IN THE LIVERPOOL COUNTY COURT

Case No: ILV11101/Bill No 782/11

Liverpool County Court
35 Vernon Street
Liverpool
Merseyside
L2 2BX

Monday, 9th January 2012

Before:
DISTRICT JUDGE SMEDLEY

BETWEEN:

MR LIAM FOWELL

and

SPS BUILDING CO LTD

Transcript from a recording by Ubiqus
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JUDGMENT
(Approved)

DJ SMEDLEY:

1. This a preliminary issue arising in detailed assessment proceedings. The brief circumstances are that the claimant was a labourer employed by the defendants. At the time of the accident in April 2010 he was in the rear of their work van parked where he was working. Another employee had placed a piece of tarpaulin at the rear of the vehicle which was held down by pieces of timber, apparently because of problems with wind, and when he stepped out of the vehicle the claimant stepped out onto one of the pieces of timber and fell awkwardly, injuring his ankle. Those are basically the facts of the accident. There was no suggestion that the vehicle was being used for its normal purposes of transporting people or goods from one place to another when the accident happened.

2. Some submissions have been made as to the label put on the claim when it was first put forward to the defendant or its insurers and, indeed, an acknowledgement by the defendant's insurers referring to it as an employer's liability claim. I have to say I do not find those labels at all helpful, whether it is or is not also an employer's liability claim. If it is properly called a road traffic accident then it falls within the definition in Part 45 Section II and would attract predictive costs and that is the defendant's contention in this preliminary issue. Do the facts which I have outlined constitute a road traffic accident?

3. Now, there are a number of authorities relating to this sort of case that are usually put forward as the starting point. The main one is *Dunthorne v Bentley [Court of Appeal 26th February 1996, unreported]* a case in which Mrs Bentley was on a journey, she ran out of petrol. She crossed the road to speak to somebody in another car and to ask if they could let her have some petrol and in crossing the road failed to look at what was happening and another vehicle, driven by the claimant in that case, collided with her, causing her death and causing severe injury to the driver. It was held in that case on the basis of section 145 (3)(a)

of the Road Traffic Act 1988 that the injury caused to the driver of the car was an injury caused by or arising out of the use of a motor vehicle on the road. This case really is involved in the interpretation of that particular wording in the Road Traffic Act. Now, the wording set out in Part 45 is precisely the same as that wording and it is commonly said that the two must be interpreted in the same way.

4. The matter is considered particularly in *Dunthorne* in terms of authorities from Commonwealth countries because there did not appear, before that case, to have been any English authority. The Court considered the cases of *Government Insurance Office (NSW) v King [1960] 104 CLR 93* and *Government Insurance Office of New South Wales v. Green & Lloyd Ltd* (1965) 114 CLR 437 in which the judgment was given principally by Mr Justice Windeyer. He said,

> 'The words "injury caused by or arising out of the use of the vehicle" postulate a causal relationship between the use of the vehicle and the injury. 'Caused by' connotes a 'direct' or 'proximate' relationship, of cause and effect. 'Arising out of' extends this to a result that is less immediate; but it still carries a sense of consequence'.

5. A little later, the case is again considered in *Dunthorne* by Pill LJ at page 11, again a quote from Mr Justice Windeyer at page 447:

> '"Arising out of" extends this to a result that is less immediate; but it still carries a sense of consequence. It excludes cases of bodily injury in which the use of the vehicle is a merely causal concomitant; not considered to be, in a relevant causal sense, a contributing factor'.

6. I read that out as it was set out in the Smith Bernal report of the case. I am aware as a result of research carried out by the Designated Civil Judge in another similar case that this report is in fact incorrect and the official Australian transcript says; 'It excludes cases of

bodily injury in which the use of the vehicle is a merely casual concomitant; not considered to be, in a relevant causal sense, a contributing factor'.

7. I have been referred, in addition, to a number of other cases. As far as I am aware those cases were not binding decisions. The first was *Green v Kis Coaches & Taxis Ltd* (2008), a case where the claimant fell while stepping out of a coach. The report I have sets out the view taken by the Court that the Claimant alighted from a coach at the end of her journey. There was a clear connection between the use of the vehicle and the injury. This was a first instance decision; it was a decision on a preliminary issue at detailed assessment and therefore presumably a District Judge decision.

8. I have *Nelson-Gracie v. Sunlight Services Group*, a decision of District Judge Fairclough sitting in Manchester County Court in December 2008.

9. I have also been referred to the case of *Thomas v Cardiff County Council* (2008) which is a case where two men were driving along, smelled smoke, pulled into the side and some part of the vehicle came through the bottom of the car and injured one of them, and to *[Inaudible] Environmental* a decision of Deputy District Judge Cooper in the Chester County Court.

10. I have to say that apart from *Dunthorne v Bentley* I can find little assistance in the cases put forward as authorities and in fact it will be difficult for there to be such because all cases of this sort hinge entirely on their own facts.

11. However, in the light of the comments which I have already taken from *Dunthorne v Bentley* the question has to be, was the use of the vehicle at the time of the accident a casual as opposed to a causal concomitant of this particular injury. I read out the correct extract from Mr Justice Windeyer's judgment, 'Excludes cases of bodily injury in which the use of the vehicle is a merely casual concomitant; not considered to be, in a relevant causal sense, a contributing factor.'

12. Now what happened in this particular case? We know the claimant was in the vehicle and that he stepped out the vehicle and on stepping out he sustained injury. What was the cause of that injury? It was, in my view, the fact that there was an obstruction on the floor in the form of the wood holding down the tarpaulin. Had that not been there, this injury is unlikely to have occurred. Had the claimant not been stepping out of the van but moving, for example, from a staging or platform or other level in a building, there can be no doubt this would not have been a road traffic accident. I cannot see how the mere fact he was stepping out of a van instead of moving from some other higher fixed level affects the position.

13. In my view, the use of the vehicle as such is not a contributing factor to the injury caused in this particular case. It follows therefore, in my view is that this is not a case to which Section II Part 45 applies. Costs are payable on the standard basis subject to provisions of Part 45 which provide for fixed success fees.

End of judgment.
