Neutral Citation No. 2011 NIQB 53 | *Ref:* **McCL8213**

Judgment: approved by the Court for handing down | *Delivered:* **17 06 11**

*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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ON APPEAL FROM THE COUNTY COURT FOR THE DIVISION OF BELFAST

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BETWEEN:

MARK McNULTY

Plaintiff/Respondent;

-and-

STEVEN HAMILTON

Defendant/Appellant.

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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] This is yet another credit hire appeal. In this particular case, the Appellant is the Defendant. The decree of the District Judge under appeal, £4,278.17, has the following components:

(a) The "credit hire" cost of securing a replacement vehicle at the rate of £51.30 *per diem* for a total period of 70 days.

(b) A collection charge of £50.

(c) VAT at 17½%.

The daily rate of hire is not in dispute. Subject to an important issue of causal nexus, the amount in dispute between the parties is £721.83, relating mainly to the period of hire.

[3] The subject accident occurred on 3rd July 2007. The period of replacement vehicle hire began on 7th August 2007, ending on 12th November 2007. It is accepted on the Plaintiff's behalf that he cannot recover in respect of the period of two weeks in October 2007 when he was on honeymoon. Plainly, the principle of reasonable necessity is not satisfied in respect of this discrete period. Taking into account the agreed facts and the evidence of the Plaintiff, I make the following material findings of fact, on the balance of probabilities:

(a) The MOT Certificate in respect of the Plaintiff's vehicle, a 1992 Audi Coupe, expired on 4th July 2007, the day following the accident.

(b) On 27th July 2007, the Plaintiff's Audi failed the MOT test.

(c) The sole reason for this failure was that the driver's door handle was defective to the extent that the door could not be opened from the inside (cf., the "Notification of Refusal").

(d) The cost of repairing the defective driver's door handle would not have exceeded £50 in respect of parts, to which an unspecified labour charge must be added.

(e) The only damage inflicted by the Defendant (whose builder's skip came into contact with the Plaintiff's parked vehicle) was minor bodywork damage to a discrete area of the front offside which had no impact on the driveability of the vehicle.

(f) In particular, the defective front driver's door handle was not caused by the Defendant's negligence. It could not have been thus caused, having regard to the photographic evidence and the emphatic opinion evidence (unchallenged except in cross-examination) of Mr. Devlin, automobile assessor, which I accept in full.

(g) But for the unrelated defect in the driver's door handle, the Plaintiff's vehicle would have been driveable until the date upon which the repairing exercise commenced, 24th October 2010.

(h) The vehicle was returned to the Plaintiff from the repairing garage on 12th November 2010.

(i) Accordingly, the repair period was of 19 days' duration. This exceeds considerably Mr. Devlin's estimated period of around two days. This period was plainly excessive. However, the Plaintiff cannot be faulted for this and, as noted in other cases, there were no third party proceedings against the repairing garage.

[4] The most critical of the findings of fact rehearsed above concerns the damage to the Plaintiff's vehicle caused by the Defendant's negligence and the cause of the damage to the front driver's door handle. I have found that this latter defect was not caused by the Defendant's negligence. I further find that this defect was the real and effective cause of the Plaintiff's vehicle being unroadworthy and, given the sequence of events, was the stimulus for the credit hire arrangement and ensuing claim. The Plaintiff's vehicle could not be lawfully driven from 4th July 2010 on account of a defect unattributable to the Defendant's negligence. It follows that there is no causal nexus between the Defendant's negligence and the financial losses claimed by the Plaintiff. In consequence, the claim for the cost of credit hire must fail in its entirety.

[5] **Costs**. In the court's resolution of the key issues in this appeal, the evidence of Mr. Devlin, automobile assessor, has proved decisive. The Plaintiff succeeded at first instance and was awarded costs accordingly. The exercise of the court's discretion in respect of the appeal hearing will be informed by, *inter alia*, the question of whether Mr. Devlin gave evidence at the first hearing. The significance of this is the well established principle that appeals to the High Court from the County Court are a rehearing which, as a general (though not inflexible) rule, should replicate the hearing at first instance. Where an appeal to the High Court generates an evidential framework which differs significantly from that of the first instance hearing without compelling justification, this may, in principle, result in a successful appellant not recovering its costs of the appeal. At this level, the High Court will form a view on the question of whether the adduction at first instance of the new evidence adduced on appeal could have averted an appeal and, *ipso facto*, the costs thereof. I shall hear further argument from both parties on this discrete issue.