Neutral Citation Number: [2017] EWCA Civ 201

Case No: B3/2015/1140 and 1140(A)

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE MANCHESTER COUNTY COURT
Mrs Recorder Howells
Claim No: 3YM00197

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31 March 2017

Before:

LORD JUSTICE LEWISON
and
LORD JUSTICE HENDERSON

- -

Between:

MR NAVEED HAMID	**First Respondent/ Claimant**
- and -	
MR SHEIKH KHALID	**Second Respondent/ First Defendant**

-and-

CO-OPERATIVE INSURANCE SOCIETY GENERAL INSURANCE LIMITED
Appellant/Second Defendant

- -

Mr Paul F. McGrath (instructed by **Weightmans LLP**) for the **Appellant**
Mr Lee Nowland (instructed by **Parkers Solicitors**) for the **Claimant**
Mr David Boyle (instructed by **Harvey Roberts Solicitors**) for the **First Defendant**

Hearing date: 2 March 2017

- -

Approved Judgment

Lord Justice Henderson:

Introduction

1. The issue on this appeal is whether the trial judge, Mrs Recorder Howells, was wrong to find that a road traffic accident had occurred on the evening of 13 January 2013 in substantially the circumstances alleged by the claimant, Mr Hamid, thereby entitling him to recover damages from the driver of the other vehicle involved (Mr Khalid, the first defendant) in a sum which the judge quantified as £28,070.39 including interest. In so finding, the judge rejected the primary pleaded case of fraud advanced by Mr Khalid's motor insurers, Co-operative Insurance Society General Insurance Limited ("the Insurers", the second defendant and appellant), who had refused to accept liability to indemnify Mr Khalid after investigating the alleged accident. The judge also rejected the Insurers' alternative contention that, even in the absence of fraud, the claimant's case had not been made out on the evidence to the civil standard of proof on the balance of probabilities.

2. The judge reached these conclusions in an unreserved judgment which she delivered at the end of a three day trial in the County Court at Manchester on 25 February 2015. At the trial, all three parties were represented by the same counsel who have appeared for them on this appeal. The judge heard oral evidence from the drivers of the two vehicles, Mr Hamid and Mr Khalid, each of whom was subjected to a searching cross-examination by counsel for the Insurers, Mr McGrath. The judge also had the benefit of expert engineering and medical evidence.

3. The Insurers' engineering expert was Dr Richard Ellwood, who holds a doctorate in automotive engineering and specialises in forensic collision investigation. The claimant's engineering expert was Mr Mark Griffiths, who is a consultant automobile engineer with 24 years' experience as an expert witness. Apart from their separate reports, Dr Ellwood and Mr Griffiths also prepared a helpful joint statement. At the suggestion of counsel, and with the judge's agreement, they gave their oral evidence at trial concurrently, in accordance with the procedure laid down in CPR PD 35 paragraph 11.

The circumstances of the alleged accident

4. According to the particulars of claim, the accident occurred when the claimant was driving his vehicle (a Skoda Octavia, which he operated as a plated taxi) along Keble Avenue in Oldham. Mr Khalid, driving a Nissan Primera, then emerged from a junction on the claimant's left-hand side, failing to give way as he should, and collided with the side of the claimant's car. The particulars of negligence alleged, as one might expect, that Mr Khalid was negligent in that he drove his vehicle directly into the claimant's, that he failed to stop or slow down, that he failed to keep any or any proper look out, and that he failed to stop at the give way markings on the side road (Eton Avenue). Although the particulars of claim alleged that the claimant "was correctly proceeding" along Keble Avenue, his car was said to be "stationary" at the moment of impact.

5. In his witness statement signed on 25 November 2013, Mr Hamid set out his version of the circumstances of the accident in more detail. He explained that he was a private hire taxi driver who owned his own vehicle, having worked in that occupation

for a little over a year. He worked a combination of days and nights. At the time of the accident, he had only recently purchased the Skoda for £3,500 from a friend who was also a taxi driver. He insured the vehicle on a third party, fire and theft basis, paying the premiums monthly. His reason for buying a replacement taxi was that the vehicle he had previously used had developed a serious gearbox problem and was not worth repairing. He had no history of involvement in road traffic accidents as a driver, and had been involved in only one accident as a passenger some three years previously when he had suffered a whiplash-type injury to his shoulder and neck.

