motoring news

Headlight

welcome

to 'Headlight', Dolmans Solicitors' motoring news bulletin.
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Advantage Insurance Ltd v Christopher Ewere [2017]

The claimant insurance company applied for committal of the defendant for contempt of court after he had brought a personal injury claim against the driver of a car (which was insured by the claimant) who had struck a parked car. The driver alleged that she had been parking her car and had reversed into the defendant's car, but that nobody was in it. She went to a nearby house and spoke to two sisters, whom she knew. She asked who owned the parked car and they pointed her to the defendant's house. The defendant answered the door, while getting dressed, and they went to look at his car. The defendant's case was that he had been in the parked car when the driver had struck it. He alleged that he and the driver had spoken, he had returned to his house, later she knocked on his door and they returned to look at his car. Proceedings were issued, but the claim was dismissed as the judge found, on the balance of probabilities, that he had not been in the car. The claimant brought contempt proceedings, alleging that the nine statements in the particulars of claim and witness statements were false.

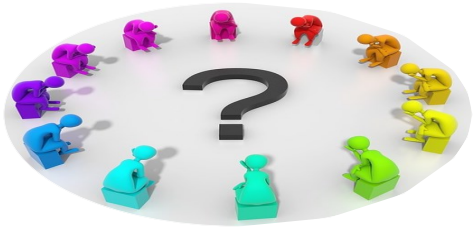
The question was whether the claimant had established to the criminal standard that the defendant had not been in his car. The most relevant evidence from the sisters was that the driver had asked to where the car's owner lived. That was consistent with her not knowing who the owner was and with the defendant's statement that he had not told her his name or number at first.

But if he had been at the scene as he said, it was inconceivable that he would not have given his name or asked for the driver's details, given her admission of fault. The driver's evidence of the first meeting being at the defendant's house tallied with his evidence and that of the sisters. It was clear beyond peradventure that that was their first meeting and there had been no earlier conversation. For contempt of court to be proved, the claimant had to show that the defendant had had no honest belief in the truth of his statements, that they were likely to interfere with the course of justice and that he had so known. Each of the grounds of contempt was made out because the defendant had not been in the car and so had not suffered any injuries due to the collision.

Liverpool Victoria Insurance Co Ltd v Mehmet Yuvaz & 8 Others [2017]

The claimant insurance company sought orders committing each of the nine defendants to prison for contempt of court after they had each brought claims for damages arising from an alleged car crash which was said to have been the fault of a driver insured by the claimant.

The claims involved three alleged crashes, two in September 2011 and one in November 2011, all quite close to one another in north London. The insurance company's primary case was that none of the alleged crashes happened. There were a number of suspicious features of the claims, including all the defendants being middle aged and of east European origin, all worked as cleaners living in the same area outside London and they were members of families that were related to each other. Moreover, each of the policies had been incepted within days of the alleged accident and all twelve of the vehicle occupants who intimated proceedings, using the same accident management company, were examined by the same medical expert on the same date.



It was held that each defendant was guilty of contempt of court. All had told deliberate lies from the outset. They lied in their witness statements, their schedules of loss and their statements of case in the county court. It was held that the crashes never happened and the defendants were not injured. The cars were not recovered or stored, nor did they take any vehicles on credit hire. The claims were thoroughly false and dishonest from the start. The occurrence of the accidents in north London, involving six different middle aged east European cleaners from Margate, who were many miles from home, and who were driving old cars which had only just been insured with the claimant, could not be mere coincidence.

There was no reasonable doubt that those who organised the insurance were intent on fraud and the inference was that the alleged victims were in one way or another participants in the fraud. Judgment was given in favour of the claimant accordingly.

