

Lenord v First Manchester Ltd

[2020] EWHC 982 (QB)

Queen's Bench Division (Liverpool District Registry)

Freedman J

24 April 2020

Personal injuries – Negligence – Appeal in context of road traffic accident

Abstract

The recorder, in considering whether the defendant company (and bus owner) was liable for the claimant pedestrian's personal injury claim, had examined the relevant factors and had applied the correct legal tests, and his decision to find both breach of duty and causation established had been available to him on the evidence as a whole. The Queen's Bench Division so ruled in dismissing the defendant's appeal against the recorder's decision, granting judgment in favour of the claimant, as to two thirds of the value of his personal claim.

Digest

The judgment is available at: [\[2020\] EWHC 982 \(QB\)](#)

Background

In June 2016, the claimant was walking along King Street to what was effectively a crossroads with Brown Street, with priority for traffic on King Street. As the defendant company's bus approached the junction with Brown Street, another bus, a Stagecoach bus, was driving down King Street in the opposite direction. The two buses needed to pass each other. The defendant's bus driver veered slightly to the left towards the mouth of Brown Street, and either just touching or just passing over the most proximal white lines on that junction. At about the same time, the claimant was in the process of crossing Brown Street. He walked in front of the left nearside of the bus, just as it was passing the mouth of Brown Street, and the two collided. The claimant was thrown to the street and he suffered a head injury with a fracture of his skull.

The claimant brought a personal injury claim against the defendant. At the trial as to liability only, the recorder gave judgment for the claimant, as to two thirds of the value of his claim.

The defendant appealed.

Issues and decisions

(1) Whether, as the defendant contended, where the evidence turned 'almost exclusively' on the CCTV footage, the appellate court was in as good a position as the recorder to assess what had occurred and, having seen the video evidence, it should form its view as to breach of duty and causation.

The court would not readily interfere with a judge's evaluation of what was reasonable in the circumstances (see [16] of the judgment).

Applying the law about the nature of a review and the authorities, the present case was not one where it was appropriate to carry out a fresh evaluation (see [46] of the judgment).

The court rejected the defendant's submission that the function on appeal was, even if the case turned on the video evidence, to consider that evidence, form a view and, if that view was different from the trial judge, to substitute the view of the appellate court for that of the trial judge. Even if the present case turned entirely on the video evidence, and in the event the court had reached a different evaluation, then absent a gap in logic, a lack of consistency or a failure to take into account some material factor undermining the cogency of the conclusion, the appellate court could not interfere, unless it came to the view that the decision was 'wrong'. It would not suffice that the appellate court might have arrived at a different decision (see [34] of the judgment).

The decision did not turn entirely on the video evidence, but also on the evidence of the bus driver and considering the video evidence alongside his evidence (see [35] of the judgment).

In any event, if there was no gap in logic, a lack of consistency or a failure to take into account some material factor undermining the cogency of the conclusion, the appellate court had, therefore, to be satisfied that it was not simply that it might have arrived at a different evaluation, but that the decision of the judge had been wrong (see [36] of the judgment).

Assicurazioni Generali SpA v Arab Insurance Group (BSC) [2002] EWCA Civ 1642 considered; *Manning v Stylianou* [2006] EWCA Civ 1655 considered; *Ahanonu v South East London and Kent Bus Co Ltd* [2008] EWCA Civ 274 considered; *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5 considered; *R (on the application of C) v Secretary of State for Work and Pensions* [2016] EWCA Civ 47 considered; *Re Sprintroom Ltd Prescott v Potamianos and another*; *Potamianos v Prescott and another* [2019] EWCA Civ 932 considered.

(2) Whether the recorder had erred in holding that the bus driver had breached his duty of care in failing to see the claimant before walking out in front of his bus.

The defendant submitted that, had the recorder applied settled law to the facts, he would have found that it had not been necessarily negligent for the bus driver not to have seen the claimant, and that the sole cause of the accident had been the claimant's manoeuvre of changing his direction and walking suddenly into King Street into the path of the bus.

The recorder had examined the relevant factors and had applied the correct legal tests. He had also carried out well the reasoning process of setting out his reasons for his decision in terms which had been clear and easy to understand. The decision to find both breach of duty and causation established had been available to the recorder on the evidence as a whole (see [48] of the judgment).

The submission that it had been reasonable for bus driver to have fixed his gaze on the Stagecoach bus for the critical period of six to seven seconds was rejected. If that had been necessary in order to pass the Stagecoach bus, then the manoeuvre of going towards the mouth of the junction with Brown Street should not have been attempted. In fact, the recorder had found that the bus driver should have intermittently glanced forward and to his left. It had been a breach of duty because of the particular hazards at the junction with Brown Street. It had been unsafe, having regard to the presence of pedestrians crossing Brown Street, for the bus driver not to have observed them at all, and to have made the manoeuvre towards the mouth of Brown Street without having been alert to the claimant's presence. It had not been

shown that the recorder had been wrong so to conclude (see [38] of the judgment).

The trial had been conducted entirely properly. The recorder had come to a conclusion based on evaluative judgments which had emerged as a result of a careful account of the evidence. It had been a conclusion that had been available on the evidence as a whole. The recorder had applied the correct legal tests and there was nothing to criticise about the logic, consistency and material factors taken into account and there was no reason to differ from his evaluation (see [39], [47]-[49] of the judgment).

(3) Whether the recorder had erred in holding that the claimant had proved that the breach of duty had caused his injuries.

The recorder had examined the relevant factors and had applied the correct legal tests. He had also carried out well the reasoning process of setting out his reasons for his decision in terms which had been clear and easy to understand. The decision to find causation established had been available to the recorder on the evidence as a whole (see [48] of the judgment).

Mark Lomas (instructed by Irwin Mitchell LLP) for the claimant.

Christian Taylor (instructed in-house) for the defendant.

Carla Dougan-Bacchus Barrister.