6. On the evening of Sunday 13 January 2013, Mr Hamid said he was not working. Over that weekend, he and his family had been making the final preparations to move house into larger Council accommodation for himself, his wife, their four children aged between 1 and 10, and his younger brother. He was being helped by a friend, Mr Ali Ahmer. The larger items had been moved in the week before Christmas 2012, and on 12 and 13 January Mr Hamid and Mr Ahmer made a number of journeys moving the smaller items from the family's old address to its new one. The weather was not very good, and by the time they had finished for the day it was snowing lightly. Mr Hamid was taking Mr Ahmer to his home address, and their route took him onto Keble Avenue. He then changed up into second gear, travelling slowly not only because of the weather, but also because there were parked cars on each side of the road. As he approached the junction with Eton Avenue, a marked crossroads where he had the right of way, he saw the headlights of a car approaching from his left, although because of the parked cars he did not actually see the vehicle itself.

7. Mr Hamid's account continued:

> "17. I was still in 2nd gear and I travelled through the junction at between 10 and 15 mph. As I did so, I became aware of the car whose headlights I had seen as it continued through the junction and drove straight into collision with the nearside of my car. I am unable to say whether or not the other car stopped at the Give Way line before pulling out. I braked, but only on impact. I tried to do an Emergency Stop. The impact was between the front of the other car and the passenger side door and centre pillar of my car with the damage extending towards the rear door as well.
>
> 18. On impact, my vehicle was pushed to the right hand side. I felt my seat belt tighten and I felt thrown around in my seat. The airbags did not deploy. The cars seemed to be about 1 metre apart from each other after the impact.
>
> 19. My vehicle came to rest on the crown of the road. The other vehicle had come to rest with its nose near the crown of the road."

8. Mr Hamid then explained how Mr Khalid, who had two female passengers, first tried to say that the accident was Mr Hamid's fault, but when Mr Hamid pointed out to him the give way lines over which he had crossed, "he appeared to accept that it was his fault". Mr Hamid then dialled 999, using his mobile telephone, and spoke to an operator at the local police station. He stated what had happened, and said he and the

other driver were in the process of exchanging details. Nobody appeared to have been seriously injured, and on hearing this the operator made it clear that the police would not be attending.

9. A witness statement was also provided by Mr Hamid's passenger, Mr Ahmer, in which he substantially corroborated Mr Hamid's version of events. Mr Ahmer did not, however, give evidence at the trial. The judge considered that "no sensible explanation" for his non-attendance had been provided, and since his evidence was untested in cross-examination she said that she could give it "very little weight".

10. The judge was provided with a transcript of Mr Hamid's telephone call to the police, and she also listened to a tape recording of it. In paragraph 14 of her judgment, she said:

> "I have heard that 999 call and it appears to me that within that, the claimant expressed some confusion in his voice as to the precise location of the accident. In my judgment that is indicative of someone who was in some shock or confusion post accident. If, as the second defendant suggests, that was a deliberately created 999 call, one would expect the claimant to have got the details as to the precise location of the accident correct. He did not and, in my judgment, having heard that 999 call and the tone of the description of the accident and the location given by the claimant, it appears, in my judgment, to be genuine and has the hallmarks of truth around it."

