

IN THE COUNTY COURT AT BIRMINGHAM

CLAIM No: 067DC386

Neutral Citation Number: [2024] EWCC 12

Birmingham Civil and Family Justice Centre

The Priory Courts

33 Bull Street

Birmingham B4 6DS

24 May 2024

Before :

HIS HONOUR JUDGE CHARMAN

(1) TEKLE SENAY

(2) FAREED OBADI

Claimants

AND

MULSANNE INSURANCE COMPANY LIMITED

Defendant

Mr Adnan Hussein instructed by Bank View Solicitors for the Claimants Ms

Louisa Denning instructed by DWF LLP for the Defendant

Hearing dates: 18 March and 15 April 2024

JUDGMENT

24 May 2024

(Draft Judgment: 2 May 2024)

1. This matter was listed for trial on 18 March 2024. Evidence and submissions were heard on that day. By the time they were completed, it was after the end of the usual court day and the Defendant sought a finding of fundamental dishonesty against Mr Senay. The matter was therefore adjourned for the delivery of an oral judgment. I delivered that oral judgment on 14 April 2024.
2. The case concerns a road traffic accident. The first Claimant, Mr Senay, was a taxi driver. The second Claimant, Mr Obadi, was a passenger in his taxi. There was a collision between Mr Senay's vehicle and that of the Defendant's insured. Liability was in dispute. Both claimants brought claims for personal injury. Mr Senay also claimed for damage to his vehicle, its recovery and storage, and in respect of credit hire. In my judgment I decided that:
 - (a) Mr Senay succeeded as to liability.
 - (b) Mr Senay's claim in respect of damage to his vehicle succeeded and he was entitled to £2,900 in respect of it.
 - (c) Mr Senay's credit hire claim failed, but he was entitled to damages for loss of use of his vehicle, which I assessed at £1572.
 - (d) Mr Senay's claim for the expenses of the recovery and storage of his vehicle succeeded and I awarded him damages for those heads of loss totalling £1092.
 - (e) Mr Senay's claim in respect of personal injury failed.
 - (f) Mr Senay's claim in respect of personal injury was fundamentally dishonest.
 - (g) Mr Obadi's claim in respect of personal injury was successful, he was entitled to special damages in respect of physiotherapy costs and I awarded him total damages of £5,575 and summarily assessed the costs of his claim.
3. In respect of Mr Senay's claim, there was disagreement between the parties following the delivery of the judgment as to whether my finding of fundamental dishonesty in respect of his personal injury claim meant that his whole claim, including the other heads of claim, should be dismissed; or whether it meant that Mr Senay should be awarded his damages in respect of the other aspects of his claim. This is a question of the effect of section 57 of the Criminal Justice and Courts Act 2015 on his claim. I was told by counsel that there is no clear and binding authority on this issue but that they were both aware that there had been decisions of Circuit Judges and Recorders on this issue going either way.

4. This judgment is concerned with that issue in this case.
5. I was also told that in fact, Mr Senay failed to beat a Part 36 offer made by the Defendant in any event. The parties indicated that they were able to agree in principle the costs consequences of that once the outstanding issue of the effect of section 57 has been determined.
6. Mr Senay's claim, like many others arising from road traffic accidents, included a claim for damages for personal injury and also claims for damages in respect of damage to property, expenses incurred consequent on the accident and a claim based on the loss of use of his vehicle due to the accident. These are different heads of loss but they all arise from the same breach of duty, namely the negligence of the Defendant's insured which I have found was the cause of the accident.
7. Section 57 of the 2015 Act provides:

Personal injury claims: cases of fundamental dishonesty

(1) This section applies where, in proceedings on a claim for damages in respect of personal injury ("the primary claim") –

(a) the court finds that the Claimant is entitled to damages in respect of the claim, but

(b) on an application by the Defendant for the dismissal of the claim under this section, the court is satisfied on the balance of probabilities that the Claimant has been fundamentally dishonest in relation to the primary claim or a related claim.

(2) The court must dismiss the primary claim, unless it is satisfied that the Claimant would suffer substantial injustice if the Claimant were dismissed.

(3) The duty under subsection (2) includes the dismissal of any element of the primary claim in respect of which the Claimant has not been dishonest.

(4) The court's order dismissing the claim must record the amount of damages that the court would have awarded to the Claimant in respect of the primary claim but for the dismissal of the claim.

