The implications of Vamsi Putta v Royal Sun Alliance PLC [2020] EWCH 117

Mohammed Azeem Ali

May 2023

clerksroom

The implications of Vamsi Putta v Royal Sun Alliance PLC [2020] EWCH 117

Mohammed Azeem Ali
May 2023

Introduction

The case of Vamsi Putta and Royal Sun Alliance Plc [2020] EWCH 117 ("Putta") is a case which is often cited in defences. Indeed, it can be quoted almost on a generic basis and is even quoted and referred to by defence counsel at trial. It is an attempt to support the notion that a hire period should be reduced pursuant to the claimant's duty to mitigate or that it somehow supports the proposition that the claimant should not be hiring a vehicle for more than 15 days after an engineer's report was sent. It's a High Court decision and merits some attention because of the regularity with which we now see it.

I will deal with the case in this article in the following ways:

(1) summary of the decision;

(2) has there been any change in the law, following the case?;

(3) the practical implications of the case and

(4) conclusions.

The decision

The Claimant was a taxi driver. There was a claim for credit hire for £26,290.27 and repair costs of £2,424.95 following a road traffic accident on the 27th of May 2016. The credit hire period was 64 days starting on the 30th of May 2016 and ending on the 1st of August 2016. The daily rate for hire was £408.00.

On the 2nd of June 2016, the Claimants engineer was instructed, and the report dated the 3rd of June 2016 was disclosed to the Defendant on the 6th of June 2016. On the 21st of June 2016, the Defendant admitted liability via the portal. On the 7th of July 2016, the Claimant received an interim payment in part payment of the repairs. The Claimant then initiated the start of the repairs. The vehicle was fully repaired by the 20th of July 2016. The vehicle then had to undergo a Transport for London safety check which was passed on the 1st of August 2016.

The lower court found that a reasonable time for a response to the engineer's report which was sent on the 6th of June 2016, was the time allowed under the pre-action protocol namely 15 days. In any event where the vehicle was repairable at modest cost, 15 days was a reasonable period of time for the Claimant to allow the Defendant insurer to indicate whether they wished to arrange their own inspection. So as of the 21st of June 2016, it was reasonable for Mr Putta to make some progress with repairing his vehicle.

Throughout the repair period, the Claimant had over £5,500 available to him on credit cards and those credit card facilities should have been used to have carried out repairs. Mr Putta was allowed the actual 13-day repair period, and 11 days thereafter to obtain the Transport for London certificate. A total of 49 days hire was allowed. The Claimant could not prove he was impecunious and therefore BHR were allowed only which made a total hire of £3,332. The lower court also rejected the Claimants evidence that he had done a search to find out what the BHR would have been. Therefore, Mr Putta had not properly considered the alternatives before deciding on credit hire which had cost many more times than the BHR.

The High Court found that that it would be "wholly wrong" (paragraph 64 of the judgment) for them to interfere with the findings of fact made by the judge in the circumstances.

Has there been any change in the law, following the case?

There has been absolutely no change in the law!

The High Court has merely stated that the finding of facts which the lower court made should not be easily interfered with, which is a well-established principle. It therefore seems somewhat remiss for defendants to mention this case so often in their pleadings, as supposedly assisting with legal principles.

The threshold for interfering with a finding of fact has always been high in the courts. The High Court in paragraph 22 of its judgment referred to a case of Wheeldon Brother Waster Ltd v Millenium Insurance Company Ltd [2018] EWCA Civ 2403 in which it was concluded that for a finding on fact to be overturned it must be one "...that no reasonable judge could have reached...". This required in practice that there was "no evidence" to support the findings of the judge or that the judge just "plainly misunderstood" the evidence in order to arrive at the finding of fact.

On the finding made by the lower court that Mr Putta was not impecunious and he should have made use of his credit card facilities, the court did not feel it was appropriate for the court to interfere with that finding of fact. The High Court (paragraph 28 of the judgment) referred to Opuku v Tintas [2013] EWCA Civ 1299 where the Court of Appeal stated that a judge is entitled to take into account a claimant's credit facility when deciding the issue of how they can reasonably be expected to find the funds.

