

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

ALAN WEIR

Plaintiff/Appellant

and

LAURENCE O'NEILL

Defendant/Respondent

KEEGAN J

Introduction

[1] This is an appeal from a decision of His Honour Judge Devlin in relation to damages arising as a result of a road traffic collision. There was no issue as to liability in the case as the plaintiff was not at fault. The issue was in relation to the amount of damages allowed for hire. The amount claimed by the plaintiff was in the sum of £4,133.26. That was for a 22 day period between 15 January and 5 February 2015. The invoice for this was raised by Crash Services, a credit hire company. The rate was stated as a taxi rate of £146.79 plus £7.50 per week collision damage waiver plus VAT. The learned judge did not award the full extent of the hire claimed and instead he awarded a sum of £2,221.77. This sum represents 12 of the 22 days during which the vehicle was hired at the full rate of hire claimed.

[2] Mr Joseph McEvoy BL appeared for the plaintiff/appellant and Mr Christopher Ringland BL appeared for the defendant/respondent. I am grateful to both counsel for the way in which they conducted this appeal with economy and focus.

Facts

[3] The facts can be briefly stated in this case. The plaintiff is a taxi driver. It is common case that on 14 January 2015 when the plaintiff was driving his taxi he was involved in a collision with an 'L' driver and as a result he sustained injuries and damage to his vehicle. There is no issue about the personal injury claim or the repair

claim. The only issue in this case was in relation to the duration of the hire claimed by the plaintiff. There was no issue raised in relation to the hire rate. The plaintiff was contracted with Crash Services in relation to the hire of a replacement taxi during the relevant period.

The evidence

[4] The plaintiff described his employment in evidence. He said that he had been working for Value Cabs for two years. He said he had a Skoda Superb and that he had the signs and logos for that. He said that Value Cabs recommended Crash Services to deal with his claims following the road traffic collision. He said that upon his employment he obtained a meter, a data head and a machine for receipts to enable him to conduct his business. The plaintiff gave evidence that his outgoings were £140 a week depot rent. He also said that he paid £165 per week for his car. He said that he paid £156 a month for insurance. He said the public service vehicle licence (PSV) was £145 per year. He also said that diesel charges amounted to £10-£20 per day.

[5] The plaintiff gave evidence that he lived with his father. He said that he had low outgoings which amounted to paying for food and £5 per week for electricity. The plaintiff gave evidence that once he reached approximately £400 per week through his taxi earnings that he stopped taking jobs as this was all he needed. The plaintiff said that he had no other source of income. The plaintiff gave evidence that he used his car for taxiing. He said he also used his car for social purposes to go to the shops with his father, to visit friends and to visit his son. The plaintiff gave evidence that if he had not hired a car after this road traffic collision or paid the depot rent that he would have faced losing his job.

[6] The plaintiff was challenged about his earnings and in this respect reference was made to an affidavit filed by the plaintiff of 25 April 2016. Mr Ringland asked the plaintiff why he had no profit and loss accounts for the year ended April 2015 or tax returns or assessments for the tax year ended April 2015. Mr Ringland also asked about the fact that this affidavit stated that "I cannot give a precise indication as to how much I earn in any given year". The plaintiff said that he had regularised the position with the authorities and the reason why formal accounts had not been filed was because of the low level of income he had and the low profit that he made.

[7] Under cross-examination the plaintiff accepted that he really only worked 3-4 days a week. He was also asked about whether or not he had thought about the contract entered into with Crash Services in terms of the financial extent of it. In answer, the plaintiff said that he was not asked how many days a week he worked. He also said he had not thought about the contract which cost £1,300 per week against the £400 per week that he made. He accepted that this was "not a great deal".

Submissions

[8] The defendant called no evidence and the case then proceeded to legal submissions which I summarise as follows. Mr McEvoy referred me to established principles in terms of the plaintiff's entitlement. Firstly, he said that the plaintiff was the innocent driver. Secondly, he said that the plaintiff should be placed in the same position as he was before the accident as nearly as possible. Thirdly, Mr McEvoy said that the need for a hire of a taxi cab was established. Fourthly, Mr McEvoy said that the distinguishing factor of this case was that the plaintiff was a self-employed taxi driver. Fifthly, it was submitted that the plaintiff had mitigated his loss. Mr McEvoy stated that the evidence showed that the plaintiff used his car both for taxiing and social purposes. He pointed out that the plaintiff remained at all times liable to pay full weekly depot fees regardless of the hours and days worked. Mr McEvoy said it was unrealistic and unreasonable to expect the plaintiff to enter into multiple hire contracts. Mr McEvoy said that in essence the plaintiff was entitled to the full cost of car hire claimed on the facts of this case.

[9] Mr Ringland made the case that the amount claimed for hire in this case was economic folly. He said that the plaintiff had not fully mitigated his loss. Mr Ringland accepted that the burden was on the defendant to prove this. He described the economic folly as a claim of £4,000 against an income over the relevant period of approximately £1,200. Mr Ringland said that he had sympathy for the plaintiff but the issue was really with the credit hire company who did not make the necessary checks when acting as the agent for the plaintiff. Mr Ringland submitted that this meant that the credit hire company may have to sustain a loss if the full amount of hire could not be established.

[10] Both counsel helpfully referred me to a number of general principles in terms of assessment of damages. There was no evidence called in relation to alternate taxi rates. Counsel submitted that this assessment of loss could be looked at in the broad round of general damages but that there was no yardstick for this. They also said that this could be dealt with as a loss of profit case or that this could be a 'hybrid' case.

