motoring news

Headlight

welcome

to 'Headlight', Dolmans Solicitors' motoring news bulletin.
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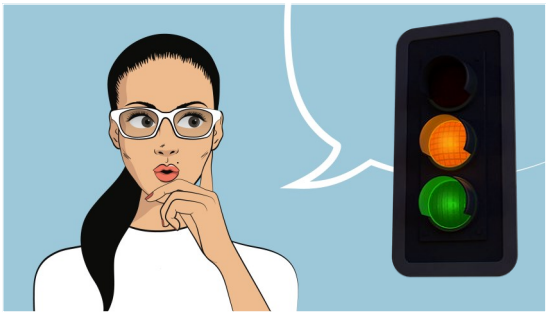
Gadsby v Hayes

On 31 October 2014, a 12 year old girl was hit by a car while crossing a pedestrian crossing. The trial focused on determining liability. The claimant's case relied on her sister Kacie's evidence, who was 11 years old at the time.

Kacie stated that the pedestrian lights were green when her sister started crossing, but she called her back after seeing a potential threat. The defendant argued that the lights were green for her and red for pedestrians, claiming the claimant ran into the road without looking. The defendant claimed to be aware of the crossing and the presence of children, thereby approaching at about 20 mph and slowing to 15 mph.

Kacie provided her statement nearly a year after the accident and again 4 years later. The defendant gave a statement to the police 25 minutes after the accident claiming the lights were green for her and that she had been driving under 30 mph.

The judge found the defendant's oral evidence somewhat confused and inconsistent, but not self-serving. Two witnesses supported the defendant's account. The first witness gave a statement to the police in January 2015, confirmed by a statement in September 2021. He stated the traffic lights were green for vehicles, red for pedestrians and that the claimant was hit as soon as she stepped onto the crossing.



The second witness provided a statement to the police in November 2014. She saw the wait sign illuminated and the red man showing on the pedestrian crossing. She saw a young woman step into the road, appearing to try to run across. She could not definitively say the traffic light colour for the car, but her best guess was that it was either amber or green but not red.

Kacie gave evidence which confirmed she was in shock after the accident and the accident had had a significant impact on her and her family, causing nightmares and flashbacks. The judge noted that no statement was taken from Kacie at the time of the accident. She provided statements nearly a year later and again 4 years later when she was 15 years old.

The judge remarked that it would be challenging for anyone, especially a traumatised 11 or 15 year old, to accurately recall events years later. Although Kacie's evidence was honest, the judge preferred the contemporaneous accounts given by the defendant and the two independent witnesses. As such, the judge dismissed the claim.

Mazahar Hussain v EUI Limited

The case revolves around a credit hire claim by Mr Hussain, a self-employed taxi driver. His car, which he used for both business and private purposes, was damaged in the accident and he sustained a whiplash type injury. He hired a replacement taxi for 162 days at a cost of £33,140.52. That sum significantly exceeded the profit he would have lost had he been without a car over that period. The defendant conceded liability for the accident and agreed on sums for personal injury and vehicle damage, but disputed the hire charges.

The primary issue was whether Mr Hussain could recover these costs under the exceptions established in the 2019 Hussain v EUI case. In the 2019 ruling, it was determined that only loss of profit is recoverable for profit-earning vehicles unless the claimant meets one of three exceptions: (a) Operating at a loss to maintain a valuable trade, contract or relationship, (b) Needing a vehicle for both business and private use or (c) Impecuniosity - inability to afford not to work.

In the 2024 follow-up case, Mr Hussain failed to prove he fell within exception (a) and did not attempt to establish exception (c). He partially established exception (b), but lacked evidence of pre-accident profitability, pro-rata loss of profit during car repairs and potential long-term impairment of his trade. Without this evidence it was unreasonable for him to hire a vehicle at £203.46 per day without considering profitability or impairment. As a private motorist, he could only recover charges for private motoring and not for business use. Therefore, he was limited to recovering hire charges at the "spot" rate for private use over 5 weeks, which was deemed sufficient time to repair his car.

Ali v HSF Logistics Polska Sp. Z O.O

The defendant's ('D') lorry negligently drove into the claimant's ('C') parked car, causing damage which rendered it undriveable. While the car was being repaired, C hired a replacement vehicle on credit hire. Total hire charges were £21,588.72.

Whilst there was no evidence that C's car had been unroadworthy prior to the accident, the last MOT certificate for the car had expired 4½ months before. The trial judge found that C had been 'careless' in this respect and there was no evidence that he had intended to obtain a new MOT certificate.

