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Anna Wilkinson discusses Failing to disclose credit cards amounts to fundamental dishonesty in credit hire claim

The recently decided appeal of Mansur Haider v DSM Demolition Ltd [2019] EWHC 2712 (QB), is an interesting case and will be useful to practitioners who deal with road traffic matters, both on the finding in respect of liability and the finding of fundamental dishonesty.
Mansur Haider was a taxi driver who made claims for personal injuries and over £30,000 for a replacement vehicle hired on credit, after the driver of the Defendant's BMW collided with the rear of his vehicle. Mr Haider said he had braked due to a vehicle ahead of him suddenly making a left turn. The Defendant's driver denied negligence and said that the Claimant had braked deliberately to induce an accident.

HHJ Tindal, sitting at Birmingham County Court, rejected the Defendant's argument that the collision had been deliberately induced, but found that the Claimant had overreacted to the manoeuvre of the vehicle ahead of him and over-braked, coming to a standstill and causing the accident. The Judge at first instance found Mr Haider to be "basically an honest man" who had struggled to recall the incident and dismissed his claim.

The Defendant argued that the Claimant had been fundamentally dishonest in failing to declare, either in his list of documents, or in his replies to Part 18 questions, two credit cards and an additional bank account, when pursuing his claim for credit hire. The Judge at first instance made no finding of fundamental dishonesty and so the costs protection of qualified one way costs shifting remained in place.

The Claimant appealed the decision on the basis that the Judge had failed to give adequate reasons for his decision and that his conclusions were unsupported by evidence. The Defendant also appealed on the basis that the Judge should have found fundamental dishonesty in respect of the failure to disclose full financial documentation.

Mr Justice Julian Knowles, sitting in the High Court (Queen's bench division), dismissed the Claimant's appeal, finding that the Claimant had failed to

discharge the burden of proving that the Defendant's driving had been negligent and that the short judgment given at first instance was adequate for a one day trial involving issues commonly encountered in road traffic cases.

The High Court found that the rule in relation to braking was that drivers had to drive at such a distance from the car in front as to be prepared for such emergencies as might reasonably be anticipated, Brown & Lynn (A Firm) v Western SMT Co 1945 S.C. 31 applied, London Passenger Transport Board v Upson [1949] A.C. 155 followed. The common law duty was encapsulated in the Highway Code which requires drivers to drive at such a speed, and at such a distance, as would allow them to stop safely if the car in front suddenly slowed down or stopped, and the safe rule was never to get closer than the overall stopping distance shown in the Code. The judge's reasons showed he was satisfied that, at the point of collision, the Defendant was not driving too close or too fast.

The Defendant submitted, first, that the judge should have found the Claimant to have been fundamentally dishonest because (a) he did not disclose either on his list of documents or on his response to Part 18 questions that he held two credit cards; (b) he did not disclose that he held a second bank account. He only admitted this when it was put to him in cross-examination, but claimed that the second account was opened by the bank in error.

The High Court found that on this point that HHJ Tindal had not "properly addressed the evidence" and that this was not a case where there had just been "not particularly good" disclosure by the Claimant. He had deliberately failed to disclose highly relevant material and there was no basis on which the Judge could have found that he had just been confused on those issues. The Court found that there was an intentional failure to make full disclosure, that that failure could only be described as dishonest and that the dishonesty was fundamental as it went to the root of a substantial part of the claim. The Defendant's costs could be enforced to their full extent under CPR 44.16.

It has long been assumed (particularly by the lay person) that those who run into the back of another vehicle are automatically found to be at fault for the collision. In recent years there have been more cases coming before the courts in which it is argued that the front vehicle has deliberately caused the collision, or that a decoy vehicle has been used, causing the vehicle behind it to appear to brake for good reason, before deliberately causing the following vehicle to collide with its rear for the purpose of pursing claims. Without additional information to undermine a Claimant's credibility, such cases can be hard to "get home" on and often judges come to the conclusion that in the event that the accident was not deliberately induced, then the Defendant must have been driving too close and were therefore negligent. This case will be useful as an alternative finding in such matters and also in defending rear end shunt cases purely on liability.

Further the many Defendants who have been faced with failure by Claimants to properly disclose financial information in credit hire cases will welcome the strict approach taken by the High Court and this case emphasises the importance of ensuring proper investigation is carried out by Defendants in order to try to establish whether any bank accounts or credit cards are being concealed.

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