Personal Injury ~ August 2023

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**Accident Reconstruction – CCTV Footage is Useful but Not Always Decisive**

CCTV cameras are nowadays ubiquitous in public places and can greatly ease the task of accident reconstruction experts. As a case involving a young man who was struck by a train showed, however, imperfectly positioned cameras or gaps in footage can still leave room for disputes that require judicial resolution.

The man had been out with friends celebrating the end of his exams when he was picked up by a CCTV camera on a railway station platform. He made his way onto the track, where a train hit him, inflicting catastrophic injury. A personal injury claim was launched on his behalf against the station's operator, alleging negligence and breaches of the Occupiers Liability Act 1984.

Very unfortunately, however, the available CCTV footage stopped short of revealing how he managed to negotiate a security gate at the end of the platform. It was argued on his behalf that he must have at least partially opened the gate before stepping through it onto the track. On that basis, it was asserted that the accident would not have occurred had the gate been locked or alarmed.

Ruling on the matter, the High Court noted that he was too badly injured to give his own account of how he made his way onto the wrong side of the gate. The CCTV footage showed him looking down the platform, apparently to check that he was unobserved by railway staff. He was also shown glancing upwards at the camera more than once, indicating that he was aware he was being filmed.

The Court found, on the balance of probabilities, that he had sidestepped around the gate rather than opening it. Such a manoeuvre would have been effortless for such a fit and agile young man. There was therefore no causal link between the accident and the absence of a lock or alarm on the gate. In the light of the Court's ruling on that issue, his claim was discontinued.

Whilst this claim was ultimately unsuccessful, there will be instances where occupiers liability breaches occur, injury results and justice can be successfully pursued. Contact our expert team to discuss your claim.

**Catastrophically Injured Pedestrian Receives £3.2 Million Damages Award**

In many road accident cases, assessing where responsibility lies is anything but a straightforward exercise. However, this difficulty was successfully tackled in a seven-figure settlement of a catastrophically injured pedestrian's claim.

The middle-aged woman was crossing the road when a car hit her, throwing her over its roof. She was not using a pedestrian crossing and there was evidence that she had not looked to her right before stepping off the pavement. She was, however, there to be seen and the driver, who said that he had been dazzled by the sun, may have been distracted.

The driver's insurers disputed liability for the accident, in which the woman sustained severe head and spinal injuries. After she launched personal injury proceedings, however, a settlement whereby the insurers agreed to pay her £3.2 million in compensation was successfully negotiated. That sum represented 72.5 per cent of the full value of her claim.

A provisional damages award was also agreed so that it will remain open to her to seek further compensation if her neurological condition deteriorates or if she goes on to develop uncontrolled epilepsy. The settlement is unlikely to affect her continued entitlement to state benefits, which amount to almost £52,000 a year. The High Court had no hesitation in approving the settlement.

Insurers will always employ arguments to reduce their costs, which makes the need for strong and experienced legal representation crucial. Contact us for expert advice.

**Honeymooner in Spanish Hotel Fall Wins Right to Recompense**

For British holidaymakers who are injured overseas, obtaining justice can prove a significant challenge. However, as the case of a woman who suffered a life-changing accident on her Spanish honeymoon showed, specialist personal injury lawyers are nothing if not determined in bringing negligence to light.

The middle-aged woman was descending an inadequately lit concrete staircase at the hotel where she and her new husband were staying when she fell, sustaining severe fractures to her left knee and right heel. She underwent extensive surgery in Spain before being flown back to the UK by air ambulance.

After she launched personal injury proceedings in England, the hotel's Spanish public liability insurers were at first non-committal, but eventually admitted liability. However, the case was further complicated by the fact that the value of her claim had to be assessed under Spanish law.

The High Court noted that, for about four months after the accident, she was incapable of doing almost anything for herself. Despite further gruelling treatment, she reported continuing pain and having to wear a knee brace at all times. Unable to kneel or manage stairs, her injuries had an impact on her ability to play with her young grandchildren and to enjoy her pre-accident hobbies of running and walking.

Having ruled in principle on the value of various aspects of her claim – including the impact on her mental wellbeing and quality of life – the Court invited both sides to consult their Spanish law experts with a view to providing a final calculation of the compensation due to her.

Says **<<CONTACT DETAILS>>**, "If you are injured as a result of an accident when abroad, contact us for assistance in obtaining the appropriate compensation."

