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[2018] All ER (D) 136 (May)

Molodi v Cambridge Vibration Maintenance Service and another

[2018] EWHC 1288 (QB)

Queen's Bench Division (Manchester District Registry)

Martin Spencer J
24 May 2018

- Damages – Personal injury – Appeal

Abstract

Damages – Personal injury. The claimant had been awarded damages of £4,397 for personal injuries allegedly sustained in a motor collision with a vehicle driven by the first defendant's employee. The Queen's Bench Division, in allowing the first defendant's appeal, held that there had been fundamental dishonesty on the part of the claimant in respect of the claim and that, on that basis, the judge should have dismissed the entire claim by reference to s 57(2) of the Criminal Justice and Courts Act 2015. The claim was dismissed.

Digest

The judgment is available at: [2018] EWHC 1288 (QB)

Background

In February 2015, the claimant, then aged 31, was driving his car along a lane in Manchester when he was involved in a collision with a Ford Transit van being driven by C in the course of his employment with the first defendant, Cambridge Vibration Maintenance Service (CVMS). C had failed to check his mirror before carrying out a U-turn and had not realised that the claimant had been attempting to overtake his stationary vehicle. According to C, there had only been a minor collision.

In March, the claimant attended Dr I for a medical report on the instructions of his solicitors. The symptoms recorded by Dr I related to the right hand, the right shoulder and the neck and the upper and middle back. Subsequently, a claim notification form (CNF) was sent to the second defendant insurer of the Ford Transit van, alleging, among other things, that the claimant had suffered whiplash injuries.

The claimant brought a claim seeking damages for personal injury. In particular, he sought special damages of £2,513, including £1,293 for vehicle damage and £1,160 for the cost of physiotherapy, alleging that he had suffered pain, stiffness and discomfort to his right hand and right shoulder for 7 months, and to his neck and back for 13 months. CVMS contended that there were inconsistencies in the claimant's evidence which pointed towards dishonesty. In April 2016, a judge found that he could rely on the claimant's evidence as to the fact that he had been injured, and as to the duration of his symptoms. He awarded the claimant damages of £4,397, comprising £2,750 for pain, suffering and loss of amenity, together with £1,647 for special damages and interest, in respect of personal injuries and loss sustained as the result of the collision.

CVMS appealed.

Appeal allowed.

Issues and decisions

Whether the judge should have made a finding of fundamental dishonesty and to have dismissed the claim.

CVMS submitted that the judge had failed to pay sufficient regard to the inconsistencies and contradictions in the claimant's evidence and pleaded case, together with his propensity for exaggeration. Among other things, CVMS relied on: (i) the claim for £1,300 damage when, in fact, the claimant had had his car repaired by a friend for about £400; (ii) the contradiction between the CNF and the claimant's evidence concerning whether he had been the only occupant in the car or whether he had had a male passenger; (iii) the CNF stating that the claimant had no rehabilitation needs, when he had then claimed for 12 sessions of physiotherapy; and (v) the fact that the claimant had told his medical expert that he had only had one previous accident, confirmed in his witness statement, when in fact he had been involved in, at least, four previous accidents. CVMS, therefore submitted that, pursuant to s 57 of the Criminal Justice and Courts Act 2015 (CJCA 2015), the court should allow the appeal and dismiss the claim on the basis that the claimants had been fundamentally dishonest in relation to it.

The problem of fraudulent and exaggerated whiplash claims was well recognised and should cause judges in the county court to approach such claims with a degree of caution, if not suspicion. Where a vehicle was shunted from the rear at a sufficient speed to cause the heads of those in the motorcar to move forwards and backwards in such a way as to be liable to cause 'whiplash' injury, then genuine claimants should recover for genuine injuries sustained. The court would normally expect such claimants to have sought medical assistance from their GP or by attending A & E, to have returned in the event of non-recovery, to have sought appropriate treatment in the form of physiotherapy (without the prompting or intervention of solicitors) and to have given relatively consistent accounts of their injuries, the progression of symptoms and the time-scale of recovery when questioned about it for the purposes of litigation, whether to their own solicitors or to an examining medical expert or for the purposes of witness statements. It was recognised that claimants would sometimes make errors or forget relevant matters and that 100% consistency and recall could not reasonably be expected. However, the courts were entitled to expect a measure of consistency and certainly, in any case where a claimant could be demonstrated to have been untruthful or where a claimant's account had been so hopelessly inconsistent or contradictory or demonstrably untrue that their evidence could not be promoted as having been reliable, the court should be reluctant to accept that the claim was genuine or, at least, deserving of an award of damages (see [44] of the judgment).

