Hearing dates: 18, 19, 20, 21 April 2023

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Approved Judgment

This judgment was handed down remotely on 5 July 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Dexter Dias KC:

(sitting as a Deputy High Court Judge)

1. This is the judgment of the court.

2. The text is divided in 11 sections and an appendix to assist parties and the public follow the court's line of reasoning. The claimant is represented by Mr Mooney KC and the defendant by Mr Compton of counsel. The court is grateful to both counsel for their contribution to this case.

3. The name of the claimant has been anonymised pursuant to CPR Rule 39.2(4) to protect her right to respect for her private and family life under Article 8 of the European Convention on Human Rights ("ECHR"). While acknowledging the vital importance of the open justice principle and the "public watchdog" function of the press (*Thoma v Luxembourg* [2001] ECHR 240 at [5]), I judge that the privacy and private life imperatives here significantly outweigh the Article 10 ECHR freedom of expression rights of the press and public. The claimant will be known as "FLR" and her mother and litigation friend as "MLR".

(B1234, §XX) refers to the trial bundle page and (internal) paragraph.
(CS/DS, §XX) refers to claimant/defendant skeleton argument and paragraph.

§I. INTRODUCTION

4. In this claim for personal injury, the claimant was 12 years old at the time of the road traffic collision that changed her life.

5. On 15 January 2018, the claimant left her home in Oxfordshire to go to school on a dark and rainy Monday morning. Her route required her to cross the Buckingham Road at a controlled pedestrian crossing. At about 7.20am, she stepped into the northbound carriageway when she was struck by a vehicle.

6. This was a BMW i3 Range Extender driven by the defendant in this case Dr Shanthi Chandran. The child's skull struck the nearside windscreen of the car, causing the glass to shatter and the claimant to sustain serious head injury. This caused a subarachnoid bleed to the brain. She also sustained a left collarbone fracture. As noted by the attending police officer PC Vale, with the force of the collision, the child's body was "thrown" or carried 11 metres beyond the pedestrian crossing and almost to the entrance of a nearby petrol station (B147). The claimant has been left with cognitive and psychiatric problems since the incident and suffers from headaches. She is at increased risk of epilepsy.

7. The defendant is a consultant physician who was on her way to work at Milton Keynes hospital. Dr Chandran told PC Vale that she was driving looking ahead when she became aware of a "thud" and her window "smashed". She immediately stopped her car and saw that a young girl had been struck. It was the head and body of the child that smashed Dr Chandran's window. The police found what they call a "bullseye" fracture on the front left of the windscreen, a radiating fracture of the protective glass, something like a spider's web, caused by the child's body.

8. The claimant's case is that the incident was caused by the negligence of the Dr Chandran. The defendant was driving too fast given the prevailing conditions and if she were driving at a safe and reasonable speed, the collision would not have happened. The defendant states that the incident was caused by the claimant stepping out into the road when the traffic light was green for vehicles to proceed. Dr Chandran was driving at 28 mph (the pleaded and agreed speed), which was below the applicable speed limit of 30 mph and appropriate for the conditions. The defendant was not reported by the police for any criminal offences. She denies breach of duty (negligence) and causation. Dr Chandran maintains that the liability for this incident lies fully with the claimant. While primary liability is firmly denied, the defendant in any event submits that the claimant was negligent.

9. Therefore, this is a liability-only trial. The court's task is to make findings of fact about what happened and thereby determine where the liability for the serious injuries to the claimant lies, whether fully with the claimant, fully with the defendant, or with a contribution from them both.

10. The court received an electronic trial bundle (in two parts) extending to 757 pages, plus video footage from the defendant's dashboard camera and from the CCTV system of the nearby Domino's Pizza restaurant. The court heard live

evidence from two instructed accident reconstruction experts, Mr Hill and Ms Eyres, and then from Dr Chandran herself.

11. Let me be clear about my approach to evidence for the purposes of this judgment. It is informed heavily by that of the Court of Appeal in *Re B (A Child) (Adequacy of Reasons)* [2022] EWCA Civ 407. The court stated at [58] that a judgment "is not a summing-up in which every possibly relevant piece of evidence must be mentioned" (Proposition 4). Therefore, I focus on what has been essential to my determinations in this case.

§II. LAW (A): Negligence and Highway Code

12. The Highway Code ("the Code") was introduced in the United Kingdom in 1931 and originally cost one old penny. Even though there was just a fraction of motor vehicles compared to today (2 million compared to 27 million), there were 7000 fatalities a year (*History of road safety, The Highway Code and the driving test* (UK Government, 2019)).[1] The Code, initially issued by the Ministry of Transport, was the national response to regulate how drivers and other road users should use public roads to make highways safer. The Code is regularly updated as our collective understanding of road safety improves. For the purposes of this case, the applicable version is dated 21 October 2017. While I set out the relevant details of the Highway Code in full in the Appendix to this judgment, put very shortly, the following precepts can be gleaned from the Code:

- **Rule 125**: the maximum speed stated by signage indicates the "absolute maximum speed" for the particular stretch of road. But adjustments must be made for prevailing conditions and hazards, including other road users and "particularly" children;

- **Rule 146**: drivers should particularly anticipate what children might do (by suddenly stepping out into the road et cetera) and drivers should be prepared to stop at pedestrian crossings or traffic lights as necessary;

- **Rules 204 and 207**: drivers should be particularly cautious about children, who are among the most vulnerable road users;

- **Rule 205**: cautions drivers to drive at a speed suitable to the conditions and with "the safety of children in mind";

- **Rule 206**: cautions drivers to drive carefully in residential areas or when driving past bus stops.

13. The general law of negligence (duty, breach, causation, loss and damage) as it applies to road traffic collisions has been set out helpfully by the courts in several decisions (for a recent exposition see this court in *AB v Main* [2015]

[1] https://www.gov.uk/government/publications/history-of-road-safety-and-the-driving-test/history-of-road-safety-the-highway-code-and-the-driving-test#the-highway-code

EWHC 3183 (QB) at [8]-[15]). I reduce the applicable the law to the following propositions:

(1) The claimant must prove breach of duty on a balance of probabilities;
(2) The standard is the "competent and experienced driver" (*Nettleship v Weston* [1971] 2 QB 691); this is the reasonable prudent driver, not a counsel of perfection or an ideal, infallible driver; that is unrealistic, unfair and not in the public interest, setting the standard unattainably and exactingly high;
(3) The duty is to take reasonable care;
(4) A motor vehicle is a potentially lethal device or "weapon" (*Lunt v Khelifa* [2002] EWCA Civ 801, per Latham LJ at [20]);
(5) Children can be unpredictable, imprudent and are highly vulnerable; therefore, caution must be exercised when they are in the vicinity of the road, and drivers should drive with children in mind and anticipate how they might behave (*Moore v Pointer* [1975] RTR 127, per Buckley LJ).
(6) A reasonable prudent driver knows the provisions of the Highway Code;
(7) The trial judge should not make findings of fact of unwarranted precision – real life is not like that (*Lambert v Clayton* [2009] EWCA Civ 237 per Smith LJ at [35]-[39];
(8) Such precaution extends to not overly relying on the evidence of accident reconstruction experts *(Stewart v Glaze* [2009] EWHC 704 at [5] and [8]-[10] per Coulson J (as then was)), but instead such expert evidence must be assessed in the context of the evidence as a whole.

14. I add finally that I derive next to no assistance from previous decisions on the facts in previous trials of road traffic collisions. These are intensely fact-specific decisions. They do not help. In *HA (Iraq) v SSHD* [2022] 1 WLR 3784, Lord Hamblen stated at [96]:

> "There is no such thing as a "factual precedent" … findings made by a tribunal in one case have no authoritative status in a different case… the tribunal has to make its own evaluation of the particular facts before it, it is often difficult to be sure that the facts of two cases are in truth substantially similar."

15. Therefore, I judge the term "factual precedent" to be in these circumstances essentially oxymoronic.

§III. LAW (B): FACT-FINDING

16. The court approaches the question of fact-finding on the basis of the following principles derived from a wide range of authority. I reduce the law to 13 propositions:

(1) **Burden of proof**. The burden of proof (to the conventional civil standard of a balance of probabilities) rests on the person who asserts

the affirmative of the issue (she or he who asserts must prove), for 'Onus is always on a person who asserts a proposition of fact that is not self-evident' (*Robins v National Trust Co.* [1927] AC 515 at 520, per Viscount Dunedin); to determine which party asserts the affirmative, regard must be had to the substance of the issue, not the way it is pleaded or framed (*Soward v Leggatt* (1836) 7 C. & P. 613);

(2) **Evidence-based findings and inference**. Findings of fact must be based on evidence, including inferences that can properly (fairly and safely) be drawn from the evidence, but not mere speculation (*Re A (A child) (Fact Finding Hearing: Speculation)* [2011] EWCA Civ 12, per Munby LJ);

(3) **Survey range and contextual evaluation**. The court must survey the "wide canvas" of the evidence (*Re U, Re B (Serious injuries: Standard of Proof)* [2004] EWCA Civ 567 at [26], per Dame Elizabeth Butler-Sloss P); the factual determination "must be based on all available materials" (*A County Council v A Mother and others* [2005] EWHC Fam. 31 at [44], per Ryder J (as then was)); and must "consider each piece of evidence in the context of all the other evidence" (*Devon County Council v EB & Ors.* [2013] EWHC Fam. 968 at [57], per Baker J (as then was));

(4) **Process iteration**. The evaluative process must be iterative, considering all the evidence recursively before reaching any final conclusion, but the court must start somewhere (*Re A (A Child)* [2022] EWCA Civ 1652 at [34], per Peter Jackson J (as then was)):

> "… the judge had to start somewhere and that was how the case had been pleaded. However, it should be acknowledged that she could equally have taken the allegations in a different order, perhaps chronological. What mattered was that she sufficiently analysed the evidence overall and correlated the main elements with each other before coming to her final conclusion."

