Personal Injury ~ October 2023

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**Cabbie Struck by Hit-and-Run Driver Receives £1.4 Million Damages**

Even where there is a clear-cut answer to the question of who is to blame for a road accident, assessing the damages due to victims requires the highest level of professional skill. That was certainly so in the case of a taxi driver who suffered devastating injuries when his cab was struck by a hit-and-run driver.

The private hire vehicle driver had a passenger on board when the head-on collision occurred. The other driver fled the scene and was later arrested at an airport as he tried to leave the country. He was subsequently convicted of causing serious injury by dangerous driving and other offences relating to the accident and received a substantial prison sentence.

The taxi driver sustained brain damage and psychiatric injuries, including severe depression and symptoms of post-traumatic stress disorder. He also suffered complex orthopaedic injuries, resulting in serious and lifelong difficulties in respect of his use of his lower limbs. His rehabilitation was significantly hindered by the intervention of the COVID-19 pandemic.

The other vehicle was not covered by a valid insurance policy and its driver, who had moved abroad following his release from prison, played no part in the case. The taxi driver therefore launched proceedings against a nominated motor insurer and the Motor Insurers' Bureau, the industry body that compensates victims of uninsured drivers.

Primary liability for the accident was admitted. There was, however, a dispute as to whether the taxi driver was wearing a seatbelt at the time. The consequences of his brain and psychiatric injuries, together with his future prognosis and care needs, were also the subject of intense disagreement. In spite of this, a £1.4 million lump-sum settlement of his claim was successfully negotiated.

In approving the settlement, the High Court noted that medical experts were poles apart on a number of issues and that there was a huge disparity between the rival valuations of the claim. Originally, the claim was pitched at in excess of £4 million, whereas the defendants argued for a figure of less than £300,000. The Court was satisfied that the settlement fairly reflected litigation risks and would address the taxi driver's reasonable needs.

If you are hurt in a road accident that is not your fault, whether as a driver, pedestrian or other road user, it is important to establish the full extent of your injuries and their likely impact on your life, and to provide clear medical evidence in support of your claim, in order to ensure that you are adequately compensated.

**Clinical Negligence – Sympathy for an Injured Patient May Not Be Enough**

When an operation ends badly, leaving a patient seriously disabled, any sympathetic person might think that a damages award will follow as night follows day. However, as a High Court ruling made plain, it is a judge's duty dispassionately to consider the evidence in deciding whether an injury was caused by clinical negligence.

The case concerned a man in his early 40s who underwent complex surgery after developing what was described as a giant prolapsed disc. His spinal cord sustained damage during the operation, rendering him partially paraplegic. He subsequently launched a compensation claim against the NHS trust that bore responsibility for his care.

Ruling on the matter, the Court acknowledged that he had suffered greatly and expressed its admiration for the way he had dealt with the enormous challenges posed by the life-changing consequences of the operation. He had conducted himself in court with forbearance, fortitude and dignity.

Dismissing his claim, however, the Court found that conservative management of his rare condition would not have been an appropriate option. Surgical decompression of the spinal cord was the only reasonable choice. He was warned that the operation, to which he consented, was not without risk.

The surgical approach taken by the consultant neurosurgeon concerned was logical and appropriate and in accordance with a responsible, reasonable and respectable body of expert opinion. The neurosurgeon was also not negligent in changing that approach in response to difficulties that arose during the operation.

The spinal cord had, during the procedure, been mobilised gently, with appropriate skill and care and in accordance with standard practice. The damage was probably caused by a sharp fragment of disc digging into the spinal cord or by the surgeon's non-negligent attempt to remove it. Whilst recognising that the outcome of the case would be deeply disappointing to the patient, the Court concluded that there was no breach of duty on the surgeon's part.

Says **<<CONTACT DETAILS>>**, "It is vital to ascertain whether or not negligence has occurred when seeking to make a claim of this type. If you or someone in your family has suffered injury while undergoing a medical procedure, we can advise you as to your best course of action."