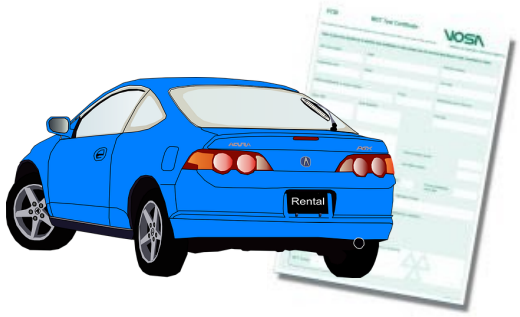
D disputed the claim for recovery of hire charges and averred, inter alia, that as the car did not have a valid MOT during the period of hire the claim for hire charges was ex turpi causa.

A separate 'causation defence' was pursued asserting that because there was no valid MOT C had suffered no compensable loss. That is, in the absence of a valid MOT, it was not possible at the time of the accident for C to lawfully drive the car on the road. Therefore, it was not a reasonable act of mitigation of his loss to hire a replacement vehicle. C had no loss of use claim because he did not have a vehicle which he could lawfully use on the road and he was not entitled to be put in the position of having a car which he could legally use on the road whilst his car was being repaired.

The trial judge found that C had been using the car regularly for work and domestic purposes and, subject to the defences raised, it was reasonable for C to hire a replacement vehicle. The trial judge held that the doctrine of ex turpi causa did not preclude recovery of the hire charges, but accepted the causation defence. This decision was upheld on C's first appeal. C appealed to the Court of Appeal.

The Court of Appeal concluded that there was a fatal flaw at the heart of D's submissions on the causation defence, comprising the assertion that C had suffered no loss as a result of D's tort. This error stemmed from a failure to appreciate the nature of a claim for 'loss of use'. Relevant case law explains that the loss being compensated is inconvenience; the lack of advantage and inconvenience caused by not having the use of a car ready at hand and at all hours for personal and/or family use. The fact that a claimant does not have a valid MOT certificate for the car does not alter the fact that they have been deprived of its use or the fact that this deprivation would have caused inconvenience but for the hiring.

The absence of a valid MOT meant that when satisfying his need for convenient transport, C had been committing an offence and exposing himself to the risk of prosecution. The trial judge's finding that the hire charges claim was not barred by the principle of ex turpi causa was clearly right. The criminal offence of failing to obtain an MOT certificate is a relatively minor offence. It would be disproportionate to refuse the claim on the grounds of ex turpi causa.



The court considered that D's causation defence was ex turpi causa by another name and without the essential requirement of proportionality. The argument underlying D's causation defence was not that C had suffered no loss of use, but that damages ought not to be recovered for loss of use where the use of the original vehicle would have had adverse legal consequences for C as a matter of criminal law. The causation defence was not a proportionate response to this.

Accordingly, C's appeal was allowed.

As it was not raised in this case, the court left open the issue of whether there may be relevant arguments to be had in other cases in relation to the issue of reduction of damages to reflect the chance of criminal prosecution and/or fine and disqualification.

Powszechny Zaklad Ubezpieczen v Alton

The claimant was injured in a collision with a lorry with a Polish number plate. The claimant's solicitors wrote to InterEurope AG European Law advancing the claim and asking for details of the insurer. Liability was admitted, but the identity of the insurer was not provided.

Proceedings were issued in the county court, with InterEurope named as the defendant. The claim was, therefore, issued against the wrong party.

A Defence was filed which denied liability on the basis that InterEurope was not the insurer of the vehicle (but their claims handler).

The claimant sought, and was granted, permission to amend the Particulars of Claim to substitute the Polish insurer as the defendant. However, that amendment did not correctly identify the relevant provision/ cause of action against the insurer.

The defendant sought to strike out the claim and a district judge allowed the application.

The claimant sought permission to appeal and to (further) amend the Particulars to plead the correct cause of action against the insurer.

The claimant's appeal was successful in setting aside the striking out. It was held that the decision to strike out the claim was a disproportionate response and outside the judge's reasonable discretion.

The defendant appealed to the Court of Appeal.

The Court of Appeal held that the judge should have considered whether a defect in the pleading could have been remedied and imposed an unless order providing for strike out unless a timely application to amend was made. The judge did not advert to, or take account of, the balance of prejudice to the claimant of being deprived of her claim if it were struck out and the prejudice to the defendant in having to meet it if it were not struck out. These were not the only factors to be taken into account, but they were the important ones.

The balance of prejudice had militated strongly in favour of dismissing the strikeout application. If struck out, the claimant would lose a claim for which liability was unlikely to be an issue, to put it at its lowest and the quantum of which was to a large extent simply not admitted rather than denied. By contrast, the defendant would suffer no prejudice by reason of the defective pleading cured by amendment and would have the opportunity to revisit such amendment on limitation grounds when the application to amend was heard. Any costs prejudice could be addressed by a costs order.