11. The driver of the Nissan, Mr Khalid, is a security officer who lives in Warrington. In his witness statement signed on 22 March 2013, his explanation of the circumstances of the accident was briefly as follows. On the afternoon of 13 January 2013, he and his wife had travelled to Oldham on a social visit to his cousin, Shazia Akhtar. They decided to go out for an evening meal, and when they set out in Mr Khalid's car they were intending to visit a local restaurant. Mr Khalid's wife sat in the front, and his cousin in the back. The accident took place between 7.30 and 7.45 pm. It was dark and snowing, and visibility was poor. Mr Khalid was using his lights and windscreen wipers. Since he did not know Oldham very well, he was relying upon his cousin for directions. After some five to ten minutes, his wife realised that she had left her bag at home, and they had no choice but to return for it, because it contained their money and bank card. It was in the course of this detour that Mr Khalid made his way onto Eton Avenue, a road which he had never used before. At the time, his was the only moving vehicle on Eton Avenue, and he was driving at no more than 20 mph. As he approached the junction with Keble Avenue, he failed to see the give way lines because it was snowing heavily and the snow was sticking to the ground. His view was also restricted because of the row of parked cars on Keble Avenue close to the junction. Mr Khalid therefore passed through the junction without stopping, and collided with the claimant's Skoda. Mr Khalid thought the Skoda was moving "very quickly" and he estimated its speed as at least 35 mph.

12. Mr Khalid continued:

> "27. When the Skoda appeared in front of me I went to slam my brakes on but I had hit the front passenger door of it before I knew it.
>
> 28. To me it felt like a heavy impact, which is why I think the other driver was speeding.
>
> 29. The taxi driver braked and moved towards his right upon impact. He was still in the area of the junction when he stopped.
>
> 30. I came to a stop partly out of my junction."

13. Mr Khalid says he then went across to the taxi and spoke to the driver. They conversed in Urdu. He had never met or spoken to Mr Hamid before in his life. Mr Khalid was apologetic, saying that he had failed to see Mr Hamid or the junction because of the snow. Mr Hamid suggested calling the police, and Mr Khalid said that was fine, but he was accepting liability and was willing to give Mr Hamid his details, which he then did. There were no witnesses to the accident, because it was a terrible night and nobody was out. Mr Khalid took a photograph of the damage to Mr Hamid's car, consisting of a fairly heavy dent to the front passenger door. Mr Khalid's own car had sustained damage to the front bumper and the grille, with some misalignment behind it.

The judgment of the recorder

14. In her judgment, the judge began by considering the claimant's evidence. As she said, his account was straightforward: this was a genuine road traffic accident, which he could have done nothing to avoid. It was caused by the negligent driving of Mr Khalid. Having seen and heard him be cross-examined over a number of hours by Mr McGrath, the judge's assessment of his evidence was that "he gave it in a straightforward manner". A number of inconsistencies in the evidence had been drawn to her attention, but she reminded herself that the evidence related to an accident which had occurred more than two years previously, and lasted for "a matter of split seconds". The judge then proceeded to discuss a number of the alleged inconsistencies, before taking "a step back" to "consider the evidence as a whole". She then said (paragraph 15 of the judgment):

> "On balance, the claimant's evidence, in my judgment, was consistent and convincing and he impressed me as a palpably honest witness. I do not accept the [*Insurers'*] submissions that he was evasive or unreliable. He was cross-examined at length and retained that credibility throughout."

15. The judge then dealt in more detail with Mr Ahmer's evidence, repeating that it could carry little weight in the absence of cross-examination. She declined, however, to draw an adverse inference from his non-attendance. Having been referred to the guidance given by this court in Wisniewski v Central Manchester Health Authority [1998] PIQR P324 at 340, she considered that no inference could safely be drawn either way from his absence. Equally, she was unwilling "to place any or any real weight upon [*his*] evidence".

16. The judge then reviewed Mr Khalid's evidence, and again considered various alleged inconsistencies in it before standing back to assess his evidence overall. On that basis, she found his evidence to be consistent, and that he was an honest witness doing his best to assist the court. She found support for this assessment in a number of considerations, including the fact that he co-operated fully with the Insurers, had provided a witness statement to them upon request, and had also provided the photograph which he took of the claimant's car at the scene. The judge also attached significant weight to the fact that there was no evidence of any previous links between Mr Khalid and the claimant, and there was nothing to displace their evidence that they had never met or been in contact with each other before the accident. The judge was aware from her previous experience of similar cases "that it is not unusual for defendant insurance companies to provide records of a history between the parties and of proven links". In the absence of any such evidence, she said she had no reason to doubt that Mr Hamid and Mr Khalid had no knowledge of each other before the accident, and "that this was anything other than an entirely genuine road traffic accident".

