motoring news

Headlight

welcome

to 'Headlight', Dolmans Solicitors' motoring news bulletin.
In this edition we cover:

case summaries

- **committal**

  Liverpool Victoria Insurance Co Ltd v Hall [2019]

- **costs**

  Panayot Ivanov v Steven Lubbe [2020]

- **credit hire**

  Jack v Borys [2019]

- **interim payments**

  (1) Alexander Hardman (2) Ethan Rose (3) Finley Hardman (4) Noah Hardman (by their mother and litigation friend, Kirsti Rose) v Estate of Oliver Davies (deceased) [2019]

  Paris v Brown & Another [2020]

article

- **new rules for pleading credit hire claims**

spring 2020

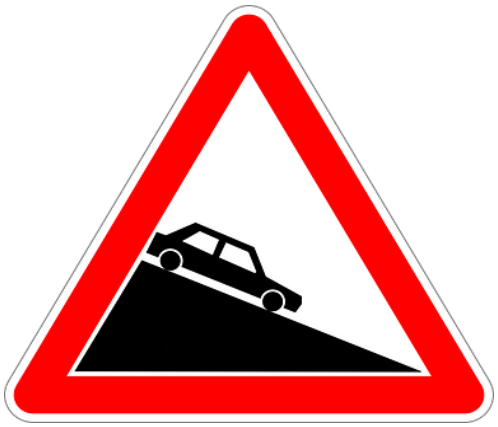
DOLMANS
SOLICITORS

DOLMANS SOLICITORS

Liverpool Victoria Insurance Co Ltd v Hall [2019]

An insurance company applied for committal for contempt of court after the respondent had made false statements in a personal injury claim. The respondent had claimed to be a passenger in a car which was involved in a minor accident and alleged that he had suffered injury. The applicant insurance company insured the driver of the car. The insurance company replaced the driver as the defendant in the proceedings and entered a defence contending that the respondent had not been a passenger and his claim was fundamentally dishonest. The respondent's solicitors ceased to act for him and he did not respond to directions for trial. It appeared that the respondent had abandoned the claim and it was struck out on the basis that it disclosed no reasonable cause of action and was an abuse of the court process. The applicant then issued proceedings for committal for contempt of court based on the respondent's false statements which had, or were likely to, interfere with the course of justice. The court heard oral evidence from the driver of another car and a driving instructor who had arrived at the scene of the collision moments after it had happened, both of whom testified that the driver of the car was alone. The respondent wrote to the court before the hearing stating that he pleaded guilty, but could not attend as he was away. The respondent told the court that he had been pressured into making the claim, that he was living hand to mouth and that his life had been on a downward slope.

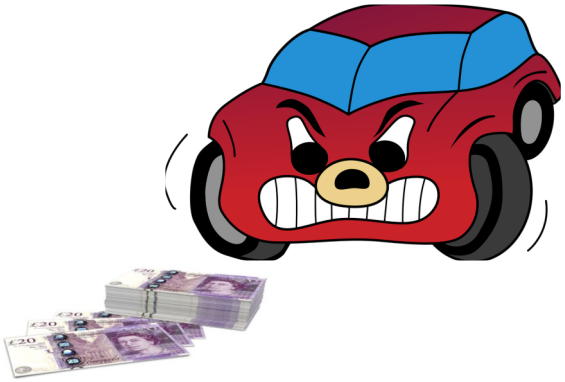
The court noted that the respondent's Claim Notification Form, Claim Form and Particulars of Claim had all been supported by sworn statements of truth. The court also accepted the oral evidence from the witnesses and acknowledged that the respondent's admission was clear and consistent with the evidence. Although the respondent was unable to attend, the court was satisfied that he was fully on notice of the application and that it should proceed in his absence. The court found that the respondent had not been a passenger in the car and the applicant insurance company had proved its case beyond reasonable doubt. The statements that the respondent had signed were false in a way that interfered with the administration of justice. If the claim had succeeded, that would have been a grave miscarriage of justice. Although the respondent had not engaged with the application appropriately or provided an adequate explanation for his failure to attend, the court was not prepared to sentence in his absence where a custodial term was in prospect. The application was adjourned for sentence to allow the respondent to seek legal advice and make submissions.



Panayot Ivanov v Steven Lubbe [2020]

In a low value claim for personal injury following a road traffic accident, the parties agreed costs, except the issue fee. The respondent questioned his liability to pay the hearing fee on the basis that the appellant, who was unemployed, would have been entitled to fee remission had he applied, so the fee had been unreasonably incurred. The appellant issued an application under CPR 23 seeking payment. At first instance, a district judge dismissed the application, ruling that where CPR 36.20 was engaged, a deemed order for costs arose, so a dispute over recoverable disbursements could only be determined by detailed assessment proceedings; a free-standing application under CPR 23 could not bypass that procedure.

