Fixed Costs Can Apply to RTA Multi-Track Cases

Qader v Esure [2015] EWHC B18 (TCC)

On appeal it was held that fixed recoverable costs should apply to road traffic accident claims that start under the RTA Protocol but then move to the multi-track because fraud has been alleged.

Judge David Grant sitting in the High Court at Birmingham dismissed an appeal relating to costs , in a case where the claim had been moved to the multi-track because the defendants had alleged the accident had been caused deliberately.

There were 3 grounds of appeal. Firstly that the judge at first instance had failed to interpret rule 45.29A in a purposive manner; secondly that the judge had failed to interpret rule 45.29A in accordance with the overriding objective at CPR 1.2; and thirdly that rule 45.29A had been applied in contravention of s.3 of the Human Rights Act 1988 and Article 6 of the Convention.

Ground 1 was rejected when the judge held at paragraph 32 that there was: *'no ambiguity, or lack of clarity, in the meaning of the words and expressions used in Section IIIA of Part 45 which would require a judge to construe or interpret them. Instead the task is simply to apply the plain meaning of those words and expressions.'*

Ground 2 was rejected when the judge held at paragraph 38 that because rule 45.29A was clear and unambiguous rule 1.2(b), which was concerned with the interpretation of any rule, was not engaged. The judge went on at paragraph 39 to state: *'It is perhaps permissible to observe that the nature and ambit of the allegations of fraud which are made in the present case are discernibly of a different nature from the types of allegation often made in cases of commercial fraud in proceedings in the Chancery Division, the Commercial Court, or the TCC. Such cases often involve examination of considerable volumes of documents, analysis of legal principles of fiduciary duty, and consideration of often complex commercial factual matrices. In contrast, the central factual issue in the present case is simply whether the first claimant applied the brakes in such a manner that he induced a relatively minor road traffic accident to occur. While the claimants' overall probity will no doubt be explored at trial, perhaps involving consideration of their conduct before the accident, at the accident, and indeed after the accident, and it may be necessary to consider some documents (such as relevant medical records), the overall nature of the case to my mind still answers the description of a low value personal injury claim arising out of a road traffic accident, albeit proceeding on the multi track. It does not therefore appear that the nature of the underlying proceedings is such that the implementation of fixed recoverable costs for such a claim would - of itself - cause affront to the overriding objective.'*

Finally, ground 3 was rejected with the judge finding at paragraph 46 that there was nothing objectionable about the fixed costs regime, or the fact that this would apply to low-value RTA claim proceeding on the Multi-Track. He further observed at paragraph 47 that the provisions of rule 45.29J provide a material safeguard against injustice. Accordingly, the appeal was dismissed.

This is an interesting case as it has long been the convention that where fraud is expressly pleaded in low value RTA claims then the case should be elevated to the Multi-Track and that costs would therefore be at large. No doubt RTA insurers will be rubbing their hands with glee over this ruling as it will severely curtail the claimant's costs in dealing with the claim. The concern will be that solicitors will increasingly refuse to take a case forward where fraud is alleged as it may be uneconomical for them to deal with the increased workload on a fixed fee basis. This is especially so in low value cases where the 20% of damages uplift on costs will be very small. This will further erode the access to justice for those deserving cases where fraud is alleged, often on the flimsiest of evidence.

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This case is reported on the BAILII website.