(5) **Decisiveness**. The court must decide whether the fact in dispute, if relevant to determination of issue, is proved or not: indecisiveness – "fence-sitting" - is not permitted (*In re B* [2008] UKSC 35 at [32], per Lady Hale);

(6) **Binary truth values**. The law invokes a binary system of truth values in respect of facts in issue (*In re B* at [2], per Lord Hoffmann):

> "If a legal rule requires a fact to be proved (a "fact in issue"), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the

> burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened."[2]

(7) **Forensic yardsticks**. The assessment of the inherent worth of the evidence may include measuring it against a number of recognised and recurring forensic yardsticks:

a) Internal consistency/coherence; historical consistency or self-contradiction; credit (previous dishonest, discreditable or reprehensible acts, if relevant); factors identified by Lord Bingham writing extra-judicially (fn.3, p.6);

b) External consistency/validity – testing it against "known and probable facts" (*Natwest Markets Plc v Bilta (UK) Ltd* [2021] EWCA Civ 680 at [49], per Asplin, Andrews and Birss LJJ, jointly), since it is prudent "to test [witnesses'] veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case" (*The Ocean Frost* [1985] 1 Lloyd's Rep 1 at p.57, per Robert Goff LJ);[3]

(8) **Memory**. There are important and recognised limits on the reliability of human memory:

(a) Our memory is a notoriously imperfect and fallible recording device; the more confident a witness appears does not necessarily translate to a correspondingly more accurate recollection; the process of civil litigation itself subjects the memory to "powerful biases", particularly where a witness has a "tie of loyalty" to a party (*Gestmin SCPS S.A. v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) at [15]-[22], per Leggatt J (as then was));

(b) The court should be wary of "story-creep", as memory fades and accounts are repeated over steadily elapsing time (*Lancashire County Council v C, M and F (Children – Fact-finding)* [2014] EWFC 3 at [9], per Peter Jackson J);

(9) **Probability/improbability**. The court "takes account of any inherent probability or improbability of an event having occurred as part of the natural process of reasoning" (*Re BR (Proof of Facts)* [2015] EWFC 41 at [7], per Peter Jackson J); "Common sense, not law, requires that …

[2] Recently affirmed by Supreme Court on facts in issue (*R (on the application of Pearce and another) v Parole Board of England and Wales* [2023] UKSC 13 at [65.(i)]).
[3] *The Ocean Frost* was a fraud case, but Mostyn J is surely correct that the principle of external verification must be 'of general application' (*Lachaux v Lachaux* [2017] EWHC 385 (Fam) at [37]).

regard should be had, to whatever extent appropriate, to inherent probabilities" (*In re B* at [15], per Lord Hoffmann);

(10) **Contemporaneous documents**. Contemporary documents are "always of the utmost importance" (*Onassis v Vergottis* [1968] 2 Lloyd's Rep. 403 at 431, per Lord Pearce), but in their absence, greater weight will be placed on inherent probability or improbability of witness's accounts:

> "It is necessary to bear in mind, however, that this is not one of those cases in which the accounts given by the witnesses can be tested by reference to a body of contemporaneous documents. As a result the judge was forced to rely heavily on his assessment of the witnesses and the inherent plausibility or implausibility of their accounts." (*Jafari-Fini v Skillglass Ltd* [2007] EWCA Civ 261 at [80], per Moore-Bick LJ);

And to same effect:

> "Faced with documentary lacunae of this nature, the judge has little choice but to fall back on considerations such as the overall plausibility of the evidence" (*Natwest Markets* at [50]).

(11) **Cross-relevance**. The judge can use findings or provisional findings affecting the credibility of a witness on one issue in respect of another (*Bank St Petersburg PJSC v Arkhangelsky* [2020] EWCA Civ 408); for evidence must not be evaluated "in separate compartments" (*Re T* [2004] EWCA Civ 558 at [33], per Dame Elizabeth Butler-Sloss P);

(12) **Non-determinativeness**. However, the court must be vigilant to avoid the fallacy that adverse credibility conclusions/findings on one issue are determinative of another and/or render the witness's evidence worthless. They are simply relevant:

> "If a court concludes that a witness has lied about a matter, it does not follow that he has lied about everything." (*R v Lucas* [1981] QB 720, per Lord Lane CJ);

Similarly, Charles J:

> "a conclusion that a person is lying or telling the truth about point A does not mean that he is lying or telling the truth about point B..." (*A Local Authority v K, D and L* [2005] EWHC 144 (Fam) at [28]).

What is necessary is (a) a self-direction about possible "innocent" reasons/explanations for the lies (if that they be); and (b) a recognition that a witness may lie about some things and yet be truthful "on the

essentials … the underlying realities" (*Re A (A Child) (No.2)* [2011] EWCA Civ 12 at [104], per Munby LJ).

(13) **Demeanour**. Decisions should not be based "solely" on demeanour (*Re M (Children)* [2013] EWCA Civ 1147 at [12], per Macur LJ); but demeanour, fairly assessed in context, retains a place in the overall evaluation of credibility: see *Re B-M (Children: Findings of Fact)* [2021] EWCA Civ 1371, per Ryder LJ:

> "a witness's demeanour may offer important information to the court about what sort of a person the witness truly is, and consequently whether an account of past events or future intentions is likely to be reliable' (at [23]); so long as 'due allowance [is] made for the pressures that may arise from the process of giving evidence" (at [25]).

But ultimately, demeanour alone is rarely likely to be decisive. Atkin LJ said it almost 100 years ago (*Societe d'Avances Commerciales (SA Egyptienne) v Merchans' Marine Insurance Co (The "Palitana")* (1924) 20 Ll. L. Rep. 140 at 152):

> "… an ounce of intrinsic merit or demerit in the evidence, that is to say, the value of the comparison of evidence with known facts, is worth pounds of demeanour."

§IV. ISSUES

17. As a result of the legal and regulatory framework, there are five prime issues for the court to determine:

1. **Finding of fact**. What was the reasonable speed for the prevailing conditions and road situation in the relevant stretch of Buckingham Road at about 7.20 am on 15 October 2018?
2. **Breach**. Was the defendant driving in excess of the reasonable speed and/or otherwise in breach of duty of care?
3. **Causation**. If the defendant were driving at the reasonable speed, would the defendant's vehicle have collided with and caused injury to the claimant?
4. **Contribution**. Did any negligence by the claimant contribute to the accident?
5. **Apportionment**. If 4., what is the apportionment of liability?

§V. EXPERT EVIDENCE

18. Two accident reconstruction experts were instructed: Mr Hill by the claimant; Ms Eyres by the defendant. I found that both experts were reasonable, professional and informed. In the end, few points of dispute remained between them. Those that persisted, I discuss below.

Summary of Mr Hill

19. Mr Hill is a senior consultant in accident reconstruction.

20. **About Dr Chandran.** He told the court that different people have different natural reaction speeds and there is a range. It is not right to criticise people with innately slower reaction speeds. One of the factors that affects ability to react is expectancy. Indeed, people's "expectation" is the most important factor in reaction time.

21. Mr Hill has encountered previous cases where pedestrians "freeze" once trying to cross the road. That has been particularly so when children freeze. This is when they are faced with a "predicament", by which he meant a car upon them or very close to them. Then they can stop or try to turn back, hesitating or being immobile ("frozen") in the road.

22. Due to the nature of our cognitive functioning and wiring, there is a lag between our perception of a hazard and our reaction to it. This perception-reaction time is called the "PRT". There is a significant body of research about it. Mr Hill agreed that Dr Chandran's PRT appears to be around 0.7s. That is the time from the movement of the child to the time of the swerve, which was at or just before the impact. Such PRT is exceptionally fast. It suggests that the defendant "had more of an awareness than she says she can recall". However, he cannot say whether the defendant's actions were "a reaction" or an "inadvertent startled response". He believes she must have been aware of some movement by the claimant before impact. In an important exchange between defendant counsel and the expert, it was put to Mr Hill that the rapid PRT suggests that Dr Chandran was "acutely aware" of the child. Mr Hill's evidence was:

> "I do not believe it was the case that she was attuned to what was around her, but it was a possibility … It [her reaction] could have been an inadvertent startle."

23. He agreed that the swerve to the right does indicate that she was aware of something to the left. But the research is "rather split" on drivers' responses to sudden obstructions in front of them. Some people swerve, others brake, others do both. It is not possible to say what Dr Chandran's preferred response would "naturally be". But from the in-car camera, although a swerve is detectable, it is not possible to estimate how much of a swerve there was. He was "reluctant" to estimate it.

24. On the CCTV from Domino's Pizza, a vehicle ("V1") is clearly seen on the road ahead of Dr Chandran's BMW. Mr Hill stated that he did not believe that this vehicle 2.2 seconds ahead of the defendant would have obscured her view of the claimant at the crossing. Further, the bend in the road assists Dr Chandran's view. He was shown the photograph Fig. 9 on B140. He reconstructed and photographed the view when V1 was about 30 metres in front of Dr Chandran's BMW. Mr Hill stated that this vehicle "has no affect whatsoever of his view of the pavement". Indeed, he stood in the middle of the road (at a safe moment) to position the camera where Dr Chandran as driver would be. The child would have been visible from that point, he concluded. He stated that a vehicle coming

the other way may have created a "negative contrast", that is a silhouette of the child near to the crossing that would have made her stand out. However, he explained that he could not say whether that actually happened. When shown Fig. 9, which depicts the BMW being 30 metres away, the vehicle ahead of it would be "alongside or beyond the child". There is "no obscuration" at that point.

25. **About the claimant**. When she began moving to cross the road, she was moving at approximately 4.8 m/s. That is within the 50 percentile in terms of speed of movement for a child or her age. There is a "raft" of published data to support that. However, that speed includes the time she was stationary in the crossing, so the claimant's actual speed for the time she was moving would be higher than 4.8 m/s, and substantially so.

26. He has been in cases where pedestrians when faced with a "predicament" stop or freeze.

Summary of Ms Eyres

27. Ms Eyres is also an expert in accident reconstruction. She works for the same organisation as Mr Hill, but there are appropriate conflict-avoidance measures in place.

