Case No: D77YM178
[2020] EWHC 521 (QB)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Leeds Combined Court Centre
1 Oxford Row
Leeds
LS1 3BG

BEFORE:

MR JUSTICE JAY

BETWEEN:

JASON ROBERTS	**CLAIMANT**
- and -	
ALAN KESSON	**DEFENDANT (1)**
TESCO UNDERWRITING LIMITED	**DEFENDANT (2)**

Legal Representation
Ms Hurst (Counsel) on behalf of the Claimant
Mr McKeown (Counsel) on behalf of the Second Defendant

Other Parties Present and their status
None known

Judgment

Judgment date: 20 February 2020
Transcribed from 12:59:32 until 13:49:13

Reporting Restrictions Applied: No

MR JUSTICE JAY:

1. This is an appeal against the order of Mr Recorder Kelbrick given on 27 August 2019, in which he awarded the Claimant, Mr Jason Roberts, damages in the sum of £4,400 together with interest and costs. I granted permission to appeal in this case on the issue of whether the Recorder correctly dealt with the Defendant's case in connection with Section 57 of the Criminal Justice and Courts Act 2015. The ground of appeal is that the Recorder failed to do so in a number of respects, and as a subordinate point ought not to have awarded costs in full in Mr Roberts' favour.

2. In order to identify the parties for the purposes of this judgment, Mr Roberts is the Respondent to the appeal, and the driver of the innocent vehicle. I will continue to describe him as the Claimant. The Appellant is the Second Defendant, Tesco Underwriting Limited, the insurers of the guilty driver, the First Defendant, Mr Alan Kesson. I will describe the Appellant and Second Defendant as the Insurers.

3. The background to this case is a straightforward road traffic accident which took place on 12 July 2017, in the Ellesmere Port area. The Insurers remain suspicious as to the circumstances but the Recorder found on uncontradicted evidence that the accident was the result of the negligent driving of Mr Kesson, who drove straight into the passenger side of the innocent vehicle. I have seen photographs which demonstrate that the vehicle suffered significant damage all along the nearside or passenger side.

4. The vehicle in question is a Mercedes E250, and on my understanding from the documentation was first registered in 2012. So at the time of the accident it had done nearly 80,000 miles, which is not altogether surprising, given that the Claimant is a taxi driver. The schedule of loss, backed by a Statement of Truth, claimed the pre-accident value of the vehicle, on the basis that it was in effect a write off.

5. The claim was put forward on the basis of an engineer's report dated 20 July 2017 which, on the basis of Glass's Guide and other evidence, gave a pre-accident value of £13,000. The salvage value was said to be £2,600, leading to the difference of £10,400, which was the amount sought in the schedule.

6. The Claimant's first witness statement is dated 6 March 2018. The date is quite important for reasons which I will come to explain, although I infer that the statement was available in draft before that date, having been prepared on the basis of client instructions. The relevant parts of the witness statement are paragraphs 22 and 23, 32 to 35, and various documents are referred to. What the statement says with reference to the engineer's report is that the vehicle was advised to be written off.

7. The Claimant's solicitors gave authority to disclose the existence of the engineer's report to the Insurers, and the latter was advised of the location on 21 July. According to paragraph 32 of the witness statement:

> **"I therefore authorised the sale of my car for salvage, and I used the salvage value in order to hire another taxi on a cash basis."**

Then paragraph 33:

> **"Effectively my car was on finance prior to the accident, and I was able to use the money that I would have used to pay the finance plus the pre accident value of the car, in order to obtain another taxi to continue earning my living."**

Then paragraph 34:

> **"I therefore maintain my claim to the pre accident value of my car at £10,400."**

8. There were additional claims which I will be addressing in due course. In my judgment, paragraphs 32 to 34 are entirely clear. What the Claimant was saying is that having given authorisation the car was salvaged and the salvage value, albeit unspecified, was used in order to hire another taxi on a cash basis. The first witness statement was backed by a Statement of Truth and was signed in the ordinary way.

