Legally Blonde

News & Case Law Update

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BACKHOUSE JONES

Whiplash Injury Regulations 2021

After several years of delays, it has now been confirmed that the new Whiplash Reforms come into force from 31 May 2021.

The regulations provide the following tariffs for damages for whiplash injuries occurring after that date:

Duration of injury	Amount payable for one or more whiplash injuries	Amount payable for one or more whiplash injuries and one or more minor psychological injuries suffered on the same occasion
Not more than 3 months	£240	£260
More than 3 months, but not more than 6 months	£495	£520
More than 6 months, but not more than 9 months	£840	£895
More than 9 months, but not more than 12 months	£1,320	£1,390
More than 12 months, but not more than 15 months	£2,040	£2,125
More than 15 months, but not more than 18 months	£3,005	£3,100
More than 18 months, but not more than 24 months	£4,215	£4,345

There are however exceptions, for example the Court may decide that the amount of damages to be awarded should be more than the tariff amount if the injuries are exceptionally severe, or PSLA affects the persons circumstances.

Rule 35.4 of the Civil Procedure Rules will also be amended as of 31 May 2021. This specifies that in most cases the medical evidence to be obtained in most personal injury claims, which include whiplash injuries should be a fixed cost medical report issued via the MedCo Portal.

Rule 26.6 of the Civil Procedure Rules is also amended to increase the small claims track limit for personal injury claims arising from a road traffic accident from £1,000 to £5,000. The new limit applies only to accidents occurring after 31 May 2021 and does not apply to employer's liability and public liability accidents and all other injury claims, for which the limit remains at £1,000. Other exceptions to the new limit include when the Claimant is a child, a vulnerable road user, an undischarged bankrupt or where the Defendant's vehicle was registered outside the UK on the date of the accident.

Testing on the new claims Portal has been deemed a success and when it's rolled out it will be designed to handle claims from unrepresented Claimants. This is necessary because as the small claims limit is rising to £5,000, meaning that costs are no longer recoverable for claims below that figure which will have an impact on whether Solicitors will be required to get involved at all in the process.

While the legislative changes apply only to RTA claims, the government has said it is 'still committed' to increasing the small claims limit to £2,000 for employers' liability and public liability claims at some point.

MEF v St George's Healthcare trust 2020

An offer on costs was made by way of Calderbank letter with no time limit for acceptance. When the detailed assessment was not proceeding as planned, the Claimant accepted the offer. The Defendant argued that the offer lapsed at the start of the hearing, but it held it was indeed open for acceptance.

Lambert v Forest of Dean District Council 2020

An Application to adjourn a hearing was granted where the applicant was in hospital suffering from COVID 19 symptoms.

Zenith Insurance PLC v LPS Solicitors 2020 EWCH 1260

The Defendant firm acted for three Claimant's following a road traffic accident. The claims were settled however the Claimant's subsequently stated that they had not been involved in the claim. A pre action disclosure was made against the Claimant's Solicitor. The Insurer stated that this was incomplete and made a further Application.

However, the Claimant failed to show how the disclosure was incomplete or that the documents were required in to dispose fairly of anticipated proceedings. The Application was refused.

Barry Cable v Liverpool Victoria Insurance Co Ltd 2020

The Claimant issued Part 8 proceedings and obtained a stay. He knew at this point that this claim would exceed the value for the portal. It was held that this constituted an abuse of process and the claim was struck out. He made an Application for relief from sanctions and for the claim to be transferred to Part 7. Proper weight had to be given to the consequences of the strike out and depriving the Claimant of his rights under ECHR 6. While considering discretion, prejudice and relief from sanctions, the Application was granted.

David Craig Pegg v David Webb & Allianz Insurance PLC 2020

The Second Defendant insurer appealed against a decision that the Claimant was not fundamentally dishonest in his personal injury claim. It was held by the Judge that a genuine accident took place, but the Claimant had failed to give the expert relevant information that he had been in a quad bike accident the month before the RTA. It was also held that the evidence made about the longevity of the injuries were inconsistent with his own evidence at Trial. However he did not make a finding of fundamental dishonesty.

Despite dismissing the claim he also ordered that the insurer pay 60% of the costs. The insurer therefore appealed against the decision. On appeal fundamental dishonesty was found and the Claimant was ordered to pay the insurers costs.

Linda Dmney v Alexander Rees & Advantage Insurance Company 2020

An Application to adduce two further expert reports in a road traffic accident was refused where the test in CPR Pt 35 was not made out. Two experts had already stated they could offer no reliable opinion as to the speed of the deceased's motorbike. The Defendant applied to instruct two further experts to provide alternative scenarios of events if the deceased had been travelling at different speeds. It was held that a finding of the deceased's speed would have to be based on lay witnesses' evidence, as it would be very unusual to have expert evidence from an accident reconstruction expert where they could not reconstruct the more important feature.