28. At first, she stated that the vehicle in front may have affected the defendant's line of sight towards the child at the crossing. But when shown the same photograph at Fig. 9 (B140) as Mr Hill was shown, she accepted that the vehicle ahead of Dr Chandran would not have obscured Dr Chandran's line of sight. This is why the theory that the car in front of the defendant obscured the claimant has, as claimant counsel put it, "dissolved".

29. Ms Eyres then added that there would be "the taillights" of that vehicle which may have "a negative effect". I deal with that in Dr Chandran's evidence. She added that it is potentially possible that the headlines would illuminate the child on the roadside as headlights have nearside bias. Thus, there may be some negative and positive effects in each direction from the lights. She was not saying that this did happen. She raises the possibility.

30. About the effect of Dr Chandran's car being further away and not "on top" of the claimant when she entered the carriageway, Ms Eyres stated:

> "It is possible that the claimant would have kept running if she felt she could make it if the vehicle was further away. And at a slower speed, both the claimant and defendant would have more time to decide what they could do."

Agreed facts

31. I emphasise, however, that I do not decide this case on expert evidence. The expert evidence must be seen in the context of all the evidence, and in particular

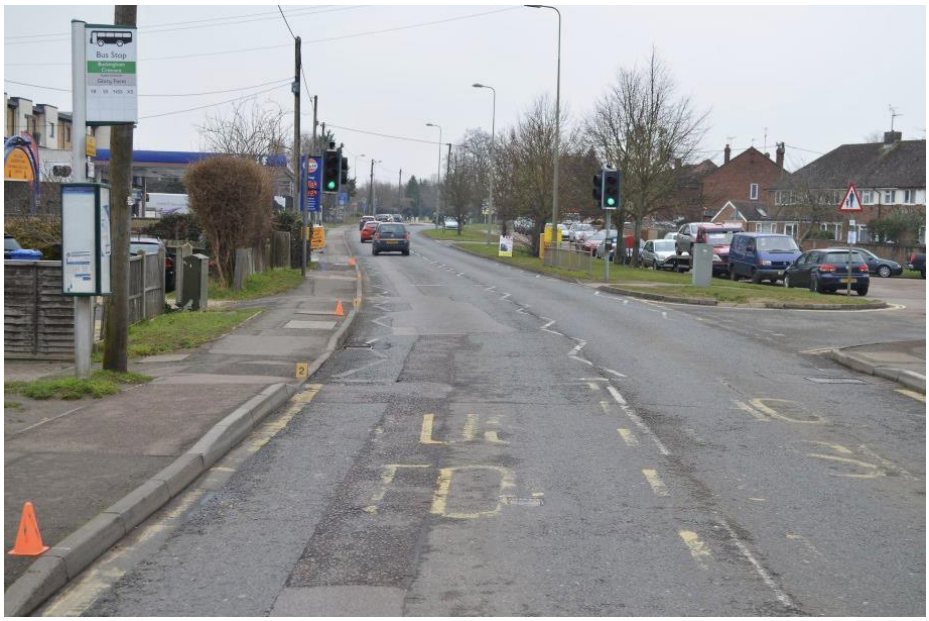
the evidence of Dr Chandran. I am conscious of what Yip J said in *Ellis v Kelly and another* [2018] EWHC 2031 (QB) at [22]:

> "There is always a danger of elevating accident reconstruction evidence to something more than it is. Generally, experts will be giving an opinion based upon variables and assumptions and subject to the court's findings of fact. Useful calculations can be provided by the experts, but care must be taken not to treat them as mathematical certainties. The expert evidence is but one piece of the evidential jigsaw. It must always be cross-referenced with the other evidence and the court must reach its own findings on the balance of probabilities taking everything into account. There is sometimes a danger of seeking to make precise findings where the underlying evidence does not really allow for this."

32. The following facts can be derived from the testimony of the experts.

1. The traffic lights were green for approximately 8s before the accident;
2. The child was stationary at the crossing for approximately 2.3s;
3. The child started to move 0.7s before impact;
4. The child's average speed once she started moving was approximately 4.8 m/s;
5. The child was on the carriageway for 0.4s before impact;
6. The child was moving on the carriageway for approximately 0.1s;
7. The child was stationary on the carriageway for approximately 0.3s (about ¾ of the time);
8. While she was moving on the carriageway, she covered approximately 1 metre;
9. The defendant could have seen the claimant from 30 metres approximately.

33. As to 9., the court makes a finding of fact, based on the joint view of the experts, and the court's consideration of the totality of evidence, including the photographs of the scene that I have carefully examined myself. The finding is that the defendant should have seen the claimant in the immediate vicinity of the pedestrian crossing when the defendant's vehicle was approximately 30 metres from the crossing. I include, with the permission of Mr Hill, the photograph he took to replicate the view:



(Reproduced with permission: originally Fig. 9/B140)

34. From this point, Dr Chandran should have seen the claimant as a pedestrian in a position to cross the road. The claimant's position at the moment V1 clears the crossing is evident from the CCTV footage at from Domino's Pizza. The child is stationary at the pedestrian crossing in position to cross the road.

§VI. DR CHANDRAN

Evidence

35. I deal with the important fine detail of Dr Chandran's evidence during the following analysis. But as an introductory overview, the defendant's account is that she "does not tend to speed", and was driving within the speed limit as is her practice. She did not feel unsafe. She knew she was approaching two bus stops and a pedestrian crossing as she had driven the route which was on her way to work many times over "about ten years". She was not aware of anyone at the pedestrian crossing until she felt a thud on her BMW. She stopped immediately and was shocked to see that it was a child. It was then that she called the police.

36. It should be noted that there is evidence from the dashboard camera of her car that she did swerve the vehicle just before or at point of impact.

Assessment

37. The evidence of Dr Chandran is fundamentally disputed by the claimant and here I provide a brief overview of the court's assessment of her evidence, before providing a fuller examination of her evidence in the subsequent analysis.

38. Dr Chandran is clearly an intelligent person. She is a medical practitioner of some eminence, being a "hospital consultant" (B72/§7). Her obvious intellect came through in the way she was able to grasp questions quickly and answer fluently. She was under considerable pressure in the witness box, it being alleged that she was primarily responsible for significant injuries to a 12 year-old child. One can readily understand the additional distress this must have caused her since she is a medical practitioner with a professional responsibility to care for members of the public. Therefore, it is important that the court makes every allowance for stress caused by the process of giving evidence (*Re B-M* at [25]). I emphasise that the following assessment has next to nothing to do with "demeanour", in the sense of inferring whether or not she is telling the truth from her presentation in court. That is a form of psychologising, and while it is sometimes appropriate (*Re B-M*), I made plain to counsel during the course of closing submissions that I am much more interested in the substance of evidence. Thus, any assessment of demeanour would have a subsidiary place in my assessment of the witness's evidence (*The "Palatina").*

39. I found Dr Chandran to be a robust person, perhaps unsurprisingly given her senior physician role. She could hold her own in the witness box. This was evidenced by her ability to respond forcefully to counsel, express strong disagreement and explain the reasons for her position. She did not appear to find testifying daunting, certainly as she found her feet in the witness box and became increasingly confident.

40. Overall, I found Dr Chandran to be an unsatisfactory witness. At times she did not answer the question, and the court was obliged to intervene to invite her to address counsel's legitimate question. This was particularly apparent when she was asked to engage with questions about the various factors that might necessitate an adjustment to driving. She frequently repeated the unspecific and unhelpful generality, "I did what I felt was safe at the time" rather than offering anything concrete. I found that she embellished her answer in a most unsatisfactory way in respect of whether she had made any preparations for the approaching traffic lights. She said, "My foot would be on the brake and not the gas pedal." There was nothing in any of her previous evidence to support this or suggest it was true. If this was a precaution she had in fact taken, I have no doubt it would have been in her filed evidence. It was not. I found her explanation for the idea's absence from her witness statement to be unpersuasive and improbable (*In re B* at [15]). It was clear she had embellished her testimony to support her case.

41. At times she was inconsistent in her answers. For example, about the question of what speed reduction she would have made if she had seen the child standing at the crossing waiting to cross. At first, she said she would have reduced her speed to 15 to 20 mph. Then she changed her answer and resiled from her first answer in a way that demonstrated a certain calculation that I found unconvincing and that impaired her credibility. I deal with this below.

42. I now deal with several important topics about which she testified and/or was challenged.

Awareness of children

43. As to awareness of children in the vicinity, she said that she knew from her "peripheral vision that there were children at the bus stop on the other (southbound) side of the road". About anticipating what might happen around the bus stop, she said, "you could expect children" at the bus stop and "you might expect a child to step into the road".

Awareness of the claimant

44. A point of controversy between parties is whether Dr Chandran was aware of the claimant before impact. This question occupied considerable time both during the defendant's evidence and then in closing submissions. However, on proper analysis, the various strands of evidence can be simply reconciled.

45. I accept the evidence of the account Dr Chandran gave in (1) her immediate report to the police; (2) her witness statement; and (3) her evidence on oath that she was not aware of the child. She plainly was not – at least she was not conscious of seeing the child. It is here that the importance of contemporaneous accounts is relevant (*Onassis v Vergottis).* She was spoken to by the police at the Gulf petrol station very shortly after the accident. If she had seen the claimant, it is likely that she would have told the officer then. She told the officer that she was just driving along when she heard a thud to the car. She does not mention having seen the child beforehand (B279). That is highly persuasive evidence. Here the deterioration of memory through the passing of time cannot have an effect (the *Gestmin* memory point). Instead, she told the officer that she only became aware of something untoward when there was a "thud" on the car – it transpired that was the noise of the claimant's body striking the metal nearside of the car and the child's head striking and fracturing the glass of the windscreen. So the puzzle remains unresolved from this account about how she could have swerved, given that in human beings there is a natural time lag between perception of stimulus/hazard and reaction – the "PRT".