9. The Defendant Insurers then undertook various inquiries as they are apparently inclined to do in certain categories of case, and it was revealed that on 5 March 2018 the vehicle passed its MOT. The date is significant for the obvious reason that the first witness statement was signed the following day. There were also Facebook entries which reveal that the Claimant was seeking to sell the vehicle in a roadworthy condition, backed by the MOT certificate, for the sum of £7,000.

10. After the Claimant had been made aware of the outcome of these inquiries, a second witness statement was filed. It is, I think, dated 21 August 2019 - that date is not altogether clear in the copy I have, and it matters not. The account given is not altogether clear either but I would not accept the submission made that it is altogether a convoluted tangled web. At paragraph 8 of the second statement, the Claimant says that on reflection, his first statement was accurate:

> **"Save for one small detail."**

11. The second statement did not fully explain the picture in respect of vehicle disposal, hire charges and what happened thereafter. The account given in the second statement, and this in particular starts at paragraph 20, is that the Claimant sold the vehicle to his brother in law, who runs a company called JP Autos, but his brother in law became frustrated because of the delays. In order to avoid tension between them, in September 2017 the brother in law persuaded the Claimant to take the damaged car back off him. So in September 2017, as the Claimant says, the ownership of the vehicle was returned to him but still in its accident damaged state.

12. The second statement is not transparent as to what happened next but according to the Claimant he then purchased parts for the vehicle, and engaged his brother in law to undertake the necessary repairs. This was on the basis that payment for the labour of course, not the parts, would be forthcoming at a later date. According to paragraph 26 of the second witness statement, it took the brother in law about a week to get the repairs done, following which the car was returned to him.

13. I note that no details of the parts purchased were given, still less any supporting documentation. In a situation where credibility was plainly in issue, it seems to me that the Claimant should have been advised to give as much disclosure as possible.

On the other hand, there may have been a reason for the paucity of the evidence the Claimant had available – that it simply did not exist.

14. It is said by Mr McKeown on behalf of the Insurers that this too is an untruthful account, and there was cross examination about it at trial. The truth or otherwise of this account is quite difficult to assess, it is fair to say, on the available evidence. There is a hire document at page 111 of the supplementary bundle, which everyone accepts is a genuine document. According to that document, hire charges arose in the sum of nearly £11,500 and covered the period 13 July to 7 September 2017.

15. If the repairs took about a week, it is just about possible on this chronology that the Mercedes was, as it were, transferred back from the brother in law to the Claimant at the very beginning of September. The repairs were then immediately carried out or at least were carried out over the course of the next week. Then the hire period ended with the Claimant able, as he says, to drive his Mercedes as a taxi from that point.

16. At the trial which took place on the date which I have stated, the Claimant was cross examined at length on his first and second statements. It is quite clear from the substance and tenor of the cross examination that it was being put to the Claimant that this was a dishonest claim in a number of respects and, at the moment of course, I am focussing on the claim for £10,400. The relevant parts of the cross examination appear in the bundle at pages 64, 67, and 71, and I do not propose to set them out seriatim in this judgment.

17. It would be fair to say, by way of overall assessment, that after some initial equivocation if not prevarication the Claimant did accept that his first witness statement was untrue. He did not say that at the very outset of his evidence since he was invited by his counsel to confirm the truth of both his witness statements on the footing that they would stand as his evidence in chief. Moreover, I have already indicated the respects in which the second statement seek to go back on, if that be the right expression, the first witness statement. And as I have already pointed out, what the Claimant is saying is that there was an inaccuracy only in one fairly minor respect.