17. In relation to the alleged inconsistencies, the judge said at paragraph 23:

> "In so far as there were inconsistencies – and undoubtedly there were – they, in my judgment, were caused by the claimant and the first defendant trying to recall, now in a forensic manner, events which happened in the course of split seconds a period of time ago."

18. Turning to the expert evidence, the judge recorded that neither Dr Ellwood nor Mr Griffiths had seen the vehicles in question, so they had to rely upon photographic evidence. Although they both felt that they were able to give an expert opinion on that basis, the judge considered this to be less than ideal (or "suboptimum" as she expressed it). She also noted that this difficulty could have been avoided had the Insurers chosen to have the claimant's vehicle inspected by their engineer prior to authorising repairs to it.

19. The judge then referred to the decision of this court in Armstrong v First York Ltd [2005] EWCA Civ 277, [2005] 1 WLR 2751, where the question was whether the trial judge in a road traffic accident case was bound to reject the evidence of the claimants, whom he found to be blameless and honest witnesses, in circumstances where the jointly instructed expert (a forensic motor vehicle engineer, with expertise in accident reconstruction and bio-mechanics) had given convincing evidence, based on second-hand information about the damage which the vehicles had sustained, to the effect that the injuries alleged by the claimants could not have occurred, with the consequence that their claim had to be fraudulent. All three members of the court (Brooke, Arden and Longmore LJJ) held that there is no principle of law which obliges a judge to accept expert evidence as dispositive of liability in cases of this nature, and the judge had therefore been entitled to conclude that the claimants were not lying and that there had to be some inaccuracy in the expert's evidence: see the judgments of Brooke LJ at [27] to [31], Arden LJ at [33] and Longmore LJ at [35].

20. The judge in the present case quoted what Longmore LJ said at [35]:

> "This is artificial logic. It would mean that cases were decided by experts rather than by judges. There must almost always be a possibility that an expert, particularly an expert in a developing field, such as the field described here by Mr Grant as bio-mechanics, which I understand to include assessments of vehicle occupant displacement, could be wrong even if a judge cannot say precisely why. This is especially so if the consequence of accepting the expert is to hold that a claimant is making a dishonest claim."

21. Having directed herself in this way, the judge proceeded to review the expert evidence. She said:

> "30. What, therefore, was the expert evidence? Essentially it comes to this. The experts agree on the damage to the defendant's Nissan vehicle that the Nissan must have been travelling slower than [*Mr Khalid*] recalls. It must have been travelling, they say, at 10 to 12 miles per hour. Regarding the claimant's vehicle, Dr Ellwood says, effectively, it must have been stationary at the point of impact. His rationale is that having examined the photographs there are no horizontal or diagonal marks on the car to indicate forward motion. He said that it simply could not have come to a dead stop on impact and only moved sideways, which would explain vertical marks. He was adamant and unshifting in his evidence in relation to this.
>
> 31. The claimant's expert, Mr Griffiths, was somewhat more sanguine. He accepted that on the balance of probabilities he would expect to see horizontal marks if the claimant's vehicle was travelling forward. He said that such marks are in fact visible and he referred to certain photographs … However, Mr Griffiths went further and said that it is possible that the Skoda would have avoided horizontal markings if it had moved sideways on impact. That is essentially the crux of the issue between those two experts.
>
> 32. I have considered this evidence very carefully. Both experts, in my judgment, carefully analysed the information provided but, in my judgment, the expert evidence in this case has some very real difficulties. I remind myself that neither engineer had the opportunity to inspect the cars in question. They are relying upon photographs on which there is a dispute as to what is shown, i.e. it is in dispute as to whether there are horizontal marks or not. Dr Ellwood was relying on crash tests to indicate the nature of and the extent of damage. However, in my judgment, reliance on such crash tests is difficult. They were carried out in different road conditions and in respect of different vehicles. The road conditions, in my judgment, are significant here. In this particular case the evidence is that snow was sticking on the road. It is accepted by both experts that this would have a significant effect on the coefficient of