46. One piece of evidence that assists in understanding the likely mechanism of what happened comes from the defendant herself. She mentioned being aware of children on the southbound side of the road as a result of, as she put it, "my peripheral vision". There is no doubt that the car did swerve just before or at the point of impact. It may be, at its highest, that Dr Chandran's peripheral vision registered the initial movement of the claimant from her stationary position on the pavement as the child accelerated towards the carriageway. This would account for what Mr Hill called her "inadvertent startled response". Both the adjectives are important. It was inadvertent as her mind had not consciously adverted to (registered) it. It was more akin, as Dr Chandran herself called the process in a different context, to something "unconscious". Second, it was because of her lack of conscious awareness that she was startled. Thus, one can reconcile the defendant's consistent evidence that she did not see the child with the fact of the swerve. It does not mean, as defendant counsel argued during closing submissions, that she must have seen the claimant due to her high state of alertness and has just forgotten about it or was not in a position to say she had. She spoke to the police very shortly after the accident. She did not mention

seeing the child. That is likely to be the truthful account. I find her counsel's suggestion that Dr Chandran must have been too traumatised or shocked to have told the police about seeing the child to be unevidenced speculation. In any event, it does not explain why she did not mention the child in her filed witness statement or her sworn evidence to the court.

47. The explanation for the swerve is that something in peripheral vision registered the movement of the claimant and then there was the inadvertent startled response that resulted in the swerve in the opposite direction, to the right. Thus, the repeated submission made by Mr Compton that his lay client was "wrong" fails. Defendant counsel sought a finding by the court that the defendant "did see the claimant" – that is, despite all his own lay client's stated and repeated evidence, a contrary finding was sought on her behalf that she did actually see the claimant. I reject this submission. I find that the defendant, a highly intelligent medical professional, was right. She said in terms on oath that she "definitely did not see a child on my side of the road". This repeated what was in her defence and in her filed witness statement. Thus, I find that she did not see the child. By that I mean she did not consciously register the presence of the claimant standing at the controlled crossing waiting to cross by reason of Dr Chandran's focused attention to and survey of road users and pedestrians. Instead, her peripheral vision registered the movement of the claimant as the child began to move with speed towards the carriageway. That led to the defendant reacting instinctively, not consciously, but in an inadvertent startled way by moving the steering wheel in the opposite direction and causing a swerve.

48. This does little if anything to support the defendant's case that she was driving with "heightened awareness" and prudently. Defendant counsel's submission is that Dr Chandran was "alert" or "hyper alert". The court rejects it. Based upon the totality of the evidence from the defendant herself, Mr Hill's expert evidence, and the lower end of the PRT stated by Ms Eyres, the swerve was an inadvertent/unconscious (or instinctual) reaction by the defendant to something she was not consciously aware of. That is why she has said at every point from the moments after the accident in her police account to her sworn trial testimony five years later that she "did not see the pedestrian on my side of the road". She said half a dozen times in evidence clearly and forcefully that she did not see a child (or indeed a pedestrian) at the pedestrian crossing. Plainly she did not. Not consciously. In her statement she said, "I was just driving looking ahead" (B279). The fact that she did not consciously see the claimant is supported by her comment "if I had seen someone, I would have reduced my speed, if I was aware there was a risk of a child crossing."

49. Thus her conscious survey of potential hazards of the road and its surroundings failed to register the child. Of course, it is a different question entirely whether the prevailing circumstances meant that a reasonable competent driver should have seen the claimant.

50. I find therefore that the defendant did not see the claimant (meaning conscious sighting). I have found that the claimant could have been seen in the prevailing conditions from approximately 30 metres from the pedestrian crossing. Indeed, it is clear from the photographs Figs. 8 and 9. (B140) that there is a street light

on the opposite side of the road very near the pedestrian crossing with its lamp overhanging the road.

Driving adjustments

51. Equally, a significant amount of court time was expended on the question of Dr Chandran's driving adjustments. Having read and heard all the evidence, it is hard to discern, even on her case, what adjustments to conditions and situation she actually made. The absolute maximum for the road is 30 mph. This should be combined with her repeated statement that her practice was to drive "within the speed limit", that this is what she "always" does. At the point of impact, she was driving at just over 90 per cent of the absolute maximum. I cannot see how she made any adjustment to her driving due to the prevalent conditions: darkness, rain, two bus stops, children on the 'other side' of the road, controlled crossing. She answered, "I cannot say whether I did or did not make any adjustment to my driving" and "I cannot say what I did or did not unconsciously do". That is no evidence to support the proposition that she made an adjustment because of conditions. It is for the claimant to prove that she made no adjustment. Combined with the impact speed of 28 mph, I am quite satisfied to the requisite civil standard that the claimant has proved that Dr Chandran made no or no material adjustment to her driving. To suggest otherwise, is purely speculative and without evidential foundation.

52. My conclusion is that Dr Chandran was principally guided by two factors (1) the maximum speed limit – she was just below it; (2) her own safety, a sentiment she repeated in various guises, "why would I put myself at risk from unsafe driving?" This is why she was able to say that she was driving, as she put it, at "the optimum speed". She said that if she had seen the child at the bus stop on her side of the road (northbound), she would have reduced her speed "dramatically". But there is no credible evidence that she adjusted her speed at all for the children at the bus stop on the southbound side, who could just as readily have stepped "unexpectedly" into the road (Rule 205). I do not accept the submission made on behalf of the defendant that it would be "ludicrous" to assume a child on the other side of the road may step out in front of a vehicle coming in the opposite direction. Regrettably, exactly this would happen within seconds on the defendant's carriageway. This case is a paradigm example of why it is so essential to be prudent and vigilant when children are or are likely to be in the vicinity of vehicles moving at speed. Further, I cannot accept defendant counsel's submission that the "mere presence" of children is not the hazard, but what they are "up to", and whether they are in "high spirits", and that they are unlikely to be so on a Monday morning. As was to come to pass almost immediately, the claimant was to step in front of traffic.

53. There is no evidence that Dr Chandran adjusted her speed because of passing the two bus stops (Rule 204). I do not accept the submission made on behalf of the defendant that Rule 204 is exclusively confined to being alert to people emerging suddenly and unseen obscured by buses (or trams). It is plainly drafted to be wider than that and directed at the hazard of having people who are in the vicinity of bus stops (et cetera) not taking proper precautions and stepping into the carriageway. There is nothing in the wording of the rule to

mandate emerging from behind buses or trams. The rule states in its first sentence, 'Drive slowly and carefully when … driving past bus … stops". Yet there is no evidence that Dr Chandran adjusted her speed at all approaching and driving past the two bus stops, one of which had children at it.

54. I do not accept the defendant's submission that "mere presence of children" is not enough to require an adjustment of speed. Having children in the immediate vicinity of the road is certainly capable of requiring an adjustment of speed. It is not necessary, as the defendant submits, for the children to be "doing something" or that there must be "something more going on".

55. Dr Chandran was driving near to the absolute maximum speed. She says that she cannot say whether she "changed her driving at all". She was asked by counsel whether she accepted that she did not drive more slowly as she was approaching the bus stop. Her answer to that was, "I don't know". She was asked if she made any adjustment of speed for the children on the other side of the road and she said, "I don't remember." She cannot say "whether I did or did not make any adjustment for the coming bus stop." She cannot recall if she "adjusted my speed because of the darkness". She said, "I might or might not have adjusted my speed because of the rain, I don't know." The closest approximation to the objective facts about her driving when she approached the traffic lights is the answer she gave to claimant counsel that, "I cannot recollect any adjustment in my driving that I made at that point".

56. She was asked about what preparations she made for the approaching traffic lights and a pedestrian crossing, a reference to Rule 146. She said, "My foot would be on the brake and not the gas pedal." Counsel immediately challenged her about why this was not in her statement. She said:

> "If I knew I had to put it in my statement I would have. I agree my foot covering the brakes is an important piece of information. I did not know I was supposed to say that."

57. She agreed she had "lengthy discussions" with her solicitors before making her statement. It was put to her, unsurprisingly and appropriately, that she had just "made up" the answer in the witness box. She denied it. She repeated, "I would have been prepared to cover the brake." However, she confirmed at the start of her evidence that she appreciated it was important to mention any important facts in her statement. Further, she accepted that covering the brake was an important detail. It is not credible, then, that she did not realise that she had to put such a detail into her statement. The reasonable inference is that she did not cover the brake. This is the inference the court draws on a balance of probabilities (*Re A (A child)*. That is because this was an unconvincing set of answers from Dr Chandran. These details were not in her witness statement which itself was drafted after appropriate consultation and discussion with her solicitors. I find no basis in her evidence to support the fact that she did make preparations for the upcoming traffic lights by covering the brakes. If her answers simply amount to what she "would have done", or that is what she "normally" does, that does not assist her case. The important question is whether she did it. I find no evidential basis to conclude that she did. But it is for the claimant to prove the opposite on this point. The claimant has done so.

I am quite satisfied on a balance of probabilities that Dr Chandran did not cover the brakes as an adjustment to her driving as she approached the traffic lights.

58. The further consequence of this interlude is that I found her evidence about this question to lack credibility. This impaired credibility is not necessarily restricted to this topic, and I can properly use it to assess her evidence on other questions - it has cross-relevance (*Arkhangelsky*), especially in combination with other impairments to her credibility.

59. Further, I reject the defendant's submission that "her heightened sense of expectancy was her dominant adjustment" (closing submissions). She was not "hyper alert". Instead, she instinctually reacted without realising it at or just before the point of collision. Therefore, I find that the claimant has proved that the defendant made no or no material adjustments to her driving due to the prevailing circumstances.

