motoring news

Headlight

welcome

to 'Headlight', Dolmans Solicitors' motoring news bulletin.
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DOLMANS
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Carl Fletcher v Anthony Keatley (a minor) [2017]

A road traffic accident occurred in 2007 when the respondent was aged 17. He was a passenger in the appellant's car and suffered a mild head injury. At trial in 2016, there was an issue as to whether the respondent was exaggerating the symptoms from his injury.

Both parties called evidence from a neuropsychiatrist and a neuropsychologist. The judge found that the respondent had continued to suffer post-concussional syndrome until the end of 2009 and then suffered a somatoform disorder until he began work in 2014. The judge drew that conclusion from the evidence of the respondent's neuropsychiatrist, which he said was supported by that of the appellant's neuropsychologist, but the appellant's neuropsychiatrist disagreed with that diagnosis. The judge also found that by May 2009, there had been an overlay of 'deliberate' behaviour, as shown by his failure to co-operate with medical tests, and reduced by 50% the amount he would have awarded for PSLA to reflect the respondent's deliberate behaviour.

On appeal, it was held that the judge's conclusion in supporting the view of the respondent's neuropsychiatrist was one he had been entitled to reach on the evidence and his analysis was not defective for want of sufficient reasoning. The balance of the expert evidence clearly favoured the respondent. Moreover, the judge's decision of awarding 50% of what he would have awarded for PSLA could not be faulted. The respondent had proved some genuine adverse consequences of the accident in the 2009-13 period. Although it seemed probable that there was an element of exaggeration towards the end of the period, the experts could not fix the extent of the contribution of the deliberate behaviour and the judge had reached a pragmatic solution. The appeal was dismissed.

Nitin Trehan v (1) Liverpool Victoria Insurance Co Ltd (2) Asons Solicitors (3) Haroon Karim [2017]

The claimant had been involved in two road traffic accidents. A claims referral company, run by the third defendant, offered to make insurance claims on his behalf and asked him to attend two medical appointments. The first claim settled, but no settlement was reached on the second claim and the solicitors (second defendant) issued proceedings on his behalf. The solicitors corresponded with the claims company to obtain the claimant's signature to various documents.

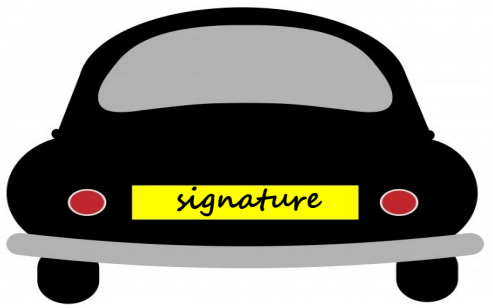
A date was set for trial and the solicitors telephoned the claimant to tell him that he was required to attend court. That was the first direct contact they had had with the claimant and he told them that the claims company was dealing with the matter.

The claimant did not attend trial, the claim was struck out and a costs order made against him. The claimant applied to set it aside on the basis that he had been unaware of the proceedings. He submitted that he had given no authority for a claim to be issued and he had no idea that the solicitors were purporting to act for him.

It was held that the third defendant had applied a forged signature to ten documents, including the Claim Form, Particulars of Claim, Disclosure Statement and Witness Statement. Other documents were forged by those at the claims company, a practice of which the third defendant endorsed. The claim had been commenced without the claimant's knowledge and a later realisation of what had happened did not amount to his adoption of the proceedings or make him liable for costs.

It was further held that the solicitors acted improperly, unreasonably and negligently. They had been deceived by the third defendant, but had they acted properly in obtaining their client's authority to any funding agreement and evidence of his identity, it would not have happened. Their gross failures made it wholly just for them to be liable for the costs of the unauthorised litigation.

The court held that the solicitors and the third defendant were liable to the first defendant insurer for all of the costs of the litigation on a joint and several basis. However, the third defendant's deliberate forgery of the claimant's signature was more culpable than the solicitor's conduct and responsibility was apportioned one third to the solicitors and two thirds to the third defendant.



Parsa v Smith (unreported) / Kathleen Whalley v Advantage Insurance Co Ltd [2017]

On 8 September 2017, HHJ Tindall, sitting in the Birmingham County Court, considered the defendant's liability for costs following late acceptance of the claimant's Part 36 offer in fast track proceedings under the fixed costs regime. The judge undertook a detailed review of various conflicting decisions (at circuit judge level) on whether, in such circumstances, a claimant's costs are payable on an assessed or fixed costs basis. The issue at hand was whether CPR 36.13 trumped the portal specific rule in CPR 36.20.

HHJ Tindall held that the defendant's liability for the claimant's costs fell to be determined under the RTA portal, specifically rule CPR 36.20, rather than under the general rule regarding costs where a Part 36 offer is accepted, namely CPR 36.13. As such, he ordered the defendant to pay the claimant's fixed costs as quantified under CPR 45.29C, which included the period during which the judge found the defendant had acted unreasonably in accepting the Part 36 offer. However, due to the frequency of this issue arising and conflicting circuit judge decisions on the point, the judge granted permission to appeal.

