

A regular review of legal developments in the world of property and casualty insurance claims May 2009

DRIVER'S STANDARD OF CARE - COLLISION WITH PEDESTRIAN

Stewart v Glaze - 2009 (QBD)

The claimant and a friend had been out drinking and were waiting at a bus stop in the early hours of the morning. The defendant was driving his car at around the speed limit of 30 mph as he approached the bus stop. The claimant walked towards the kerb but then continued into the road and was hit by the car causing a catastrophic head injury which left him in a persistent vegetative state. When analysing liability the court had to apply the standard of the reasonable driver and be careful not to replace that test with the standard of the ideal driver. The court also had to take care not to be guided by hindsight at the same time recognising that the driver is in charge of a potentially dangerous weapon.

Accident reconstruction experts had been instructed to interpret the evidence but it was the primary factual evidence itself that was of greatest importance in a case of this kind and the court had to be careful not to elevate the experts' evidence into a fixed framework or formula into which the driver's actions were rigidly measured with mathematical precision. Whilst he remained on the pavement the claimant was not a hazard and there was no reason for the defendant to react to his walk to the kerb until he actually stepped into the road. He was driving within the speed limit and had not fallen below the standard to be expected of the reasonable driver. Consequently, he had not been negligent and was not legally liable for the accident.

Comment

It is unusual for a court to find that a driver was not negligent in circumstances where he could observe the pedestrian walking towards the road prior to the collision. However, the fact that the claimant appeared to be waiting for a bus caused the judge to decide that the defendant had no reason to apply the brakes before the claimant stepped into the road and even had he done so the accident could not have been avoided. The standard of care of the reasonably careful driver as opposed to the ideal driver and the court viewing the circumstances as they were at the time rather than with the benefit of hindsight are powerful arguments for the defendant in these types of cases.

CONTEMPT OF COURT

Carol Walton v Joanne Kirk - 2009 (QBD)

The claimant had claimed substantial damages in a personal injury claim for a significant and long term disability but had accepted, out of time, a much lower payment into court

following the disclosure of surveillance videos showing her driving, walking and shopping. It was the defendant's view that the video evidence showed the claimant to be capable of far more than she had claimed in her statements which she had verified as being true. The defendant brought contempt of court proceedings submitting that the videos automatically showed the claimant's description of her symptoms to be untrue and dishonest. As these proceedings were quasi-criminal, any doubt had to be resolved in the claimant's favour and it was the degree of exaggeration or the circumstances of it that was important. However, gross exaggeration and dishonesty would not be tolerated. The claimant stated that she accepted the low offer because she was exhausted by the proceedings but the court did not accept this explanation. She had been entitled to bring her claim and it was more likely than not that she had fibromyalgia. The majority of the defendant's insurer's arguments were not made out but there were answers in her "Incapacity for Work" questionnaire that she could not reasonably have believed to be true and the answers in her disabled parking blue badge application were irreconcilable with the video evidence. Once verified by the claimant's statement of truth those applications for state benefits would have been relied on to demonstrate a high level of disability and in those respects the claimant was in contempt of court. She had to pay the defendant's costs from 21 days after the payment into court which effectively meant she received nothing from the litigation. Additionally she was fined £2,500 for her contempt.

Comment

The burden of proof for defendants in contempt of court proceedings is high and it seems that there must be good evidence of significant exaggeration which contradicts the claimant's evidence which has been verified by statements of truth before the court will find that there has been a contempt of court. Nevertheless, it is a useful decision which might help to dissuade claimants from exaggerating their injuries, especially where those exaggerations have also been used to obtain state benefits.

LOCAL AUTHORITY'S DUTY TO VULNERABLE PEOPLE

X & Y v London Borough of Hounslow - 2009 (CA)

The local authority was responsible for a married couple with learning difficulties and their two children and housed them in one of their flats. The couple befriended local youths who took advantage of them and used the flat for illicit purposes and also assaulted one of the children. The social worker found out about the situation and reported it to both the police and the children and

families department. She also told the housing department that the couple were vulnerable and that their long standing application for re-housing should be dealt with urgently. One weekend the parents were effectively imprisoned in their flat and then assaulted and abused by the youths who were later convicted for their crimes. The official solicitor brought proceedings against the local authority on behalf of the parents for failing to re-house them before the assaults took place.

