

IN THE COUNTY COURT AT BRADFORD

Civil and Family Centre
Exchange Square
Drake Street
Bradford BD1 1JA

Wednesday, 18 March 2020

BEFORE:

DISTRICT JUDGE MITCHELL

BETWEEN:

(1) ATIQ UR REHMAN

(2) ATIF MASOOD

Claimants

- and -

SKYFIRE INSURANCE COMPANY LIMITED

Defendant

QTP SOLUTIONS REHABILITATION LIMITED

Third Party

MS J DAWSON (instructed by Keoghs Solicitors) appeared on behalf of the Defendant
The Claimants did not attend and were not represented
The Third Party did not attend and was not represented

JUDGMENT
(Approved)

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1. THE DISTRICT JUDGE: The insurer, Skyfire, are represented by Ms Dawson. The claimants and the third party did not attend. I note the third party was spoken to yesterday by the defendant's solicitors and I have also checked with the court that no emails have been received from them. They did not attend.
2. Some of the history needs to be considered. There was a claim brought by Mr Rehman referring to a road traffic accident on 19 February 2017 when he was a passenger in a Vauxhall Corsa driven by the driver, an Ahmed Masood who was insured by Skyfire. The claim included personal injury but also a claim for £730 physiotherapy and CBT of £2,300. The second claimant, Atif Masood, was also a passenger in the vehicle driven by Ahmed Masood. That claim included personal injury, physiotherapy for £590, CBT for £2,300 and care and assistance of £1,210.
3. The defence against Mr Rehman's claim (which is the same for Mr Masood's claim) questioned the veracity of the accident. Amongst other things it was said that the driver could not recall the accident date or the road or the address he was taking the claimant (a friend) to, despite the fact he was supposed to be taking him home. There were no photographs of the scene, there was no mention of hitting street furniture, a lamppost, before hitting a wall. It was said the damage was inconsistent with the speed which was said to be about 30. No street furniture damage was reported and there were concerns that the accident was said to have been reported to a Hamza Jamju, the brother-in-law, and it appears that the brother-in-law was also the claims handler for Dinn Solicitors and had signed the claim form with a statement of truth.
4. A lot of orders have been made in this case. Initially standard fast-track directions and the case was listed for hearing on 6 February 2019. That trial was vacated and there was some issues which had arisen over travel dates of Mr Rehman and whether they impacted on particularly the physiotherapy claim but also the CBT claim. By May 2019 the court was recording that the first claimant was out of the country between 17 July and 4 September 2017 and an order was made striking out the first claimant's claim and striking out the second claimant's claim and giving the defendant permission to enforce against the first claimant, adding QTP Solutions as a third party and directions for the solicitors to file evidence as to why they should not pay, along with evidence of flights, documentation in relation to physiotherapy and evidence from the third party why they should not be paying.
5. The most relevant order for today is that of 21 October 2019 (page 36). There were various comments or orders in relation to Messrs Dinn Solicitors, which I need not trouble with in this judgment, but specifically by 11 November 2019 the third party was to disclose letters of instruction, details for the claimants' contacts, any correspondence on treatment or proposed treatment, all communications with the claimants, third parties, therapists or others, all invoices relating to treatment from providers or for the providers, any portal documentation and any claims commenced against the claimants as Mr Ashraf was referring to pursuing the cost of treatment, ie, QTP were suing Rehman and Masood for the cost of treatment. It also ordered that Mr Ashraf was to attend to give evidence and in his absence his statement could not be relied on and adverse inference drawn.