Inconsistency: speed reduction

60. Towards the end of her cross-examination, she was asked by claimant counsel about the degree of speed reduction she would have made if she had seen the claimant standing by the controlled crossing waiting to cross. She said:

> *"It would probably be between 15 and 20 mph if I had seen a child."*

61. She said that if she saw the child at the crossing, she would have made a "dramatic" reduction. When shortly after this answer, the court asked her to clarify whether her evidence was that the appropriate speed if she saw a child at the crossing was between 15-20 mph (the answer the court had just noted down). She replied that she did not know what the appropriate speed was. It was plain that she had appreciated the adverse implications to her case of her answer to claimant counsel. She sought to resile from it. This showed a certain degree of calculation by the witness. I found her answer to the court to be unconvincing. I preferred her answer to counsel. That, it seems to me, is far closer to the truth, being an immediate and genuine response. This adversely affected her credibility to my mind. But I keep it in proportion. It certainly does not mean that I reject the entirety of her evidence. It goes into the overall evaluation of her reliability and creditworthiness.

62. In closing, her counsel submitted that she might have responded to Mr Mooney's questions as a capitulation to being "browbeaten" (at one point this appeared to be the submission). Such a suggestion is very wide of the mark for two reasons. First, this was not the style or effect of Mr Mooney's entirely appropriate questioning. Second, this ignores the robust character of this confident professional, described by her counsel as a "difficult" witness. She said, "If there had been a pedestrian at the lights I had seen, I would have gone at a slower speed." Then added, "I would have killed my speed if I had seen a child there waiting to cross. I would have slowed down much more than I was driving at." She said that there was "a huge difference between a child being

seen and not seen." She added that a pedestrian on her side of the road would "automatically make me slow".

63. I find on her own evidence that if Dr Chandran had been consciously aware of the claimant standing at the crossing, she would have slowed ("killed") her speed to between 15 and 20 mph from 28 mph.

Flawed approach to Highway Code

64. Her approach to the requirements of the Highway Code was flawed. She said, "My understanding is you judge your speed to the visibility at the front of the road, and it's the same with darkness". This approach was confirmed by the fact that she said, "If I felt unsafe due to wet or darkness, I would have reduced [speed]", but she did not feel unsafe. Thus, rather than adjusting her speed due to rain or darkness, she relied upon whether she was feeling unsafe herself. The focus was on herself rather than the possible impact on other road users. This is confirmed by the answer, "If any factor had impacted on my safety, I would have reduced." This reveals a troubling absence of concern for other road users and the potential danger her vehicle moving at speed in suboptimal conditions presents. This flawed approach is confirmed by her belief that "the speed limit has been worked out to allow you to drive safely". Further, "I did not feel unsafe".

65. The net result of her belief is that if she was driving under the speed limit and she did not feel unsafe herself, that would be the appropriate speed. That this was her approach on the day of the collision is supported by the fact that despite the prevailing conditions and the road situation, she was driving at very nearly the maximum permitted speed. Therefore, I find that the defendant's approach to the Highway Code was flawed.

66. This does not automatically lead to a finding of breach. But it is a significant factor to be weighed. This is because breach of the Highway Code is relevant to, but not determinative of, negligence (*Wakeling v McDonagh & MIB* [2007] EWHC 1201 (QB)).

Impact of other vehicle lights

67. The impact of the taillights of the car in front of her cannot be significant as she was not aware of a car in front of her. This is evident from her witness statement: "there were no cars in front of me" (B72/§11). She testified that she meant in her statement that there were no cars directly in front of her "to bump into". I judge that this was another elaboration to cover flaws in her evidence. She was plainly concerned that if she was not aware of the vehicle in front (and such vehicle is clear from the CCTV footage) that this would indicate that she was not paying sufficient attention. Hence, she modified her written account in her oral account. But when she was probed by claimant counsel, she said, "I cannot recall what was on the road". Nevertheless, there is no evidence from her or any other quarter to suggest that the taillights of the car in front of her distracted, let alone blinded, her.

68. Equally, there is no suggestion in any of the filed evidence that she was impacted by the lights of the cars coming in the opposite direction. Any such theoretical suggestion from Ms Eyres, was not supported by the evidence before the court. Once more, it is for the claimant to prove this. She has.

69. Before I set down my findings of fact in respect of Dr Chandran, I must deal with the question of reasonable speed.

§VII. Reasonable speed

70. I must resolve the dispute between parties about what constitutes the reasonable speed for the road situation and driving conditions that prevailed on that stretch of Buckingham Road at the time of the accident. Rule 125 provides:

> "The speed limit is the absolute maximum and does not mean it is safe to drive at that speed irrespective of conditions. Driving at speeds too fast for the road and traffic conditions is dangerous. You should always reduce your speed when
>
> > the road layout or condition presents hazards, such as bends sharing the road with pedestrians, cyclists and horse riders, particularly children, and motorcyclists.

71. The Rule makes it plain that the designated 30 mph is the absolute maximum. It must be adjusted due to prevailing conditions. The reasonable driver must "always reduce your speed" when sharing the road with pedestrians and "particularly" children. It is submitted on behalf of the defendant that:

> "The only obligation for reasonable driver is to drive below the speed limit and to have a very heightened sense of alertness."

72. This cannot be correct. This submission would mean that irrespective of conditions, it would be permissible when the absolute speed limit is 30 mph to drive at 29 mph. The fallacy in this argument is that it omits the essential requirement for the reasonable driver to adjust his or her speed to reflect the prevailing hazards of the conditions. If the rain were so heavy or the fog so dense that visibility was severely restricted to a couple of metres beyond the windscreen, it would obviously be very dangerous to drive at 29 mph and thus "below the speed limit". To gauge what the reasonable speed for any relevant stretch of road in the prevailing conditions should be, all the obviously relevant factors should be taken into account, something that reasonable drivers habitually do. In this case, the collision occurred on a school day, at a time when children were on the way to school and likely to be using the bus stops (there were in fact children at the bus stop on the southbound side). It was an urban area with residential housing bordering the road in places, and certainly on the northbound side in the vicinity of the bus stop and pedestrian crossing. Front gardens of houses lead directly onto the pavement bordering the road right next to the northbound bus stop (Figs. 8 and 10., B140). It was both raining and dark. The BMW was approaching two bus stops and a pedestrian crossing.

73. The defendant submits that the reasonable speed was the speed she was driving at: 28 mph. I reject that submission.

74. In all the identified circumstances, I find that the reasonable speed at this location, at this time of day, in those driving conditions, was approximately 20 mph. By that I mean within a range of 1 mph on either side. Thus from 19-21 mph. That is the speed the defendant should have driven because of the darkness, the rain (the police describe "standing water" on the road), the fact of the two bus stops, the pedestrian crossing and the fact that, as the claimant accepted, children could be in the vicinity in a substantially residential area around the opposite bus stop on a school morning. Dr Chandran was, of course, aware of children at the bus stop on the other side of the road on that day. I find that driving just below the "absolute maximum" speed limit, despite such conditions was not safe or reasonable. A prudent and experienced driver would not have driven at that speed. However, I do not accept the claimant's suggestion that that the speed should have been 17 mph. The significance of that figure is that this would have permitted the defendant to have braked sufficiently to stop her vehicle before the pedestrian crossing. I find that this is being too prescriptive and formulaic and is an act of reverse engineering. Therefore, I do not accept the claimant's submission that Dr Chandran should have reduced the BMW's speed to 15 mph. That is one half of the maximum speed limit. Instead, I find that approximately 20 mph is the reasonable figure (with the margin mentioned). In reaching that mark, and while it is not for the defendant to give definitive evidence about it, I note that she accepts that if she had seen the child, she would have reduced her speed "dramatically" to "between 15 to 20 mph". She is not an expert. She does not decide the reasonable speed; the court does. Yet, as defendant counsel accepted, her answer on reasonable speed "cannot be entirely ignored". Nevertheless, the decision about what is the reasonable speed is one for the court. Her answer is not without significance. It indicates what she believed in the conditions was the safe speed if she saw a child at the pedestrian crossing. Her answer supports the fact that 20 mph would be a reasonable speed to drive, which was the court's conclusion in any event.

75. Therefore, the defendant drove faster than the reasonable speed by about 1/3 to ½ (7/21 to 9/19). This was significantly faster and both unsafe and unreasonable.

Conclusion

76. I make the following findings of fact:

1. The defendant was driving at 28 mph;
2. The reasonable speed in all the circumstances was 20 mph (with a margin of 1 mph either way);
3. The defendant was driving significantly in excess of the reasonable speed by a factor of 1/3 to 1/2;
4. The speed the defendant was driving at in the conditions was excessive, unreasonable and unsafe.

§.VIII. FINDINGS OF FACT: DR CHANDRAN

77. Having now determined the reasonable speed, I now set out my findings of fact in respect of Dr Chandran. The court finds that the defendant:

1. Had driven the same route to work numerous times over a period of almost a decade;
2. Was aware that children habitually use the bus stop she was approaching (on school days);
3. Was aware of children at the bus stop on the southbound (opposite) side of the road;
4. Was aware of the darkness, rain, two bus stops and controlled crossing;
5. Did not see of the claimant (conscious sighting);
6. Without being consciously aware of it, did register the presence and/or movement of the claimant at or just before the impact and in an inadvertent startled reaction the defendant caused the car to swerve to the right;
7. Would have reduced her speed to between 15-20 mph if she had been consciously aware of the claimant standing at the pedestrian crossing;
8. Drove at 28 mph at point of impact;
9. Made no or no material adjustment to her driving due to the prevailing road conditions or surrounding circumstances;
10. Was not distracted or impacted by the taillights of vehicle in front of her or the vehicles coming in the opposite direction;
11. Was not prepared to stop at the pedestrian crossing, nor did she anticipate that a pedestrian might step into the carriageway at traffic lights or a pedestrian crossing (Rule 146);
12. Was not sufficiently alert to the risk of pedestrians, and in particular children (Rule 204);
13. Did not drive with the safety of children in mind (Rule 205);
14. Did not drive at a speed suitable for the conditions (Rule 205);
15. Did not adjust her speed due to driving past bus stops (Rule 206);
16. Was not sufficiently mindful that she was driving through an area that had a substantial residential element (Rule 206);
17. Did not reduce her speed to allow for the hazard of particularly vulnerable pedestrians such as children (Rule 207);
18. Has misunderstood Rule 125 that the speed limit is the "absolute maximum" and does not mean it is safe to drive at that (or close to that) speed.
19. Drove at an excessive, unsafe and unreasonable speed for the road location, time of day, prevailing conditions and road situation.