> friction. [*Dr Ellwood*] said that this was not significant enough to fundamentally weaken his proposition that the vehicles would not simply have moved sideways but would have moved forwards. Mr Griffiths disagrees.
>
> 33. In my judgment this has to be an important factor. The crash tests are, in my judgment, not an accurate basis of comparing what happened in this accident in these road conditions or on this day. If I were to decide which expert were to be preferred I would, on balance, prefer the evidence of Mr Griffiths. I note that he was willing to make concessions whereas Dr Ellwood was not …
>
> 34. However, overall, I do not find the expert evidence in this case as a whole compelling. The accident occurred during snowy conditions. We do not have precise test conditions here. We do not have precise records of speed. All involved are estimating. In those circumstances, while I take into account as part of the evidence overall, the expert evidence, it is not such as to persuade me that the overall evidence of the claimant and the first defendant is incorrect. Particularly, it is not such to persuade me that the claimant and the first defendant are deliberately attempting to mislead me or bring a false claim."

22. Having dealt with some further evidence relating to quantum, which I need not summarise, the judge stated her findings on liability as follows:

> "37. I turn now, therefore, to my findings. I find that the claimant and the first defendant gave evidence in a way which was honest and truthful. They were doing their best to assist the court. Although there are a number of inconsistencies, they were caused by lack of forensic detail regarding an accident two years ago rather than anything more suspicious. I find that the claimant was driving slowly on the road in question in second gear at 10 to 15 miles per hour. He saw a light, headlights, from a car to his left. The first defendant was driving probably slower than he recalls given that he was on an unknown road and in poor road conditions. I find he was driving probably less than 20 miles per hour on his approach. He misjudged the right of way. He did not have time to assess the claimant's speed on approach as he did not really see him. He crossed the Give Way lines. He drove into collision with the claimant's vehicle. That caused the claimant's vehicle, travelling very slowly on snowy road conditions, to be moved laterally. That collision caused damage to the claimant's vehicle, evidenced in the photograph which required repair and for which claim is made. The cause of that was the negligent driving of the first defendant.
>
> 38. I reject the allegations of fraud. There is no evidence before me, or no evidence on which I could satisfactorily conclude,

> that the claimant and the first defendant have conspired together. The allegations that there have been a number of inconsistencies are, in my judgment, smoke and mirrors; they do not lead me to conclude that the claimant is anything but an honest claimant or that the first defendant is anything but an honest defendant.
>
> 39. I therefore find that the claimant has satisfied me, on the balance of probability, that the accident happened as alleged."

The grounds of appeal

23. There are seven grounds of appeal, which Mr McGrath in his skeleton argument grouped into four categories:

    (a) Grounds 1 and 2: these grounds concern the judge's finding that Mr Hamid and Mr Khalid were honest and consistent witnesses. The first ground is that she failed to provide proper reasons for so finding, and failed to deal with the majority of the inconsistencies in the evidence. The second ground is that the finding was against the weight of the evidence. Reliance is placed on the familiar guidance given by this court in English v Emery Reimbold & Strick Ltd [2002] EWCA Civ 605, [2002] 1 WLR 2409, at [19] (on the need for a judge to provide adequate reasons for his decision), and in Assicurazioni Generali SpA v Arab Insurance Group [2002] EWCA Civ 1642, [2003] 1 WLR 577, at [195] to [197] per Ward LJ (on the circumstances in which an appellate court, conducting a review of the lower court's decision, may properly interfere with findings on questions of fact).

    (b) Grounds 4 and 5: these grounds are directed to the judge's findings in relation to the expert engineering evidence, again alleging a failure to provide adequate reasons as well as advancing a number of specific criticisms of the way in which the judge dealt with this evidence.

    (c) Ground 6: the judge was wrong to refuse to draw any adverse inference from the non-attendance of Mr Ahmer, despite accepting that no sensible reason had been given for his absence.