Jacqueline Smith v (1) Lancashire Teaching Hospitals NHS Foundation Trust (2) Lancashire Care NHS Foundation Trust (3) Secretary of State for Justice [2017]

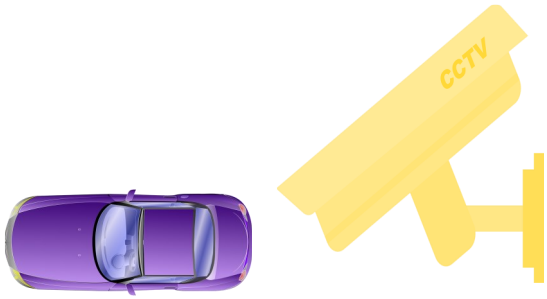
Although this is not a motor case, it has relevance in relation to fatal accident claims which often arise following road traffic accidents. The appellant, who had cohabited with her partner for over 2 years before he died, made a dependency claim under s. 1 of the Fatal Accidents Act [1976]. Under that section, a "dependant" included any person who had been living as husband, wife, or civil partner of the deceased for at least 2 years immediately before death of the deceased. The issue was whether s. 1A (2)(a) of the Act, which introduced the provision of bereavement damages, but only to spouses and civil partners, was incompatible with article 8 of the ECHR. The judge found that a claim to bereavement damages was not within the ambit of article 8 because there was no sufficiently serious infringement and because the absence of a right to compensation for the appellant's grief was only tenuously linked to respect for the family life which was enjoyed with the deceased.

On appeal, it was held that if a state had brought into existence a positive measure which, even though not required by article 8, was a modality of the exercise of the rights governed by article 8, the state would be in breach of article 14 if the measure had more than a tenuous connection with the core values protected by article 8 and was discriminatory and not justified. The court found that s. 1A of the Fatal Accidents Act was incompatible with article 14 to the extent that it excluded cohabitees of over 2 years from its scheme for bereavement damages. The appellant, who was in a long term relationship in every respect equal to a marriage in terms of love, loyalty and commitment, was sufficiently analogous to that of a surviving spouse or civil partner.

Aviva Insurance Ltd v Ahmed [2017]

The respondent made a claim against the applicant insurance company in the county court seeking damages for personal injury suffered in a three vehicle collision. He alleged that he had been driving in slow moving traffic, when he saw traffic building up ahead. He said he reduced his speed and then felt a sudden impact, followed by a second impact, suffering neck and shoulder pain as a result. The applicant's case, as per the defence that they served, was that the respondent had deliberately caused the accident by braking suddenly in front of another vehicle in order to make a fraudulent claim. The claim was allocated to the fast track and directions made, but when CCTV of the accident was served on the respondent's solicitors, they came off record.

The respondent then failed to pay the required hearing fee or file the listing questionnaire. An unless order followed, but the respondent played no further part in the proceedings. At the hearing, a district judge found that the claim had been fundamentally dishonest and ordered the respondent to pay costs of over £10,000. The applicant applied for permission to bring committal proceedings for making false witness statements. They made repeated attempts to effect personal service on the respondent and wrote to him on a number of occasions and at various addresses. He did not respond and did not appear at the hearing. He also failed to pay the costs order and was made bankrupt.



The hearing proceeded in the respondent's absence. The court was satisfied that the respondent had received notification of the proceedings, had had sufficient time to respond and had provided no reason as to why he had not engaged with the proceedings. The court held that the footage established beyond reasonable doubt that the respondent's version of events was false. He knew his claim was fundamentally dishonest as he had caused or contrived the accident. The court found, in sentencing the respondent, that his serious dishonesty stuck at the foundation of the justice system. He was sentenced to 9 months imprisonment on each of his three false statements, to run concurrently, and a committal warrant was issued.

(1) Lorna Howlett (2) Justin Howlett v (1) Penelope Davies (2) Ageas Insurance Ltd [2017]

The appellant and her son had claimed damages for personal injuries and financial loss allegedly suffered as a result of a road traffic accident caused by the first defendant's negligence. They were passengers in the first defendant's car. The insurer did not accept that the accident happened "as alleged, or at all". No positive case of fraud was asserted, but it was stated that credibility was in issue. The insurer suggested during the trial that the appellant, her son and the first respondent had actively sought to deceive the court. The judge found the claim to be fundamentally dishonest for the purposes of CPR 44.16(1) and ordered that it should be dismissed, with permission to enforce a costs order. The appellant appealed the decision.

The issue was whether a trial judge could find that qualified one way costs shifting had been displaced without fraud having been alleged in the defence. It was held that it could. The fact that a party had not pleaded dishonesty would not necessarily bar a judge from finding a witness to have been lying or from finding that the claim was fundamentally dishonest.

