motoring news

Headlight

welcome

to 'Headlight', Dolmans Solicitors' motoring news bulletin.
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summer 2022

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Armstead v Royal & Sun Alliance Insurance Co Ltd [2022]

The claimant was involved in a non-fault accident in 2015 and, as a result, hired a Mini on credit terms. The rental agreement included a clause which stated that the claimant would pay on demand the full contractual rate, for up to a maximum of 30 days, in respect of the hire company's loss of use for each calendar day the vehicle was unavailable to be hired. When driving in the hire vehicle, the claimant was involved in a further accident with the defendant's insured. Although liability was admitted, due to the contract clause, the claimant was liable to pay the hire company liquidated damages for the hire company's loss of use for the period that the hire car was not available due to repairs. As such, in March 2018, the claimant received a purported demand for this loss of use.

Subsequently, proceedings were issued against the defendant by the claimant seeking to recover consequential loss arising under the contract by virtue of their position as bailee of the hired vehicle and under contract. The claim was dismissed because the judge concluded that the claimant had suffered no loss and that the claimant's claim for liability arising under contract with the hire company was not reasonably foreseeable by the defendant's insured. This decision was appealed, it being held that whilst a claimant was entitled to recover the cost of repairs of hired equipment from a tortfeasor who had negligently damaged that equipment, a claimant could not recover amounts agreed in contract with the hire company for the hire company's loss of use.

Parry v Johnson & Another [2022]

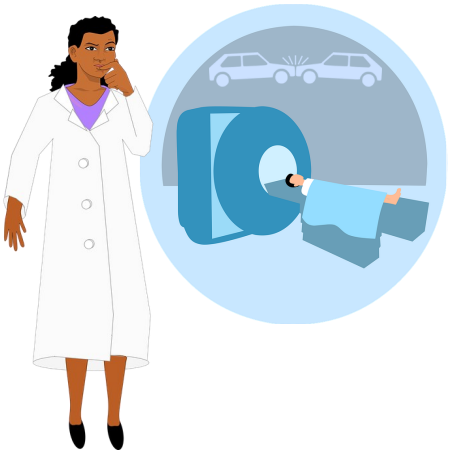
The claimant was injured in a road traffic accident which occurred on 13 August 2019 at around 9:00pm in Llandyn Hall Lane, Llangollen. The claimant was a pedestrian and the first defendant was driving a tractor towing an unlit seeding machine. The first defendant approached the claimant from behind as the claimant and his wife were walking down the lane towards their campsite. The claimant and his wife stepped onto a grass verge to the offside of the tractor as it approached, when the seeding machine hit the claimant.

In the first defendant's initial interview with the police, amongst other things, he asserted he was in the centre of the road and going at a speed around 25 to 30 kilometres per hour. He also said there was a parked car on the lane. However, in a subsequent statement, he asserted that he was only going 20 to 25 kilometres per hour and increased the amount of parked cars from one to two. Therefore, the judge considered he had changed his evidence, in his favour, to increase the number of parked cars blocking his vision down the lane. During cross-examination, the first defendant accepted he had given different accounts of his speed and of the number of parked cars. He accepted that his immediate post-accident account would have been when events were freshest in his mind. Therefore, it was held that the first defendant failed to keep a proper look out as he drove down the lane eager to get home, and for that reason he failed to see the claimant. The first defendant's differing accounts on different occasions did not help his cause. The judge found for the claimant, with no contributory negligence.

North v Khan [2022]

This claim involved a claimant who had suffered a traumatic brain injury in a road traffic accident in 2017 and a trial on quantum was upcoming. The defendant instructed a neurologist who failed to participate in the joint statement which should have been produced before the instant hearing.

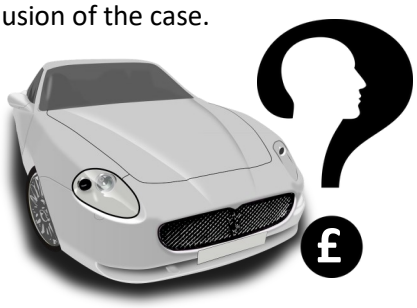
The reason for not participating was because the neurologist believed that issues of causation were beyond their expertise and that a neuroradiological report was required, however, this had not been raised until the joint meeting was held. As such, the defendant applied for permission to obtain and rely on a report from a neuroradiologist and the claimant applied for an order debarring them from relying on certain expert evidence. The defendant's application was granted and the claimant's application was refused.