    (d) Grounds 3 and 7: the judge was wrong in her overall assessment that the claimant had proved his case. On a proper evaluation of all the evidence, the only permissible conclusion was that the claimant had failed to prove that a genuine accident took place. The judge had wrongly formed a view based almost entirely on the demeanour of the witnesses of fact.

24. Permission to appeal was granted on paper by Sir Robin Jacob, who said that although the appeal was on a question of fact, he was persuaded that "there is a very real question of whether this was a fraudulent claim and whether the decision of the judge was perverse in the sense that no reasonable judge could have reached the conclusion she did". He also considered that the judge had failed to deal adequately with the "mass of inconsistent evidence before her", and had "no basis for rejecting the concurrent expert evidence given by both sides".

25. Before considering the grounds of appeal, I think it necessary to say a little more about the principles which should guide an appellate court when it is asked to overturn findings of fact made by the trial judge. There is a considerable body of recent authority on this topic, which we drew to the attention of counsel shortly before the hearing. Another principle of potential relevance, to which we also drew attention, concerns the position of a party who has been acquitted of fraud in a court of first instance.

(1) When should an appellate court interfere with findings of fact?

26. The principles which govern the review of findings of fact by an appellate court were authoritatively re-stated by the Supreme Court in McGraddie v McGraddie [2013] UKSC 58, [2013] 1 WLR 2477, at [1] to [6], in the judgment of Lord Reed with which the other members of the court agreed. These principles were then endorsed, and further developed, by the Supreme Court in Henderson v Foxworth Investments Ltd [2014] UKSC 41, [2014] 1 WLR 2600, at [58] to [68], where the only reasoned judgment was again given by Lord Reed. The point which emerges with particular clarity from these passages is that an appellate court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that the trial judge was "plainly wrong". The meaning of that phrase was elucidated in Henderson at [62], where Lord Reed said:

> "There is a risk that it may be misunderstood. The adverb "plainly" does not refer to the degree of confidence felt by the appellate court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached."

27. Because Mr McGrath relies on it, I also draw attention to what Lord Reed said in Henderson at [67]:

> "It follows that, in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified."

28. It is also pertinent to note the guidance given by this court in Fage UK Ltd v Chobani UK Ltd [2014] EWCA Civ 5 at [114] to [115] (per Lewison LJ), and (very recently) in Grizzly Business Ltd v Stena Drilling Ltd and Another [2017] EWCA Civ 94 at [39] to [40]. This guidance emphasises that appellate courts should not interfere with findings of fact by trial judges unless compelled to do so. The reasons for this approach include the following, which Lewison LJ identified in the Fage case at [114]:

> "(i) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.
>
> (ii) The trial is not a dress rehearsal. It is the first and last night of the show.
>
> (iii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case.
>
> (iv) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.
>
> (v) The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence).
>
> (vi) Thus even it were possible to duplicate the role of the trial judge, it cannot in practice be done."

I respectfully agree with all of those observations.

(2) An acquittal of fraud at first instance should only be displaced on appeal on the clearest grounds

29. Authority for this proposition may be found in Akerhielm v De Mare [1959] AC 789 (PC), where Lord Jenkins, delivering the judgment of the Privy Council, said at 806:

> "Suffice it to say that their Lordships are satisfied that this is not one of those exceptional cases in which an appellate court is justified in reversing the decision of a judge at first instance when the decision under review is founded upon the judge's opinion of the credibility of a witness formed after seeing and hearing him give his evidence … Their Lordships can hardly imagine a case in which the credibility of a witness could be more vital than a case like the present where the claim is based on deceit, and the witness in question is one of the defendants charged with deceit. Their Lordships would add that they accept, and would apply in the present case, the principle that where a defendant has been acquitted of fraud in a court of first instance the decision in his favour should not be displaced on appeal except on the clearest grounds (see *Glasier v Rolls* (1889) 42 Ch D 436, 457)."

30. A distinction may, however, be drawn between cases where the appellate court substitutes a finding of fraud for an acquittal below, which will only happen in the rarest of cases, and cases where a retrial is ordered, without the appellate court expressing any concluded view on the defendant's guilt: compare Glasier v Rolls at

459 per Fry LJ. Subject to that distinction, the principle stated in Akerhielm is in my judgment a sound one. Once a person has been acquitted of fraud at trial, it is only on the clearest grounds that an appellate court may reach the opposite conclusion.