6. I have seen medical evidence from a Ms Ahmed. The report from Mr Rehman records an examination on 22 July 2017 and reported a whiplash injury to the neck and back, 14 to 15 months and a knee injury the same and physiotherapy recommended. Ms Ahmed reported for Mr Masood with an examination on 8 July 2017, neck, back and shoulders, 14 to 15 months, headaches, head swelling, physio recommended. Psychological reports have also been provided for both the claimants by Dr Miah, reporting situational anxiety and CBT.
7. I note that witness evidence is included within the bundle, including Mr Rehman, particularly paragraph 11, confirming treatment for physiotherapy and CBT and Mr Masood, again particularly paragraph 12 in this case, for physiotherapy and CBT.
8. Further information was provided by Mr Rehman (page 113) which records hands-on physio but CBT was an online video course system and Mr Masood the same. Both confirmed the address at which the physiotherapy took place.
9. I have seen a statement from Nicholas Berry which led to investigation effectively in terms of the physiotherapy, CBT and a wedding in Dubai at which the first claimant was in Dubai for the whole of the month of August and flight information is provided. He did not come back until 4 September.
10. Mohammed Ashraf has provided two statements, one from 29 May 2019 and one from 11 November 2019, though I note that he was ordered to attend and adverse inference could be drawn. That suggests that the second claimant was treated at a clinic but the first claimant did not attend the sessions, and the officers of QTP advised telephone treatment and home exercise. It denied there had been any dishonesty and it is said records showed remote treatment. The second statement indicated that older emails had been deleted, that there were no records of communication and he had no control over the treating party, a Mr Shah. It did record that two sets of instructions had actually been sent for each claimant, which was a mistake which had been overlooked.
11. Mr Shah, who treated the first claimant, was a different physio than the second, indicated that he would treat face to face or by telephone or by video or home exercise pack and stated there were four calls with Mr Rehman, that he was not treated at the clinic and that the notes reflected that. That was confirmed in a second statement that the treatment was by telephone with four calls. Treatment notes have been provided at 177 and later recording telephone calls and dates. Questions were put. The response has a number of points but what was of particular note to me is that in relation to sub-questions at paragraph 22 that the notes include that there was actual physical manipulation which could not be done on either patient and this was accepted. Dr Miah has also been questioned and provided responses.
12. So what issue am I being asked to decide? I am being asked to decide whether a third party should be ordered to pay the costs and the amount that they should be ordered to pay. The issue from a legal perspective, and I summarise here, is that the Senior Courts Act section 51 provides a power for the court to make such orders for costs.

CPR 46.2 makes provision for costs order against non-parties where the procedure is followed as has occurred here.

13. The guidance notes in the White Book clearly state that costs orders against non-parties are exceptional, but whether a case is exceptional depends on all the circumstances of the case. Generally pure funders would not face such orders and that is those with no personal interest in the litigation. But if the non-party funds or controls the benefit, they may face such an order.
14. In *Deutsche Bank AG v Sebastian Holdings* [2016] 4 WLR 17 the crucial factor is the nature and degree of the non-party's connection with the proceedings. It is also clear from the *Deutsche* case that the discretion on the issue of costs is not altered by the issue of qualified one-way costs shifting. It is stated the only immutable principle is that the discretion must be exercised justly.
15. In this case it is clear there is no contractual documentation between the claimants and the providers of treatment. That either does not exist or may never have existed. The third party has not provided such documents, ie, Mr Ashraf acting on behalf of QTP. There is a statement saying that claims have been brought for the invoices but, despite an order, no such claims are produced.
16. It is clear the claim for special damages was made but they were also used to bolster the general damages claim. There are a number of documents which are within the bundle. By way of example, at 85 and 86 there is a physiotherapy invoice from QTP for Mr Rehman dated 30 July 2017 and for Mr Masood, dated 11 July 2017.
17. Mr Ashraf (page 169 paragraph 2) stated that instructions were received on 3 August and treatment was arranged. That would mean either the instruction date or the invoice date is wrong because they do not work. Mr Ashraf then served a second statement (172 and later) that two sets of instructions were provided for each claimant and that was the confusion. But for the first claimant (202 to 204) it is either 7 July or 7 August. That cannot fit with instructions on 3 August and I note the invoice was 30 July, so it cannot be the later instruction date. The medical report was said to be attached, but that is dated 30 July so that does not fit for the earlier date. It might fit for the later date but that cannot fit, as I have already indicated. It is also recorded that the claims handler is said to be the second claimant's brother-in-law.
18. Physiotherapy assessments (87 and 88 for the first claimant and 89 to 90 for the second) are both on headed notepaper, though different physiotherapists. Those documents, when one considers them, and Mr Shah in relation to the first claimant accepts in response to questions, that the documentation misleads in that it supports physical examination, an example (and there are several) is it records "reflexes, strength and skin sensation on examination appear normal". Mr Shah accepts that that is misleading. Mr Shah suggests that he was unaware that future treatments were to be remote, whereas Mr Ashraf is saying that the first claimant contacted them and asked for remote treatment. I note that there is no documentation disclosed, despite

orders, in relation to any communications between any of these people, and particularly between the claimants and any of these people.

