

Neutral Citation No. [2011] NIQB 57

Ref: **McCL8212**

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

Delivered: **17/06/11**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**QUEEN'S BENCH DIVISION**

**ON APPEAL FROM THE COUNTY COURT JUDGE  
FOR THE DIVISION OF ANTRIM**

**BETWEEN:**

**ADAM MAHOOD**

**Plaintiff/Appellant;**

**-and-**

**MARK McDONNELL  
and  
O'KANE POULTRY LIMITED**

**Defendants/Respondents.**

**McCLOSKEY J**

[1] I refer to the judgment of this court delivered today in the related appeal of *McAteer -v- Kirkpatrick* and, in particular:

- (a) The court's analysis and observations in paragraphs [1] - [9].
- (b) The basic framework of credit hire litigation set out in paragraph [10].
- (c) Paragraph [12], which rehearses the governing principles.

[2] In this case, Crash Services ("*Crash*" - the trading name of Granite Financial Limited) specified a maximum daily rate of £42.50 in its written contract with the Plaintiff and, in due course, claimed a daily rate of £42.50 in its invoice to the Plaintiff, giving rise to a total "credit hire" bill of £765, before VAT (the period in

question being of 18 days' duration). The Plaintiff's claim for damages had financial loss components other than the credit hire claim. Upon the hearing of this appeal, there were two disputed items:

- (a) **The credit hire claim.** The District judge awarded a daily rate of £30, rather than the £42.50 claimed.
- (b) **Delivery and collection charge.** The District judge awarded £45, rather than the £62 claimed.

Accordingly, the amounts in dispute between the parties upon the hearing of this appeal were:

- (i) Credit hire costs: £290.40.
- (ii) Delivery and collection: £17.

[3] The only witness called at the hearing was the Plaintiff. The Defendants' evidence consisted of certain materials served under the Civil Evidence (NI) Order 1989. Having considered all the evidence, I make the following material findings of fact on the balance of probabilities:

- (a) The Plaintiff, aged eighteen years at the material time and living at home, was earning the modest income of £140 net per week.
- (b) He had no credit card and no savings.
- (c) Given his parents' working commitments and arrangements, his place of work and his hours of work it was reasonably necessary for him to acquire a replacement vehicle following the subject accident.
- (d) The Plaintiff could not afford to hire a car in the usual way.
- (e) His decision to resort to the Crash credit hire and other facilities was pre-eminently reasonable in his particular circumstances.

[4] Given the above findings and applying the governing principles, I conclude:

- (i) The principle of reasonable necessity is satisfied.
- (ii) The principle that, *prima facie*, the amount specified in the credit hire invoice is the recoverable amount prevails.
- (iii) These conclusions are reinforced by the operation of the principle of *restitutio in integrum*.

- (iv) The “impecunious Plaintiff” principle also operates in favour of this Plaintiff.
- (v) The Defendant has failed to discharge the onus of establishing that the Plaintiff acted unreasonably in purported mitigation of his loss or failed to take reasonable steps in mitigation thereof.

I apply these principles also to the delivery and collection charge, which is inextricably linked with the claim for credit hire costs. The Defendants adduced no evidence relating to the reasonableness or otherwise of this discrete item and it would appear that the award of £45, in lieu of the amount claimed, £62, at first instance was somewhat arbitrary, lacking any evidential foundation. I conclude that the recoverable sum is that claimed in the Crash invoice, £62.

[5] Accordingly, this appeal succeeds in full. The parties are invited to agree the exact amount of the consequentially varied decree. The Plaintiff is entitled to his costs at first instance and on appeal.