

DAMAGES - INTERIM AWARDS

Johnson (a minor) v Compton-Cooke (2009) QBD

The claimant sustained severe injuries in a road traffic accident. She was still recovering and her rehabilitation was incomplete. She required 24 hour care and lived with her family in accommodation that was 'better than adequate'. The past costs for care and other expenses were substantial, the defendant argued grossly exaggerated. The claimant sought an interim payment of £1.67M to cover a period of 12 months inclusive of a lump sum for accommodation. The defendant argued against the accommodation claim and that the local authority funding she was receiving was adequate for her care needs. It was held that there was no real need for any instant payment for accommodation needs and that whilst it was patent that the claimant would need a high level of care the trial judge would wish to examine the claim carefully. An interim of £600K was awarded on the basis that the capitalised award at trial would amount to around £1.75M on a conservative estimate.

Comment

This case follows the earlier authority of Eeles v Cobham Hire Services. Courts should be slow to fetter the trial judge's discretion on determining how future loss claims should be paid. Periodical payment orders are becoming more common and it is important not to pre-judge contentious issues at an early stage by the award of significant interim payments. It is in defendant's interest to resist such applications, where the facts permit, in order to avoid the implementation of untested recommendations which may later prove difficult to reduce.

LOCAL AUTHORITY - UNADOPTED HIGHWAY

Young v Merthyr Tydfil CBC & Merthyr & another (2009) CC

The claimant slipped on a footbridge in a park owned by the local authority. The bridge was in a state of disrepair. The claimant argued that she was a lawful visitor to the park and a duty was owed under the Occupiers Liability Act 1957. The court found that the footbridge was, in fact, unadopted highway and the claimant was not a visitor under the 1957 Act. The local authority had conducted itself in a way that it had shown that it had granted a public right of way over the footbridge. As such the local authority was not under a duty to repair the bridge and was entitled to do nothing despite the non-slip surface having worn away. The claimant was on the bridge as of right and not pursuant to the 1957 Act and no duty was owed. That the footbridge was unadopted highway meant that the local authority did not have a duty to maintain it under the Highways Act 1980 (s41).

Comment

The local authority's conduct amounted to no more than nonfeasance and, therefore, the rule in McGeown v Northern Ireland Housing Executive applied. This case demonstrates the importance of determining clearly the status of the land where a claimant has an accident as there are important differences between the duties owed, or not owed, arising there from.

LIABILITY - POLICE - CRIMINAL RECORDS CERTIFICATES

Desmond v Chief Constable of Nottinghamshire (2009) - QBD

The claimant, a teacher, had applied for an advanced Criminal Records Bureau (CRB) certificate in December 2005. The defendant indicated to the CRB that it had information about the claimant in connection with an arrest several years previously on charges of indecent assault. The claimant had been released without charge. The claimant alleged that the decision to include details of this incident (he had been shown to have been completely innocent) had caused him psychiatric injury and financial loss. The defendant successfully defeated allegations of misfeasance in public office in a summary judgement application. At first instance the court had also struck out those parts of the claim relating to negligence on the grounds of the immunity enjoyed by the police from actions in respect of activities undertaken in the investigation and suppression of crime (the core principle in Hill v Chief Constable of West Yorkshire). On appeal it was held that it was at least arguable that the police had assumed a responsibility towards the claimant when they knew that the information would be disclosed to potential employers and that adverse information was likely to be detrimental. It was also arguable that the claimant was entitled to rely on the police to ensure that the information they place before the decision maker was accurate and complete. It was not clear to the court whether or not the collation of information by the police in connection with an application to the CRB fell within the immunity conferred on them by the core principle in Hill. In this respect this case was permitted to proceed to a trial.

EMPLOYERS LIABILITY - VOLENTI NON FIT INJURIA

Davies v Global Strategies Group (2009) QBD

The claimant sought damages following the fatal shooting of her husband in Iraq. The deceased was providing defence and security services under contract to the US Government. The defendant was found in breach of duty for failing to provide a neck collar though the evidence was that a collar would have made no difference in the circumstances. The court further found, on the

facts of this case, that it would not have been reasonably practicable to have provided a bullet-proof windscreen or that the mission should have been aborted. If there had been a causative breach of duty then the defendant would not have been able to argue a defence of volenti to defeat the negligence claim. Whilst the deceased had agreed to undertake a task carrying a very significant risk he could not have been said to have consented to any breach of duty by his employer.

PROCEDURAL - PART 36 OFFERS

Whistance v Valgrove : Gibbon v Manchester City Council (2009) CC

The appellants appealed against decisions that their Part 36 offers had not been withdrawn and were capable of acceptance. In the first case a Part 36 offer had been made which the defendant had rejected. This was followed by an increased offer to which the response of the defendant was to try and accept the earlier, lower offer. On appeal it was held that whilst it was undoubtedly better to specify in the subsequent offer that earlier offers are withdrawn the only sensible interpretation was that the latter offer replaced the previous one. In the second case the initial offer had been rejected but it had not been replaced, the defendant had made subsequent offers to which the claimant had only invited higher offers. The defendant was permitted to accept the initial offer as Part 36.9(2) required the offeror to serve notice of withdrawal to prevent the offeree from accepting it even though the offeree had made different offers.