Overall conclusion

78. Dr Chandran has driven the route "lots of times before" at a "similar time in the morning". She was "very familiar with the route" and was "just driving looking ahead". She was not consciously aware of the claimant waiting at the pedestrian crossing. That was because she was not paying sufficient attention. Without concluding she was in a state of approaching automatism, I find that her driving

was likely to contain an element of autopilot. She had driven the precise route at the similar time so many (possibly hundreds) of times before in what her counsel called her "five-days-a-week-ritual". This resulted in her not adapting her driving to the obvious risks of the prevailing situation – all the listed hazard factors – because she did not feel "unsafe" and felt if she felt safe and was "within the speed limit", that was the "optimum speed". She did not make the reasonable and necessary adjustments for, as the Highway Code puts it, "road users requiring extra care" because children are among "the most vulnerable road users". That was an approach materially inconsistent with the Highway Code's safety principles. She drove in breach of and inconsistent with Rules 125, 146, 204, 205, 206 and 207. No breach of the Highway Code is determinative of negligence. But the court should have regard to them and weigh their cumulative effect.

79. Having done so, I find that the defendant's conduct demonstrated an approach that fell below the standard of a reasonable competent and experienced driver. I find that the breaches of the Code cumulatively amounted to a breach of duty of care in the circumstances that prevailed: a combination of her excessive and unsafe speed and lack of sufficient attention to conditions and other road users.

80. **Therefore, I find that the claimant has proved breach of duty of care.**

§IX. CAUSATION ANALYSIS

81. Having found that the defendant was in breach of her duty of care, I must consider the question of causation. I reject the submission on behalf of the defendant that engaging in the analysis of what would have happened if the defendant was driving at a reasonable speed is the construction of "castles in the air". It is not. It is legitimate – and indeed routine – for courts to draw inferences, so long as they are safe, reasonable and fair and grounded in the evidence (*Re A (A Child)*). It is equally permissible – indeed necessary – to establish what would have happened if the defendant was driving at a reasonable speed and thus not in breach – just as in clinical negligence case the court considers what would have happened if there had not been a breach in the informed consent duty (*Montgomery v Lanarkshire* [2015] UKSC 11).

82. To begin, there are several solid facts. These are factual anchor-points, agreed by parties, that permit safe and clear reconstruction of what was likely to have happened at different speeds. When the vehicle ahead of the defendant (V1) cleared the pedestrian crossing, there were 2.2 seconds until impact. At V1 clearing the crossing, the defendant was approximately 28-30 metres away. This coincides with the expert evidence that the claimant could have been seen at the crossing from approximately 30 metres away.

83. Therefore, if instead of driving at 28 mph, the defendant were driving at 20 mph, in 2.2 seconds, the vehicle would be 7 metres further away from the child at the point of impact. I propose to call this the **"extra distance"**. This is how it is calculated:

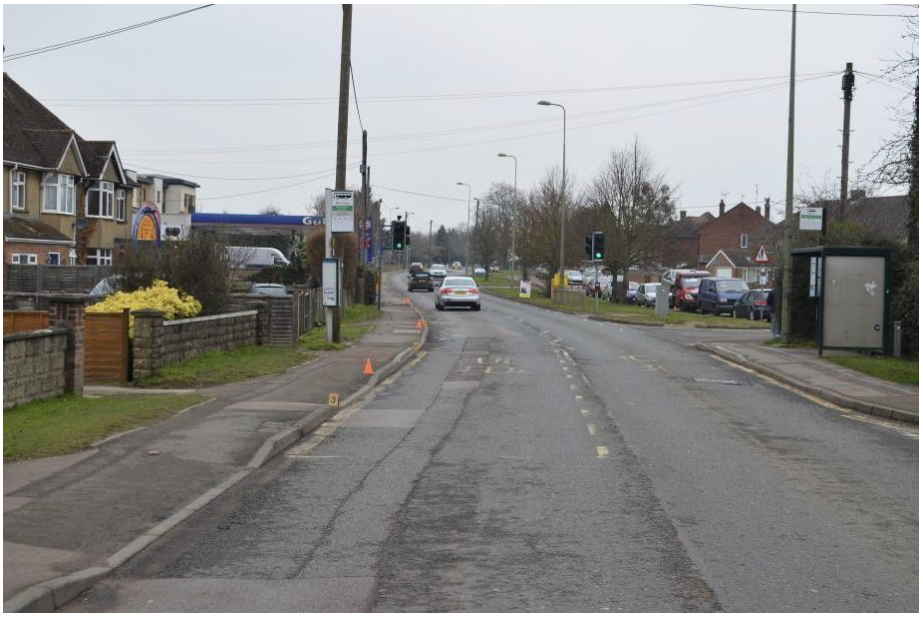
1. When the claimant stepped into the road and froze, the BMW was approximately 5 metres away from her. The experts agree on this. It is clear from looking at the CCTV why they jointly reached this reasonable estimate;
2. The child entered the road approximately 2 seconds after the first vehicle passed the claimant (actually 1.9 seconds, with 2 seconds with rounding up);
3. If the defendant had been driving at 20 mph instead of 28 mph, in those 2 seconds the BMW would be 7 metres further away. (28 mph = 12.5 m/s. 20 mph = 9 m/s. 2 seconds x 3.5 m/s (12.5-9) = 7 metres);
4. To this distance must be added the 5 metres distance from the BMW that actually occurred when the claimant did step into the road;
5. Thus at 20 mph the claimant's distance from the BMW would be approximately 12 metres (7 + 5) instead of 5 metres.

84. There is no need for expert evidence for this. It is mere mathematics.

85. There is no doubt that the claimant "froze" in the carriageway. She did so for 0.3 seconds. The question is why that happened. It is clear: when she stepped into the carriageway, the BMW was about 5 metres away. It is entirely unsurprising that she froze and came to a stop. This vehicle was moving very close to the absolute maximum permitted speed. The distance of 5 metres is a little over an average car's length away. Ms Eyres told the court in undisputed evidence that 15 metres is about three car lengths. Thus, one vehicle is about 5 metres.

86. When the claimant moves forward into the crossing, the lights of the defendant's car can be seen to the right of the claimant (left as we view). One can entirely see why the experts concluded the distance was about 5 metres. Thus the defendant's vehicle was right on top of the claimant and moving near the absolute speed limit. The claimant panicked and froze. Having frozen, she took no evasive action and was struck by the BMW travelling at 28 mph.

87. If the defendant was driving at approximately 20 mph as the proceeding car V1 passed, the "extra distance" produced as a result of the lower speed is approximately 7 metres. This results in defendant's vehicle being approximately 2½ car lengths. When Dr Chandran reached the point 30 metres from the pedestrian crossing, her BMW should already have been driving significantly more slowly than 28 mph. This is because it should have already slowed down due to its passing the bus stops (for the purposes of Rule 206). This is can be seen from the photograph that Mr Hill produced of 40 metres out.



(Reproduced with permission. 40 metres from pedestrian crossing: Fig. 8/B140)

88. Thus, I proceed on the basis that when she reached 30 metres from the pedestrian crossing she should have already been driving at 20 mph. To try to put this combined distance of 12 metres into some kind of perspective, it should be remembered that 12 metres is over half a cricket pitch (approximately 10 metres or 11 yards).

89. So if there was a greater distance, what would the outcome have been? One must recall that what is required is not certainties. This is a civil trial, not a scientific experiment. The proper question should be framed as "if the distance to the defendant's car was approximately 12 metres, what is the claimant likely to have done and what is the defendant likely to have done?" There are two important factors to consider: (i) how the claimant is likely to have reacted; (ii) how the defendant is likely to have reacted.

(i) The claimant

90. If there was that extra distance, it is far more likely that the claimant would not have "frozen". The BMW would not be right on top of her. It would be over half a cricket pitch away. As Ms Eyres the expert instructed on behalf of the defendant stated:

> "It is possible that the claimant would have kept running if she felt she could make it if the vehicle was further away. And at a slower speed, both the claimant and defendant would have more time to decide what they could do."

91. That was not strictly speaking within the expertise of either instructed expert, but a matter of common sense and natural inferences from the evidence. But it is obvious good sense based on the situation on that day. The fact is that the claimant started running "at speed" into the road. She froze when the

defendant's vehicle was right on top of her, around one car-length away. If the BMW was further away – at 20 mph approximately 7 metres or another car-and-a-half away - I find that it is likely on a balance of probabilities that the claimant would not have frozen. As Ms Eyres said, it is possible that the claimant would have "kept running". I find that this is correct and likely, not relying on Ms Eyres or Mr Hill on this point, but natural inference and the dictates of common sense. Thus, if the defendant's BMW were further away, it is likely that the claimant would not have frozen and she would have kept moving.

92. I say "moving", but one must remember that the claimant entered the carriageway at what Mr Compton described as "a good run" or a "real run". Indeed, in his closing submissions, Mr Compton adopted the idea that the claimant was moving at a "real run", due to her having been stationary for 0.3 seconds in the carriageway, meaning her moving speed was far greater. Simple mathematical proportions, without indulging in unwarranted precision, indicates that she must have been moving, *while she was moving*, on average significantly faster than 4.8 metres per second, at a "considerable run", as Mr Compton also characterised it. She was in the carriageway for 0.4 seconds. She was stationary for 0.3 of those seconds – 75 per cent of her time on the road itself. Therefore, her speed before she stopped was significantly higher than 4.8 m/s. If she did not freeze, and had kept running – as is likely without the BMW right on top of her – in those extra 0.3 seconds that she did freeze, could have moved something like an additional 2 metres (say at around 5 or 5.5 metres per second of her "good run" speed).