At first instance the court held that the local authority were in breach of their duty of care to the claimants for not moving them into emergency accommodation in view of the knowledge of the social worker that they were vulnerable. The Court of Appeal overturned this decision and found that there could be no duty of care in carrying out a statutory duty in accordance with *Gorringe v Calderdale MBC – 2004 (HL)*. In view of the wide range of responsibilities of the local authority in providing housing and as a landlord it would not be fair, just or reasonable to impose such a duty. The only duty of care that could exist was in relation to the social worker whose actions had been impeccable and, in any event, no allegations had been made against her.

Comment

It is often overlooked that in carrying out its statutory duty a local authority does not owe a duty of care unless they actually create the danger or where the statute specifically creates a right of action.

DUTY OF CARE EXPECTED OF A CHILD

Orchard v Lee - 2009 (CA)

The claimant was a lunch time assistant supervisor at a school where the 13 year old defendant was a pupil. During a game of tag with another pupil the boy ran backwards and collided with the claimant causing her personal injuries. She made a claim against him for his negligent behaviour but, at first instance, the judge decided that the defendant was simply doing what 13 year old boys do and dismissed the claim. The claimant appealed. The Court of Appeal reviewed the Judge's findings of fact which were that the accident occurred in an area where the child was allowed to play and where running was not prohibited. There was no furniture or other obstructions in the walkway or the courtyard. It was accepted that the defendant owed the claimant a duty of care but the standard of care was one of a 13 year old boy. It was accepted that such children would play tag, would run backwards and taunt each other and if they were not breaking any rules they should not be liable in negligence. Indeed, it would be a retrograde step if liability was visited upon a child for simply playing in an area where he was allowed to do so. The Court of Appeal upheld the decision to dismiss the claim.

PERIODICAL PAYMENTS - COST OF ANNUAL PROOF OF LIFE

Bruna Long v Norwich Union - 2009 (HC)

In addition to the lump sum of £900,000, periodical payments were ordered to be paid in this case in the sum of £25,000 p.a. by way of equal quarterly instalments and increased each year in accordance with a stipulated formula. At the beginning of each year the claimant was required to

provide suitable evidence that she remained alive prior to the first quarterly instalment each year. A letter from the claimant's professional deputy was accepted as being reasonable proof. The claimant proposed an additional sentence to the Order that the defendant should be responsible for the additional costs of doing so on the grounds that the whole system of periodical payments placed the administrative burden on the defendant. The court held that there was a balance of burdens and benefits on both sides. The claimant had the benefit of being relieved of any concern as to future inflation and the uncertainties of life expectancy. There was no need to include the cost of proof of life in the Order because the fees of the deputy had been estimated and assessed on a global basis each year and should have included such a cost. In any event not all of the obligations of executing the Order could be said to rest with the paying party. Judgement was given for the defendant.

NEW RTA CLAIMS PROCESS DELAY

The introduction of the new streamlined process for RTA claims has been delayed due to difficulties in agreeing some of the details of the process. The basic principles were to speed up the handling of claims under £10,000 and to introduce a system of fixed costs. It was originally intended that the system would be introduced in October 2009 but this will not now be introduced until April 2010. It was recognised that all those affected by the changes would need time to put in any IT and make necessary changes to systems and procedures before they could comply with the new procedure.

INCREASES IN NHS CHARGES

From 1st April 2009 the NHS charges have increased as follows;

Out-patients from £547 to £566

In-patients from £672 to £695

Maximum charge from £40,179 to £41,545

Ambulance charges from £165 to £171

List of abbreviations used:

CC	County Court
HC	High Court
QBD	Queens Bench Division of the High Court
Ch D	Chancery Division of the High Court
CA	Court of Appeal
HL	House of Lords
SCCO	Supreme Court Costs Office
ECJ	European Court of Justice
TCC	Technology and Construction Court

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