18. It did emerge in evidence that there was a degree of mitigation in that the Claimant's mother died on 5 March 2018, the day before he signed his first witness statement. It may be possible to infer from this, but it is not an irresistible inference, that the Claimant did not read that statement before signing it. However, the Claimant must have known that the statement would have been prepared on the basis of what he told his solicitors to write down and, in my view, he could not have forgotten that. The fact remains that the first witness statements contains a rather different account, unequivocally so in relation to the receipt of the salvage monies. This is not a situation where the Claimant, as it were, is reinterpreting what has happened; it is a fundamentally different account.

19. The other factor which is relevant in my view, and I have already touched on this, is that the Claimant could not have forgotten the date of his MOT certificate which, as it happens, bears the same date as his mother's passing.

20. I should touch on other elements of the claim which were included in the schedule of loss and which were maintained at trial. There was a claim for storage in the sum of

£570 vouched by an invoice from JP Autos. That is the brother in law's business. I will be coming back to that invoice in a moment. There was also the claim for hire charges which I have mentioned.

21. The reason why the hire charges were so high was that the Claimant was saying that he was impecunious and could not obtain hire at a more commercial rate, which would be the position if he could demonstrate to the hirer that he had sufficient credit. In advancing his claim in that way, the Claimant appears to have forgotten what he asserted in his first witness statement: that he hired a vehicle for cash. It was in consequence of the allegation that he was impecunious that DJ Thompson made standard disclosure orders that the Claimant provide full disclosure of bank and credit card statements, wage slips, tax returns, and supporting accounts. If he failed to do so, he would not be able to maintain at trial that he was indeed impecunious.

22. It seems that the Claimant did provide some disclosure but, on any view, it was quite limited. There were some bank statements to which I was taken in the bundle, and one tax return. There were no supporting accounts and no credit card statements. It emerged in evidence that the Claimant in fact had three credit cards but his evidence was that those accounts were closed at some point in 2017, and it was for that reason that he was unable to obtain relevant documentation from the relevant credit card companies.

23. There were submissions before Mr Recorder Kelbrick on the issue of fundamental dishonesty, and one of the leading authorities on the topic was provided for him to read over the luncheon adjournment, during the course of which I understand he prepared his judgment. It was made quite clear by Mr McKeown that whether or not the Claimant had substantiated elements of his claim for special damages, and indeed for general damages, the entirety of the claim was so infected by dishonesty that Section 57 should be activated.

24. The Recorder delivered an ex tempore judgment after lunch, and my preliminary observation is that it is rather brief. It runs to 14 paragraphs and could certainly be described as succinct. The Recorder found, as I have pointed out, that the accident occurred more or less as the Claimant asserted, and therefore that there should be a finding of liability in his favour. At paragraph 5, he then moved on directly to consider the question of the claim made by the Claimant for damages under various heads. At no stage did he address specifically, the issues joined under Section 57 of the 2015 Act.

25. He addressed first of all the claim for £10,400, and pointed out that there were inconsistencies between the two witness statements, and much had been sought to be made of that in cross examination. Then at paragraph 6, he made this brief finding:

> **"It is right that he [the Claimant] has accepted that he was dishonest in part when making his first statement, but I do observe that he did not persist with that dishonesty. Whether or not was because he had been, to use Mr McKeown's words -**
>
> **'flushed out'**
>
> **or whether it was not, nevertheless he did not persist with it, and did not persist with it in oral cross examination today."**

26. That is the closest that the Recorder comes to addressing the issue of fundamental dishonesty. What I think he is saying is that there *was* some dishonesty but it could not be regarded as material because the Claimant did not persist with it. The absence of any finding about whether the Claimant had been "flushed out" is somewhat surprising in this context: the inference must be that had it not been for the Insurer's endeavours the Claimant would have continued as before.

27. The Recorder rejected the claim for £10,400 on the basis that there was not enough evidence in support of it. The claim, as correctly constituted, could have been brought on the basis of a) the cost of repairs, and b) the difference between the pre accident value of the vehicle and its value in its current condition, but there was no evidence which bore on either of those two matters, so the claim failed.