Discussion

31. With these principles in mind, I now turn to the grounds of appeal. I start with the evidence of Mr Hamid and Mr Khalid (grounds 1 and 2).

32. In his skeleton argument, Mr McGrath listed no fewer than thirty "major points of significance" in the evidence which he said the judge was required to evaluate, but she had either failed to do so or her conclusion was against the weight of the evidence. He submitted that she had failed to give adequate reasons for her conclusions, and the Insurers were left not knowing why their case had been rejected. He submitted that this court could, and should, intervene, despite the limited scope for appellate interference with findings of fact reaffirmed in the recent authorities, because the judge had demonstrably failed to consider, or had misunderstood, relevant evidence (Henderson at [67]).

33. In his well-focused oral submissions, Mr McGrath gave some examples of alleged inconsistencies in the evidence which the judge had simply failed to deal with. For instance, in an expert medical report prepared for the court on 31 March 2013, Mr Hamid was reported as having said he was "jolted forward and backward" by the accident, whereas under cross-examination Mr Hamid maintained that he had said "sideways" and he never noticed the error in the report. He agreed that the previous road traffic accident in which he had been involved was a rear-end collision in which he was thrown forwards and backwards, but denied that he had just decided to tell the doctor the same as before because the alleged accident never really happened. Furthermore, the same doctor prepared an expert report on the same day in relation to the injuries allegedly sustained by Mr Ahmer. It is a striking feature of the two reports that they record the symptoms described to the doctor at the time of examination in identical terms, and that they both took painkillers "4 hours after the accident". Mr Hamid denied colluding with Mr Ahmer about this, but such an implausible coincidence, submits Mr McGrath, required careful consideration by the judge and an explanation of her finding.

34. Another instance concerns Mr Hamid's insurance arrangements for his taxi. His evidence was that he had always paid the premiums on a monthly basis, until the week of the accident when he switched to a weekly policy. Over the course of a month, this would have cost him £70 more than a monthly premium. It was therefore put to him that the policy was changed because he knew he would not need a monthly policy given the impending "accident". Mr Hamid's answer to this in cross-examination was that he needed to save some money, so he temporarily took out a cheaper policy. Mr Hamid agreed he had £2,000 in savings, but said he needed the extra money while they were moving house. This point was not dealt with by the judge anywhere in the judgment, despite the apparently flimsy nature of Mr Hamid's explanation.

35. There is undeniable force in these, and similar, points on the evidence which were skilfully marshalled by Mr McGrath, and it may be that a different judge would have been persuaded to reach a different conclusion. That, however, is not the relevant

question. In my judgment it cannot be said that the judge demonstrably failed to consider, or misunderstood, the evidence on these points merely because she did not expressly refer to it in her judgment. The task of a trial judge is difficult enough without having to deal expressly with every single piece of evidence, or alleged inconsistency, which emerges in the course of the trial. If such a requirement were to be imposed, the task would become still harder, judgments would have to become longer, and the time taken to produce them would increase. Because the judge gave an immediate judgment, all of the evidence would have been fresh in her mind, and it would be quite wrong to infer that she failed to discharge her task properly merely because she did not refer to each and every alleged inconsistency or implausibility in the evidence. Furthermore, there are other possible explanations for the discrepancies which I have mentioned. The doctor may have made a mistake in recording Mr Hamid's account of the accident, precisely because rear-end collisions are more usual than lateral ones. The similarity of symptoms recorded by Mr Hamid and Mr Ahmer could be the result of carelessness in writing up the reports of two examinations carried out on the same day, rather than collusion. And as to the weekly insurance policy, the transcript shows that the judge had this well in mind, because when Mr McGrath put the point to her in his closing submissions she said:

> "People on limited means often make financial decisions which don't make sense to those of us who are perhaps more financially secure, because they have bills to pay each week, don't they?"