The same finding was made by District Judge Besford in **Kathleen Whalley v Advantage Insurance Co Ltd** in the Kingston Upon Hull County Court on 5 October 2017. Conflicting case law was considered and it was found that unless there were "exceptional circumstances" in accordance with CPR 45.29J, or "out of the norm" conduct to justify indemnity costs, the fixed costs regime would apply.

It remains to be seen whether the high court, or better still the court of appeal, provides clarification on the issue.

Graham Barnes v Nicholas Howard [2017]

The claimant and his father had been riding their motorcycles on a single carriageway A road in the countryside on a sunny, clear evening. The father was riding in front, passed several cars and moved through a staggered junction ahead. The claimant had been held up by the cars briefly and had not caught up with his father. The defendant entered the A road from a minor road, in front of the claimant (who he saw in his mirror) and wished to turn into another minor road so moved into the middle filter lane of the junction. However, the claimant had sped up and was attempting to overtake him on his right. The claimant's motorcycle collided with the nearside of the defendant's car, causing the claimant to sustain a severe brain injury with memory loss, several fractures and pain in his arm and knee. The claimant contended that the defendant was primary liable because he had moved into the middle lane when it was unsafe to do so.

The claimant's father had seen the collision in his mirror, but it was held that his evidence contained some embellishments.

The court did not accept that the claimant's flashbacks could be taken as the truth. He was trying to piece together the incident from hazy memories.

It was found that the claimant was travelling between 70 to 75mph shortly before the collision and had been sufficiently far away to lower his speed to avoid a collision. The impact with the rear nearside of the defendant's car supported the view that the claimant had made a last minute attempt to abort his overtake.

The court was satisfied by the eyewitnesses' evidence that the defendant had indicated before moving and it had been safe and reasonable for the defendant to decide that there had been sufficient space between himself and the claimant to move into the filter lane. It was held that the collision had been within the claimant's control and the defendant had not acted negligently in any way. The impact occurred because of the claimant's speed and actions and, as such, his claim was dismissed.

Gonzalez-Ramirez v First Eastern Counties Buses Ltd & Another [2017]

A road traffic accident occurred when the claimant, a pedestrian, was crossing the road on a dark, wet evening and was hit by a double decker bus.

The claimant and her partner had visited a castle which was in a pedestrianised area. Her evidence was that she looked both ways and after a single decker bus passed, she crossed the road to join her partner in seeking shelter from the rain. As she reached the far side of the road, she saw a double decker bus, driven by an employee for the defendant, was an arm's length away from her and whilst she tried to run back, she was struck by the bus. The claimant sustained a fractured skull and permanent brain damage.

It was held that the bus driver had driven the bus negligently. He had driven too fast and not kept a proper lookout. The 20mph speed limit reflected that the area in question was a non-vehicular area and a safe speed, given it was dark and raining heavily, would have been 10mph. It had been agreed between the parties' respective experts that the impact speed was 13mph, and before that the bus had been travelling at 16mph. It was held that had he been driving more slowly, he probably would have seen the claimant.

However, the claimant was also held at fault as CCTV footage showed that the bus should have been visible 8 seconds before she crossed the road. She had probably looked right, but not left. Even if she had looked left, her view would have been obscured by the single decker bus. It was held that she should have waited to cross the road until she had a clear view. Liability was apportioned 50% to the claimant and 50% to the defendant.

Joseph James Penn Revill (a protected party) v Philip Damiani [2017]

The claimant, who lacked capacity to litigate and was acting by his litigation friend, was seeking damages for injuries sustained in a road traffic accident. Liability had been admitted and, at a joint settlement meeting, a memorandum of agreement was prepared whereby the defendant agreed to make a lump sum payment to cover the claimant's losses. The discount rate for future losses was agreed at the then rate of 2.5%, with the proviso that if the rate was reduced before the court approved the settlement, there would be a re-calculation in accordance with the new rate. The discount rate was reduced 3 days after the meeting, considerably increasing the sum payable by the defendant. Before the court approved the compromise agreement, the defendant withdrew from it. The claimant challenged the defendant's right to do so and applied for an approval hearing. It was common ground that under CPR 21.10 a compromise agreement made with a protected party was not binding until it was approved by the court, unless the Human Rights Act 1998 led to a different result, and the defendant was entitled to withdraw from the compromise agreement.

The claimant sought a declaration that the defendant was bound by the compromise agreement because CPR 21.10 was incompatible with his rights under ECHR Article 14, read with Article 6. The issue was whether the requirement for court approval of the agreement under CPR 21.10 was a proportionate means of giving protection to protected parties. The court held that it was. CPR 21.10 is a long established and well known rule, and that permitting all parties to withdraw from a settlement before it was approved maintained a fair balance between them. Moreover, CPR 21.10 formed part of a series of rules which obliged the court to provide active case management which permitted the court to ensure that cases were managed proportionately, securing the good administration of justice and protecting relevant rights. It was held that CPR 21.10 was not incompatible with ECRH Article 14, read with Article 6, and the defendant was entitled to withdraw from the compromise agreement.

If there are any topics you would like us to examine, or if you would like to comment on anything in this bulletin, please email the editor:

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