28. Then the Recorder addressed the claim for the storage charges and he paid attention to the invoice from JP Autos, which I too have looked at with some care with the assistance of counsel. The Recorder described it as a curious document, the reason being that various dates did not match at all. The invoice is dated 20 March 2017, which of course predates the accident, and the recovery and storage is said to cover the period 12 July to 28 March 2017, which of course cannot be right.

29. However, it is not entirely a nonsensical document if the author of it is given the benefit of the doubt. On a generous interpretation, it could be argued that what it was intended to state is that the period was 12 July to 28 July 2017, which is 16 days; and at £20 per day the sum of £320 is arrived at on the basic arithmetic. However, it still does not explain of course the date of the invoice which is the very same date as the final date of the storage period. There is a very reasonable argument that the document has been manufactured to support a false claim, not least because one doubts whether the brother-in-law would have raised a charge for storage in these circumstances. I also note that the storage period covers the time the brother-in-law was apparently in ownership of the vehicle.

30. All these were difficulties which were obvious of course to the Recorder, and what he said was, at paragraph 9:

> **"I am not sure or not whether it is a false document but I have to be satisfied that it is a true document."**

31. His conclusion was that the Claimant did not satisfy him that it was a true document and he therefore rejected the claim for storage.

32. Finally, before he came to the claim for general damages, with which I am not concerned, the Recorder addressed the claim for hire charges. He pointed out that the burden of proof was on the Claimant to prove that he was impecunious, and he concluded that the Claimant had not provided sufficient documentation to discharge the burden of proof. Then, he said at paragraph 12:

> **"He has not satisfied me that he has proved to the appropriate standard, that he was impecunious and, in particular, I refer to the fact that he had at least three perhaps four credit cards at the time of this collision, and we know nothing as to the balances on those or the available credit available to him."**

33. So the Recorder did not expressly find dishonesty in relation to this issue, but he did find by implication that the Claimant had failed to comply with the relevant orders. I say by implication because he made no reference to the order of DJ Thompson and, for that reason, the burden of proof could not be discharged.

34. It is submitted today on appeal by Mr McKeown, that the Recorder's judgment is seriously deficient in relation to the Section 57 issue in numerous respects, and that there was a mass of evidence which demonstrated that, in particular, the Claimant's first witness statement was not merely untrue, but was dishonestly untrue. All the relevant facts were known to the Claimant and he could not have been mistaken about them.

35. It was submitted that the Claimant had stated precisely and in terms that the vehicle had been sold when this was not the case, and it was only when the Insurers drew attention to that, that he changed his story. Mr McKeown also submits that the second statement is not very much better. In relation to the other matters, the £570 for storage and the hire charges, Mr McKeown submits that the Recorder should have gone further than to characterise the JP Autos' invoice as a curious document. That in fact it is a complete mess in relation to the dates, and the inference should be drawn that the Claimant participated in that and/or procured his brother in law to prepare a document which was untrue.

36. The submission is slightly more subtle in relation to the claim for hire charges, and reliance is placed on a recent decision of Julian Knowles J, to which I will be coming in a moment. The central submission is that the Claimant's failure to comply with the order of DJ Thompson was deliberate, and that the inference of dishonesty in relation to that was, frankly, irresistible.

37. It was submitted by Ms Hurst on behalf of the Claimant that, although the judgment of Mr Recorder Kelbrick is certainly brief, it is sufficient in that he dealt, by implication, with the Section 57 issue adequately. For this purpose I should take into account not merely what the Recorder said in terms, but also the submissions of the parties, and all the available evidence. She submitted that it is not open to me to revisit that evidence and come to different conclusions or evaluations of the primary facts.

38. The central submission is that the Recorder had squarely in mind Mr McKeown's point that there was fundamental dishonesty here, but he did reject it: see, in particular, paragraph 6, of the judgment to which I have made reference. The appellate court, she submitted should be extremely slow to revisit these questions. Moreover, this was an ex tempore judgment and, though she did not quite put the point in this way, it should not be trawled over with a toothpick to ascertain deficiencies. It should be considered in the round.

