

IN THE COUNTY COURT AT GUILDFORD

Case No: E00GU779

Courtroom No. 5

The Law Courts
Mary Road
Guildford
Surrey
GU1 4PS

Tuesday, 19th November 2019

Before:
DEPUTY DISTRICT JUDGE LE BAS

B E T W E E N:

MARK BAKER

and

THOMAS FLYNN

MR J GILBERTHORPE appeared on behalf of the Claimant
MR M GRIFFITHS appeared on behalf of the Defendant

JUDGMENT
(Approved)

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DDJ LE BAS:

1. This is a claim arising out of a road traffic accident which occurred on 23 August 2016. I am grateful for, in particular, the skeleton arguments from both counsel and I rely on the helpful chronology in Mr Gilberthorpe's skeleton on behalf of the claimant.
2. The claims notification form was submitted on 23 August 2016, following the accident. Liability was disputed and the claim left the portal on 15 September 2016. Further evidence was gathered on behalf of the claimant and there were discussions between the parties with a view to trying to settle the substantive claim, which culminated on 18 June 2018 where the claimant accepted the defendant's Part 36 offer in the sum of £50,000 in settlement of the claim; as a result of which substantive proceedings were not issued and so this claim was never allocated.
3. Looking at the value of the claim as it would have been pleaded and the nature of the evidence that would have been presented to the court, it seems to me highly likely that this matter would have been allocated to the multi-track had the claim been issued and it proceeded in that manner.
4. Had the claim proceeded in that fashion then the claimant would not be bound by the fixed costs regime as set out in CPR 45.29 and, given the nature of this judgment, I will not go through those provisions in full but suffice to say that CPR 45.29B provides an exception to the fixed costs regime for those claims allocated to the multi-track.
5. That did not happen, as I say, and so the court is being asked to consider CPR 45.29J and specifically whether there are exceptional circumstances which make it appropriate for the court to depart from the usual fixed costs regime applicable to matters which are started through the portal.
6. I have been taken through several authorities on what approach the court should take when faced with this question. It seems to me that the most helpful (and I think it was one of the most recent of those authorities) is that of *Ferri v Gill* [2019] EWHC 952 (QB). The conclusion in that case was, from Stewart J, that exceptionality should not be a low bar and it must be measured against the types of cases covered by Section 3A. That is at paragraph 52 of his judgment and, for context, I suppose one should say that Section 3A is, in essence, those cases leaving or exiting the Protocol.
7. It seems to me that the question that the court is, in effect, being asked to consider is whether this case is exceptional or are there exceptional circumstances making it appropriate for the court to justify departing from the usual fixed costs regime when one compares this case to other cases leaving the Protocol. To answer that question, the court has to look at what is in that basket of cases that leave the Protocol at that time.
8. It is submitted, on behalf of the claimant, that cases would exit the Protocol for a number of reasons such as: the insurer failing to respond appropriately in the manner proscribed by the Protocol; an allegation of contributory negligence, with limitations regarding failure to wear a seatbelt; the claimant notifying the defendant that the claim is valued at above £25,000, or a dispute over liability.
9. As Stewart J noted, and a point that I raised at the outset of the hearing, there is no empirical or statistical evidence regarding this basket of cases. Therefore, it seems to me, that the court must approach the question in the usual manner on the balance of probabilities. That being the case, it seems to me that the most likely reason for a claim leaving the Protocol would be because liability was being disputed. It seems to me that the vast majority of those cases would proceed to trial either on the fast track or, if necessary, on the multi-track and therefore those cases will be catered for one way or another by operation of the applicable provisions,

- depending on the type of case, in Part 45.
10. It seems to me that there would be a comparatively small number of cases that exit the Protocol on the basis of disputed liability that do not proceed to trial. When one steps back and looks at this case, it seems to me that this case does fall within a limited number of cases that exit the Protocol and settle prior to the issue of proceedings, particularly for the amount that this case settled for and particularly in circumstances where it was not a straight forward claim. For example, there were potential issues regarding disability under the Equality Act, Ogden tables, pension losses and the like.
 11. It seems to me that this is consistent with the overall framework governing these matters which, to summarise, is that once you are allocated to the multi-track you come outside of the fixed costs regime, for anything else you can only come outside if there are exceptional circumstances, and for the reasons I have given it seems to me that there is one of the small number of cases which fall into that category. Therefore, I am, on balance, persuaded that it is appropriate for the court to consider a claim for an amount of costs which is greater than the fixed costs in this case.

End of Judgment

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This transcript has been approved by the judge.