motoring news

Headlight

welcome

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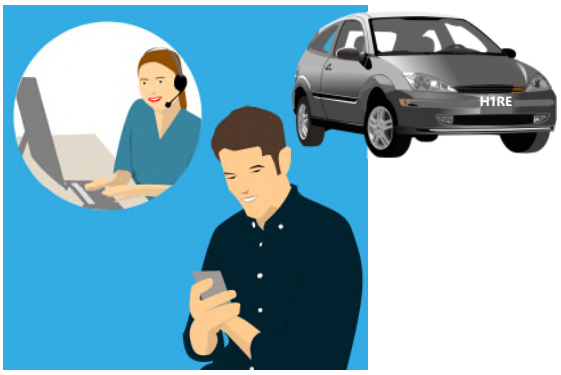
DOLMANS SOLICITORS

Parker v Skyfire Insurance Co Ltd

This case revolves around a road traffic accident and the subsequent claim for losses, including credit hire charges and other fees, made by the claimant. Following the accident the claimant immediately attempted to notify his insurers. He googled their name and rang the first number in the list of search results. Unbeknownst to him, he was, in fact, speaking to Spectra, a claims management company, who told him that he would be put in touch with a hire company who would arrange for his car to be repaired.



The defendant objected to the claim on several grounds, including the enforceability of the credit hire contract. They suspected that some misrepresentation was made during the claimant's discussions with Spectra. The defendant argued that if any misrepresentation were made the agreement would be voidable for misrepresentation, and that if the claimant were to avoid it he would not be under any subsisting liability to pay the credit hire charges and would not have suffered any corresponding loss, with the result that the defendant would be relieved of any obligation to indemnify.

The defendant applied for non-party disclosure of the recordings of all calls between Spectra and the claimant in relation to the accident, vehicle damage and replacement vehicle. The defendant believed that these recordings might support its case on misrepresentation.

The court dismissed the appeal, stating that, even if the Application were granted, the defendant would be unable to establish any circumstances in which the claimant would be relieved of his liability under the contract with Spectra. Therefore, disclosure could not be regarded as necessary for the fair disposal of the claim. The court also discussed "Google-spoofing", where companies pay Google to ensure that they appear at the top of a particular list of search results, stating that, in the absence of fraud or misrepresentation, so-called "Google-spoofing" did not necessarily involve anything illegal. The court noted that while this practice might be objectionable, it was not necessarily illegal and could only be addressed by Parliament, the Financial Conduct Authority or other industry regulators.

Ibrahim v AXA Belgium

This matter concerned a claimant, Mr Ibrahim Rahman, who sustained complex life changing injuries in a road traffic accident in Belgium. The driver responsible for the accident, a Belgian, was insured by AXA Belgium, who admitted liability prior to proceedings being issued.

The claimant later issued proceedings and the defendant's UK solicitors confirmed that they were nominated to accept proceedings. The defendant's UK solicitors filed and served an Acknowledgment of Service and a subsequent Defence, reiterating its admission of liability, but no points on jurisdiction were taken. At the same time, the defendant instructed Belgian solicitors, who issued and served Belgian proceedings on the claimant, asserting that the courts of Belgium had exclusive jurisdiction. The claimant applied for Judgment on the admission contained in the Defence.

The defendant, through its UK solicitors, cross applied, under CPR r.11.1, for a declaration that the court should not exercise its jurisdiction over the claimant's claim and applied for a stay of proceedings. However, the Application was made 30 days after filing the Acknowledgement of Service, contrary to the 14 day time limit specified in r.11.1(4). The defendant's explanation for the breach of the 14 day time limit was that there had been a misunderstanding between it and its UK agent, AXA UK, through whom the UK solicitors had received instructions, and that it had been unaware of the English proceedings.

The court refused the defendant's Applications for relief from sanctions and an extension of time for applying for a stay. The court considered the breach to be serious and significant, and found no good reason for it. The court also dismissed the defendant's Application for a stay of the claim.

It found that the defendant had not demonstrated that the Belgian court was the more appropriate forum. Furthermore, it would be unjust to confine the claimant to pursuing his claim in Belgium, given the medical evidence and the fact that the claimant did not speak or understand Dutch, the language of the Belgian court.

Thakkar v Mican

The incident in question was a road traffic accident that occurred on 18 May 2017. The claimants and the first defendant had different accounts of the accident. The second defendant was the first defendant's insurer. At a Costs Case Management Conference on 6 May 2021, the defendants unsuccessfully applied for permission to amend their Defence to plead fundamental dishonesty. The trial took place on 19 to 20 April 2022 and the Judge found in favour of the claimants.

The Judge decided that the claimants' costs up to 6 May 2021 should be assessed on the standard basis. The Judge also held that the claimants' costs of the trial (after 18 April 2022) should be assessed on the indemnity basis because the claimants had bettered a CPR Pt 36 offer. The claimants argued that in Commercial and Chancery cases failed allegations of fundamental dishonesty attracted a "presumption" that indemnity costs would be awarded, and that the same approach should apply in personal injury cases. The claimants submitted that there was a presumption or "starting point" in favour of indemnity costs where allegations of fundamental dishonesty had been rejected. However, the appeal was dismissed.

The Court of Appeal held that there was no presumption or reversal of the ordinary burden of proof where allegations of fundamental dishonesty failed. Whether an award should be made for indemnity costs would always depend on the circumstances of the particular case, and the Trial Judge retained a complete and unfettered discretion. The default position was always that standard costs would be assessed and paid, unless the party seeking indemnity costs could demonstrate why they were appropriate in all the circumstances. The Trial Judge had applied the correct test when making the Costs Order and had express regard to all the relevant circumstances.