39. I am grateful to both counsel for their helpful submissions.

40. The legal framework governing this application is familiar, and the starting point is the terms of Section 57 of the 2015 Act. Its purpose of course is to enable the Court, in the right circumstances, to invalidate fundamentally dishonest claims, even if there be properly constituted elements of such claims. Indeed, it is a premise of the Section that the Court is finding that the Claimant is entitled to some damages in respect of the claim. It is Section 57(1)(b) which is particularly important:

> "On an application by the defendant for the dismissal of the claim under this section, the court is satisfied on the balance of probabilities that the claimant has been fundamentally dishonest in relation to the primary claim or a related claim."

41. The obligation under Section 57(2) is that if satisfied to the probabilistic standard of fundamental dishonesty, the Court is then required to dismiss the primary claim unless satisfied that the Claimant would suffer substantial injustice if the claim were dismissed. There has been authority on the issue of fundamentally dishonesty but no authority, on my understanding, on the issue of substantial injustice. However, the latter is somewhat academic in the circumstances of this case since the issue of substantial injustice as a derogation from the obligation to dismiss the claim has not been raised on behalf of the Claimant.

42. As for the authorities on fundamental dishonesty, I was referred to the judgment of Newey LJ in *Howlett v Davies & Anor* [2017] EWCA Civ 1696, where he said:

> "A claimant should not be exposed to costs liability merely because he is shown to have been dishonest as to some collateral matter or perhaps as to some minor, self-contained head of damage. If, on the other hand, the dishonesty went to the root of either the whole of his claim or a substantial part of his claim, then it appears to me that it would be a fundamentally dishonest claim: a claim which depended as to a substantial or important part of itself upon dishonesty."

43. A gloss was provided on that Julian Knowles J in his judgment in *London Organising Committee of the Olympic and Paralympic Games (in liquidation) v Haydn Sinfield* [2018] EWHC 51 (QB). In particular, paragraphs 62 and 63:

> "In my judgment, a claimant should be found to be fundamentally dishonest within the meaning of Section 57(1)(b) if the defendant proves on a balance of probabilities that the claimant has acted dishonestly in relation to the primary claim and/or a related claim (as defined in Section 57(8)), and that he has thus substantially affected the presentation of his case, either in respects of liability or quantum, in a way which potentially adversely affected the defendant in a significant way, judged in the context of the particular facts and circumstances of the litigation. Dishonesty is to be judged according to the test set out by the Supreme Court in *Ivey v Genting Casinos Limited*.
>
> By using the formulation 'substantially affects' I am intending to convey the same idea as the expressions 'going to the root' or 'going to the heart' of the claim. By potentially affecting the defendant's liability in a significant way 'in the context of the particular facts and circumstances of the litigation' I mean (for example) that a dishonest claim for special damages of £9,000 in a claim worth £10,000 in its entirety should be judged to significantly affect the defendant's interests, notwithstanding that the defendant may be a multi-billion pound insurer to whom £9,000 is a trivial sum."

44. The final authority which is germane on this particular issue is the decision again of Julian Knowles J, in *Haider v DSM Demolition Ltd* [2019] EWHC 2712 (QB). In that case My Lord addressed the issue of the role of the appellate court in this sort of situation where primary findings of fact fall within the province of the fact-finding court under appeal. It is unnecessary for me to cite all the authority which bears on the obvious constraints that are imposed on an appellate court in reversing decisions of the relevant fact-finding tribunal, if that tribunal has apparently addressed the relevant issues, but Julian Knowles J, at paragraph 21 of his judgment, addressed the decision of the Court of Appeal in *Flannery v Halifax Estate Agencies Ltd* [2000]1 WLR 377 in the situation where a lower court reasons are said to be defective.

