

Weightmans

# Weightmans

## Motor Update

Recent liability decisions and  
Compelling the progression of claims

Manchester Claims Association  
10 May 2018

**Liam McGuire**  
Partner

DD: 0151 242 0889

[liam.mcguire@weightmans.com](mailto:liam.mcguire@weightmans.com)



## Outline

- Some recent interesting decisions to get you familiar with the way Judge's look at liability
  - Including a chance to test your knowledge (anonymously!)
- Brief review of options open to defendants to force the progression of claims

## Liability cases

- Don't forget, generally for lawyers to go to the trouble of reporting cases they tend to have been a big result for one of the parties
- Run of the mill decisions not normally reported
- Of course, compromises which make up the vast majority of conclusions, are not reported
- So, we are looking at the tip of the iceberg when we consider case law
- That said, to get the best possible settlements, it's always important to be familiar with the Court's approach to deciding liability

## Case 1

- Pedestrian hit by a HGV
- Dual carriageway in Milton Keynes
- Just before midnight, streetlights off
- Pedestrian had no recollection of accident
- Wearing grey clothing
- No pavement, shops or pubs in area

## Case 1

- 50mph speed limit for the HGV (70mph for cars etc)
- Tachograph confirms HGV travelling at 44mph before braking
- Expert's view was that pedestrian would have been visible for 40 metres
- Likely impact speed was 25mph
- A reaction time of 2 seconds was likely in the conditions

## Case 1 – Walker v Culina Logistics Ltd

- County Court
- Pedestrian 100% liable
- HGV driver was comfortably below speed limit
- Pedestrians were not expected in that area
- Braking was powerful
- “Roaming in the dark across what the pedestrian called ‘a motorway’ in the face of a well-lit oncoming vehicle was an act of obvious and inexplicable folly”

## Case 1 – Walker v Culina Logistics Ltd

- In motoring cases...it's often suggested...drivers should never drive faster than the speed which enabled them to stop within the limits of their visibility...
- ...quite unrealistic to conclude that on an unlit dual carriageway no vehicle should drive at night on dipped beams at more than 27mph lest some unexpected pedestrian might sally into its path.

## Case 2

- Pedestrian hit by a car
- Crossing road between pubs
- Well lit area
- Had been drinking and wearing dark clothes
- Car driver not distracted and travelling at 20mph
- Witness said pedestrian walked on to the road and then in front of car
- Driver had not seen the pedestrian before impact
- Pedestrian in road for 6 seconds before stepping in front of the car



## Case 2 – Wooldridge v George

- High Court
- Driver 70% liable – Pedestrian 30% liable
- Although pedestrian wearing dark clothes, face and arms were bare and contrasted
- Driver should have seen him around 6 metres away
- Not just suddenly stepped in to the road, had been there for some time
- Likely people would be crossing the road in that area

## Case 2 – Wooldridge v George

- Intoxication not itself a reason for contributory negligence
- But had possibly misjudged the speed and location of the car
- Driver had more responsibility as car can be more dangerous
- Pedestrian's carelessness was not the main cause of the accident

## Case 3

- Pedestrian hit by taxi
- Leeds city centre, near a pub
- One way road but with lane joining from right
- Taxi travelling at 25–27.5mph
- Pedestrian jogging across the road from left
- In road 7 metres and for 2.5 seconds before being hit
- Driver said that checked mirrors and blind spot for traffic coming from right
- Also checking for pedestrians from pub to right
- Only saw pedestrian momentarily before collision

## Case 3 – Wormald v Ahmed

- High Court
- Driver 60% liable – Pedestrian 40% liable
- Reasonable driver would have checked mirror and blind spot, but also the road ahead
- Should have glanced forward first to identify any hazards
  
- Court of Appeal
- Endorsed the decision

## Case 4

- Pedestrian hit by moped in Lambeth
- Moped rider was a learner driver with a provisional licence
- Moped rider said he was travelling at 30mph
- Pedestrian had been drinking
- Dark but streetlights on
- Cars parked to left but not on right where pedestrian crossed from
- Pedestrian ran across road from the right around 10 metres from moped

## Case 4

- Pedestrian could not remember the accident
- Denied being drunk
- Medical records suggested had previously had an alcohol problem
- Police notes record that the pedestrian said the accident was his fault at the scene
- Moped driver was injured too
- Judge found if moped rider had been travelling 10mph slower, would have missed pedestrian

## Case 4 – Scott v Gavigan

- County Court
- Pedestrian 100% liable
- Moped rider had been negligent by going 30mph, should have been 20mph
- But, pedestrian running into road was novus actus interveniens (an intervening act that broke the chain of causation)
- Pedestrian entirely to blame for running into the path of the moped
- Judge found pedestrian not credible witness (important)