**'Plucky and Delightful' Disabled Girl Awarded Millions in Clinical Negligence Claim**

No matter how young they may be, qualities of courage and determination are often more evident in severely disabled people than they are in the able-bodied. That was certainly so in the case of a nine-year-old girl whose winning personality put her front and centre of her family's life despite the catastrophic injuries with which she was born.

The girl's disabilities were alleged to have arisen from a negligent failure to diagnose maternal sepsis prior to her delivery. The NHS trust that bore responsibility for her mother's ante-natal care disputed liability. However, following negotiations, it agreed to pay 85 per cent of the full value of her clinical negligence claim.

That enabled a final settlement to be reached whereby the trust agreed to pay her a lump sum of £6.25 million. To cover the costs of her care, she will in addition receive index-linked payments of £220,000 a year until she reaches the age of 18. Those payments will thereafter increase to £325,000 a year and will continue for the rest of her life.

Her disabilities are at the most serious end of the scale. She has no independent mobility, her vision is impaired and she has a severe learning disability. Unable to speak, she communicates by flicking switches and by making noises and facial expressions. She was nevertheless described as a delightful and lovable child who greatly enjoys school and holidaying abroad with her family.

Approving the settlement, the High Court noted that, when seeking to put a value on serious clinical negligence claims, it is all too easy to focus on a person's disabilities rather than positive features of their character. The girl is able to make choices of her own and, through her own pluck and determination, has achieved happiness. Her parents have acted as her advocates and ambassadors and have clearly lavished enormous care and attention on ensuring that she meets her potential.

Negotiating a suitable settlement requires awareness of many factors. Our experienced team takes all relevant issues into account in helping our clients achieve the best possible compensation awards.

**Prolapsed Disc Victim Succeeds in Securing Justice**

There is nothing more satisfying for a clinical negligence lawyer than obtaining justice for a seriously disabled client. The point was made by the case of a woman who for years needlessly suffered the agonising pain of an undiagnosed prolapsed disc, which eventually rendered her paraplegic.

The woman has for some time suffered from a degenerative back condition arising from a fall on her patio. Subsequently, however, she developed a different spinal problem in the form of a prolapsed disc. The excruciating pain she endures has rendered her all but housebound.

She underwent surgery in 2017, but by then it was too late to save her from partial paraplegia below the waist. She launched proceedings against the NHS trust that bore responsibility for her care, alleging that earlier diagnosis and surgical treatment would have led to a much better outcome.

Upholding her claim, the High Court found that the prolapsed disc was symptomatic when she was seen by a pain management consultant in 2009. He breached the duty of care he owed her in failing to order an updated MRI scan or conduct a full neurological examination. At a further consultation the following year, he failed to examine her or take an adequate history. In giving her advice regarding the possibility of surgery, he also exceeded his remit.

Had her condition been diagnosed at that stage, she would have elected to undergo surgery. Had that happened, she would have made a full neurological recovery from the prolapsed disc, although she would have continued to suffer pain and disability arising from her pre-existing back condition. If not agreed, the amount of her compensation will be assessed at a further hearing.

Errors or delays in diagnosis can lead to tragic consequences and, when this is due to the negligence of medical staff, compensation may be warranted. If you or a member of your family has suffered as a result of improper medical treatment, contact **<<CONTACT DETAILS>>** for advice.

**Speed Limits are Not a Target – Motorist Ruled Liable for Running Down Child**

Motorists who believe that it is always safe to drive just below the speed limit are guilty of a fundamental misunderstanding of the Highway Code. A judge made that point in guaranteeing substantial compensation for a child who was run down and severely injured at a light-controlled pedestrian crossing.

A motorist was driving her accustomed route to work on a dark and rainy Monday morning when she struck the 12-year-old girl, who sustained life-changing head injuries. The lights were green in the motorist's favour and she was travelling at 28mph, just below the prevailing 30mph speed limit.

After a personal injury claim was brought against her on the child's behalf, she adamantly denied that she was in any way to blame for the accident. Her view was that she was driving at the optimum speed and that the child simply stepped into her path, giving her no opportunity to stop in time.

Ruling on the case, the judge noted that it is a common misconception that driving just below the speed limit is always reasonable and competent. Speed limits are not a target or an infallibly safe measure. They represent an absolute upper limit that is only justified if weather conditions and the road situation are sufficiently good to permit it. That was, essentially, the error that the motorist fell into.