On appeal, it was held that CPR 36.13 simply provided for the costs consequences following acceptance of a Part 36 offer. It did not make an order, so there was no right to begin detailed assessment proceedings (as provided for by CPR 44.9). CPR 36.20 created a regime whereby a claimant was entitled to costs which were quantified in accordance with tables 6B to 6D and, as such, it did not perform the function of CPR 44.9 of deeming a costs order to be made in the claimant's favour. As the costs were fixed, there was no need for assessment. Thus, an analysis of CPR 36.20 led to the conclusion that there was no costs order made under CPR 36 in a fixed costs case and a party seeking to involve the court's costs jurisdiction had to do so via an application under CPR 23.



As for the disputed issue fee, the court considered CPR 44.3, which made it clear that the burden of proof was on the receiving party to satisfy the court that the costs were reasonable and proportionate. The court expected litigants of modest means, even those that are unrepresented, to apply for fee remission. However, utilising fee remission did not mean that a claimant had incurred no loss, it meant only that the public purse was depleted by the amount that the claimant would otherwise have paid. Therefore, the court was simply deciding whether the public purse or the tortfeasor should bear the loss, and it was found that it was not unreasonable for the appellant to pass the costs of wrongdoing to the respondent. Accordingly, the appeal was allowed.

Jack v Borys [2019]

The claimant was involved in a road traffic accident on 1 March 2018, for which the defendant's insurers admitted liability. The claimant was driving a Vauxhall Combo van, which was written off as a result of the accident.

The claimant established he was impecunious in the context of 'credit hire' and consequently entered into a credit hire agreement for a replacement vehicle.

The claimant pursued a claim for the cost of hiring the alternative, replacement van, but, at the time of the accident, the claimant's Vauxhall van did not have a valid MOT certificate and the defendant submitted that the claimant was placing himself in a better position by hiring a vehicle which had a valid MOT certificate and should, therefore, not be able to recover the cost of that hire. Based on the above submission, on 8 August 2019, District Judge Phillips declined to allow the claimant to recover the costs of a hire vehicle, stating that, immediately prior to the incident, the claimant did not have a roadworthy vehicle, but subsequently acquired one as a result of the credit hire agreement, therefore, placing himself in a vastly improved position as a result. The claimant appealed and HHJ Freedman disagreed, considering that reasoning as flawed. HHJ Freedman considered that not having an MOT certificate was only a minor infringement of the regulations, but it did not mean that the claimant did not have a roadworthy vehicle. HHJ Freedman noted that DJ Phillips' reasoning was based on betterment, but did concede that where the hired vehicle is far better and more powerful, then that would be deliberate betterment and a claimant would not be entitled to recover the hire charges.

However, Freedman determined that was not the situation in this case because one had to ask what else could the claimant do but hire a vehicle which had a valid MOT certificate? There was no other option available to him and he hired a vehicle that was comparable to the Vauxhall Combo van that he was driving at the time of the accident. Freedman concluded stating that DJ Phillips' had approached the matter incorrectly and looked at it from the perspective of what the claimant failed to do, rather than looking at what was the claimant's entitlement, which was to have a vehicle which he could use on the road.

---

(1) Alexander Hardman (2) Ethan Rose (3) Finley Hardman (4) Noah Hardman (by their mother and litigation friend, Kirsti Rose) v Estate of Oliver Davies (deceased) [2019]

A father, the first claimant, suffered orthopaedic and psychiatric injuries as a result of a road traffic accident in February 2015, for which the defendant was responsible. The second, third and fourth claimants were the first claimant's stepson (E) now aged 14, his elder son (F) who was aged 7 and his younger son (N) who was 6. The court's approval was sought for interim payments to be made to E and F for £76,932 and £81,932 respectively. Those sums included amounts to be paid in respect of gratuitous care provided by their mother and litigation friend. However, the applications by the first claimant and N for interim payments were contested.

The main aim of the application was to obtain funds for the purchase of a house for the family as their 3 bedroom rented property was said to be inadequate for their needs. The house, which the family wanted to buy, was on the market for £465,000 with ancillary costs, bringing the total expenditure to approximately £510,000. Funding was also requested for the purchase of a larger car for £28,000 and the first claimant's case management. The interim payments offered by the defendant would make available the sum of £459,176, which was insufficient for the purchase of the house, car and any therapy.

It was held that the court had to adopt a conservative approach to valuation and avoid the risk of overpayment. It should also not conduct a mini-trial, risking any element of pre-determination of the issues between the parties. It was appropriate to adopt the defendant's figures as a likely award for the disputed future losses. The defendant's offer of £365,000, by way of an interim payment for the first claimant, was awarded. Moreover, it had not been shown that the sum sought to buy a new house was reasonable as the figure could not reasonably exceed £350,000. In respect of N's application, it was held that it would not be safe, given the risk of overpayment, or appropriate, given the current state of the evidence, to make an order for a payment beyond the sum offered by the defendant. There was a clear and substantial risk that the sum awarded for the purchase of a new car would be less than £28,000. The uncontested interim payments for E and F were approved and judgment was given accordingly.

