Neutral Citation No. [2014] NIQB 90 | *Ref:* **GIL9332**

Judgment: approved by the Court for handing down | *Delivered:* **26/6/14**
*(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 DISTRICT COURT FOR THE DIVISION OF ARDS

Between

IVAN WATSON

Plaintiff

and

LEAH McCULLOUGH

Defendant

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GILLEN J

Summary

[1] This case concerns a dispute as to the rate of labour costs of repair of the plaintiff's vehicle, a Toyota Landcruiser, which was damaged in the course of a road traffic accident on 12 December 2012 in Comber, Co Down.

[2] The plaintiff contends that the appropriate hourly rate for repair of the vehicle was £35 per hour whereas the defendant contends that the appropriate hourly rate was £26.

Background Facts

[3] This is a plaintiff's appeal from the whole of the Decree made by the District Judges' Court on 12 March 2014 whereby it was ordered that the defendant do pay the plaintiff the sum of £2,908.73 damages.

[4] As a result of agreement between the parties, the only issue to be determined by this court is the labour rate for the repair. Based on the evidence of the two assessors retained by the parties the two competing figures are £26 per hour and £34 per hour .

The Evidence

[5] The plaintiff had sworn an affidavit of 27 May 2014 in the course of which he made the following points:

- After the accident he had spoken with a number of friends and neighbours who recommended W J McVeigh Accident Repairs to carry out the repair to his vehicle. He was informed that the quality of the workmanship provided by the garage was impressive and he was not told of anywhere else apart from this repair firm.

- His main priority after the accident was to have his car repaired to a high standard and put back on the road. W J McVeigh Accident Repairs were close to his home being only about 1½ miles distance.

- He had never been involved in a road traffic accident before and therefore had never required the services of any other car body repair shop.

- When leaving his car to be repaired he did not ask how much they would be charging as he knew "the insurance companies would be ultimately paying for this".

- When he brought his car to W J McVeigh Accident Repairs they referred him to Crash Services who provided him with repairs and a replacement vehicle on a credit basis.

- From his own experience he did not consider £34 per hour to be an unreasonable figure for the costs of the labour for the repair of his car. In the event the repair work was very satisfactory.

[6] The plaintiff had retained Mr Bonner, a consulting engineer assessor, whose report was before me albeit he did not give evidence. He recorded that repair costs had been agreed with W J McVeigh at this rate.

[7] There was also a computer programme from Autotex which provided manufacturer's guidelines for how long repairs would take together with costs of the overall repair for such a job. This was comparable to the money charged in this instance for the overall repair. However, this did involve a calculation of the hours which was not a matter of dispute before the court since the only issue before me was that of labour rates.

[8] The defendant called in evidence Alan Foster, an in-house engineer/ assessor for the insurance company AXA. He had obtained a series of comparables – 6 in all – from repairing garages which included independent operations in roughly the

same geographical area as WJ McVeigh. Four of these involved AXA insured vehicles and two involved vehicles where AXA was the insurer of the "at fault" vehicle and therefore was paying the bill for the vehicle in respect of which the quotation was sought.

[9] The six hourly rates did range from £25-£26 per hour and two of the quotations were from McVeigh's Accident Repair Centre, the garage at which the plaintiff had his vehicle repaired. McVeigh's had requested an hourly rate of £28 and this was negotiated down to £26 with Mr Foster.

[10] It was Mr Foster's evidence that there was overall only a figure of £192 separating the parties in the overall repair bill, but nonetheless Mr Foster insisted that the repair costs per hour claimed by the plaintiff was excessive.

[11] In cross-examination Mr Cleland on behalf of the plaintiff suggested to him that as an experienced motor assessor he was able to cut a better deal than the person in the position of the plaintiff in the open market. Mr Foster countered this by indicating that the estimates had been sent to him and whilst some may have been aware that it was being sought by insurers not all would have been so informed.

Principles governing cases of this kind

[12] Counsel referred me to the now well trammelled authorities and cases dealing with credit hire issues. These included Barry Matchett v Heather Hamilton [2011] NIQB 132, Stokes v McAuley [2010] NIQB 131, Bates v Keegan [2012] NIQB 103 ,McAteer v Kirkpatrick [2011] NIQB 52 and Gilheany v McGovern [2009] NIQB 46. In addition my attention was drawn to a more recent authority in the Court of Appeal in England of Coles and Others v Heatherton and Others [2013] EWCA Civ 1704.

[13] From these cases, I have distilled the following principles:

- The guiding principle is that of restitutio in integrum.

- The appropriate measure of damages is the cost of repairing the damaged goods. There is a discernible element of objectively assessed reasonableness in such a test.

- There is limited scope for the operation of the doctrine of judicial notice in this sphere and the courts must carefully adhere to the burden and standard of proof conventionally applied in such cases.

- The requirement of reasonableness operates to prevent the plaintiff from recovering excessive damages.

- There is no single correct solution in such an area. Based upon evidence, the court has to decide whether the amount claimed by the plaintiff exceeds the bounds of what is recoverable in law without applying some arithmetical scale.

- Thus where the differences between competing figures are relatively slight, involving margins of modest dimensions, the court is less likely to conclude the marginally higher amount claimed is unreasonable and to measure damages on the basis of a lower competing rate which is deemed to be reasonable. The common law consistently deals with the realities of life. Market forces and profit making activities give rise to differing costs to the consumer for the same product or service. In any given market or industry there may be a range or band of rates or charges composed of differing money amounts, which, depending on the context, may satisfy the legal requirement of reasonableness.

- Thus the common law will not invariably and inevitably condemn as unreasonable a money rate or amount which is higher than a competing rate or amount.

[14] Coles case reflects the latest development in the litigation over the recovery of the cost of vehicle repairs. In this case the court found that the measure of loss for damage to a vehicle is not necessarily as straightforward as the figure paid at a garage but can be the reasonable cost of repair assessed by a reference to what the individual claimant could obtain on the open market. The court held that it is neither here nor there whether the insurers put in place a repair company which sub-contracts, contracts directly with a garage or repairs the car itself. The only issue is the reasonable cost of repair to the individual claimant, which can be established by any form of admissible evidence in court. Only if the claim appears to be clearly excessive will the court be justified in investigating whether that sum exceeds the cost that the claimant would have incurred in having the repairs carried out by a reputable repairer.

Conclusion

[15] Applying those tests in this instance, I have come to the conclusion that the gap between the hourly rate claimed by the plaintiff and the comparable figures found by the one motor assessor who gave evidence before me, namely Mr Foster, is so great as to bring this case into the category of a repair cost which is clearly excessive based on what could be obtained in the open market. I find Mr Foster to be an impressive witness who had taken the fairly elementary precaution of obtaining comparable hourly rates in roughly the same geographical area where the plaintiff lived including two estimates from the very garage where the plaintiff had obtained his rate of £34. I find this evidence to be overwhelming on the facts of this case. I consider that the figure of £34 per hour is very much in excess of what is the reasonable hourly rate of repair assessed by a reference to what the individual

claimant could obtain on the open market. Although, as Coles case suggests, I have considered the modest increase in the overall repair bill, the degree of excess in this aspect is so great that it demands correction.

[16] In all the circumstances therefore I affirm the decision of the County Court Judge.