36. Nor can it be said that the judge turned a blind eye to the inconsistencies in the evidence. On the contrary, she considered several of them in her judgment, and she dealt with the problem more generally in paragraph 23, quoted at [17] above. This is just the kind of question on which an appellate court must in my view resist the temptation to think that it can safely second-guess the view formed by the trial judge who heard and saw all of the evidence. This was a case, it must be remembered, in which a detailed and apparently credible account of the general circumstances of the accident had been given by both key witnesses, there was nothing to suggest that they had ever met or been in contact before, and a telephone call to the police was made at the scene. Nor did the Insurers have any positive case to advance about how or where the supposed accident was staged. The most they could do was put the claimant to proof, and hope to chip away at his account of the accident by an accumulation of points of detail. The evaluation of a case of that nature is quintessentially a matter for the trial judge, and where the result of the evaluation is to acquit the claimant of fraud, that should be the end of the matter unless there are the clearest grounds for saying that no reasonable judge could have reached such a conclusion. So far as concerns the evidence of Mr Hamid and Mr Khalid, I consider that the present case falls well short of satisfying that stringent test.

37. I am also satisfied that the judge dealt entirely appropriately with the expert evidence (grounds 4 and 5). The passages which I have quoted from the judgment show that she considered it very carefully, and was well aware of the problems caused by the fact that neither expert had been able to inspect the vehicles. Furthermore, although there was much common ground between the experts, they were not as unanimous as Sir Robin Jacob seems to have thought when granting permission to appeal. In particular, Mr Griffiths clearly allowed for the possibility that the markings shown on

the photographs of Mr Hamid's Skoda were compatible with his account of the accident, and that with snow on the road it would have been more likely that his vehicle was forced sideways than if the road conditions had been dry. The judge was in my view plainly entitled to accept this evidence, and to prefer it to the dogmatic insistence of Dr Ellwood based on crash tests carried out with different vehicles in different road conditions. The judge's overall conclusion in paragraph 34, that the expert evidence was not compelling, and was insufficient to persuade her that the account of the accident given by Mr Hamid and Mr Khalid was incorrect, is in my judgment unassailable.

38. The other grounds of appeal can be swiftly disposed of. The judge cannot fairly be criticised for her refusal to draw any adverse inference from the non-attendance of Mr Ahmer, when she had before her the detailed written and oral evidence of the two protagonists. Nor can it reasonably be said that she erred in finding that the claimant had proved his case on the balance of probabilities. Indeed, I think it would be strange if, having rejected the Insurers' allegations of fraud, she had declined to find that the claimant's case was made out to the usual civil standard of proof.

39. Mr McGrath rightly reminded us of the observations recently made by this court in the Harb case (Harb v HRH Prince Abdul Aziz Bin Fahd Bin Abdul Aziz [2016] EWCA Civ 556) at [33] to [39], where the approach taken by the trial judge in assessing the reliability of the key witness was severely criticised in a number of respects, including the taking of a "short cut" based on an essentially unreasoned acceptance of her reliability in the witness box. As the court said at [39]:

> "In a case … which largely turns on oral evidence and where the credibility of the evidence of a main witness is challenged on a number of grounds, it is necessary for the court to address at least the principal grounds. A failure to do so is likely to undermine the fairness of the trial. The party who has raised the grounds of challenge can have no confidence that the court has considered them at all; and he will have no idea why, despite his grounds of challenge, the evidence has been accepted. That is unfair and is not an acceptable way of deciding cases."

40. I have those principles well in mind, but hope I have said enough to explain why, in the present case, I am satisfied that the judge did deal with the evidence in sufficient detail to justify the conclusion which she reached, and without any unfairness to the Insurers. There is also an issue of proportionality in play. Without detracting in any way from the principles stated by this court in Harb, it would I think be unrealistic to apply them with the same stringency to a relatively low value road traffic accident case in the County Court as to a multi-million pound claim in the High Court to enforce an alleged oral contract made in most unusual circumstances with a member of the Saudi royal family.

41. For these reasons, I would dismiss the appeal.

Lord Justice Lewison:

42. I agree.