The pleading had given the appellant sufficient notice of the points the insurer intended to raise at trial. The appellant could not fairly say that she had been ambushed. The appellant also argued that they had not been cross-examined on the basis that the claim was dishonest, but the district judge disagreed. He said that the insurer's case had been "put fairly and squarely" and that every opportunity had been given to the appellant and her son to defend themselves. The district judge was, therefore, entitled to find that the claim was fundamentally dishonest and that CPR 44.16(1) applied because the points had been adequately foreshadowed in the insurer's defence and sufficiently explored during oral evidence.

Charli Lewington v Motor Insurers' Bureau [2017]

The appellant had been driving at night on an unlit road and was seriously injured after she swerved to avoid two large earthmovers which had been stolen from a quarry and were being driven slowly without any rear lights. The drivers of the earthmovers made off and the appellant applied to the MIB for compensation under the Untraced Drivers' Agreement [2003]. The MIB refused her application on the ground that the earthmover was not a "motor vehicle" within the meaning of s. 185 of the Road Traffic Act [1988] and so the drivers had not required insurance to drive them on public roads. The appellant appealed to the arbitrator, who found that a reasonable man would not consider that the earthmover was "intended or adapted for use on roads" as was required under s. 185 and Directive 2009/103 art. 1.

The appellant appealed, and in doing so she argued that the arbitrator had applied the wrong test. She said that the "Marleasing" principle should have been applied.

It was held that the relevant test was whether "a reasonable person looking at the vehicle would say that one of its users would be a road user". The arbitrator had erred in law when he said that a reasonable person would not have contemplated the use of the earthmover on a road unless that use had been lawful. An item could be used on a road in circumstances where its use on a road was unlawful. A reasonable person would contemplate what thieves and criminals might do and might use the item to do, such as take it from a quarry and drive it, as part of a theft, on public roads. It was, therefore, held that an earthmover was a motor vehicle within the meaning of s. 185 and required to be insured under s. 145 of the Road Traffic Act [1988] and, consequently, the MIB was liable to the appellant.

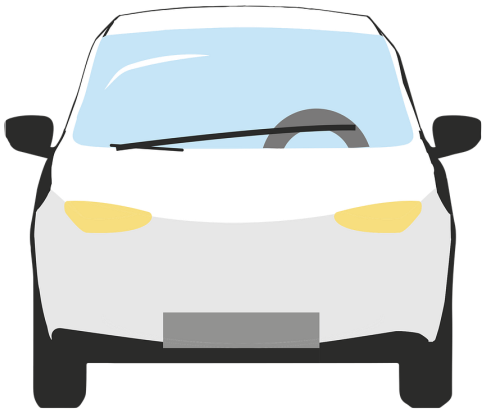
Roadpeace (claimant) v Secretary of State for Transport (defendant) & Motor Insurers' Bureau (interested party) [2017]

The claimant road safety charity claimed that domestic legislation, concerning compulsory motor insurance and compensation for victims of uninsured and untraced drivers, contravened EU law.

The court was required to determine whether section 143, 145 and 151 of the Road Traffic Act [1988] were compatible with Directive 2009/103, which obliged Member States to ensure that civil liabilities arising from the use of vehicles were covered by insurance, given that the sections allowed insurance policies to limit insurance, for example to "social, domestic or pleasure use" or exclude cover for "deliberate damage" or "road rage". The court also had to consider whether UK law was compatible with the decision in *Vnuk*, where it was directed that compulsory insurance may be required for vehicles driven solely on private property, and whether the meaning of "accident" in regulation 2(1) of the European Communities (Rights Against Insurers) Regulations [2002] breached the Directive because it was confined to accidents "on a road or other public place in the United Kingdom".

It was held that there was no incompatibility between a restriction on the scope of the use covered in an insurance contract, including "road rage" and "deliberate damage", and the requirements of the Directive.

Insurance would be more expensive if all potential uses were subject to the requirement to obtain compulsory insurance. The secretary of state accepted that *Vnuk* widened the scope of the compulsory insurance obligation and that amendments to legislation and to the MIB agreements were required. However, to set aside any part of domestic legislation would cause chaos and with the scope of the judgment in *Vnuk* being unclear, and the European Commission considering legislative amendment of that Directive, the court directed that it would hear further submissions as to whether a timetable should be made for legislative amendment. The secretary of state also accepted that the limitation of the definition of "accident" breached the Directive.



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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