(5) When assessing costs in the proceedings, a court which dismisses a claim under this section must deduct the amount recorded in accordance with subsection (4) from the amount which it would otherwise order the Claimant to pay in respect of costs incurred by the Defendant.

(6) If a claim is dismissed under this section, subsection (7) applies to –

(a) any subsequent criminal proceedings against the Claimant in respect of the fundamental dishonesty mentioned in subsection (1) (b), and

- (b) any subsequent proceedings for contempt of court against the Claimant in respect of that dishonesty.*
- (7) If the court in those proceedings finds the Claimant guilty of an offence or of contempt of court, it must have regard to the dismissal of the primary claim under this section when sentencing the Claimant or otherwise disposing of the proceedings.*
- (8) In this section –*
- “claim includes a counterclaim and, accordingly, “Claimant” includes a counter Claimant and “Defendant” includes a Defendant to a counterclaim;*
- “personal injury” includes any disease and any other impairment of a person’s physical or mental condition;*
- “related claim” means a claim for damages in respect of personal injury which is made –*
- (a) in connection with the same incident or series of incidents in connection with which the primary claim is made, and*
- (b) by a person other than the person who made the primary claim.*
- (9) This section does not apply to proceedings started by the issue of a claim form before the date on which this section comes into force.”*

8. Neither counsel referred me to any authorities on the issue.
9. Counsel for the Claimant submitted that the effect of section 57 here is that as a result of my finding that his personal injury claim was fundamentally dishonest, Mr Senay’s is liable to pay the Defendant’s costs of his personal injury claim, but his entitlement to the damages I found due to him relating to his vehicle is not affected. He said that is the effect of the words used in section 57. He then focussed his submissions on the question of whether Mr Senay would suffer substantial injustice if I were to dismiss his claims relating to his vehicle. That is a different point and one which only arises if the current issue is determined against Mr Senay.
10. Counsel for the Defendant addressed the immediate issue more directly. She submitted that it is the general understanding of section 57 and the generally accepted practice that in cases such as this, the Court assesses the damages which it would have awarded the fundamentally dishonest claimant and deducts those damages from the amount that the claimant would otherwise have to pay in respect of the defendant’s costs. He is liable to pay those costs consequent on the loss of his QOCS costs production resulting from the finding of fundamental dishonesty. She says that this is the approach generally taken by first instance judges in this situation and the generally accepted

approach. However, she informed me that there have been cases where that approach has been challenged at Circuit Judge level and she is aware that there are decisions on such challenges going either way. Those decisions are unreported and copies of the judgments were not available.

11. Two are referred to in commentary prepared by members of barristers' chambers who undertake this work. The first is a decision of HHJ Saunders in *Basir v Larizadeh* at Central London County Court on 20th February 2019, which appears to have been an appeal on the question of whether associated claims should be struck out following a finding of fundamental dishonesty in respect of the personal injury claim. It is said that HHJ Saunders decided the issue in favour of the defendant in that case and struck out the other heads of claim. The second is a decision of Recorder Mark Jones in *Diaw v ERS Syndicate Management* at Manchester County Court on 25 February 2020. Recorder Jones apparently decided the issue in favour of the claimant in that case. It is also said that each of these judges included in his judgment a *Pepper v Hart* review of Hansard when the 2015 Act was going through Parliament.
12. I have not seen either of these judgments or heard submissions about them and I do not consider that I can rely upon the limited commentary on them which appears on lawyer's websites. I must therefore carry out my own analysis without the assistance of them.
13. I indicated at the hearing that I have not previously had to deal with a case in which this issue falls to be determined but had previously understood that the effect was as contended for by the Defendant. However, looking at section 57, it appeared that such a result was not consistent with the ordinary and natural meaning of the words used.
14. Not only are there numerous decisions in the County Court where the court has proceeded on the basis of the general understanding relied upon by the Defendant, but there are also decisions of High Court Judges which do so as well. Three relatively well-known examples are *London Organising Committee of the Olympic and Paralympic Games v Sinfield* [2018] EWHC 51 (QB), *Haider v DSM Demolition Ltd* [2019] EWHC 2712 (QB) and *Woodger v Hallas* [2022] EWHC 1561 (QB). There are others. However, in no case that I have identified was the matter given specific consideration or even argued. I therefore approach the question I have to decide against that background of these previous decisions but with no binding authority or even guidance.