**Every Minute** – **Even Second** – **of Delay in a Baby's Birth Can Make a Difference**

When children suffer asphyxia in the womb, a delay of minutes – even seconds – in their delivery can make an enormous difference to the level of disability, if any, that they will endure for the rest of their lives. One such delay was the focus of a High Court case concerning a seven-year-old boy.

There was no dispute that the boy was deprived of oxygen prior to his birth due to a compressed umbilical cord. It was alleged that permanent injury to his brain was avoidable and that a failure adequately to monitor the foetal heartbeat in the few minutes before he was born led to a catastrophic delay in his delivery.

The NHS trust that bore responsibility for his care admitted that there were failings in midwifery care in the latter stages of his mother's labour. There was, however, a dispute as to the precise time that he would have been born but for those failings. The trust presented expert evidence that the timing and brevity of the delay was such that it had little or no impact on the extent of his injuries.

In the light of those arguments, a settlement of liability issues was reached whereby the trust agreed to pay 80 per cent of the full value of his claim. In approving that compromise, the Court noted that a foetus is generally considered able to withstand 10 minutes of asphyxia before sustaining permanent brain damage. However, every second that passes thereafter may crucially affect the outcome.

Given a number of imponderables identified in expert evidence, complex issues in the case relating to the timing of the boy's delivery could have been decided either way had the case proceeded to a contested trial. On that basis, the Court found that the settlement was sensible and proportionate.

The boy is of average intelligence and has no hearing or visual problems. However, he has motor, cognitive and emotional difficulties that are likely to be lifelong. It will be some time before the amount of his compensation can be assessed. Given the severity of his disabilities, however, his award is likely to run well into seven figures even after the agreed 20 per cent deduction.

Says **<<CONTACT DETAILS>>**, "Nothing can truly compensate for mistakes on the part of medical staff during a child's birth that cause permanent damage to health. However, a financial settlement enables the family to achieve the best quality of life possible for their child, without the stress of money worries. Our specialist legal team is experienced in handling claims of this kind."

**Negotiations Achieve £13.4 Million Settlement for Meningitis Victim**

For personal injury lawyers, negotiating and risk assessment skills are just as crucial as their knowledge of the law or their ability as advocates. That was certainly so in a case concerning a seven-year-old girl who was a baby when she was struck down by a devastating bout of pneumococcal septicaemia and meningitis.

As a consequence of the infection, which struck when she was approaching her first birthday, the girl sustained a catastrophic brain injury. Severe quadriplegic cerebral palsy will always affect every aspect of her life and development. A clinical negligence claim was lodged against the NHS trust that bore responsibility for her care at the relevant time.

Meningitis is notoriously difficult to diagnose but, after intensive negotiations, the trust agreed to pay 87.5 per cent of the full value of her damages claim. A further round-table meeting yielded a final settlement of the case, whereby the trust agreed to pay her a lump sum of £4.2 million, plus annual, index-linked payments towards the costs of her care for life. The settlement was calculated to have an overall capitalised value of £13.4 million.

Approving the settlement, the High Court noted that there were issues in the case, not least in respect of her life expectancy, that could have been decided either way had the case been the subject of a contested trial. The compromise of such issues that was reached represented a very good resolution in a desperately sad situation. The level of energy her parents and wider family put into caring for her was a testament to their strength of character.

If you or a member of your family suffers injury as a result of negligent medical treatment, we can help you obtain an appropriate settlement. Contact **<<CONTACT DETAILS>>** to discuss your claim.

**Over-Egging a Personal Injury Claim is a Fool's Game**

There will always sadly be a few accident victims who exaggerate their injuries with a view to maximising their compensation. A High Court ruling, however, showed the extent of legal and surveillance resources that insurance companies are willing to deploy in their determination to weed out dishonest claims.