Indeed, in paragraph 64 of its judgment, the High Court concluded it was "wholly wrong" for the court to interfere with the findings of fact made by the court in the "circumstances" set out. It is in this context that the 15 days waiting period for a response to the engineer's report should be considered. This was a finding fact that a lower court made, which the High Court was not prepared to interfere with. Any comments made by the county court in Putta that suggest a 15-day waiting time should be the standard, is not binding.

Indeed, it may be considered the ratio decidendi (reasons for the decision) of the case that the lower court was entitled to make the findings of facts – this seems to be the highest that the case can be put.

I cannot find anything in the entire judgement to suggest that somehow, the magical figure of 15 days is the amount of time for a pecunious claimant to wait for a response after sending the engineers report. For example, in the Court of Appeal case of Zurich Insurance Plc v Umerji [2014] EWCA Civ 357, it took nearly 6 weeks after the engineer report was sent for the vehicle to be disposed of. The Court of Appeal decided it was another 2 weeks after that date (after the vehicle was disposed of) that another vehicle should have been purchased by the Claimant. In other words, it was a period of nearly 8 weeks after sending the engineers report, that it was considered that the Claimant should have purchased another vehicle.

It seems that case of Putta did not make any change to the law whatsoever. I suspect that if the lower court had made findings that the Claimant was impecunious, then the High Court would have equally upheld the right of the lower court to make the findings of fact that they had made. Equally if the lower court had decided on a higher period than 15 days that it was appropriate for Mr Putta to wait for a response, then the High court may not have even interfered with that.

If there was any doubt that the High Court was merely deciding it was not appropriate to interfere with the findings of facts, then this doubt can be put aside with the concluding words of the High Court in paragraph 64 that it would be "wholly wrong" for the Court to interfere with the findings of fact which the judge made "in the circumstances I have set out." Context is everything in law and it should be noted that this was a case in which the lower court found that Mr Putta was not credible (see paragraph 9 of the judgement).

Practical implication of the case

The case of Putta :

(1) did not lay down any new legal principles, even though it is regularly quoted in many defences;

(2) the finding that the lower court made that the Claimant was not impecunious as he should have made use of his credit card facilities, was a finding of fact which the High Court decided that they could not interfere with;

(3) there is no “magical” figure of 15 days for the pecunious claimant having to wait after serving the engineers report before deciding to replace or repair a vehicle. However there may be cases where a 15 day wait is appropriate, depending on the facts of the case;

(4) this case was very much a case on its facts;

(5) Indeed in the Court of Appeal case of Zurich v Umerji the Court of Appeal allowed nearly 8 weeks after the serving of the engineers report, before it was considered that the Claimant should have purchased another vehicle.

In terms of my practical experience as to how courts deal with Putta, *so far* the courts do see the case as having been decided on its own facts. Indeed, as I stated in my article on “Impecuniosity”, the “...period a claimant is entitled to wait after serving an engineer’s report is a question of fact of reasonableness in all the circumstances.”

Conclusion

Unfortunately, quoting Putta is in a long line of tradition within the credit hire world whereby whilst no new legal principle is established, the case is still referred to in the pleadings.

In my view the case of Putta does no more than to say that the lower court was entitled to make the finding of facts. It does not establish any new legal principles. My real time experience in courts *so far* also suggests that the courts are also seeing the case of Putta as not having added any new principles.

I hope this article assists the reader in understanding the potential implications of this case.

Azeem Ali

Please note this article does not constitute legal advice for any specific case or cases.

03/05/2023

contact the author:

Azeem Ali (1997)
Barrister

Contact:
Email: **ali@clerksroom.com**
Call: **01823 247 247**

Join Azeem on LinkedIn

Follow Azeem:
@Azeemali1Ali

clerksroom.com