

IN THE COUNTY COURT
AT SHEFFIELD

The Law Courts
50 West Bar
Sheffield
S3 8PH

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Before:

DISTRICT JUDGE BELLAMY

Between:

MR. SHAKEEL AHMED

Claimant

- and -

MR. MICHAEL PRYCE

Defendant

Miss Sarah Robson for the Claimant

Mr. Hines for the Defendant

APPROVED JUDGMENT

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JUDGE BELLAMY:

1. This matter comes before the court today as a result of paragraph 4 of a Consent Order dated 11th July where the parties compromised a Claim for loss and damage arising out of a road traffic accident which concerned a Claimant who was a licensed taxi driver. Part of his Claim was in relation to hire and replacement of the vehicle, storage and recovery as well as personal injury. It was a Claim that was limited in value to a sum not exceeding, (although it is rather bizarrely pleaded,) not exceeding £10,000, even though it included General Damages for more than £1,000 and some damages not exceeding £14,300, it says on the Particulars of Claim. I think we will gloss over that because it is not relevant.
2. The parties compromised the claim but could not agree the issue of fixed costs. Whether it was pursuant to 45.18 or whether it was pursuant to 45.29(c): is it Part 7 or portal costs.?
3. The starting point is the removal of the Claim from the portal which led to the issue of Part 7 proceedings, that led to a fairly full set of pleadings, court orders and a trial date with settlement a week or so before trial. There was no issue on breach of duty; it was simply a causation and damages case.
4. There is no dispute that this matter exited the portal and there is no dispute that the wording used in a letter of 8th August was that:

“Please note we believe this Claim is unsuitable for this protocol due to complex issues of fact and law as per para. 7.7.6 of the pre-action protocol for low value personal injury claims in road traffic accidents. The following issues are relevant. We disagree that your intervention offer should stand (inaudible) offer is a matter too complex for a Stage 3 hearing and therefore the matter will be removed from the portal as Part 7 proceedings will be necessary.”
5. The decision I have come to is based upon what this court believes would be a reasonable decision taken by a Claimant in relation to these proceedings. I am satisfied that, whilst the decision is taken at the time and, therefore, those issues are relevant, it is not irrelevant to consider what happened in the sequence of events following the matter exiting the portal. Although they are helpful as background, they are not of magnetic importance.
6. The Defendants focus upon the intervention offer. It is not uncommon for Stage 3 hearings in this court, for example, to have to deal with issues of hire, to deal with issues of storage and to deal with issues of intervention. Occasionally there are also issues of impecuniosity, although these are harder to deal with, particularly if, for example, they are linked with issues of need and credibility where cross-examination is clearly required.
7. On the face of this case, looking at how it was pleaded, it contains issues that were capable of being dealt with at a Stage 3 hearing but that does not mean to say when the decision was made to take it out of the portal it was unreasonable. It may be – and I am not trying to read into the mind of the fee earner who dealt with this – that he/she

formed a view that they were not getting anywhere with this Claim with the Defendant insurers via the portal because either there was delay or there were obstacles being placed in the way of progression. I pray in aid here the helpful chronology from the Claimant as to the number of pages of documents that were posted (or pasted, I am not sure which is the right word here) on the portal and also the extent of the enquiries that were made. Then the further enquiries that were made and the failure to reply to information which I think was properly requested in relation to the intervention offer. Perhaps the final straw would be to verify by Statement of Truth the information that had been supplied, initially by a C.N.F. which has a Statement of Truth and then supplemented by solicitors handling the case.

8. That may have been the background. It may be that the peg upon which the hat was placed as the real reason was simply the intervention offer. Either way, it seems to me it was not unreasonable, in the light of those issues that I have just mentioned, the lack of progress: the raising of question after question and Insurers ignoring the enquiries that were raised in respect of their offer (which appeared not to take into account that this was a private hire vehicle which needed licensing,) that the solicitors took the view that Part 7 was appropriate.
9. I am also strengthened in that view by what happened subsequently. I accept the rules do not provide for issues of costs if non-compliance with the protocol is not pleaded but it seems to me good practice to do so and even if it is not good practice, to put it in the Defence, it is clearly good practice because the protocol refers to this, to put it in the directions questionnaire. My view is that all issues that are to be raised between the parties should be canvassed openly at the earliest possible opportunity once Part 7 proceedings are underway.
10. Whilst I do not criticise the Defendant once proceedings were underway for raising Part 18 questions and ensuring that the Claimant was put to proof, it is almost retrospective justification for the actions taken by the Claimant's solicitor in removing this from the portal in any event. In other words, it goes to show that this was never going to be a matter that was capable of being dealt with in a short 30 minute Stage 3 hearing in any event.
11. For those reasons it seems to me that the appropriate regime for costs is that provided in C.P.R. 45.29 which are the fixed R.T.A. costs in Part 7.

MISS ROBSON: Sir, I believe I have one little correction for you to make and this would become relevant only if either of us chooses to get the transcript, I anticipate. You quoted from our exit letter, I believe, from our witness statement which is incorrect.

JUDGE BELLAMY: Right.

MISS ROBSON: So if anyone does get a transcript could that be altered to the actual letter that was ----?

JUDGE BELLAMY: Please do, yes.

MISS ROBSON: Thank you.

JUDGE BELLAMY: I quoted from the one that was on the...

MR. HINES: Miss Wild's statement.

MISS ROBSON: Yes.

JUDGE BELLAMY: The statement, yes.

This Judgment has been approved by the Judge.

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