

Arun Katyar obtains exemplary damages award against motor fraud ring

Stefanov v. Zurich & Ali (25th October 2016, HHJ Madge, sitting in the Central London County Court).

Arun Katyar recently achieved an award of exemplary damages, believed to be the highest of its kind against participants in a motor fraud ring. The ring comprised a cluster of four interconnected claims involving local authority employees.

The Claimant alleged that Ali negligently drove his council works van into his BMW vehicle. He sought damages of £34,412.51, mostly comprising credit hire charges of £29,758.51, and for an alleged soft tissue injury.

The insurers put him to strict proof given various suspicions about the accident as particularised in their defence, but initially did not plead fraud. The Claimant filed a Reply to Defence, maintaining this was a genuine road traffic accident.

Fraud was eventually pleaded after further investigations, and Ali was subsequently joined as Third Party; the Defendant made a Part 20 claim based upon the torts of deceit and unlawful means conspiracy.

Shortly thereafter the main claim was struck out, and Ali did not enter a defence or otherwise participate in the Part 20 proceedings. The matter was set down for an assessment of damages hearing on 25th October 2016.

The judge noted that each accident within the cluster involved a works van being driven by a council employee, into collision with a vehicle occupied by persons with Eastern European surnames. There were demonstrable connections between many of the parties involved in these separate accidents. It was alleged the accidents were staged or contrived, being part and parcel of a 'crash for cash' scheme.

On the counterclaim, the insurer claimed restitution of the pre-accident value paid out to the Claimant and £2,000 additional (pre-action) investigative costs incurred by the insurer. They also claimed exemplary damages based upon the torts of deceit and conspiracy.

The learned judge was referred to a number of authorities including **Tasneem v. Morley**, (HHJ May QC, sitting in the Central London County Court), **Churchill Insurance v. Shajahan**, (Recorder Tilbury, Birmingham County Court), and **Alam v. Blackwell** (Coventry County Court).

The judge held that exemplary damages here came within the second limb of **Rooks v. Barnard [1967] AC 1129**. The conduct of the Claimant and Ali was to bring or engineer a deceitful claim, calculated to make a profit. He further referred to **Kuddus v. Chief Constable of Leicestershire [2002] 2 AC 122**.

His Honour observed that fraudulent road traffic accidents had reached epidemic proportions, increasing insurance premiums for members of the public. This was a matter of public concern. Court time and resources were wasted. An additional factor relevant in this case was that the fraud was perpetrated against the local authority who were publicly funded. Further, any road traffic collision was dangerous, and could involve risks not confined to the perpetrators.

In considering the appropriate Level of exemplary damages, His Honour took into account the following factors:-

1. The claims were pernicious and dishonest. They increased insurance premiums, and affected insurance companies and their customers;

2. There was a need for deterrence of fraudulent road traffic accident claims;
3. The amount of exemplary damages should be moderate and not excessive;
4. The means of the parties. Although neither the Claimant nor Ali had put in any evidence about their means, they had had an opportunity to do so. Ali was employed at the time of the accident and the Claimant was driving a BMW, and had sought to claim for hire.
5. The conduct of the parties, was dishonest and deceitful. It was a manufactured claim from the outset. One aggravating feature was that the Claimant filed a reply to the original (strict proof) defence, maintaining this was a genuine road traffic accident. It was struck out for failing to comply with orders, and the size of his claim and costs was well over £60,000. His Honour felt that it was only reasonable that there be some relationship between the amount claimed and exemplary damages. There was no fixed rule, and there was no reason why it should be less than the amount claimed by the deceitful Claimant. His Honour stated that on one view, there was no significant deterrent value unless the award was more than the amount originally claimed.
6. Criminal proceedings. Neither the Claimant nor Ali had been prosecuted despite their involvement in a 'crash for cash' scheme. No such proceedings had been instigated nor appeared to be envisaged.

Taking into account all of the circumstances, the HHJ Madge considered that an award of exemplary damages was justified and appropriate. It should have some deterrent effect, but be fair to all concerned and the judge considered an appropriate award was one of £50,000 in respect of each party.

The Court further made a declaration that the Claimant and Third Party conspired to defraud the Defendant. Costs were awarded on the indemnity basis.