The case concerned a father-of-two who lodged a claim for in excess of £600,000 in compensation following a workplace accident. Liability was admitted, but the insurance company that would foot the bill grew suspicious and put inquiry agents on his tail. Their surveillance reports prompted the insurer to contend that his claim was tainted by fundamental dishonesty and should be dismissed in its entirety.

In his claim, the man asserted, amongst other things, that the accident had rendered him barely able to walk, totally reliant on others and essentially housebound. However, the surveillance footage was said to show him driving and working under the bonnet of a car and walking freely on shopping trips without the use of a stick. Such activities were said to be wholly inconsistent with his claimed disabilities.

The man denied dishonesty but his claim was eventually struck out due to a failure to comply with case management orders. He was ordered to pay legal costs and to reimburse a £10,000 interim payment he had previously received. The insurer later launched further proceedings, alleging contempt of court.

In granting permission for those proceedings to continue to trial, the Court found that the insurer had, on the face of it, shown a strong case that the man had knowingly made false statements and either fabricated or grossly exaggerated the effects of the accident. If found in contempt, he would face a maximum penalty of two years' imprisonment or an unlimited fine.

Says **<<CONTACT DETAILS>>**, "While there will always be people who exaggerate their injuries, this should not deter anyone who is genuinely injured from seeking the justice they deserve. Contact our expert team for advice and guidance."

**Personal Injury and Admissions of Liability – Guideline High Court Ruling**

Early admissions of liability, based on an overall assessment of the likely outcome of a contested trial, are a common occurrence in personal injury cases. However, the weight of the evidence may subsequently shift and, in a guideline ruling, the High Court considered the circumstances in which such an admission may be withdrawn.

The case concerned a woman who underwent abdominal surgery to remove fibroids. She attended hospital twice in the week following the operation. On her second visit, she suffered a cardiac arrest and could not be resuscitated. A serious incident report subsequently identified numerous issues in respect of her post-operative care.

An independent gynaecologist, external to the hospital, also found that her care fell below an acceptable standard. In legal correspondence the trust later admitted liability in full for the woman's death. It did so before the administrator of her estate formally issued a clinical negligence claim on behalf of her loved ones.

The trust argued, however, that a new theory as to the mechanism of her death had emerged at a subsequent inquest. There was, it asserted, fresh evidence that she would not have survived even had she been appropriately treated and that any negligence on the part of clinicians had thus not caused her death. On that basis, it sought judicial permission to go back on its admission.

Ruling on the matter, the Court acknowledged that, were there a contested trial of liability issues, the trust would have a real prospect of successfully defending the claim. However, the theory, whilst representing a shift in one medical expert's opinion, did not amount to new evidence in that it had first been floated as a possibility some time before the admission was made.

The trust was open to criticism in that it had not taken its own independent legal and medical advice prior to making the admission. There was a significant delay between the inquest and the trust's application to resile from the admission. By the time the application was heard, the woman's death was almost five years in the past.

The admission had been a source of great relief to the woman's family and its withdrawal was bound to cause them distress. Money had subsequently been spent on investigating the value of the claim on the basis that liability was no longer in issue. The inquest was conducted on that assumption and opportunities to gather evidence at an early stage had been lost.

It remained open to the trust to argue that the woman's life expectancy was limited by underlying health problems and that the value of the claim should be reduced accordingly. Given the trust's conduct and the prejudice that the family would suffer if the admission were withdrawn, the Court concluded that the balance came down in favour of dismissing the application. The trust was, therefore, required to stand by the admission.

Sometimes, achieving a fair outcome requires doggedness and determination. Our experienced team are here to help.

**Thinking of Lodging a Clinical Negligence Claim? You Need to Act Promptly**

Those who delay lodging clinical negligence or personal injury claims take a serious risk that their cases will be dismissed without a hearing. However, as a High Court ruling showed, even legal deadlines sometimes come second to the overriding requirements of justice.