15. The question arising is one of the construction of the words used in section 57. Section 57 states (1) that it applies to *proceedings* on a claim for damages in respect of personal injury and defines that as “*the primary claim*”(emphasis added in each case). It then states that where the court finds (a) that the claimant is entitled to damages in respect of *the claim* – which in my judgment means damages for the primary claim and/or other claims brought in the proceedings – but (b) the court also finds that the claimant has been fundamentally dishonest in relation to *the primary claim or a related claim* – so the personal injury claim or a claim related to it – (2) the court must dismiss *the primary claim* - the personal injury claim – unless the claimant would suffer substantial injustice if the claim were dismissed; and (3) the duty to dismiss includes the dismissal of any element of *the primary claim* - the personal injury claim – in respect of which the claimant has not been dishonest. Further, (4) when dismissing the claim, the court must record the amount of damages that it would have awarded in respect of *the primary claim* – the personal injury claim – but for the dismissal of the claim.
16. Accordingly, section 57 applies to claims which include a claim for damages for personal injury, which is Mr Senay’s claim; and is engaged when the court finds that there has been fundamental dishonesty in respect of the personal injury claim, as I did in Mr Senay’s case. The section then provides that the court must dismiss Mr Senay’s personal injury claim unless he would suffer substantial injustice thereby. It notably does not provide that parts of his claim other than the primary claim, (being the personal injury claim), must be dismissed. This is because the section defines the primary claim as the claim for damages for personal injury and then provides that it is the primary claim which is to be dismissed where fundamental dishonesty is found to be present.
17. In subsection (4) the section states that the court must record the amount of damages it would have awarded the claimant but for the dismissal of *the claim*. In my judgment that reference to the claim must be to the primary claim. There are two reasons for this. First, the sentence only makes sense if it is referring to the dismissal of the primary claim as the words “but for” refer back to the dismissal of the primary claim and not any other claim brought with it.
- Second, the earlier provisions of the section provide only for the dismissal of the primary claim and any element of the primary claim. They make no reference to a requirement for dismissal of any other part of the claim. Not only does the section expressly define the primary claim as a claim for damages in respect of personal injury, but the inclusion of a definition of primary claim and its use

in identifying what is to be dismissed would not be necessary if the dismissal extended to all claims brought in proceedings which include a claim for damages for personal injury.

18. Therefore, in my judgment, the words used in the section mean that it is only the primary claim – being the claim for damages in respect of personal injury – which is to be dismissed where a finding of fundamental dishonesty as to that claim or a related claim has been made.
19. Further, if the meaning contended for by the Defendant were correct, the effect would be to abrogate the property rights of claimants whose vehicles were damaged in accidents caused by negligent defendants. Whilst the policy behind section 57 is self-evidently to penalise claimants who bring dishonest personal injury claims, it would be expected that clear words would be used if Parliament had intended to deprive claimants of their property rights as well as damages for personal injury. It will be apparent from the analysis of the words of the section which I have already set out that there are no such clear words.
20. As my conclusion as to the meaning and effect of the words used in section 57 differs from the previous general understanding and the assumption as to its application made in decisions of the higher courts, I consider it appropriate to also consider Parliamentary material. The question of the meaning of section 57 in a case such as this falls within the exception to the general rule against considering such material referred to by the majority of the House of Lords in *Pepper v Hart* [1993] AC 593. Lord Browne-Wilkinson said in that case at 634D:

“My Lords, I have come to the conclusion that, as a matter of law, there are sound reasons for making a limited modification to the existing rule (subject to strict safeguards) unless there are constitutional or practical reasons which outweigh them. In my judgment, subject to the questions of the privileges of the House of Commons, reference to Parliamentary material should be permitted as an aid to the construction of legislation which is ambiguous or obscure or the literal meaning of which leads to an absurdity. Even in such cases references in court to Parliamentary material should only be permitted where such material clearly discloses the mischief aimed at or the legislative intention lying behind the ambiguous or obscure words. In the case of statements made in Parliament, as at present advised I cannot foresee that any statement other than the statement of the Minister or other promoter of the Bill is likely to meet these criteria.”

21. He continued, at 634H – 635B:

“In many, I suspect most, cases references to Parliamentary materials will not throw any light on the matter. But in a few cases it may emerge that the very question was considered by Parliament in passing the legislation. Why in such a case should the courts blind themselves to a clear indication of what Parliament intended in using those words? The court cannot attach a meaning to words which they cannot bear, but if the words are capable of bearing more than one meaning why should not Parliament’s true intention be enforced rather than thwarted?”

