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Haider v DSM Demolition Ltd [2019] EWHC 2712 (QB)

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Successfully defending a client in a rear end shunt claim, staged accidents and fundamental dishonesty

Mini-summary

This appeal and cross appeal were about a road traffic accident that the Defendant alleged had been staged. Ultimately, the Defendant succeeded in demonstrating that the Claimant had presented a claim that was fundamentally dishonest, albeit that the Court found that his dishonesty related to quantum rather than liability.

Q&A

What are the practical implications of the case?

First and foremost, this is a case of the High Court once again overturning the decision of a circuit judge who was far too benevolent in his findings about the Claimant's credibility.

The Claimant's dishonesty in this case centered around his failure to give proper disclosure and the High Court took the opportunity to remind litigants of the importance of their disclosure obligations.

Where you have a weak case on liability, proper scrutiny of the presentation of the claim on quantum, including in particular focused Part 18 questions, can make all the difference in a close contest.

Secondly, those acting for motorists who appear to have been the victim of a staged accident should look very carefully at the speed that the policyholder says that he or she was travelling at before the collision. As the judgment explains, a speed of less than 20mph is significant because the Highway Code does not give stopping distances for speeds under 20mph.

What was the background to the case?

On July 10th, 2014, the Claimant, a taxi driver, was driving his car along the A450 Worcester Road, a country lane. Behind him was the Defendant's vehicle, a large pick up truck. The Defendant's case is that he could clearly see that in front of the Claimant's taxi there was another vehicle in which there was a man sitting on the back seat gesturing from time to time to the taxi driver. Suddenly and without warning, the lead vehicle veered off down a side road and the taxi driver slammed on his brakes resulting in a collision between his taxi and the Defendant's vehicle: cue a personal injury claim and a substantial credit hire claim.

What did the court decide?

The trial

At trial, the circuit judge found that there was not remotely sufficient evidence to establish that the taxi and the lead vehicle had staged an accident but he dismissed the claim on liability on the basis that the taxi driver had brought his vehicle to a stop without needing to do so and that if there was any fault for the collision it was the result of the negligence of the driver of the lead vehicle, not the Defendant's.

Anticipating that the Court might be disinclined to conclude that the collision had been staged, cross examination focused instead on the presentation of the claim for damages – i.e. on the evidence supplied, and not supplied, to support the claim for hire.

The taxi driver accepted under cross examination that the cheque that the Defendant's insurers had eventually paid for the pre-accident value of his vehicle was paid into his bank account and also accepted that this transaction did not appear on the statements that he had disclosed in the proceedings. He accepted that there was another account whose statements he had not disclosed and he also accepted that he had credit cards notwithstanding that he had specifically denied having any such credit cards when he had answered Part 18 questions. The solicitor's role in asking focused Part 18 questions was crucial to the outcome in this case.

The trial judge concluded that the Claimant had not made a false disclosure statement or given false answers in Part 18 replies. However, since he also dismissed the Claimant's claim on liability, the Defendant did not initially seek permission to appeal against the decision not to make a finding of fundamental dishonesty.

The appeal

The taxi driver, however, appealed against the trial judge's finding on liability and permission to appeal was granted.

The Defendant therefore made a cross appeal against the decision not to make a finding of fundamental dishonesty.

Ultimately, Julian Knowles J dismissed the Claimant's appeal and helpfully provided a very full and detailed analysis of the relevant legal rule in relation to braking which will be of particular interest to those seeking to raise an alternative defence to a suspected staged accident.

The duty of persons driving in a line of traffic is to drive at such a distance behind the car in front as to be prepared for reasonable emergencies which may arise: *Thompson v Spedding* [1973] RTR 312, 314. The word reasonable is especially important in the expression 'reasonable emergency'.

In *Brown and Lynn v Western Scottish Motor Traction Co Limited*: 1945] SC 31,35, Lord Cooper said:

"The distance which should separate two vehicles travelling one behind the other must depend upon many variable factors – the speed, the nature of the locality, the other traffic present or to be expected, the opportunity available to the following driver of commanding a view ahead of the leading vehicle, the distance within which the following vehicle can be pulled up and many other things. The following driver is, in my view bound, so far as is reasonably possible, to take up such a position, and to drive in such a fashion, as will enable him to deal with all traffic exigencies reasonably to be anticipated: but whether he has fulfilled this duty must in every case be a question of fact, just as it is a question of fact whether, on any emergency disclosing itself, the following driver acted within the alertness, skill and judgment reasonably to be expected in the circumstances."

That said, a driver is not expected to anticipate 'folly in all its forms': *London Passenger Transport Board v Upson* [1949] AC 155, 172.

The cross appeal

Having lost his appeal, things went from bad to worse for the Claimant when Julian Knowles J overturned the finding of the trial judge on the question of fundamental dishonesty. Again, the High Court's analysis here has very broad application to all personal injury lawyers but especially those who practice in credit hire claims. Paragraphs 59 & 60 of the judgment reads as follows:

59. The importance of the Claimant giving proper disclosure about his financial circumstances needs to be emphasised. Part of the purpose of a statement of truth is to bring home to party signing the solemn nature of what s/he is doing, and importance of telling the truth. To knowingly give a false statement of truth is a contempt of court: CPR r 17.6(1). Moreover, as the Defendant correctly observed in its Skeleton Argument, the County Court cannot carry out an assessment of the issue of impecuniosity when a litigant fails to give full financial disclosure. By doing as he did, the Claimant prevented the Defendant from carrying out a proper investigation into his claimed impecuniosity. This skewed and distorted the presentation of his claim in a way that can only be termed fundamentally dishonest.

60. It follows that the judge was wrong not to have concluded (per CPR r 44.16(1)) that the claim was not fundamentally dishonest so as to allow the order for costs made against the Claimant to be enforced to its full extent.

Thus, even if the Claimant had succeeded in his appeal, his claim would have been dismissed in any event because the Court would have applied s. 57. In the end, fundamental dishonesty related to QOCS in this particular case rather than to s.57.

Ultimately, an agreement was reached with the hire company who agreed to pay the Defendant's costs of the action in full.

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