93. But one must remember that since the BMW would be further away if travelling at 20 mph, it would need additional time to reach the pedestrian crossing. It is easy to calculate this. At 20 mph, to travel the extra 7 or so metres, it would take another second approximately (20 mph is just under 9 metres per second). Thus the claimant would have an additional second to run at her considerable pace. Even if she continued at around 5 per second, in that extra second she could have comfortably crossed the other side of the carriageway (the second 3 metres).

94. The width of the carriageway is 6 metres (B136/§3.12). The northbound carriageway is 3.2 metres wide and the southbound 2.8 metres. When she was struck, the claimant was about 1 metre into the carriageway. So we can represent the distances in the following very simple diagram. Note that I deal with matters broadly and not with a micro-precision that I find to be unjustified.

|<<<< **Road width = 6 metres** >>>|

1m **+ 2m** [3.2m/middle of road] **+4-5m**

>>>>>>>>

(0.1 second/initial run) (0.3 seconds/if not freezing) (1s for BMW to travel 7m at 20mph)

95. Thus, if the claimant did not freeze, and kept moving at her "good run" speed, she would have reached about the centre of the carriageway in the 0.4 seconds she was in the carriageway on the day. The additional time for the BMW to drive the "extra distance" of 7 metres or so if driving at 20 mph (9 m/s) is approximately 1 second (0.8 seconds, precisely). In that extra time, the claimant could have comfortably covered most, if not all, of the other side of the carriageway. These are approximate figures and present a broad picture. This subsection has examined just what the claimant is likely to have done. I turn to the Dr Chandran.

(ii) The defendant

96. This is the position without the defendant doing anything different except driving at the safe and reasonable speed of 20mph. But how is the defendant likely to have reacted if driving reasonable and prudently? To my mind, there are a number of relevant factors.

97. **First**, from the figures above it is clear that if the claimant had continued to run, she would be a good way across the road as the BMW approached the pedestrian crossing and would not be suddenly emerging from the defendant's left causing her to be startled in that way.

98. **Second**, it might be thought that the natural instinct of a driver confronted with someone or something suddenly in the road directly ahead them (or slight to the right) with some distance between the car and the object or person is to brake. One must be cautious. Mr Hill very fairly stated that the "research is rather split on the reaction drivers make, whether to swerve or brake or both." However, it should be noted that Dr Chandran did bring her vehicle to a very rapid complete stop shortly after impact. For example, one can see the incident on the Domino's footage and see the BMW at a dead stop towards the right of the screen around the Gulf petrol station. Thus, it is very likely that should Dr Chandran have seen the claimant in the road ahead of her she would at the very least have attempted some braking. She did exactly that after the "thud". I emphasise that it is unlikely that she would have brought the car to a complete halt before the crossing (as if she had been travelling at 17 mph). But the significance is that if she had seen the claimant ahead of her because the claimant had not frozen and kept running towards the centre of the road, it is likely on a balance of probabilities that Dr Chandran would have done precisely what she did do immediately upon becoming aware of the thud and started to brake. The consequence of that is from the point she was braking, the speed of the BMW would be reduced and that would permit the claimant *more time* to clear to the opposite carriageway and significantly towards the opposite pavement. I emphasise that in the diagrams of speed and distance, I have not allowed for the additional running time this would have provided the claimant. Thus, the very approximate diagram above is a conservative evaluation of what was likely to take place.

99. **Third**, if Dr Chandran was acting as a reasonable driver with reasonable attention, she could have seen the claimant around the area of the pedestrian crossing from about 30 metres out. Thus, a reasonable driver is likely to have seen the claimant somewhere in the range from 30 metres. At that point, the

claimant was standing stationary at the pedestrian crossing and waiting to cross. This should have led the defendant to reduce her speed significantly seeing a pedestrian in position at the crossing. This can be seen on the CCTV – when V1 clears the crossing, the claimant is standing at the crossing.

100. Dr Chandran herself says that if she had seen that, she would have reduced her speed significantly or "dramatically". It must be noted that this was the defendant's answer about seeing a child standing at the crossing. It is clear that even if it were not easy to see that the person at the crossing were a child, but simply a pedestrian, due to all the prevailing factors, Dr Chandran should have reduced speed coming into the bus stop zone to approximately 20 mph. This would have created more time for the claimant to have crossed towards the other carriageway.

101. **Fourth**, if there was an instinct to swerve, it would more likely to be to swerve in the opposite direction to the figure who would be well into the road and to the right if the BMW were driving closer to the reasonable speed. I find that this is likely because the defendant swerved to the right in response to the claimant in motion to the defendant's left. The opposite is likely to be the case.

102. Let me draw this together. I reduce the court's analysis into the following **ten** critical findings.

1. I find that a reasonable and competent driver would have been driving the BMW more slowly at around 20 mph;
2. The corollary is that I find that the defendant was driving too fast given the situation and prevailing circumstances;
3. If the defendant had been paying proper and reasonable attention as she should have been, even if travelling at 28 mph, she should have seen the claimant from approximately 30 metres out. On this, I prefer the evidence of Mr Hill, although Ms Eyres accepted she was wrong about the vehicle in front obscuring the claimant at 40 metres (and thus also at 30 metres);
4. I find that the suggestion that she would have been distracted by the oncoming lights of the vehicle in opposite carriageway to have little merit. Drivers are constantly aware of headlights coming in the opposite direction. That does not necessarily mean one cannot see what it happening on your side of the road and one might, of course, slightly turn away from the oncoming lights. I do not say that is what happened – that would be speculation. But I find that having lights coming in the opposite direction is such a regular and frequent occurrence that if it blinded your activity on your side of the road, it would make driving virtually impossible. Importantly, Dr Chandran has at no point suggested that the oncoming lights were full beam and there is no evidence that they were anything other than at normal and proper illumination. Naturally it is possible as Mr Hill said that the oncoming vehicle may have made the claimant stand out by silhouetting her, but there is no evidence that it did.
5. I find that the taillights of V1 did not have any significant impact on Dr Chandran. The highest Ms Eyres put it is that the rear lights "may have some negative effect", yet she accepted that there may be positive

effects such as V1's headlights illuminating the claimant. It is an absolute commonplace of driving in darkness that there will be taillights in front of you. It is a fact of driving life. There is no evidence that the V1 rear lights had any detrimental effect on Dr Chandran's ability to see pedestrians on her side of the road. Dr Chandran has given no evidence about the impact of any taillights. Indeed, the specific facts are important. Here, V1 was not right in front of Dr Chandran to distract her – it was about 28 metres away (about 5 or 6 car lengths). Moreover, Dr Chandran stated in her witness statement that "there were no cars in front of me" (B72/§11). It is clear that she was not or not meaningfully distracted by the taillights of V1.

6. I find that if the defendant's vehicle were that extra significant distance away, as it should have been, when the claimant stepped into the road, that the claimant is unlikely to have frozen and stopped, but instead she is likely to have kept running.
7. I find that the extra time and distance created by Dr Chandran driving at the reasonable speed would have been sufficient, and not just marginally, for the claimant to have crossed most of the way across the road towards the southbound side.
8. I find that if the claimant had kept moving at her significant speed across the road, the defendant is likely to have braked. This is because the child would have been in front of the defendant and likely to be in the middle of the carriageway or slightly to the defendant's right. There would have been significantly less likelihood of the defendant swerving to the right in the direction in which the child was running.
9. Putting the above findings together, I find on a balance of probabilities that there would not have been a collision if the defendant had been driving at the safe and reasonable speed and there would have been no injury to the claimant.
10. I find, therefore, that the defendant's breach of duty caused the claimant's loss and damage.

103. I emphasise that I have used approximate figures and not analysed the situation with unwarrantedly precise figures. This is about orders of magnitude and mapping out how things are likely to have turned out if the defendant had been doing what she should have been – driving at a reasonable speed that was safe in the circumstances (she did not) – and was keeping a proper look-out (she was not). Her actions were negligent and a cause of the accident and thus the serious injury to the child.

104. If I had found that the claimant might have only *marginally* cleared the BMW on a micro-analysis of facts and figures, then I would not have found for the claimant. That is the defect that Mr Hill's original analysis suffered from. He maintained in his addendum report that if the defendant were driving at 24 mph, the claimant might have just cleared the offside of the BMW. In the claimant's skeleton, it was submitted that a "reduction of just 4 mph to 24 would have been enough to prevent this accident from happening". For the fundamental reason that I did not consider it to be expert evidence as opposed to mere mathematics, I rejected the application to admit that evidence. However, this analysis relies

on very fine margins. It would have the claimant just passing clear of the offside wing of the BMW. It makes no allowance for the fact that the defendant only had to swerve marginally more to nevertheless collide with the claimant. A similar analysis was found in the supplementary joint report of the experts produced on the morning of the trial (§§2-4). I must emphasise that this addendum was a way for parties to agree the mathematics (since the experts were present and adept at doing the calculations). But that did not elevate it into the status of expert evidence, just an agreed mathematical position between parties. Nonetheless, I do not accept that the calculation which shows that the child could have just cleared the offside of the BMW if the vehicle was moving at 24 mph is a safe conclusion to draw. This strikes me as suffering from the kind of over-precision deprecated in *Lambert v Clayton*. The vehicle would be significantly closer to the child; it would be a correspondingly higher risk she would have frozen; she would have been less far across the road by the vehicle's arrival at the marked pedestrian crossing. I do not regard that as a safe finding of fact.

105. However, once one reduces the speed from 28 to 20 mph, by a factor of approximately one third, the numbers significantly change. With that substantially lower driving speed, I am absolutely clear that the outcome is likely to have been different: the claimant would not have been struck by the defendant's vehicle. I reach that finding of fact on a balance of probabilities. At 20 mph, I find that there are sufficient margins to conclude that it is likely this accident would not have taken place. That is because the claimant is likely not to have frozen because the vehicle would not have been right on top of her; she is likely to have kept running at her "considerable" speed; she is likely to have made it most of the way across the road by the time the BMW arrived at the crossing; the BMW is unlikely to have swerved towards her, as the defendant would not have been startled by a something suddenly emerging from her left-hand side; there is unlikely to have been any collision; the claimant is unlikely to have suffered loss and damage.