The judge was clearly entitled to reach the conclusion that the claim should not be struck out. His reasoning disclosed no error of principle and was not outside the generous ambit of his discretion. Accordingly, the defendant's appeal was dismissed.

Yordanov v Vasilev / Atanasov v Vasilev

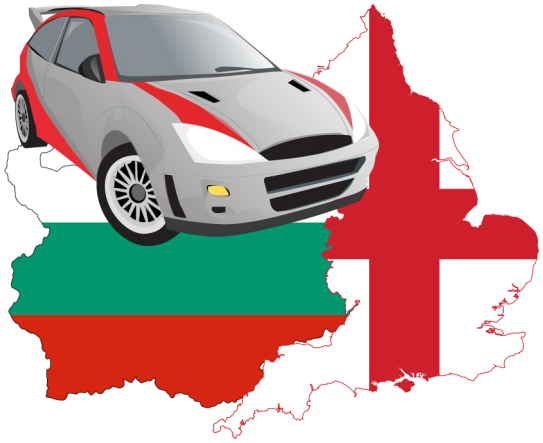
The case revolves around a high-speed collision which occurred in July 2019 on a country lane. The accident involved two cars, driven by Alyosha Angelov and Vladimir Atanasov who were racing at speeds approaching 80 mph. The collision resulted in the death of Mr Angelov and serious injuries to Mr Atanasov and the occupants of Mr Angelov's vehicle.

The court had to determine liability in both claims, choice of law in the Yordanov claim, contribution between the defendants in the Yordanov claim and Atanasov's contribution to his own injuries. The court found that both drivers were equally culpable for the collision.

A significant aspect of the case was determining whether Bulgarian or English law should apply. This was crucial because the drivers and some of the claimants were Bulgarian nationals. The court had to interpret Article 4 of the Rome II regulations, which governs the applicable law for non-contractual obligations in cross-border disputes.

As such, the court examined whether the parties were habitually resident in Bulgaria or England at the time of the accident. This determination would influence which country's law would apply under Article 4(2) of the Rome II regulations.

The fifth defendant, a Bulgarian motor insurer, argued that Bulgarian law should apply because both the person claimed to be liable (Atanasov) and the person sustaining damage (Yordanov) were habitually resident in Bulgaria. However, the other parties contended that English law should apply as the accident had occurred in England.

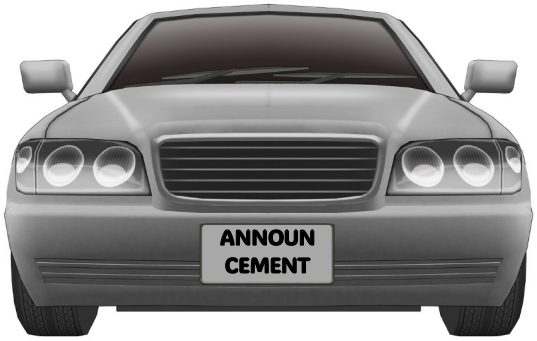


The judge concluded that both Yordanov and Atanasov were habitually resident in Bulgaria, thus initially applying Bulgarian law. Despite the initial application of Bulgarian law, the court found that the tort was manifestly more closely connected with England. Factors included the location of the accident, the involvement of English emergency services and the significant medical care received in England.

As such, English Law was applied to Yordanov's claim. Atanasov's damages were reduced by 20% for not wearing a seatbelt and by 50% for his negligent driving.

The Lord Chancellor announces the new Personal Injury Discount Rate (PIDR) applicable from 11 January 2025

On 2 December 2024, the Lord Chancellor (Shabana Mahmood MP) announced that the new PIDR for England and Wales would be fixed at +0.5% from 11 January 2025. Shortly after, The Damages (Personal Injury) (England and Wales) Order 2024 (SI Number 2024 No. 1261) was published (albeit dated 28 November 2024).



This is the first time a positive PIDR has been implemented in England and Wales for several years. Inevitably, in that context, it represents (limited) good news for insurers and defendants, as, generally, it will produce somewhat decreased multipliers – particularly in relation to cases where significant periods of future loss are applicable.

The expert panel had recommended a range of PIDR of between +0.5% and +1.5%. Within that range, therefore, the Lord Chancellor has taken what might be considered a cautious approach in adopting the lowest recommended PIDR at +0.5%. Inevitably, any PIDR is a compromise and, like what has been said of all good compromises, engages a degree of disappointment on all parties involved. As the advice of the expert panel put it, "No single PIDR will be exactly right for all claimants …".

We now have a single PIDR (rather than multiple rates for differing types of claimants) and a consistent PIDR across all 3 "home" legal jurisdictions, thus reducing complexity in the market. The question now is if we will see an increased appetite for Periodical Payment Orders – time will tell.

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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