

Neutral Citation No: [2015] NICty 5

Ref:

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

Delivered: 20/10/15

14/002837

IN THE COUNTY COURT FOR THE DIVISION OF LONDONDERRY

—————
BY THE DISTRICT JUDGE
—————

CHARLES DANIEL TAYLOR

Plaintiff

v

TMC GAS

Defendant

DISTRICT JUDGE GILPIN

[1] This is an application by the Plaintiff pursuant to Order 55 Rule 6 of the County Court Rules (NI) 1981 to allow certain witness expenses. It comes before the Court by reason of a Summons dated 1 September 2015 which is grounded upon the affidavit of the Plaintiff's solicitor sworn on 26 August 2015. The Defendant declined to file any affidavit on its behalf.

[2] The background to this matter is that the Plaintiff was involved in a road traffic collision on 12 August 2013. A civil bill was issued by the Plaintiff claiming both general damages for personal injuries together with a claim for special damages.

[3] After a contested hearing I found in favour of the Plaintiff and awarded him the sum of £2500.00 for his personal injuries, £1775.12 for the damage to his car and £206.88 for hire charges he had incurred. The Plaintiff's costs were also to be paid by the Defendant.

[4] The only issue of the costs that the Plaintiff requires this court to now determine is the amount of the fees charged by a firm of motor assessors, Independent Engineers (NI) Limited for the work its assessor Mr McCauley carried out on the Plaintiff's behalf.

[5] Mr McCauley inspected the Plaintiff's vehicle on 14 August 2013 and assessed the damage caused to the Plaintiff's vehicle in the sum of £1808.94.

[6] The Defendant's position was that not all of the damage to the Plaintiff's vehicle was caused by the subject accident. The Defendant retained its own assessor, Mr Douglas.

[7] Both motor assessors attended the trial and gave evidence.

[8] I found that the damage to the Plaintiff's vehicle had indeed been caused by the Defendant in the road traffic collision.

[9] The Plaintiff's motor assessor issued his bill of costs dated 12 May 2015 which totalled £858.10 exclusive of VAT.

[10] The Plaintiff's solicitor, Mr McDermott, in his affidavit grounding this application indicates the motor assessor determined his fee in accordance with the amounts allowed in the Northern Ireland Legal Services Commission "General Authority for Consulting Engineers' Report and Witness Fees in Civil Cases" dated 4 September 2003.

[11] The Plaintiff's motor assessor when marking his fee on this General Authority did so at the rate that the General Authority provides would be paid to Consulting Engineers rather than the reduced rate it provides for engineers who do not satisfy the definition contained therein of a Consulting Engineer.

[12] In this application the motor assessor does not seek to argue he should be considered to be a Consulting Engineer but rather with the General Authority now being of some vintage a fee marked by him at the higher rate allowed therein for Consulting Engineers would now be just to be paid to him.

[13] Order 55 R6 of the County Court (NI) Rules 1981 provides that the District Judge may allow in respect of witnesses such fees and expenses as the Judge "in his discretion think just."

[14] In exercising such a discretion it seems to me that the Judge should apply the principle that is applicable to taxations of costs in the High Court namely to allow all such costs as were reasonably necessary or proper for the attainment of justice or enforcing or defending the rights of a party.

[15] Furthermore the principles contained in Order 55 R9(4) would also appear to be of relevance

(4) With respect to any costs and allowances which are discretionary, the officer on taxation shall take into consideration the amount or value of the subject matter of the

suit and the general nature and circumstances of the particular case as well as the work actually done.

[16] Valentine comments in "Civil Proceedings: The County Court" 1999 at para 17.70

"In assessing the fees of an expert witness the judge will look favourably on any comprehensive, carefully prepared and generally accepted professional scales, such as the hourly rate for engineers set by the Legal Aid Authority."

[17] In Hobson v Ferris [1999] 3 BNIL HHJ Hart, as he then was, gave three reasons why it is appropriate to take the General Authority as a guideline when fixing costs namely that there is an element of swings and roundabouts in the application of a scale; that it allows a prospective litigant to assess their financial commitment before embarking on proceedings and that they minimise the need for taxation of costs.

[18] For all of these reasons it does seem to me entirely appropriate to take into account the said General Authority when fixing the fees of the motor assessor in the instant case. Indeed clearly the motor assessor took the same view as he based his fee on the General Authority.

[19] Having said that in my view a slavish adherence to the General Authority would be impermissible as the duty cast upon the court to fix costs and expenses must always be discharged by reference to the particular case applying the taxation principles set out above at paragraphs 14 and 15.

[20] In this matter the assessor was required to assess the damage to the Plaintiff's vehicle and whether it was consistent with the account of the collision the Plaintiff gave. He assessed the damage £1808.94. He has already been paid the sum of £90.00 for the preparation of his initial report. He now seeks an additional sum of £858.10 for taking instructions in connection with the litigation, preparing for and then attending at court for the trial.

[21] I see no reason why the motor assessor should not be paid the sum of 35.7p per mile that he has charged for the 272 miles he drove in this case. This is the rate without deduction provided for in the General Authority. In any event by a letter dated 15 May 2015 from the Defendant's solicitors they indicate that they take no issue with this being the applicable mileage rate. The fee to be allowed for mileage is thus £97.10.

[22] In connection with the elements of the assessor's bill which are in dispute I have come to the view, applying the taxation principles set out above set in the context of this case, that the motor assessor should be allowed the reduced rate as set out in the General Authority in respect of taking instructions, travelling, preparing for and attending at court. I note in particular the amount of damage to the Plaintiff's

vehicle as assessed by the motor assessor amounted to £1808.94; that the circumstances of the accident in question were commonplace being a rear end collision at a roundabout and that aside from assessing the amount of damage to the Plaintiff's vehicle the other matter the motor assessor had to address was whether all of the said damage was caused by the accident in question.

[23] I will thus allow him 0.5 hours for taking instructions at £28.88 per hour namely £14.43; £38.50 for his pre-court preparation; £135.50 for his attendance at Londonderry Courthouse; £92.50 for his attendance at Coleraine Courthouse; £20 per hour for time he spent in driving some 272 miles in connect with this case which gives rise to a fee of £104.

[24] In summary the motor assessor is to receive the sum of £572.03 exclusive of VAT for the work he carried out in this case. Having already been paid £90 for his initial report I allow him the further sum of £482.03 for the other aspects of the work done in this case.