45. At paragraph 26, Lord Phillips MR said this:

> "Where permission is granted to appeal on the grounds that the judgment does not contain adequate reasons, the appellate court should first review the judgment, in the context of the material evidence and submissions at the trial, in order to determine whether, when all of these are considered, it is apparent why the judge reached the decision that he did. If satisfied that the reason is apparent and that it is a valid basis for the judgment, the appeal will be dismissed… If despite this exercise the reason for the decision is not apparent, then the appeal court will have to decide whether itself to proceed to a rehearing or to direct a new trial."

Then, at paragraph 22, Julian Knowles J in his case continued:

> "The italicised words in paragraph 26 are important. In considering whether the judge properly explained his conclusion, or whether his reasons were inadequate, I can have regard to the evidence and to the submissions made by counsel in order to determine these questions. I am not limited to the judgement alone."

46. In my judgment, the reasons of Mr Recorder Kelbrick are inadequate. The issue of fundamental dishonesty was at the forefront of the Insurer's case, but it was not properly addressed, and certainly not addressed in the systematic way the Section requires. Objectively speaking, the Claimant's first witness statement was untrue on an important issue, and the second witness statement did not clearly put the matter right. The Recorder should have grappled with these matters properly and made clear findings. In my view, he did not.

47. The first question for my determination against that backdrop is whether I can deduce, from all the material in the case, including in particular the submissions made by counsel, what the Recorder's reasons were: in other words, applying the guidance laid down by the Master of the Rolls at paragraph 26 of his judgment in the *Flannery v Halifax Estate Agencies Ltd* case. The second question is that if I am unable to do that, I then have to decide whether to proceed to a rehearing or to direct a retrial.

48. It has to be recognised that conducting a rehearing is not a straightforward matter in these circumstances because a finding of fundamental dishonesty against a claimant in a case such as this is extremely important. In my view, I should only proceed to a rehearing if I am driven to conclude, on the basis of all the available evidence, that there is only one answer to the fact in issue. If I am in any doubt, I should be going down the separate and different course of directing a new trial.

49. Although a retrial is not a practical or sensible option in the circumstances of this case, given the amounts involved and the way in which the Claimant is being funded, it seems to me that I should be approaching this on the issue of principle, not on the basis of what I deem to be convenient.

50. Turing first to the claim for storage charges, I have already indicated my concerns about the JP Autos' invoice. There is more than a suspicion that it is a fraudulent document. However, applying the abstinent approach enjoined by all the authorities on fact appeals, I have concluded that there is an insufficient basis for holding that the Recorder's finding was perverse. He said that it was a curious document and the reasons for that curiosity are obvious. The Recorder was not prepared to find that it was a false document, and in my judgment he was entitled to come to that conclusion, generous though it might have been. The issue of falsity and fundamental dishonesty is one and the same in connection with this element of the claim.

51. In relation to the hire charges, the issue is, as I have said, more complex, and I must bear in mind what Julian Knowles J said in the *Haider v DSM Demolition Ltd* case at paragraphs 58 and 59 of his judgment, an authority which was not available at the time the Recorder made his decision. It was, however, squarely submitted by Mr McKeown that the Claimant was deliberately and dishonestly supressing documents and that an adverse inference against him should be drawn on that account. The Court is after all well used to drawing adverse inferences if it is of the view that documents are being deliberately withheld, and the adverse inference here would be that the underlying claim was dishonest in the sense that the Claimant was not impecunious and knew that he was not.

52. In my judgment, the Recorder failed to deal with Mr McKeown's submissions properly. It was not a satisfactory approach merely to find that this claim failed on the burden and standard of proof; it was incumbent on the Recorder to consider the contention that the Claimant was being fundamentally dishonest, and he did not.