The case concerned an eminent doctor who, in 2007, consulted a leading pathologist about a lesion on his back. Cell samples were taken and the pathologist reported them as being benign. He was discharged without follow-up treatment. Sadly, however, the lesion returned in 2009.

Examination of further samples confirmed the presence of malignant melanoma. A report also indicated that malignancy was present in the 2007 samples. The lesion was removed but, in 2013, he was diagnosed with metastatic melanoma which caused his death the following year, at the age of 61.

After his widow launched a compensation claim against the pathologist in 2022, the pathologist argued that her case should not be permitted to proceed in that it had been brought far outside the three-year time limit prescribed by the Limitation Act 1980. She contended that the widow's claim had been lodged 10 years too late and that the limitation period had expired even before her husband died.

Ruling on the matter, the Court found that time began to run in June 2013 when the man became aware that his condition was serious and terminal. On that basis, he would have had until June 2016 to bring proceedings. His right to take legal action thus remained vested in him when he died.

Following her bereavement, his widow had a further three years in which to lodge a loss of dependency claim under the Fatal Accidents Act 1976. That limitation period expired in January 2017 and her claim had therefore been lodged about five and a half years beyond the deadline.

In exercising its discretion under Section 33 of the Limitation Act to disapply the time limit, however, the Court noted that the widow was in no way responsible for the delay in launching her claim. Whilst acknowledging the impact that its ruling would have on the pathologist, who had previously been told that the case against her would not proceed, the Court found that the overall balance of justice came down in favour of permitting the widow to pursue her claim.

The pathologist would suffer prejudice in that she would be required to face a claim relating to events that occurred over 15 years ago, of which she had no recollection. The 2007 samples, however, remained extant and the outcome of the case was likely to hinge not on her memory but on expert evidence. The Court found that the prejudice to her was outweighed by the prejudice that the widow would suffer were her claim dismissed on grounds of delay.

If you would like advice on how to make a personal injury claim, contact **<<CONTACT DETAILS>>**. It is important to take advice early on in order to adhere to time limits.

**Vicarious Liability Can Extend Beyond Those Formally On Your Payroll**

An important Court of Appeal ruling provided a clear warning to employers that their indirect – or vicarious – responsibility for the unlawful acts of those who work for them may not be confined to those who are formally on their payroll.

The case concerned an 18-year-old former pupil at a secondary school who returned to his alma mater for a week-long work experience placement. Whilst there, he met a 13-year-old pupil with whom he began to communicate on social media shortly after his placement ended. He started to abuse her a few months later and subsequently pleaded guilty to sexual activity with a child and other sexual offences.

His victim subsequently launched proceedings against the school, seeking £27,500 in compensation for psychiatric injury. Following a trial, however, a judge rejected her claim on the basis that she had failed to establish that the school bore vicarious responsibility for the abuser's wrongdoing.

The abuser was not the school's employee and the judge noted that affording him work experience was an altruistic gesture. The limited activities that he performed were required to be closely supervised by qualified staff and his presence was a burden to the school, rather than a benefit.

Ruling on the victim's challenge to that outcome, the Court found that the abuser's position vis-à-vis the school was nevertheless akin to an employment relationship. He was required to read and accept the school's procedures and guidance; he assisted with the school's business and it regulated his time, supervised him and directed and controlled what he did. Pupils were told to treat him with the same respect due to any member of staff. There were powerful pointers in the evidence that he began grooming the victim during his placement.

In dismissing the appeal, however, the Court found that the abuser's wrongdoing was not so closely connected to his relationship with the school as to give rise to vicarious liability. He was not placed in a position of authority over pupils and had no caring or pastoral responsibilities. The abuse did not begin until many weeks after his placement came to an end. Overall, it would not be fair, just or reasonable to hold the school indirectly responsible for his unlawful acts.

Says **<<CONTACT DETAILS>>**, "Whilst this claim was unsuccessful, there will be instances where organisations are vicariously liable for the damaging behaviour of others. For individual advice, contact our personal injury experts."

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