Irani v Duchon [2019] EWCA Civ 1846

Factual Background

The Claimant, Mr Irani, suffered serious injuries in July 2013, when he was involved in a road traffic accident whilst riding his motorbike. Liability was not in issue. The Claimant was an Indian National who had moved to the UK in 2010. His visa had been sponsored by his employer, and his leave to remain was set to expire in 2020.

As a result of the accident, the Claimant suffered serious injuries to his leg and elbow. He was hospitalised for an extended period and had significant scarring and ongoing leg pain. Partially as a result of his injuries, the Claimant was made redundant. Due to the break in the continuity of his employment, the Claimant was unable to obtain indefinite leave to remain in the UK.

High Court Judgment

David Pittaway QC, sitting as a High Court Judge found as follows:

1. The Claimant had suffered a serious injury, was an honest witness and his perception of his pain was genuine.

2. The Claimant's inability to renew his visa after March 2020 had arisen as a result of the accident (paragraph 37).

3. The Claimant's proposed method for assessing what his residual earning capacity would be in India, based on a letter from a friend, several job advertisements, and his own oral evidence, was inadequate (paragraphs 41, 46).

4. A *Blamire* award should only be adopted in preference to the multiplier/multiplicand approach to loss of earnings where other methodology was impracticable. However, given the probability in the present case that a multiplier/multiplicand approach would lead to an obviously unreal result, due to the inadequacy of evidence relating to the residual earning capacity, and uncertainty over whether the Claimant would in fact return to India, the most appropriate way to quantify to the loss of earnings claim was as follows:

    a. £30,000 *Smith v Manchester* award; and

    b. £150,000 *Blamire* award.

The former recognised the fact that he may have difficulty maintaining or obtaining full-time employment. The latter reflected the probability that there would be a disruption in employment after leaving the UK, and that he would earn at a lower-level in whichever country he moved to. This provided an acceptable broad-brush compensation for the claim (paragraphs 44, 56).

Court of Appeal

The Claimant appealed on the basis that the High Court had been incorrect to award a lump-sum *Blamire* award, and should rather have adopted a multiplier/multiplicand approach (which he contended would have led to an award of £1,259.256).

The Defendant cross-appealed, arguing that the court had applied the incorrect test of causation to the losses flowing from redundancy, and had failed to find on the balance of probabilities that, but for the injuries, the Claimant would not have been made redundant.

The Court of Appeal dismissed both the appeal and cross-appeal. Hamblen LJ (with whom the Master of the Rolls and Holroyde LJ agreed) held that:

1. The general method of assessment for any future loss of earnings claim is to adopt a multiplier/multiplicand approach, using the Ogden Tables. This method is preferable to awarding an overall, lump-sum *Blamire* figure (paragraphs 18, 20).

2. To calculate the multiplicand, one needs evidence of the Claimant's 'but for' earnings (what s/he would have earned but for the accident), and the 'residual earnings' (what s/he can actually earn following the accident) (paragraphs 19, 23).

3. There will be no real alternative to a *Blamire* award if there is insufficient evidence or there too many imponderables to support the multiplier/multiplicand approach (paragraph 22).

4. Faced with an evidential case on residual earnings '*based on a letter from a friend, a snapshot of unsuitable jobs presently available from one Indian website and various assertions made by the Claimant*' it was not surprising the judge had concluded that there was no proper evidential basis for residual earnings. Equally, there was uncertainty over whether the Claimant would actually return to India, and therefore whether his likely earning capacity in India was of any relevance. In those circumstances, it was appropriate to make a *Blamire* award (paragraphs 34, 36 and 39).

5. Furthermore, the judge had been entitled to reject the Claimant's own evidence of his residual earning capacity, which had been untested and unchallenged in cross-examination. This was because it was a statement of belief or opinion, rather than an assertion of fact. The Defendant's case had not been that the Claimant did not

6. honestly hold that belief, but simply that there was no objective basis for it (paragraphs 43, 46).

7. The cross appeal was dismissed. The court had clearly found that that the Claimant's injuries were an operative or effective cause of his redundancy, rather than merely a contributory factor. Therefore, the conclusion that the redundancy would not have occurred but for the accident was justified (paragraphs 56, 57).

Tom Stafford, Hailsham Chambers
Wednesday 27 November 2019