Her approach to the Highway Code was also flawed in that her focus was on her own safety rather than the possible impact of her driving on other road users. Having travelled the same route very many times before, she was not paying sufficient attention. It was likely that there was an element of autopilot in her driving.

In ruling her chiefly responsible for the accident, the judge found that she was not driving through a residential area with the safety of children in mind. Given the wet and gloomy conditions and the presence of children at a nearby bus stop, a speed of 20mph would have been reasonable. Had she been travelling at that speed the collision would probably not have occurred.

The judge acknowledged that, even judged by the standards of a 12-year-old, the child was negligent in stepping into the road when the lights were against her. He ruled, however, that the motorist bore 60 per cent responsibility for the accident. If not agreed, the child's compensation will be assessed on that basis at a further hearing.

"This case shows how dedicated and experienced legal representation can be vital when blame for an accident is denied," says **<<CONTACT DETAILS>>**. "If you have suffered an accident that was not your fault or for which you were only partly responsible, we can advise you on the possibility of claiming compensation."

**Theme Park Operator Succeeds in Roller Coaster Personal Injury Appeal**

For businesses found liable in personal injury proceedings, the reputational damage can be every bit as serious as the financial consequences. As a case concerning a theme park operator showed, however, they are entitled to have their arguments carefully considered and to a clear judicial explanation as to why they have lost.

After a woman went to the theme park with her young son, they embarked on a roller coaster ride which was not for the faint-hearted. She said that their carriage reached excessive speed, travelling out of control and throwing her from side to side before coming to a sudden halt. She and her son were trapped at the top of the ride for an extended period, on a very hot day, before they were rescued.

In seeking compensation from the operator, she alleged that the incident occurred due to a fault in the ride which had caused her serious physical and psychological injuries. In its defence to the claim, the operator asserted that the ride was safe to use and that it had done all that was reasonably practicable to ensure that its guests came to no harm. Following a one-and-a-half-day trial, however, a judge found the operator liable and ordered it to pay the woman substantial damages.

Upholding the operator's challenge to that outcome, the High Court noted that the judge gave her decision orally just after each side had made their final arguments. That was a common occurrence. However, given the numerous issues raised during the case, some of them technical, her decision to give an immediate ruling, without taking any time for reflection, was challenging and ambitious. When transcribed, her judgment ran to just over three pages.

The case was not straightforward and it was apparent that the judge was not well prepared to deliver her decision. She failed to engage adequately with the operator's arguments and it was not possible to discern from her ruling the basis on which she rejected key aspects of its case. Overall, her judgment was not coherent and did not adequately explain why the operator's defence failed and the woman's claim succeeded. The Court directed a retrial of the claim.

For advice and guidance on compensation claims, please contact **<<CONTACT DETAILS>>**.

**Vulnerable Child Abused by Charity Worker Receives £150,000 in Damages**

Children who suffer sexual abuse are entitled both to see their tormentors punished by the criminal law and to damages. In a case on point, a young woman who was violently preyed upon by a charity employee received a six-figure award.

When in her mid-teens, the girl, who suffers from a number of serious physical and learning disabilities, regularly attended an adventure playground operated by a charity. Over a period of months, a man who worked there subjected her to sexual abuse of the most serious kind. He would beat her if she resisted his demands.

After she launched proceedings, the charity disputed allegations that it had breached the safeguarding duties it owed her. It admitted, however, that it bore vicarious liability for the man's criminal acts. Subject to High Court approval, a £150,000 settlement of her claim was negotiated.

Ruling on the matter, the Court noted that, following a criminal trial, the man was convicted of offences of sexual activity with a person with a mental disorder impeding choice. He was sentenced to 13 years' imprisonment. The girl had exhibited enormous courage in testifying against him.

Formerly a bubbly and popular individual, her condition has deteriorated markedly since the abuse and she requires a great deal more care, of which her family bears the brunt. Diagnosed with post-traumatic stress disorder, she is prey to emotional volatility, depression and low self-esteem. Despite the terrible wrong that had been done to her, she continues to enjoy a number of hobbies and activities.

Approving the prudent settlement, the Court noted that, as an intensely vulnerable child, the playground should have been a safe environment for her. No amount of compensation could turn the clock back and money merely served as a proxy for the quantification of the pain, suffering, heartbreak and anxiety that she and devoted members of her family continue to experience constantly.

Psychological as well as physical injury can warrant a personal injury claim. If you have experienced treatment by another person that has caused you emotional or psychological distress, contact us for advice.

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