Comment

The usual rules of contract do not fully apply to Part 36 offers. It is always best to be clear on whether earlier offers are explicitly withdrawn as the conduct of the parties may otherwise be open to interpretation. The provisions of Part 36 do though afford the parties the opportunity, in certain circumstances, to revisit earlier offers should their position have deteriorated and the earlier offers appear attractive and, therefore, parties should consider carefully the terms of correspondence when considering appropriate tactics for the settlement of claims.

PROCEDURAL - RTA CLAIMS PROCESS

The Ministry of Justice has confirmed an implementation date of 6 April 2010 for the new RTA claims process. This will apply to claims with a value between £1-10K occurring after 6 April. There will be a 15 day timeframe for a decision on liability, there will be no extension permissible and any default on the part of the defendant will remove the claim from the process. A fixed cost regime will apply to each stage of the claim under this process. This process will only apply to quantum negotiations. The Civil Procedure Rules Committee is now working on drafting the appropriate rules, practice directions and pre-action protocols to implement the new process.

PROCEDURAL - SCOTLAND

With the aim of expediting personal injury cases and reducing the associated costs on 2 November 2009 new rules came into force for dealing with such claims in the sheriff court. These rules relate to claims worth £5000+ (but not clinical negligence claims) and are similar to the fast track procedure in the Court of Session. There will no longer be a

requirement for detailed pleadings, proof (trial) will be fixed no later than 9 months after defences are first lodged. A timetable will set out deadlines which must be adhered to and will provide for each party to lodge their valuation of the claim. Similarly, there will also require to be a pre-proof conference designed to facilitate settlement or otherwise narrow issues in dispute. Applications may be made to withdraw from this procedure where there are exceptional reasons for doing so.

PROCEDURAL - NEW UK SUPREME COURT

A new Supreme Court will operate from 1 October 2009 taking over the function of the Appellate Committee of the House of Lords. The Supreme Court will be the final court of appeal for all UK civil cases. It will also hear appeals on arguable points of law of general public importance and concentrate on cases of the greatest public and constitutional importance. The changes are mostly constitutional by separating the judicial and legislative functions of the House of Lords. The procedures are similar to those that applied previously.

DAMAGES - NEW NATIONAL MINIMUM WAGE LIMITS

From 1 October 2009 the annual increase in the National Minimum Wage took effect.

- For workers aged 22+ the minimum rate of pay is £5.80hr
- For workers aged 18-21 it is £4.83hr
- For workers aged 16-17 it is £3.57hr

POLICY LIABILITY - MISREPRESENTATION

R&R Developments Ltd v AXA Insurance UK plc (2009) - Ch D

The claim related to a policy of insurance against theft and damage to contract works. The policy stated it would be voidable in the event of misrepresentation, mis-description or non disclosure of a material fact. The proposer answered in the negative the following question;

'Have you or any Partners or Directors either personally or in connection with any business in which they have been involved...Ever been declared bankrupt or are the subject of any bankruptcy proceedings or any voluntary or mandatory insolvency'

The insurer sought to void the policy when it became apparent that a director of R&R had been a director of another company which was in administrative receivership, and of other companies that had gone into liquidation, arguing the proposal form required this information to be disclosed. The claimant successfully argued that the questions related only to the company and its directors personally and not any other company they had been involved in. Given the ambiguity present the court applied the contra-proferentem principle and rejected a meaning that may be grammatically possible but was not one that could reasonably have been how the insured understood the question. The court does not have to decide on the correct interpretation of the question but only where the answer was correct on the basis of a meaning which could reasonably be attributed to it.



POLICY LIABILITY - SUMMARY JUDGEMENT

A C Ward & Sons Ltd v Catlin (Five) Ltd & Ors (2009) -CA

The claimants suffered a burglary with a resulting loss of property. The alarm system had failed during the burglary. The defendant sought summary judgement that its policy would not respond because it required that an approved alarm be on at all times when the premises were closed and that the failure of the system resulted in a period off cover. At first instance the court found that there were factual lines of enquiry to pursue and dismissed an application for summary judgement. The Court of Appeal held that the insurers' interpretation of the policy was sufficiently draconian and that the insured should be allowed to adduce evidence in its defence because it had a real prospect of successfully arguing that the warranties should be limited to defects which could have reasonably have been known to the insured. The more unreasonable or draconian the effect of the terms of insurance then the clearer and more specific those terms must be.

List of abbreviations used:

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

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