Medical evidence was at the heart of claims for whiplash injuries. Given the proliferation of claims that were either dishonest or exaggerated, for a medical report to be reliable, it was essential that the history given to the medical expert was as accurate as possible (see [46] of the judgment).

If the court was satisfied that no reasonable judge, in the position of the trial judge, could have failed to accede to the submission that the claimant had failed to prove his case, then the court was entitled to allow the appeal and overturn the judge's order. However, if the judge had heard the evidence and had not concluded that the claimant was dishonest, it would require a very clear case for the appellate court to effectively overturn the judge's conclusion in that respect and find that the claimant was dishonest, despite not having seen the witnesses give evidence (see [42] of the judgment).

In the present case, given that it had been for the claimant to prove his case, which had depended very largely on his credibility and reliability, it had been open to the defendants to submit that, by reason of demonstrable untruths, inconsistencies and general unreliability, the claim should be dismissed (see [42] of the judgment).

On the facts, and pursuant to CJCA 2015 s 57, the appeal would be allowed and the claim for personal injuries would be dismissed on the basis that the claimants had been fundamentally dishonest in relation to it. The defendants had proved, on the balance of probabilities, that the claimant had acted dishonestly in relation to the primary claim and/or a related claim and that he had, thus, substantially affected the presentation of his case, either in respect of liability or quantum, in a way which potentially adversely affected the defendant in a significant way, judged in the context of the particular facts and circumstances of the litigation. There had been fundamental dishonesty on the part of the claimant and, on that basis, the judge should have dismissed the entire claim by reference to s 57(2) (see [48] of the judgment).

The judge had adopted a much too benevolent approach to evidence from a claimant which could be demonstrated to be inconsistent, unreliable and, on occasions, simply untruthful. The most glaring example of that related to the claimant's clear lie to Dr I, confirmed by Dr I in his Pt 35 answers, that he had been involved in only one previous accident when, as conceded, there had been five or six previous accidents or, on submissions made on behalf of CVMS, some seven previous accidents. Not only had the claimant lied to Dr I in that regard, but he had also maintained that lie in his witness statement, endorsed with a statement of truth (see [45] of the judgment).

Once, as in the present case, the claimant could be shown to have been dishonest in respect of a fundamental matter and then to have maintained that dishonesty through his witness statement and into his evidence before the court, it was difficult to see how the judge could have accepted any other part of the claimant's evidence or the medical report itself – and, without those, there had been nothing left (see [46] of the judgment).

The claimant's dishonesty had not stopped there, because £1,300 special damages had been claimed in respect of a loss which, when investigated in cross-examination, turned out to have been only £400. Further, there had been fundamental inconsistencies between what the claimant had said in his witness statement and evidence, and what he had said in the CNF (see [47] of the judgment).

It followed that the present case was one of those rare cases where the weight of the other evidence, and in particular the inconsistencies and the failure truthfully to account to the medical expert in relation to previous medical history and previous accidents and the dishonesty in relation to the special damages were such as to justify overturning the finding of the judge that, having heard the claimant, he could rely on his evidence as to the fact that he had been injured and as to the duration of his symptoms (see [49] of the judgment).

The claim would be dismissed (see [50] of the judgment).


Benmax v Austin Motor Co Ltd [1955] 1 All ER 326 considered; *Piglowska v Piglowski* [1999] 3 All ER 632 considered; *Kearsley v Klarfeld* [2005] All ER (D) 98 (Dec) considered; *Casey v Cartwright* [2006] All ER (D) 72 (Oct) considered; *Gosling v Hailo* [2014] Lexis Citation 316 considered; *Howlett and another v Davies and another* [2017] All ER (D) 52 (Nov) considered; *London Organising Committee of the Olympic and Paralympic Games (in liquidation) v Sinfield* [2018] EWHC 51 (QB) considered.

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