22. The relevant wording of section 57 is far from straightforward to construe and is sufficiently ambiguous to justify consideration of Parliamentary materials as the words have led different judges to different conclusions as to their meaning and in a large number of cases have been assumed to have a different meaning to the meaning that I consider emerges from a detailed analysis of those words. As I have already noted, it has been said that both HHJ Saunders and Recorder Mark Jones made reference to Hansard in the course of arriving at their judgments on the same point.

23. In considering Hansard, I have in mind Lord Browne-Wilkinson’s guidance that only a clear indication of what Parliament intended should be relied upon by a court construing a statute.

24. In my judgment, there is such a clear indication in relation to the issue which I am considering.

This is because an amendment to the bill to achieve precisely what the Defendant contends for in this case was proposed by Lord of Hunt of Wirral as amendment

128. The amendment was rejected by the Minister responsible for the bill in the House of Lords, Lord Faulks. In doing so, his words made clear that the intended meaning and effect of the words of the bill put forward by the Government, and which were enacted, was that the section would not result in the dismissing of claims other than in respect of personal injury and claims related to personal injury, such as claims for property damage and credit hire. In his response to the amendment, Lord Faulks said:

“Amendment 128 was tabled by my noble friend Lord Hunt of Wirral, to whom the House listens very carefully on all things, but perhaps particularly in areas such as this. It would extend the scope of Clause 49 to cover claims for items linked to the personal injury claim. As he has indicated, this could typically include items such as damage to property and the cost of credit hire. The effect of the amendment would be that where the court was satisfied that the Claimant had been fundamentally dishonest, its order would dismiss any such related elements, as well as the claim for personal injury—when, for example, a claim for personal injury is used as a vehicle for other fraud.

I understand precisely what my noble friend says, and I have considerable sympathy for what lies behind the amendment, which is to make the clause as strong a deterrent as possible. However, after careful consideration by my officials and myself, I believe, on balance, that it would unnecessarily complicate the clause, and could have unintended consequences that would not be desirable.

The types of loss that would be caught by the amendment arise primarily in motor accident claims, and in practice payments for such losses are generally made up front by the Claimant's insurer, and are then recovered by them from the Defendant's insurer in the event that negligence is admitted or proved. This means that the amendment could affect subrogated rights between insurers, and could operate to the disadvantage of the Claimant's insurer, who would find it much more difficult to recover such sums. That might in turn have the undesirable consequence of making insurers less inclined to make payments in respect of this kind of loss to genuine victims of accidents for whom, for example, the rapid replacement of a vehicle could be essential.

The complexity of the law on subrogated rights means that the potential for this type of unintended consequence would be high. In any event, I do not consider the amendment necessary. The existing focus of the clause on personal injury claims avoids complexities of this nature, and ensures that the core matter in relation to which the Claimant has actually been dishonest, and where the main scope for dishonest behaviour arises—the personal injury claim—will be dismissed whenever the court considers it appropriate. We are confident that this should provide a sufficiently powerful deterrent to discourage Claimants from seeking to bring fraudulent and exaggerated claims, and believe that the amendment could on balance run the risk of creating uncertainty in the law and would make the clause unnecessarily complex in practice.”

25. This passage makes clear that the intention of the legislature was that the dismissal of a claim consequential on a finding of fundamental dishonesty would apply to the personal injury claim and claims related to the personal injury claim only. That intention coincides with what I have found to be the meaning of the words in section 57 applicable to Mr Senay's claim.
26. Accordingly, what I consider to be the meaning of the words of section 57 and the intention of the legislature in enacting it as disclosed by Lord Faulks response to amendment 128 proposed when the section was being considered, and the fact that the meaning contended for by the Defendant

would abrogate property rights despite the absence of clear words doing so, all point to the conclusion that where a finding of fundamental dishonesty has been made, section 57 requires the dismissal of the claim for damages for personal injury and claims related to personal injury only.

27. It follows that in this case, Mr Senay's claim for personal injury is dismissed but his claims in respect of damage to his vehicle, its recovery and storage and for loss of use of it are not dismissed.

28. I invite counsel to seek to agree an order consequent on this judgment, including as to costs. In the event that they are unable to do so, each should file written submissions as to the form of order that should be made in respect of Mr Senay's claim and as to the costs consequences. If it is necessary for me to undertake a summary assessment of any costs, I will do so on paper following receipt of the relevant costs schedules and written submissions on them.