The Court of Appeal considered that the Trial Judge's Judgment was not perverse and was a conclusion that was open to her in all the circumstances.

Butt v Gargula

This matter involved a claimant who brought proceedings against the defendant following a road traffic accident which occurred in January 2019. The defendant denied that the accident occurred due to their negligence and argued that the impact was not sufficient to cause any injury or damage beyond minor scraping. The defendant described a woman, Ms Begum, arriving at the scene of the accident about 45 to 50 minutes after the collision. The claimant confirmed that Ms Begum was in a car behind him at the time of the accident and that she came out of her car after the accident to check if everyone was okay. The claimant maintained that he did not know Ms Begum prior to the accident.

The claimant subsequently served a Witness Statement from Ms Begum, alleging that she was an independent witness. The defendant's investigations revealed that the claimant and the alleged witness had residential links to five properties, were both directors of the same company and were both involved in a road traffic accident less than 12 months after the index collision. The defendant applied to strike out the claim on the basis that the claimant's activity, which they contended was dishonest, was "likely to obstruct the just disposal of the proceedings". No evidence was submitted on behalf of the claimant or Ms Begum to challenge the material relied upon by the defendant in the Application.

HHJ Brown found that the claimant had acted dishonestly in putting Ms Begum forward as an independent witness. As such, HHJ Brown, granted the Application and struck out the claim. The decision was based on the test formulated in *Excalibur & Keswick Groundworks Ltd v McDonald [2023] EWCA Civ 18* which questions if a litigant's conduct is of such a nature and degree as to corrupt the trial process so as to put the fairness of the trial in jeopardy. The claimant was ordered to pay the defendant's costs of the action on the indemnity basis and QOCS was disapplied.

Robinson v Murphy

The incident in this matter occurred in 2019, during a social weekend in the Lake District, when Robinson's group's taxi was involved in a collision. Robinson was a senior partner of a law firm and all members of the group pursued a claim against Murphy. One of the members of the party, James Gibson, made a claim through Robinson's firm for whiplash, with a medical report produced stating he had pain and stiffness of the neck and emotional upset. Robinson signed a Statement of Truth which said that the facts stated in Gibson's claim were true, including that he was in the car with the group. Murphy's insurer agreed to compensate Gibson. However, subsequent dashcam footage showed that Gibson was not a passenger in the taxi, and Judgment was subsequently entered against him for £5,916.

The court heard that Robinson was said to be in 'disbelief' at finding out that five not six passengers were in the vehicle at the time of the collision. Robinson stated that he had been misled by Gibson and, when he discovered that Gibson was not a passenger, he told Gibson to repay his damages and stated that he would no longer act for him.

The insurer brought contempt proceedings against Robinson on the grounds that, as a Legal Executive since the 1990s, he knew the importance of a Statement of Truth. Robinson told the court that at all times he believed Gibson had been in the vehicle, even though his recollection of events were limited after a 'boozy night out'. It was only when he saw the dashcam footage that he realised that someone was missing from the vehicle. The court held that it could not be sure that Robinson knew that the statements he had made were not true. There were alternative reasonably credible explanations, and there was cogent evidence in support of Robinson's position. Given the reasonable doubts as to Robinson's liability for contempt, the court dismissed the Application for committal.

Mehmood v Mayor

The claimant brought a claim for serious injuries arising from a road traffic accident in January 2019. As a consequence, the claimant suffered a severe brain injury, which he alleged caused a lack of capacity. The defendant admitted primary liability, but contested the claimant's capacity and alleged fundamental dishonesty under section 57 of the Criminal Justice and Courts Act 2015 on account of surveillance evidence. The claimant sought retrospective approval for a £10,000 interim payment and an additional £75,000 for rehabilitation.

The court considered the approach to applications for interim payments pursuant to CPR 25.7 as outlined in the case of *Cobham Hire Services v Eeles*. The defendant argued that the claimant had not satisfied the pre-condition for an interim payment because of the plea of fundamental dishonesty. The court concluded that it could not determine a 'reasonable proportion of the likely amount of the final Judgment' due to the wide range of potential outcomes at trial.

The court found that the defendant's plea of fundamental dishonesty meant that the requirement of CPR 25.7(1)(a) was not satisfied. The court dismissed the Application for interim payments and left the issue of fundamental dishonesty to be addressed at trial. The court acknowledged that this decision could cause injustice to the claimant if they were to succeed at trial without the benefit of the interim payments for recommended rehabilitation and therapy, but the requirements for ordering an interim payment were not met.

Amini-Edu v Esure Insurance Co Ltd

A personal injury claim for £80,000 was made following a road traffic accident on 16 November 2018. The claim was settled for £40,000 via the MOJ portal. The claimant sought fixed costs of £10,992, including £2,916 for a pain management medical expert report. The defendant disputed this fee, as the sum due to the Medical Referral Agency was not disclosed. The defendant applied for a breakdown of the disbursement, while the claimant applied for determination of their fixed costs and disbursements. The Agency refused to provide a breakdown of the fee due to "commercial sensitivity" and argued that it was not necessary, for reasonableness and proportionality, to be considered. The claimant argued that the fixed costs regime applied and that the court should assess the disputed charges on a broadbrush basis without needing the breakdown demanded by the defendant.

The Judge disagreed with the argument that providing a breakdown of the fee would be disproportionate and emphasised the importance of transparency. The Judge stated that it is for the claimant to establish proportionality and that the paying party is entitled to know who is being paid what and what for. The Judge rejected the submission that £2,916 was prima facie proportionate, and assessed costs in the sum of £750 plus VAT for the index report, unless the breakdown was forthcoming. Permission to appeal was refused.

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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