It was held that there was no basis on which to make an order debarring reliance on the neurologist's evidence where they had taken a view in good faith. The further evidence was reasonably required and necessary so that best evidence would be before the court. Therefore, each side was given permission to obtain neuroradiological expert reports. Although the defendant sought to maintain that the trial date could be kept, the court was persuaded by the claimant that that would not be practical. The disadvantage of losing the trial date was outweighed by the advantage of having the neuroradiological reports, such that the trial date was vacated.

Shaw v Wilde [2022]

This claim involved a dispute as to costs following a trial on the issue of liability where it was determined that the claimant was not guilty of any contributory negligence and that the road traffic accident which occurred on the 30 June 2018 was entirely the fault of the defendant. After the determination, the claimant sought an order that the defendant should pay the claimant's costs of the liability issue, to be subject to a detailed assessment in default of agreement, and that the defendant should pay a reasonable sum on account of such costs. The defendant contended that the question of whether the claimant should recover the costs of the issue of liability should be deferred until the conclusion of the case.



The general rule is that the unsuccessful party will be ordered to pay the costs of the successful party, but a court may make a different order (CPR 42.2(2)). There was no doubt that on the issue of liability, the successful party had been the claimant. However, in seeking to resist the usual order on costs, the defendant relied on the provisions of Section 57 of the Criminal Justice and Courts Act 2015.

In a Re-Amended Defence, the defendant made allegations that the claimant had been fundamentally dishonest in respect of the extent of their disability compared with what could be seen on surveillance film taken by the defendant. Section 57 provides that a court must dismiss the primary claim unless it is satisfied that a claimant would suffer substantial injustice if the claim were dismissed. Therefore, unless the court could conclude that there was no real prospect of a finding of fundamental dishonesty, or that there was bound to be a finding of substantial injustice, it would be premature to make an order for costs in the claimant's favour at this stage. Interestingly, the claimant had previously conceded that there was a real prospect of a finding of fundamental dishonesty, such that the judge could not satisfy himself that the claimant could establish the substantial injustice provision. Therefore, the appropriate order was for costs to be reserved to the judge determining quantum.

Woodger v Hallas [2022]

The claimant brought a claim for damages arising out of a road traffic accident in July 2014. Liability was admitted. At trial, in June 2021, the claimant was awarded damages of £49,415. The trial judge found that the claimant had been fundamentally dishonest in relation to his claim within the meaning of s.57(1) of the Criminal Justice and Courts Act 2015, but did not dismiss the claim, finding that it would be substantially unjust to do so.

The defendant had made a Part 36 offer in March 2015 of £80,000, which the defendant withdrew in September 2018. The claimant had made a Part 36 offer of £40,000 in March 2020. The trial judge awarded the claimant their costs up to September 2018 and made no order for costs thereafter. The defendant appealed on the grounds that the trial judge was wrong not to dismiss the claim. There was no proper basis for a finding of substantial injustice such as to avoid the consequences of s.57. Further, even on the trial judge's approach to s.57, the award of costs was wrong.

The appeal judge held that the trial judge was wrong not to have dismissed the entire claim once they had found the claimant to have been fundamentally dishonest. There was no proper or adequate basis for the finding that it would be substantially unjust to dismiss the entire claim. Substantial injustice meant something more than the claimant losing their genuine damages.

As regards to the finding that others had provided past care, s.57 (2) makes it clear it must be the claimant, and not anyone else, who would suffer injustice. Further grounds advanced by the claimant's counsel were also not made out. The claimant had suffered serious injuries, but they were not the most serious and the claimant had made a substantial recovery.

The need for a liable defendant to be seen to pay damages had been rejected in *Iddon v Warner [2021]*. Adopting the approach to substantial injustice in *Iddon* of balancing, on the one hand, the nature and extent of the claimant's dishonesty and, on the other, the injustice to the claimant of dismissing the whole claim, the balance fell in favour of dismissal.

Even on the assumption that there was some injustice to the claimant, which the judge found there was not, the sustained nature of the dishonesty, the length of time for which it was sustained and his involvement of others made the claimant's dishonesty so serious that it would have outweighed any injustice to him. The trial judge should have dismissed the entire claim and awarded the defendant its costs of the action, subject to s. 57(4) and (5).