Finsbury Food Group PLC v Scott Dover (2020)

In the initial matter the Claimant sustained injuries during his employment. Initially the claim was valued under £25,000 and submitted to the Low Value MOJ Portal. The Defendant failed to provide a response within 3 days and the matter exited the Portal. Liability was later admitted subject to causation. Counsel's advice was sought on quantum and the matter settled for £70,000 in December 2017. Within the Claimant's bill of costs, £650.00 + VAT was claimed for Counsel's advice. This was disputed. The issue was whether CPR r.45.29I(2)(C) fixed counsel fees at £150.00 + VAT under CPR 45.23B/table 6A or if the fees fell outside the fix costs regime and where subject to assessment. It was found that the disbursement could be recovered, but it was reduced to £500.00+VAT, the appeal was dismissed.

Lucas v Gatward & Anor (2020)

An application to vacate a trial due to the Claimant and other witnesses being vulnerable during COVID-19 was dismissed. It was held that giving evidence via video link did not undermine proceedings and credibility could still be assessed. Within the application the Claimant applied to join her parents as Defendant's and amend her Particulars of Claim. The court refused to grant permission as the claim was becoming disproportionate due to the amount at stake.

(1) Ryandeep Colar (2) Paul Singh v Highways England Co LTD (2019)

The Highways agency was liable for a tree falling and causing injury. While it was found that the authority could not know from a visual inspection that the tree was diseased, but the presentation of the tree should have triggered a further investigation. The Judge also found that the as a public authority had a duty to act fairly against the Claimant's, by providing a balanced view on all the evidence available and disclosing all the documents available.

Simetra Global Assets LTD & Anor v Ikon Finance LTD & ORS (2020)

A discontinuance from the Claimant against the eighth Defendant was approved by the Court. It was agreed that while the other Defendants in the proceeding agreed a Tomlin Order with the Claimant's the eighth Defendant maintained his innocence. The Court stated a Claimant who discontinues against a Defendant is liable for their costs, however the eighth Defendant could not evidence the costs he incurred, therefore it was agreed the discontinuance was approved, with no order as to costs.

Knapman v Carbines (2020)

An application to rely on new expert evidence was denied where the Defendant took the steps to better their own case. The Claimant suffered a

severe traumatic brain injury in a road traffic accident, liability was admitted. The claimant solicitors valued the claim at £12.5 million. The Defendant provided a counter-schedule and valued the claim at £130,000. The Claimant had pre - existing learning difficulties, therefore the Defendant argued he would have require a high level of care in the future, in particular after his father's death (his care provider). The Court granted the parties permission to reply upon several experts, after a 'round the table' meeting no agreement could be reached. Following the meeting the Defendant instructed a further expert, without the permission or knowledge of the Claimant or the Court. The Defendant then make an Application to rely upon this report, and they accepted that the Claimant may instruct a expert of their own choice in the same field. However, this would result in the 10 day trial being vacated. It was held that any further delay in the trial would prejudice the Claimant and that the delay in bringing the application outweighed the content and significance of the report.

West v Olakanpo (2020)

A Judge found a Defendant to be dishonest without a testing his evidence. Within the Judges finding of dishonestly he awarded indemnity costs under CPR r.45.29J. In the case the Defendant argued that he was not involved in a collision with the Claimant and provided evidence in support. The Claimant provided evidence of the Defendant's business card and photographs of the Defendant's vehicle at the scene of the accident. The Claimant made an offer by way of Part 36, after the claim had been allocated to the Fast Track the Defendant accepted the Part 36 offer. The Claimant made an application that indemnity costs should apply as the Defendant was dishonest. On appeal, it was found that the Judge has failed to address the evidence the Defendant filed in the early stages of the proceedings, the Court held it could not be stated that the Defendant failed to provide witness evidence. In order to find a decision of dishonestly the Defendant's evidence would have to be tested at a trial.

Bonsor v Bio Collectors Ltd (2020)

The Claimant, a pedestrian, was involved in a road traffic accident with the Defendant, a heavy goods vehicle. The Defendant was found fully liable for failure to check his mirrors. To comply with rule 170 of the Highway Code the driver was obliged to take reasonable steps to check whether a pedestrian was concealed within his blind spot. He failed to indicate in good time and should have paused before he completed his left turn, in order to check for pedestrians in his blind spot. Had he done so, he would have seen the Claimant and the collision would have been avoided.

Phoebe Lewis v Wandsworth London Borough Council (2020)

On appeal it was granted in the instance where a Judge awarded damages to a Claimant who was hit in the eye with a cricket ball while she was walking in a public park. It was found that the local authority had no duty to provide warning to the public that a game of cricket was in progress and warn of the type of ball that was being used.