19. The answer to that from Mr Shah and Mr Ashraf is to say that documentation is either not created or has been deleted. That appears odd, not least because what there is has headed notepaper for QTP Solutions. I also note that invoices of treatment provided were ordered. They have not been provided. The evidence is that they would only be created after payment was received by QTP. That to me makes absolutely no sense, not least as the above evidence was that the documentation required was either deleted or had never been created. On that basis it would appear impossible to work out what amount should be charged, what amount would be charged, and effectively what amount of profit the third party would take.
20. I also have discharge reports (91 and 93 of the bundle). These clearly read as treatment was hands-on. By way of example, the one for page 91 which is Mr Rehman on the second page 92, he has been discharged after eight sessions. "Client can now self-manage home exercise", and, in terms of the treatment (page 91) that refers to, by way of example, "deep tissue massage of the neck, scapula, knee and lumbar. Stretching of quadriceps and hamstrings", et cetera, ie hands-on. I do record that there is a difference between Rehman and Masood. He appears to have been treated hands-on, but again most of the documentation ordered to be disclosed has not been disclosed and the explanation is either it was never created or it has been deleted.
21. CBT reports (95 and 100) are limited, although expensive and almost identical. Discharge reports (97 and 102) at £190 each do not mention telephone treatment. The treatment notes QTP headed (177 to 179) relate to physiotherapy were disclosed after the court had ordered and after the trial. It is noted that the defence actually requested such documentation in 2018. They are also curious. By way of example (178) recording a check-up, 26 September 2019, face to face, whereas the previous sessions were all by telephone. As I have already recorded, the first claimant had already stated in further information the address at which he attended in order to have physiotherapy. That must be a lie. That does not fit with the first claimant record of telephone attendance with dates and that does not fit with the fact the claimant was abroad. No other documentation was actually supplied and, again either it was never created or has been deleted.
22. That treatment discharge report or treatment session date, contradict the invoice and the assessment documents. There is a partial screenshot at page 210. It is very difficult to work out what it does or does not do, because it does not do very much, but it is obvious when one looks at it that there must be a column beyond the letter M because the shading continues passed the line and there is the start of some typing. So not even that is complete.
23. So what is the effect? The court needs to consider all the circumstances. As an overview, the third party was seeking to recover thousands of pounds. Directions were specifically given with a good deal of express disclosure expressly stated (page 36). Most of that has not been provided. What has been provided either contradicts earlier

documents or appear to create or be created to bolster claims in the face of adversity, in particular the treatment notes. Even when the instructions were said to have been given, by way of example for physiotherapy, and they do not fit, whether you take the earlier or the later letter, when one compares with other documents. Mr Ashraf has also put in some contradictory statements and, despite being ordered to attend has not done so. I can only conclude the actions of the third party have been either to deliberately mislead the court and the insurer or, even at the highest for them, been so badly handled that the veracity of any claims would always be in issue.

24. The nature of that action is more severe for the first claimant, particularly when one considers for physio he was not even in the UK and I believe his original assessment for CBT was actually in the air, but that taints the second claimant as well. The treatments provided cannot be clear in the light of the above evidence.
25. Then what needs to be considered is what the court should do. The first issue in all the circumstances, should the court exercise its discretion justly to order costs against the third party? The second issue, if the first is answered in the affirmative is, if so, the extent.
26. I take the view that costs should follow. The documents I have, and I record the documents that clearly ought to have been available and I do not have either due to deletion or the fact they were never created, have led me to the inevitable conclusion that the claims were dishonest on a balance of probabilities and I also note that I am entitled to draw an adverse inference from Mr Ashraf not being her and I do so.
27. Therefore, what costs order should I make? The defendant asks for 50 per cent of the costs of the consolidated action. Obviously the percentage is part of the discretion of the court but here, as I have already recorded, there was dishonesty with an attempt to mislead and a failure to comply with the court order. It would seem to me that that is a perfectly legitimate request and I agree. You can have 50 per cent of the consolidated action costs.
28. In addition, the costs of applying for the third party costs order are sought (page 223 to 226) in the sum of £5,966.70, inclusive of VAT, and the costs of today which have been amended to £3,464.28, including VAT, on the non-attendance of the solicitors. I take the view that those costs should also follow. I note in the light of my decision that they will be on an indemnity basis and costs are resolved in favour of the receiving party in issues of any doubt. I have looked at the costs schedules and I see nothing objectionable and, frankly in a case of this nature, one might even consider them to be relatively modest.
29. I therefore order the third party pay 50 per cent of the total costs of the consolidated action, which I have already summarily assessed earlier in this hearing, the costs of the third party costs order, which is £5,966.70 and the costs of today of £3, 464.28. I record payment should be by 4 pm on 8 April three weeks hence.

30. I also record the hearing has been in open court. The court file has been read in its entirety and most of the documents have been expressly referred to, either in submissions or in this judgment. In the circumstances I record that CPR 33.22(1) applies.

This transcript has been approved by the Judge

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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