53. On this issue, I cannot conclude that there is only one answer, because my assessment
is that deliberate and dishonest suppression is certainly one possible inference from all the surrounding evidence; but I am not satisfied that it is the only inference. I bear in mind the answers given in cross examination, and also I bear in mind the fact that the Claimant may well have had some difficulties in obtaining relevant documentation; but I think the point is this. I am not driven to conclude that documentation in relation to the hire charges claim has been deliberately withheld in defiant contravention of the order of the District Judge. The upshot is that there would have to be a re-trial on that question were it not for my conclusion on the claim for £10,400.

54. Ultimately, I have reached a different conclusion adverse to the interests of the Claimant on that claim in relation to his first witness statement. The language of Section 57 is important. The Court must be satisfied on the balance of probabilities that the Claimant *has been* fundamentally dishonest. The real question is whether the Claimant has been fundamentally dishonest and not whether he has persisted in that dishonesty. In my judgment, the only permissible conclusion on all the available evidence is that the Claimant has been fundamentally dishonest in advancing a false claim in the schedule of loss and a false claim in his first witness statement.

55. No proper explanation has been given for those falsities and, in my judgment, none could possibly exist. The fact, for example, that his mother passed away on 5 March 2018 is not a proper explanation, since the instructions were given at an earlier point. I do not agree with the Recorder that the correct test is one of persistence in the dishonesty because that does not reflect the language of Section 57(1)(b).

56. In any case, the Recorder rather ducked the issue of whether the Claimant did persist in his dishonesty in this sense. He made no finding as to whether the Claimant had been "flushed out". I must say that in my judgment the only reasonable inference in all the circumstances is that the Claimant would have persisted in his false claim had the Insurers not called him out. There would have been no second witness statement otherwise, and no basis on which the Claimant could have been cross-examined.

57. Overall, this is not a situation where I should be ordering a re-trial for proper findings to be made on this issue. The direct evidence, and the inferences to be drawn from it, are sufficiently strong to enable me to determine this issue on a re-hearing in favour of the Insurers.

58. The final question for me to determine is whether, in circumstances where I am completely satisfied that there has been dishonesty, that dishonesty is fundamental for the purposes of the Section. This requires the sort of analysis which Newey LJ pointed out in the authority to which I have referred.

59. Julian Knowles J addressed a straightforward situation where there was a claim for £10,000, £9,000 of which was clearly dishonest, and that is not quite the situation here. We have a claim for £10,400 which is amidst a much smaller claim for £570 and then a claim for nearly £11,500 in relation to hire charges; and then we have a modest claim for general damages for pain, suffering and loss of amenity.

60. The issue really is whether the dishonest claim is sufficiently fundamental in the sense that it is a sufficiently important part of the overall claim to go to the root of it, thereby fulfilling the criteria helpfully laid down by Julian Knowles J the *London Olympic and Paralympic Games* case, paragraphs 62 and 63. In my view, what is required is a global assessment in the light of the claim as advanced in its entirety, but also in view of the saliency and importance of the particular claim under consideration.

61. In my judgment, applying that approach, which is necessarily a holistic approach, and having regard both to Newey LJ and to Julian Knowles J, I am satisfied that the dishonesty here did go to the root of the claim and was fundamental. The claim was not minor or peripheral. It was the policy of Parliament in enacting Section 57 that even in circumstances where other claims may be valid, if a party advances a claim which is dishonest and it is significant and substantial, the Court should not be slow to find that the stringent criterion of Section 57 has been fulfilled.

62. The consequence must be that this appeal has to be allowed. This has not been on all the submissions advanced by Mr McKeown, but on the narrower question of the claim for pre-accident value, the £10,400 claim. Fundamental dishonesty should have been found by the Recorder in that particular regard, and there should have been judgment for the Insurers. I will hear counsel however, as to any other appropriate orders that I need to make.

This Transcript has been approved by the Judge.

The Transcription Agency hereby certifies that the above is an accurate and complete recording of the proceedings or part thereof.

The Transcription Agency, 24-28 High Street, Hythe, Kent, CT21 5AT
Tel: 01303 230038
Email: court@thetranscriptionagency.com