

IN THE COUNTY COURT AT BRADFORD

Case No: F79YJ186

Exchange Square
Drake Street
Bradford
BD1 1JA

Thursday, 6th August 2020

Before:
DISTRICT JUDGE HICKINBOTTOM

B E T W E E N:

MOHAMMAD KHALIQ

and

EUI LIMITED

MR R ROSS (instructed by Horwich Farrelly Solicitors) appeared on behalf of the Defendant
MR R MOFFATT (instructed by Kaizen Law Solicitors) appeared on behalf of the Claimant

JUDGMENT
(Approved)

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DJ HICKINBOTTOM:

1. This claim arises out of a road traffic accident which occurred on 6 February 2019. The claimant was travelling along Stanningley Road in Leeds and indicated to turn right into a minor road when the defendant's insured collided with his rear. As a result of that accident, firstly he was injured and secondly, his vehicle which was a taxi was damaged beyond repair.
2. Liability has not been in issue. As a result of the accident the claimant sustained injuries to his neck and his knee. These injuries took eight months to recover. Both counsel and I were the same area in terms of the value of the claim. Nobody strongly opposes my figure of £3,250 for the general damages.
3. The issues in relation to hire charges, and to some extent, recovery and storage charges, are a lot more complicated. I think it is probably best first of all to set out a chronology. The accident occurred on 6 February 2019, hire commenced on 7 February 2019 and this was a credit hire arrangement for a taxi similar to the taxi which the claimant had written off as a result of this accident. The figure for the credit hire per day, including collision damage waiver was some £310.
4. On 11 February the claimant's solicitor sent the letter of claim and on the same day an engineer was instructed, the engineer inspected on 12 February 2019. On 15 February 2019 the engineer's report was received by the claimant solicitors. The evidence was that the claimant's solicitors had telephoned the claimant to inform him of the contents. Essentially the vehicle was a write-off.
5. On 20 February the engineer's report was disclosed to the defendants for interim payment in respect of the [inaudible] that was requested. In his written evidence the claimant started to look for a replacement vehicle on 25 February 2019, although in his oral evidence today he said that his efforts to obtain an alternative vehicle commenced before then. The period of storage ended on 26 February 2019, a new vehicle was purchased on 22 March 2019 and on the same date the claimant applied to Leeds Council for a compliance test and that was fixed on 26 April 2019. Initially it failed but the compliance test was subsequently passed on 30 April. The vehicle came off hire on 1 May 2019. The period of hire is therefore claimed at 84 days.
6. For purposes of these proceedings the claimant is pecunious. Both parties have referred to the case of *Hussain v EUI Limited* [2019] EWHC 2647 a decision of Mr Justice Pepperall in relation to how one should approach cases of this nature involving taxis. The starting point is that where one is dealing with a profit-earning chattel the measure of loss is loss of profits. In his judgment Mr Justice Pepperall dealt with potential exceptions to that general rule. He said at paragraph 16.5:
 - a) where a claimant acts reasonably in hiring a replacement vehicle at about the same cost as the avoided loss of profit, the court will not count the pennies and hold the claimant to the hypothetical loss of profit if it turns out to be a little lower; but
 - b) where the cost of hire significantly exceeds the avoided loss of profit, the court will ordinarily limit damages to the loss of profit.'
7. Then he goes on at paragraph 16.6 of his judgment to deal with three exceptions. The exceptions in general terms are, where the hire of a taxi is required in order to maintain important customers or contracts, secondly if it is required that there is a replacement vehicle needed for private and family use, and thirdly circumstances where the claimant could not afford not to work.

8. I think by general consensus the relevant exception to this case is the second. There was no evidence at all in relation to the requirement for the vehicle to be retained for purposes of maintaining contracts and as it has been pointed out the exception in relation to “could not afford to work” comes back full circle to the issue about impecuniosity.
9. Let me concentrate then on the second exception. The relevant paragraph of the judgment says this:

‘Secondly, many professional drivers use their vehicles for both business and private purposes. Where such a claimant proves that he or she needed a replacement vehicle for private and family use, a claim for reasonable hire charges, even if in excess of the loss of profit that was avoided by hiring the replacement vehicle, will ordinarily be recoverable in the event that a private motorist would have been entitled to recover such costs.’
10. There is a difference of opinion of the interpretation of that paragraph by counsel on either side. Regrettably I do not concur with Mr Moffatt’s interpretation. It seems to me that what the paragraph means is this; (i) the basic claim is for loss of profit (ii) in the event that an individual such as this claimant requires a vehicle for private and family use, (and nobody denies that he does), then he would be entitled to hire a vehicle (iii) the level of the vehicle which he may hire is limited to that which would be appropriate for a private motorist.
11. There is not a choice simply because he is a taxi driver. He can choose to hire a taxi instead of hiring a similar vehicle for private use. He is entitled only to hire a vehicle suitable for his private needs. The Claimant would technically have had an additional claim over and above that for loss of profit, but he has not pursued such a claim.
12. I then turn to the question of period. I think that frankly Mr Ross could have attempted to argue me down, but Mr Ross accepted my analysis of six weeks and I will explain again roughly how I get to that figure. The hire period commenced on 7 February, there can be no difficulty with the hire of the vehicle up to 15 February.
13. Mr Moffatt argued that it should be beyond 15 February because it should be limited to the period to the point where the claimant receives notification in writing of the contents of the engineer’s report, but the evidence today was that the claimant received information from his solicitors by telephone, therefore probably on or about 15 February. He knew as of that date that there was a requirement to obtain an alternative vehicle.
14. Based upon his written evidence he took a period of about 28 days to find a suitable alternative vehicle from 25 February to 22 March. It could be argued that the figure for the period should be nearer five weeks, but I am content that there should be some element of elasticity included in and therefore I am content that six weeks is an appropriate period for him to find an alternative suitable vehicle.
15. Mr Moffatt would say that I should also allow a period of hire beyond that in order to deal with the gap between the date upon which the compliance test was requested and the date upon which the compliance test was carried out. ~~However, in my view there is nothing to gainsay the argument that~~ However, once the claimant has obtained his alternative vehicle there is nothing to prevent him from using that vehicle for his own private purposes. ~~This is a hired car, he~~ He has a car that is perfectly suitable for his private purposes, it just so happens that there is a further period of a month to the date he acquires that vehicle and the date he is again able to use that vehicle as a taxi.
16. In relation to the hire charges I find the claimant entitled to £1,499.94 which is the lowest rate identified by the defendants in their evidence with Enterprise, together with the additional figure £693 representing the collision damage waiver.
17. Finally, there is the position in relation to recovery and storage. Mr Ross properly conceded

the point in relation to the recovery charges. I am also going to allow the storage charge because ~~I do not think it was unreasonable that the storage had been away from the claimant's property. I think that Mr. Mr.~~ Ross quite reasonably believed that the whole of the area that was identified on Google Maps as being an area where the Claimant's vehicle ~~could~~ may have been parked ~~may not actually have been true, I think. However,~~ it was ~~hoping to be~~ used by other parties who lived ~~around there, in the area.~~ I do not think there is anything unreasonable with ~~this~~ the vehicle being stored commercially for a very short period, so the recovery storage charge will be allowed in full.

End of Judgment

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291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiquis.com

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