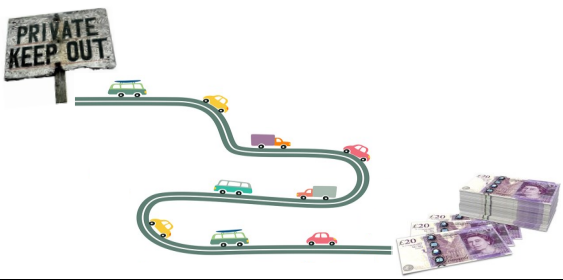
Pursuant to s. 57(4) and (5), a court is required, when dismissing a claim, to (a) record the amount of damages that it would have awarded a claimant in respect of the primary claim but for the dismissal of the claim and (b) when assessing costs, to deduct the amount so recorded from the amount which it would otherwise order a claimant to pay in respect of costs incurred by a defendant.

In relation to the damages figure, it was held that because the claim should have been dismissed under s.57(2), the appropriate figure for the purposes of s.57(4) was the trial judge's initial figure of £74,460, the figure which would have been awarded to the claimant but for their fundamental dishonesty. That was the figure to be deducted from any costs award against the claimant pursuant to s.57(5).

The Motor Vehicles (Compulsory Insurance) Act 2022

Readers will be aware that, prior to 2014, compulsory motor insurance under the Road Traffic Act 1988 only required UK insurance policies to cover liabilities caused by, or arising out of, use of a vehicle on a road or other public place. However, in 2014, we had the decision in *Vnuk v Zavarovalnica Trigalev* from the European Court of Justice, whose effect was that compulsory insurance should also cover accidents on private land. Due to the broad interpretation of "use of vehicles" and the definition of "vehicles" by the European Court, it also meant that insurance was required for a whole variety of vehicles, such as agricultural machinery, forklift trucks, construction equipment, golf buggies et cetera.

The effect of *Vnuk* was that the claimants could pursue a claim direct against the UK Government for failing to implement the directive and to obtain damages from the MIB in its capacity as a guarantee body designed to meet European compulsory insurance requirements. This position was confirmed in *Lewis v Tindale & Others [2018]*, where a pedestrian was knocked down by a driver on private land. Taking into account the MIB levy on insurers, the additional costs was indirectly being met by them.



Brexit did not change the position, as section 4 of the European Union (Withdrawal) Act 2018 effectively converted pre-existing rights and remedies available under European law into domestic law. In early 2021, the Government signalled its intention to legislate so as to create an exception to the Withdrawal Act. It has taken until now for The Motor Vehicles (Compulsory Insurance) Act to re-establish the position as it was in 2014. This has been achieved by any insertion of section 156A which states that any retained European case law shall cease to have effect in the UK.

The Police, Crime, Sentencing and Courts Act 2022

The Police, Crime, Sentencing and Courts Act 2022 is now in force and is perhaps the most significant change in respect of motoring offences for many years.

Readers will be aware that there has been a significant gap where the standard of driving cannot be classed as dangerous and yet serious injury, as opposed to death, has occurred. That gap is now effectively "plugged" by the creation of a new offence of Causing Serious Injury by Careless or Inconsiderate Driving. It is triable either way and on indictment has a maximum sentence of 2 years imprisonment (section 87). Previously the Crown Prosecution Service, not being confident of being able to prove that the standard of driving was dangerous, were left with pursuing the far more mundane offence of careless or inconsiderate driving, often attracting no more than penalty points and/or a fine despite the serious consequences.

The introduction of this new offence follows a government consultation where it is said that 90% of the 9000 submissions in response supported its creation.

Opponents to the creation of this new offence, who are now defeated, made the valid point that it is the consequences of an accident that now seem to be the driving force behind charging decisions, rather than the culpability of the driver. For instance, a relatively minor driving infringement which results in serious injury could now see the driver imprisoned. Hopefully, a degree of common sense will prevail when sentencing.

The Act also brings with it increased sentencing powers in respect of the offences of causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs (section 86). Previously both offences carried a maximum of 14 years imprisonment. The maximum sentence is now life imprisonment.

It should perhaps be borne in mind that it also remains open to the Crown Prosecution Service to bring charges of murder and manslaughter in circumstances where the evidence points to the vehicle being used as a weapon.

The new offence of causing serious injury by careless or inconsiderate driving, and increased sentencing powers in circumstances where death has occurred, are not retrospective and apply to offences committed on or after 28 June 2022.

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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