

## **Isaac Hogarth has claim dismissed for fundamental dishonesty under section 57 CJCA 2015**

*(1) Howell (2) Walker v Brindley Asphalt Ltd (2017) Birmingham County Court, HHJ Wall, 18 September 2017*

Following a two-day trial before HHJ Wall, C1's claim was dismissed upon an application under section 57 CJCA 2015 for a finding of fundamental dishonesty, with an order for indemnity costs.

### Facts

On 15 December 2015, C1 was driving a VW Golf in which C2 was a passenger. D's employee was driving a Land Rover Discovery. Both vehicles were positioned in the right-hand lane of two on a dual carriageway, with C1 in front of D. The speed limit on the road was 50 mph and as found by the judge, both drivers were going at 30 to 35 mph, and it was lightly raining.

At a certain point on the approach to a roundabout a third vehicle, a BMW, suddenly pulled in front of C1's Golf. D's driver said that as soon as the BMW had pulled across, it accelerated away, it did not brake at any time, and the road ahead was otherwise clear.

In response to the BMW's manoeuvre, as found by the judge, C1 performed a sudden and extreme braking manoeuvre and came to a standstill or virtual standstill. D's driver, who had been travelling behind at a distance of three car lengths was able to brake and almost to stop his vehicle, but a collision at a low speed occurred.

### Issues

C1 brought a claim for personal injury, credit hire, vehicle damage and physiotherapy.

C2 brought a claim for personal injury, physiotherapy and travel expenses.

D raised the following issues:

- (a) Induced accident;
- (b) Low velocity impact;
- (c) Significant accident histories, especially on the part of C1;
- (d) Numerous inconsistencies in the Claimants' evidence, and particularly that of C1 on the issue of injury. In particular, there were inconsistent statements about what injuries had been sustained and the duration of such injuries;
- (e) Damage consistency;
- (f) Need, impecuniosity, period and rate in respect of credit hire.

### Judgment

The judge found the following:

- The accident happened as alleged by D's driver, but was not deliberately induced;
- The main cause of the accident was C1's extreme braking manoeuvre, which was negligent;

- D's driver was, however, also driving too close to C1, such that he was 30% liable;
- C1 has been fundamentally dishonest in relation to her injury claim;
- The hire claim (of £8,480.70) was reduced to £480 on a full liability basis, or £144 on the basis of 30% liability;
- The vehicle damage was assessed at £650, or £195 on the basis of 30% liability;
- The claim for physiotherapy was dismissed;
- In relation to C2, whilst the Court had concerns that she had been dishonest in some collateral respects, found that she had suffered some injury, and awarded general damages of £2,500 and special damages of £474.80.

C2 obtained judgment.

Upon an application under section 57 of the CJCA 2015, C1's claim was dismissed, and she was ordered to pay D's costs on the indemnity basis.

### Comment

This case is an example of the court being willing to apply section 57 in a case where a claimant has lied about her injuries, notwithstanding there being other heads of loss where a real loss has been sustained.

This should encourage defendants who have doubts about liability, but have good evidence to suggest that a claimant has been dishonest, to fight matters to trial in order to make the relevant application.

Isaac Hogarth of 12 King's Bench Walk represented the Defendant.