Paris v Brown & Another [2020]

The claimant was involved in a serious road traffic accident after his vehicle was struck by a motorcycle riding on the wrong side of the road.

As a result of the accident, the claimant suffered psychiatric harm and had already received £90,000 in interim payments, but was seeking a further £155,000 from the second defendant insurance company pursuant to CPR r.25.7. Although there was some agreement between the parties in relation to the medical evidence, it was incomplete and some important features remained in dispute. The claimant had a pathological gambling disorder and had attempted suicide on several occasions, which led the defence to question whether more recent symptoms were related to the accident. A diagnosis of post-traumatic stress disorder (PTSD) and depression was agreed, but the claimant's expert had also diagnosed a mild traumatic brain injury. The defendant's expert did not agree and opined that the immediate post-accident features indicated no neurological issues with the brain, but, in any event, the need for rehabilitation and therapy had been identified.

The defendant argued that a further interim payment was unwarranted because of the unresolved medical issues and submitted that causation was in issue, meaning if it was found at trial that there had been a break in the chain of causation, the value of the claim would be much less than the claimant was seeking. The court confirmed that it was not its duty to resolve the causation dispute. The court took on board the defendant's arguments, specifically the risk of overcompensating, but confirmed the threshold for making an interim payment had been passed, meaning that the claimant was entitled to a reasonable proportion of the final sum awarded. The court also noted that the defendant had previously made a Part 36 offer which was three times the value of the interim payments. Further, the medical evidence confirmed it was necessary to provide for treatment and rehabilitation over the next 6 to 12 months and, therefore, it was fair and reasonable to award £70,000 by way of interim payment to cover further costs that the claimant would incur during the rehabilitation process.

new rules for pleading credit hire claims

On 6 April 2020, amendments to Practice Direction 16 (PD16) of the Civil Procedure Rules (CPR) will come into force. Back in 2017, the Civil Procedure Rules Committee conducted a review of the provisions that concerned credit hire claims. The Committee reviewed the existing model order and standard directions which were mandatory in all credit hire claims proceeding in the County Court. The reason for undertaking a review was due to the existing draft being the cause of avoidable contested directions hearings.

As a result, the changes that are set for April 2020 now impose a number of mandatory requirements for cases involving credit hire claims and will cover what needs to be pleaded in the statement of case. The proposed changes to PD16 after paragraph 6.2 now read:

"Hire of replacement motor vehicle following a road traffic accident

6.3 *Where the claim includes the cost of hire of a replacement motor vehicle following a road traffic accident, the claimant must state in the Particulars of Claim—*

(1) the need for the replacement vehicle at the relevant time;

(2) the period of hire claimed (providing the start and end of the period);

(3) the rate of hire claimed;

(4) the reasonableness of the period and rate of hire; and

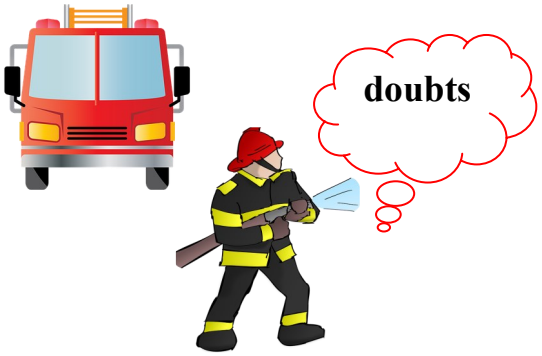
(5) impecuniosity (if the claim relates to credit hire).

6.4 *In paragraph 6.3—*

(1) "relevant time" means at the start of the hire and throughout the period of hire;

(2) the obligation to state the matters there set out includes an obligation to state relevant facts."

Many claimant firms will feel that they have already provided this information at the pre-action stage or in proceedings, however, the changes will now ensure that those who do not now address that issue and provide more detail. From a defendant's perspective, it is hopeful that the new rule will bring about greater certainty, extinguishing any doubts around the losses claimed.



It is hopeful that the changes will also facilitate defendants' ability to assess the merits of credit hire claims at an earlier stage, resulting in early settlement if required. If the new rule has the anticipated impact, it is hoped that there will be more meaningful negotiations and earlier resolutions, along with decreased costs across the board and reduced court time. However, there is still concern that the rule change does not require supporting documentation to be provided when the Particulars of Claim are filed or served. This could eradicate any initial certainty the new rule may bring as defendant's will, undoubtedly, still require further detailed evidence before they can be sure of their stance in any claim.

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:

Simon Evans at simone@dolmans.co.uk

Capital Tower, Greyfriars Road, Cardiff, CF10 3AG

Tel : 029 2034 5531
Fax : 029 2039 8206

www.dolmans.co.uk