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Paul Beale -v- Multifab

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On 10th December 2021 HHJ Tindal sitting in Worcester County Court took the unusual step of dismissing Mr Beale's noise induced hearing loss claim applying section 57 of the Criminal Justice and Court Act 2015.

Mr Beale had brought a claim against four Defendants for noisy work in steel fabrication. Two of the Defendants chose to settle prior to the trial. Charlotte Brown from Keoghs represented the two remaining Defendants who alleged that the Claimant had been provided with hearing protection. Fortunately, there was a witness available to represent both Defendants at trial.

During the trial it was established that the Claimant had lied about a history of noisy hobbies including duck shooting and motorbiking. In addition, Claimant had not been forthcoming about a previous hearing test he had undergone in 1993. HHJ Tindal also found that the Claimant had lied about the provision of hearing protection.

The case was unusual because there was engineering evidence of noise levels in excess of 90dB(A) in the fabricating workshop. However, the Defendant witness was accepted and gave evidence that hearing protection was used when the noisy machinery was working. He said that if anyone was to use noisy equipment they would shout noise or ears and all the other workers would either put on earmuffs or earplugs. HHJ Tindal found that there was a breach of duty in that there was no formal system in place to control noise exposure in line with the 1989 Noise at Work Regulations. He thought it was likely that the Claimant was probably exposed to some excessive noise because of that breach of duty.

Applying *Keffe v Isle of Man Steam Packet Company Ltd* [2010]EWCA Civ 683 and *MacKenzie v Alcoa Manufacturing (GB) Ltd* [2019]EWCA Civ 2110 HHJ Tindal said he was prepared to make an inference of some hearing loss as a result of noise exposure. He assessed damages at £12,500.

He then went on to consider the level of dishonesty of the Claimant. He determined that it was fundamental and also that the Claimant would not face substantial injustice by having his case dismissed. HHJ Tindal relied upon *Diamanttek v James (Coventry County Court HHJ Gregory 8 February 2016)* as authority for the proposition that an untruth about hearing protection in a noise induced hearing loss case could be fundamental.

In a twist at the end of the trial the judge chose to assess the cost liability of the Defendants at the same level that he said damages would have been awarded. This left the Claimant without having to pay any costs order.

Consequences

The case is helpful to Defendants because it shows that if they can establish that a Claimant had lied in a disease claim then even if some damages are awarded they can still have the claim entirely dismissed. The case emphasises the importance of thorough preparation, Facebook images and detailed part 18 questioning were used in this case. The case is unusual as well because the Court chose to draw an inference that some hearing loss would have been caused even though hearing protection was used for the time of most noise exposure. The Claimant had not actually satisfied the conclusions of the engineering evidence but the Court was still prepared to make some award.

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