Diriye v Bojaj (2020)

The Court have confirmed in this case that Defendant need to correctly set out and evidence in relation to impecuniosity. The Claimant was a taxi driver who issued proceedings which included a large credit hire claim, within his particulars of claim he claimed to be impecunious but did not provided any further details or evidence. An 'Unless Order' was made by the Court directing the Claimant to provide a reply to the Defence 'setting out all of the facts in support of any assertion that the Claimant was impecunious at the commencement of and during the hire of the vehicle in question.'
The reply was served late on the Defendant. The reply was sent the day the reply was due, it was sent by way of ' Signed for First Class'. It was signed for five working after it was due.

The reply also failed to set out and evidence what the unless order had stated, his reply was as follows: 'As he earned cash as a minicab driver, he expended the same on bills and daily living allowances for his family'.

The Claimant then made an Application for relief from sanction, given that the service of the reply to the Defence was late, this was made over one calendar month after the breach.

The application was rejected.

The Judge held that serving the Reply to the Defence by ' Signed for First Class' was not effective service, furthermore he applied the three stage Denton test.

The first issue looked at was the unless order and service of the Reply to the Defence; the Court of appeal held that 'Signed for First Class' was the same as 'First Class' post except that it is signed for. It was deemed on this basis the reply was deemed to be served two days late and not 5 days.

It was however held that the substance of the reply did not comply with the Unless Order; the Claimant was 'required to set out his income and expenditure and how those figures meant that he could not afford to hire a replacement vehicle'.

Conclusion

The deemed service provisions within CPR 6.26 apply to both 'Signed for First Class' and 'First Class'; a document will be deemed served two days after it was sent, regardless of when it was signed for.

It has been made very clearly that a Claimant should set out all the facts in support of their claim of impecuniosity from the outset. This will allow the Defendant to be able to assess the claim made against them.

Smithson v Lynn & North Yorkshire Cunty Council

The Claimant was a passenger in a car driven by the First Defendant. The First Defendant will say he lost control of his car on ice. Section 41 (1A) of the Highways Act 1980 contains a duty, so far as reasonably practicable, that safe passage along a highway is not endangered by snow or ice. It was firstly held that the duty was the Highways Authority to plead and prove it. It was also held that the highways Authority here was in breach of its statutory duty to deploy gritters to grit the accident location despite there being two earlier accident on the same stretch of road.

GARY VINCENT v (1) GARY WALKER (2) VIDIONICS SECURITY SYSTEMS LTD (2021) [2021] EWHC 536 (QB)

QBD (David Pittaway QC) 08/03/2021

PERSONAL INJURY - NEGLIGENCE - ROAD TRAFFIC DRIVING : PEDESTRIAN CROSSINGS : PEDESTRIANS : PERSONAL INJURY : ROAD TRAFFIC ACCIDENTS

A claim against the driver of a car, following a road traffic accident in which a pedestrian was hit as he crossed the road in the dark without using automated traffic lights or looking, was dismissed where the driver had not driven at excessive speed or failed to scan the road adequately as he approached the pedestrian crossing.

The claimant pedestrian (V) brought a claim in negligence against the defendant driver (W) following a road traffic accident.

V, wearing dark clothes, had been crossing a road in the late afternoon in November. The pedestrian crossing was controlled by automated traffic lights but the lights were green for cars to proceed as he stepped from the central refuge into the road. Two-thirds of the way across he was struck by a car driven by W and suffered injuries. V accepted that he was not paying attention when he crossed the road. An eyewitness gave evidence that V had not been looking as he crossed the road. The speed limit on the road was 50mph and W told the police that he had been driving at 45 to 50mph and had applied emergency brakes as soon as he saw V step into the road. Two accident reconstruction experts gave evidence as to the visibility of V and the speed of W's car.

V submitted that the fact that W had accepted that he had not observed him before he stepped into the road was an indication that he was not looking properly and that a reasonable and careful driver on approach to a pedestrian crossing should have been scanning both sides of the road for pedestrians so that he would have had ample time to see him and react. W contended that V's dark clothes obscured his presence until after he stepped into the road, his reaction time had been very fast and there was no time to take avoiding action.

Held

Using the calculation in the experts' joint statement, W was probably travelling at a speed of 39 to 41mph when he first saw V which was not excessive given the particular circumstances of the road. He probably eased his foot off the accelerator as he approached the crossing as was his usual practice. Caution should be applied to what he said immediately after the accident when he was very shocked. Motorists were required to pay particular attention to the presence of pedestrian crossings and attention should be sharper in the dark. The court was not satisfied that V would have been visible to W before he reached the central refuge. If W had scanned the central refuge as he approached the junction, he was unlikely to have observed V. Even if he had seen him, W could not reasonably have anticipated that V would ignore the pedestrian crossing traffic lights and step into the road without looking. A reasonably prudent driver, driving at 39 to 41mph in a 50mph limit, was permitted to rely on an adult pedestrian using the traffic lights before he crossed or checking that the road was clear. Even if W had seen V on the central refuge, the accident could not reasonably have been avoided. W had not driven at excessive speed or failed to scan the road adequately (see paras 28-30, 39-43 of judgment).

Claim dismissed.

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