## Case 4 – Scott v Gavigan

- Unsurprisingly, given that moped rider was found to be negligent, the pedestrian appealed
- Court of Appeal – Pedestrian 100% liable
- 30mph was OK for circumstances
- Moped rider may well have missed pedestrian if going 10mph less, but not negligent as not expected to run out in the way that he did
- As found moped rider could not have anticipated pedestrian doing what he did and speed ok, intervening act not really relevant



## Case 5

- Claimant and defendant both drivers in a car park
- Defendant reversed into the rear of the claimant's car at low speed
- Claimant got out of car to inspect damage, leaving his children in the car
- Defendant moved his car away and claimant's car began to roll backwards down a slope
- Fearing for the safety of his children, claimant attempted to hold car back
- Was overwhelmed and his car crushed his leg against a gatepost, which ultimately resulted in amputation

## Case 5

- “But for” the defendant’s negligence in reversing into the claimant’s car:
  - The claimant would not have got out to inspect damage
  - The car would not have been left on a slope
  - It would not have rolled backwards
  - The claimant would not have tried to stop it, suffering injury

## Case 5

- However, was there a break between the defendant's breach of duty and the damage complained of (amputated leg)?
- Was the claimant's own negligence in not applying the handbrake, the real cause of the injuries sustained?
- Was the claimant trying to stop the car rolling down the hill, a break in the chain of causation (novus actus interveniens)?
- Was damage caused not foreseeable/too remote?

## Case 5 – Sparrow v Andre

- High Court
- Claimant 60% liable – Defendant 40% liable
- Although there was negligence by the claimant in doing what he did, this was secondary to the defendant's breach and arose in the context of defendant's primary breach of duty, so no break in chain of causation
- Normally foolhardy, understandable to try and stop car given that children were inside
- However, as claimant's negligence was a major cause of his own injury, damages should be reduced by 60%

## Compel the progression of claims

- Claimant's solicitors deliberately and tactically withhold evidence
- This is to prevent informed offers so as to maximise damages and costs
- The sooner defendants get evidence, the better the outcome in terms of damages and costs

## Pre Action Disclosure – CPR 31.16

- If it should be on the claimant's list of documents had the case got to the disclosure stage of litigation
- AND
- You can do something with it that is likely to avoid litigation or just save costs
- You can have it (even where liability denied)
  - Medical records
  - Quantum documents
  - Liability documentation
- Cannot get privileged material, eg medical reports or witness statements

## Avoid Incubation

- Claimant's solicitor prefer keeping matter in the Portal and subject to Low Value RTA Protocol as no information needs to be provided
- If get to limitation and not ready to serve stage 2 settlement pack, can issue proceedings via CPR 8 (non contentious litigation)
- Sometimes process is being abused to build a case in terms of damages and costs
- Lyle v Allianz – case effectively struck out as claimant's solicitors knew worth circa £200k but maintained in Portal



## CPR 7.7

- Don't allow 4 months to serve the claim form
- Whilst the claim form is valid for 4 months from the date of issue, why does the claimant need that time to tell you where they are up to with the claim? Often, they have already had 3 years involvement
- Serve CPR 7.7 notice requiring service of the claim form within 14 days, which gets you closer to case management and at least disclosure



## Fundamental Dishonesty

- Section 57 of the Criminal Justice and Courts Act 2015
- Used properly, can keep the claimant honest
- If successful, claimant loses QOCS protection
- So, as well as recovering nothing, can be liable for defendant's costs
- Doesn't have to be expressly pleaded (Howlett v Davies)
- Dishonest element will infect honest aspects of claim (eg gardening costs in LOCOG v Sinfield)

## Don't let them get away with TBC!

- Again, this is deliberate to keep the defendant in the dark and frustrate informed offers and meaningful negotiation
  
- 10.1 of Personal Injury Protocol –
  - “In all cases, if the defendant admits liability, the claimant will send to the defendant...a schedule of any past and future expenses and losses which he claims, even if the schedule is necessarily provisional.”

## Don't let them get away with TBC!

- Plead it in the defence and pursue it at the CMC, make an application where appropriate
- CPR 1 – “...the overriding objective of enabling the court to deal with cases justly and at proportionate cost.”

## Postponements due to lack of judicial time

- Seems to be becoming a more regular problem
- Appears to be worse in southern Courts
- Big emotional impact on parties if were to attend
- Financial impact on parties due to extra costs and delays to process



## Questions?

- Come and speak to me now
- Email or call me
  - [liam.mcguire@weightmans.com](mailto:liam.mcguire@weightmans.com)
  - 0151 242 0889
  - LinkedIn