Legal context

[11] I am indebted to Stephens J and McCloskey J for their exposition of the relevant principles in this jurisdiction in a number of cases including McAteer v Kirkpatrick [2011] NIQB 52 and Kelly v Mackle [2009] NIQB 39.

[12] I do not intend to recite all of the established legal principles save those that are directly relevant in relation to this case which I summarise as follows:

- (i) The purpose of the damages is to place the injured party in the same position as he was before the accident as nearly as possible. The guiding principle is that of *restitutio in integrum* Lagden v O'Connor [2004] 1 AC 1067.

- (ii) The plaintiff must establish that there is a need for the hire of a vehicle. This principle has been expressed in terms of reasonable necessity in the cases of Giles v Thompson [1994] 1 AC 142 and Dimond v Lovell [2002] 1 AC 384.
- (iii) The recovery is not unconstrained and this feeds into the principle of the mitigation of loss which rests with the plaintiff. The onus in relation to proof of this is with the defendant. This principle has been reiterated in the case of Stokes v Mc Auley [2010] NIQB 131.
- (iv) The expenditure incurred must be reasonable. The credit hire invoice is the normal measure. However, that principle is not inviolate. In terms of the assessment of damages, other principles may apply such as the spot rate measure of damages and the additional benefits principle. The issue of impecuniosity is also relevant. Clarke v McCullough [2013] NICA 50.
- (v) The nature of the plaintiff's occupation is relevant Kelly v Mackle [2009] NIQB 46.
- (vi) In Beachwood Birmingham Ltd v Hoyer Group UK Ltd [2011] 1 All ER (Comm) 460 loss of profits was used as a mechanism for calculating loss where the company had alternative vehicles.

Consideration

[13] I have considered this case as a rehearing as it is a matter on appeal from the County Court. I have also considered the evidence on the balance of probabilities. I accept the plaintiff's evidence that he is a self-employed taxi driver. I accept the evidence that he works 3-4 days per week. I accept the evidence that he uses the vehicle for work but also for social purposes. I accept that he needed to hire a vehicle after the road traffic collision. The affidavit filed by the plaintiff is sparse but in evidence he succeeded in convincing me that he earned approximately £400 per week and that after outgoings he made a very low profit.

[14] A distinguishing characteristic of this case is that the plaintiff is a self-employed taxi driver. This is his only employment. He has a profit making vehicle. However, as the plaintiff is only working 3-4 days per week he is effectively a part time worker. The exact number of days worked depends on the level of business and so the pattern may vary from week to week. There was no case made that the plaintiff was on holiday or incapacitated during the hire period. I accept the plaintiff's evidence that he would have to maintain his depot rent and other charges such as PSV and insurance in relation to the taxi otherwise he could lose his employment. It is important to note that the plaintiff was referred to Crash Services by the taxi company. There was no evidence given about an alternative taxi rate or any other rate that Crash Services may have been offered to obtain a replacement taxi.

[15] This case then comes down to an issue of whether or not I should allow the 12 days of hire which equates to when the plaintiff was actually working or whether I should allow 22 days which is the full hire period. If I do allow the longer period there is then an issue as to how I should assess the loss.

[16] Having heard the evidence, I consider that the characteristics of this case are such that I must allow for the 22 day period. I do not consider that in a case such as this the court can disaggregate the periods at work and off work. There is a loss of use during the entire period. I accept that the car was used for business and social purposes. As such I consider that the learned judge was wrong in disallowing 10 days from the hire period.

[17] I then turn to the amount to be allowed. There was an argument that the 10 day period did not have to be compensated by way of allowing the entire credit hire invoice. However, this case differs from cases involving private vehicles where assessments may be made by applying an alternative market rate. The only rate that I have been provided with is the rate of hire given at the hearing. However, two other options were mooted as follows.

[18] The first argument was that as the plaintiff did not need a taxi for the entire 22 days, he could have hired a private vehicle for part of the period when he was not working. This was described by counsel as a 'hybrid' solution. This argument had an initial attraction to me. However, upon reflection, I consider that it would be unreasonable to require the plaintiff to enter into multiple contracts during the repair period to allow a taxi to be substituted for another private vehicle for certain periods each week. I therefore consider that this suggestion is unworkable.

[19] The second argument was whether I could use a loss of profits formula in this case. In looking at this I must bear in mind the nature of the plaintiff's employment. As such this case is distinguishable from the particular circumstances in Kelly v Mackle. For this second argument to succeed I would effectively have to say that the plaintiff should have given up his work for a period to mitigate his loss. I do not consider that is a reasonable proposition. I accept the plaintiff's evidence when he said that he feared losing his job. I consider that this case is also distinguishable from a business situation such as that in Beachwood where there were alternative vehicles available.

[20] I can well understand the argument that the result in this case may appear uneconomic given that the cost of hire outstrips the loss of profit. However, I must decide this case on the evidence applying established legal principles. The question is whether the plaintiff has acted reasonably in mitigating loss. On the facts of this case it seems to me that the plaintiff has taken reasonable steps to mitigate loss. Whilst there is a differential between the amount of hire per week and the amount of profit per week there does not appear to me to have been any other reasonable

alternative open to the plaintiff. The position in this case cannot therefore be characterised as a folly or extravagance.

Conclusion

[21] Accordingly, on the particular facts of this case, I will allow the appeal and I will substitute the figure for hire of £4,133.26. I will hear from counsel as to costs and as to whether any other relief is sought.