IN THE BRISTOL COUNTY COURT

Claim No. B41YP353
Appeal No 5BS0171C

Bristol Civil and Family Justice Centre
2 Redcliff Street
Bristol
BS1 6GR

Tuesday, 27th September 2016

Before:

HIS HONOUR JUDGE DENYER, QC

Between:

MR KULBINDER SINGH

Appellant

-v-

MR AFAD AJAZ

Respondent

Counsel for the Appellant: MR PILLING

Counsel for the Respondent: MR. RIVERS

JUDGMENT APPROVED BY THE COURT

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APPROVED JUDGMENT

1. THE JUDGE: I start this judgment with a slightly surprising sentiment. The matter relates to an argument about costs, but in spite of that fact, it is an interesting case. It is an appeal from a decision given by Deputy District Judge Whitely on 8th August 2016. The learned Deputy District Judge himself gave permission to appeal.

2. The background can be shortly stated. There was a road traffic accident on 1st July 2014 between a vehicle driven by Mr Singh, who was the claimant, and a vehicle driven by Mr Ajaz, who was the defendant. Although not relevant, there clearly were problems so far as insurance in Mr Ajaz was concerned, and the insurers themselves were ultimately brought in as second defendants.

3. On the face of things, the claim was within the scope of the pre-action protocol for low value personal injury claims in road traffic accidents, known as the RTA Protocol. The claim comprised of a very modest claim in respect of personal injury, a claim in respect of damage to the claimant's vehicle, and a claim in respect of credit hire, and the sort of associated items one gets with credit hire claims. I am not going to spend long on the protocol itself.

4. What happened here was that on 18th July 2014, i.e. within a couple of weeks of the accident, the claimant issued or caused to be sent what is known as a Claim Notification Form I in compliance with Part 1 of the protocol. Both counsel very helpfully explained to me this morning how the protocol works. This case dropped out of the protocol after the notification of the claim, because the defendant did not admit liability. In other words, we never got to Parts 2 and 3 of the protocol. Therefore, the claim drops out of the protocol.

5. After it dropped out, the parties agreed certain matters. They agreed a sum in respect of the damage to the claimant's vehicle, and they agreed a sum in respect of the claimant's personal injury. That left, effectively, the credit hire argument and matters associated with it.

6. At this point, the claimant then issued a Part 7 claim. The matter came before District Judge Cope for directions, and she allocated the claim to the small claims court. A date was fixed for hearing, but prior to that hearing, the remaining issues of quantum were sorted out, and an appropriate figure arrived at to settle the credit hire claim. Therefore, by the time of the date of hearing, there were, as far as liability and quantum issues were concerned, no subsisting disputes between the parties. The hearing, which was the hearing that took place in front of Deputy District Judge Whitely, simply concerned itself with questions of costs. That involved the learned Deputy District Judge in considering two rival contentions. I hasten to add those are, of course, the same rival contentions as have been argued before me today.

7. The claimant asserts that the appropriate costs regime is that set out in Part 45.2(9)(a) and following of the rules. The defendant asserts that the matter, in fact, is governed by Part 27 of the rules.

8. In an excellent judgment which articulated the rival claims with clarity, the learned Deputy District Judge came down in favour of the defendant's contention that this was a matter governed by Part 27 and what it says in relation to costs.

9. Before looking at Part 27.1(4), I do just remind myself of 27.2. It is headed, "Extent to which other parts apply", and I note by 27.2(2) the other parts of these rules apply to small claims, except to the extent that a rule limits such application.

10. We go then to 27.1(4). On its face, it is fairly clear. "(1) This rule applies to any case which has been allocated to the small claims track", and by (2), "The court may not order a party to pay a sum to another party in respect of that other party's costs, fees, and expenses, except the fixed costs attributable to issuing the claim, court fees, witness expenses, loss of earnings, and possible expert's fee".

11. There is, of course, (h) annexed to 27.14(2), (h) which sets out an exception. Both parties accept that has no application to this case.