106. I note the force of the judgment of Smith LJ in *Lambert v Clayton* at [39]:

> "If there are inherent uncertainties about the facts, as there were here, it is dangerous to make precise findings. This may well mean that the party who bears the burden of proof is in difficulties."

107. I find no significant factual uncertainties here. Evidentially, the claimant is not in forensic "difficulties". I find that if the defendant were driving at the reasonable speed of 20 mph, the accident is likely not to have occurred.

108. **Therefore, I find that the claimant has proved causation and loss and damage to the requisite civil standard.**

§X. CONTRIBUTION AND APPORTIONMENT

Contribution

109. The title page of the Highway Code states in terms that it is for "all road users". The Introduction emphasises the point by stating that the Code "applies to pedestrians as much as to drivers and riders". As a road user, the claimant had a duty to "exercise due care" (*Nance v British Columbia Electric Railway Company Ltd* [1951] AC 601). The level of due care required will be that of an average 12 year-old. The claimant stepped into the road when the traffic light was green for oncoming traffic. I find that her action was negligent, even judged by the standard of 12 year-old children. They would know not to step into a road when vehicles were proceeding through a green light at speed. No one disputes this. It thus becomes necessary to apportion liability.

Apportionment

110. The basis upon which a finding of contributory negligence can be entertained has a statutory footing. Section 1(1) of the Law Reform (Contributory Negligence) Act 1945 provides:

> "Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage …"

111. The 1945 Act did not countermand the observation of Viscount Birkenhead in *The Volute* [1922] 1 A.C. 129:

> "Upon the whole I think that the question of contributory negligence must be dealt with somewhat broadly and upon common-sense principles as a jury would probably deal with it."

112. I find that given the claimant must bear significant responsibility. The pleaded defence is that the "Defendant had no chance at all of avoiding an impact with the Claimant". At the speed the defendant was driving, the claimant accepts that was probably correct. However, I have found that the defendant was driving at an unsafe speed. If she was driving at a reasonable speed, the accident would have been avoided. I find that the preponderance of responsibility lies with the defendant in driving too fast and unsafely and not paying sufficient attention to other road users. It is right that the claimant "made a mistake", but that is precisely why the Highway Code emphases the need for caution around children. Mr Mooney put it graphically: pedestrians do not "kill or maim cars, it is always the other way around."

113. I accept the submission that a "high burden is placed on drivers" (*Lunt v Khelifa* [2002] EWCA Civ 80) and that a car is a "potentially dangerous weapon". However, Mr Mooney's submission that the claimant's responsibility should be "not be higher than 33%" (CS §20) is too low and unfair to Dr Chandran. Equally, the submission by Mr Compton that the preponderance of responsibility should fall on the claimant is unrealistic given the findings of the court.

114. I look at it in a broad way, using a common-sense approach (*The Volute*). As Denning LJ (as then was) explained in *Davies v Swan Motor Co (Swansea) Ltd* [1949] 2 K.B. 291:

> "Whilst causation is the decisive factor in determining whether there should be a reduced amount payable to the plaintiff, nevertheless, the amount of the reduction does not depend solely on the degree of causation. The amount of the reduction is such an amount as may be found by the court to be "just and equitable," having regard to the claimant's "share in the responsibility" for the damage. This involves a consideration, not only of the causative potency of a particular factor, but also of its blameworthiness …"

115. This test is now firmly established and beyond dispute, having been approved by the House of Lords in *Fitzgerald v Lane* [1989] AC 328 and *Stapley v Gypsum Mines Ltd.* [1953] AC 663. Equally, there is no dispute between parties but that the child being 12 years old at the time of the incident was of sufficient age and understanding to be capable of being negligent. I thus find it just and equitable to make a finding of contributory negligence.

116. Overall, I find that:

1. **The defendant is chiefly responsible for the collision;**

2. **The apportionment that is just and equitable and that reflects the relative liabilities is 60 per cent attributed to the defendant and 40 per cent on the part of the claimant.**

§XI. DISPOSAL

117. This is a liability-only trial. The claimant has proved liability to the civil standard. The key findings, put together in one place, are:

1. On 15 January 2018, Dr Shanthi Chandran was driving at an excessive, unsafe and unreasonable speed in the Buckingham Road and failed to pay sufficient attention to hazards and other road users;
2. Thus Dr Chandran was in breach of her duty of care towards the claimant, who was a child aged 12;
3. Dr Chandran's breach caused the loss and damage to the claimant;
4. The claimant's negligence by stepping into a pedestrian crossing when the light was green for vehicular traffic contributed to the collision;
5. The just and equitable apportionment of liability is 60 per cent to Dr Chandran and 40 per cent to the claimant.

118. The injury to the child could have been worse. The Highway Code emphasises how crucial vehicle speed is to severity of injury. It states at Rule 207:

> "At 40 mph (64 km/h) your vehicle will probably kill any pedestrians it hits. At 20 mph (32 km/h) there is only a 1 in 20 chance of the pedestrian being killed. So kill your speed …"

119. In 2022, the number of people killed in road traffic collisions was approximately 1700 (*National Statistics* (UK Government, November 2022)).[4] While this case is not about a fatality, it shows yet again how dangerous it is to drive at excessive and unreasonable speed. There is a common misconception that if one is driving just below the speed limit, this is sufficient to be a reasonable and competent driver. It may not be. The maximum speed limit is not a target or an infallibly safe measure. It is an absolute upper limit, only justified if conditions and the road situation are sufficiently good to permit it. This, essentially, was the error that Dr Chandran fell into.

120. May I end by paying tribute to the immense dignity and restraint shown by the child's parents, who sat through the entire trial, hearing very distressing details about the circumstances in which serious injury was inflicted upon their daughter. At not a single point did they visibly display any anger or even incredulity while listening to the evidence, even when, as I have found, Dr Chandran gave answers that simply could not have been right. In this, they showed great respect for the court process and all parties. What has happened has without question been life-altering for both of them and their child. Counsel tell me that the quantum of damages is likely to be agreed between parties. If not, I will set the matter down for a trial on quantum and reserve the matter to myself. I trust this will not prove necessary.

121. I want to end by addressing a few words to the claimant herself. It may be a little while before you feel ready to read this judgment. But I want you to know that it is your judgment. I am publishing it to the National Archives because it raises matters of importance to the general public. The case shows yet again how dangerous vehicles are when driving at excessive speeds and how vulnerable children can be. I hope that the compensation that will be awarded will make life a little easier for all of you. I appreciate that money is no substitute for all the pain and suffering and worry and heartache you have all experienced. But it is the best we can do. I wish you well.

122. I enter judgment for the claimant on the claim with damages to be assessed, if not agreed, on the basis of 60 per cent liability.

123. That is my judgment.

[4] https://www.gov.uk/government/statistics/reported-road-casualties-in-great-britain-provisional-estimates-year-ending-june-2022/reported-road-casualties-in-great-britain-provisional-estimates-year-ending-june-2022

APPENDIX

Highway Code (as at January 2018)

Introduction

This Highway Code applies to England, Scotland and Wales. The Highway Code is essential reading for everyone. The most vulnerable road users are pedestrians, particularly children, older or disabled people, cyclists, motorcyclists and horse riders. It is important that all road users are aware of The Highway Code and are considerate towards each other. This applies to pedestrians as much as to drivers and riders.

Speed limits

125. The speed limit is the absolute maximum and does not mean it is safe to drive at that speed irrespective of conditions. Driving at speeds too fast for the road and traffic conditions is dangerous. You should always reduce your speed when

- *the road layout or condition presents hazards, such as bends*
- *sharing the road with pedestrians, cyclists and horse riders, particularly children, and motorcyclists*
- *weather conditions make it safer to do so*
- *driving at night as it is more difficult to see other road users.*

146. Adapt your driving to the appropriate type and condition of road you are on. In particular

- *Do not treat speed limits as a target. It is often not appropriate or safe to drive at the maximum speed limit*
- *Take the road and traffic conditions into account. Be prepared for unexpected or difficult situations, for example, the road being blocked beyond a blind bend. Be prepared to adjust your speed as a precaution*
- *where there are junctions, be prepared for road users emerging*
- *in side roads and country lanes look out for unmarked junctions where nobody has priority*
- *be prepared to stop at traffic control systems, road works, pedestrian crossings or traffic lights as necessary*
- *Children, are looking the other way, they may step out into the road without seeing you.*

Road users requiring extra care

1.Overview

204. The most vulnerable road users are pedestrians, cyclists, motorcyclists and horse riders. It is particularly important to be aware of children, older and disabled people, and learner and inexperienced drivers and riders.

2.Pedestrians

205. There is a risk of pedestrians, especially children, stepping unexpectedly into the road. You should drive with the safety of children in mind at a speed suitable for the conditions.

206. Drive carefully and slowly when

- *in crowded shopping streets, Home Zones and Quiet Lanes (see Rule 218) or residential areas*
- *driving past bus and tram stops; pedestrians may emerge suddenly into the road passing parked vehicles, especially ice cream vans; children are more interested in ice cream than traffic and may run into the road unexpectedly*
- *needing to cross a pavement or cycle track; for example, to reach or leave a driveway. Give way to pedestrians and cyclists on the pavement*
- *reversing into a side road; look all around the vehicle and give way to any pedestrians who may be crossing the road*
- *turning at road junctions; give way to pedestrians who are already crossing the road into which you are turning*
- *the pavement is closed due to street repairs and pedestrians are directed to use the road*
- *approaching pedestrians on narrow rural roads without a footway or footpath. Always slow down and be prepared to stop if necessary, giving them plenty of room as you drive past.*

207. Particularly vulnerable pedestrians. These include:

- *children and older pedestrians who may not be able to judge your speed and could step into the road in front of you. At 40 mph (64 km/h) your vehicle will probably kill any pedestrians it hits. At 20 mph (32 km/h) there is only a 1 in 20 chance of the pedestrian being killed. So kill your speed …*