12. Therefore, on its face, this was a case which had been assigned to the small claims track, and the prohibition on the payment of costs set out in 27.14(2) would apply. Indeed, that is what the learned Deputy District Judge decided. Of course, Mr Rivers, on behalf of the respondent, asserts that he was clearly, and obviously, right. The wording of 27 is unambiguous, and this case falls fairly and squarely within it.

13. The appellant's position is different, and that involves a consideration of Part 45 of these rules. It is, I think, permissible to go straight to Part 45.29A(1). Subject to paragraph 3, this section applies where a claim is started under the Road Traffic Act protocol, but no longer continues under the relevant protocol, or the Stage 3 procedure in practice direction 8(b).

14. Pausing there, the claim with which we are concerned did, indeed, start under the protocol, but did not continue under that protocol. Nor was the Stage 3 procedure envisaged by the practice direction gone through.

15. By 45.29B, subject to .29F, .29G, .29H, and .29J, if in a claim started under the protocol, the claim notification form is submitted on or after 31st July 2013, the only costs allowed are the fixed costs in Rule 45.29C, and disbursements in accordance with Rule 45.29I. By 45.29C, the amount of fixed costs is set out in Table 6(b). It is not necessary for me to make any further reference to Table 6(b).

16. There is clearly a stark difference between the two Rules. On the one hand, the assertion in Part 27 that there is a small claim that is governed by Part 27 and that is it, no costs. Alternatively, 45.29A where you get fixed costs and certain disbursements. The regime under 45.29A is, in fact, a little more generous to claimants, more particularly their legal advisors, than the Part 27 regime. It is perhaps of note that the 45.29A and B rules reflect a change in the law, which came into effect in July 2013, and they are a more recent addition to the rules than that set out in Part 27. I agree, I think, with both counsel that it would have been helpful if the Rule Committee had perhaps made themselves clear as to which regime did apply, but it does seem to me that the matter has to be governed by the later rule, the Part 45 rule, rather than the earlier rule.

17. It is unequivocal 45.29B: if, in a claim started under the protocol, the CNF is submitted after the 31st July, the only costs allowed are as there set out. If there was to be some exception, so that the regime in Part 27, which governs the normal small claims set up was to apply that surely is where the Rules Committee would, could or should have set it out. The very fact that it is in such a blanket form suggests to me that it is not

intended that I, as a judge, should read into those words in 29B some modification specifically referring to small claims.

18. One can take some comfort in that respect from the judgment of Lord Justice Jackson himself in a case called *Phillips v Willis [2016] EWCA Civ 401*, judgment being handed down on 22nd March this year. It may be that the paragraph to which I am going to refer is strictly obiter, but I have to say that is not an argument that carries very much weight with me. In paragraph 4 of his judgment, Lord Justice Jackson says this:

> "I must at the outset say something about the changes which were effected at the end of July 2013. The earlier and the later versions of the protocol had important similarities and important differences. The main similarity was that both prescribed fixed costs for cases within their ambit. The important difference was this: cases which dropped out of the earlier version fell under the general provisions of the small claims track, or the multitrack, or fast track. Cases which dropped out of the later version fell into a newly created fixed costs regime".

That fixed cost regime, of course, is the one set out in Part 45. That seems to me to be a fairly unequivocal statement by the learned Lord Justice. It is clear that he did have in mind, specifically, I think, the issue with which we are grappling, because he outlines the fact that under the old scheme, if it dropped out, then general provisions of the small claims track, multitrack, or fast track as the case may be, would apply. It is clear he is saying that under the current version of the protocol, any case which drops out of the protocol falls into the newly created fixed cost regime. In other words, there is not an exception for fast track, there is not an exception for small claims, nor is there an exception for multitrack. They all fall into the 'newly created fixed cost regime'.

19. Given the relevance of that observation, coupled with the wording of Part 45.29A, it seems to me that one really has no basis for saying that this claim should be dealt with from a cost perspective pursuant to the small claim regime in Part 27. It follows that, in my view, excellent though his judgment was, I do take a diametrically opposite view to that taken by the learned Deputy District Judge, and I think he was wrong in coming down in favour of the Part 27 argument. It is my view that this case ought to be dealt with pursuant to 45.29A, B, and C. Therefore, I allow the appeal.

(End of judgment)

(Discussions continued regarding costs)