High Court upholds decision to slash Success Fee from 75% to 30%

By Umar Rauf (Http://Ontimegroup.co.uk/Author/Umar-Rauf/) | Published: July 2, 2014 (2014-07-02T14:44:28+00:00)

The High Court in *Bright v Motor Insurers' Bureau* [2014] EWHC 1557 reinforced the decision by Costs Judge Master Rowley to reduce the Success Fee claimed by the Claimant from 75% to 30%. The case, which was brought by Irwin Mitchell, concerned a pedestrian who was left tetraplegic when a car reversed into her.

The Claimant had entered into a CFA with Irwin Mitchell which provided for a two-staged variable success fee, this allowed for a success fee of 50% payable if the claim settled three months prior to the commencement of trial and 100% if the claim was settled or was determined in favour of the Claimant subsequently.

The Defendants in this case, the MIB, denied liability in full and in the alternative alleged contributory negligence on the basis that the vehicle's hazard light were flashing and that she was pre-occupied with her mobile phone and therefore had a lack of awareness of the approach of the vehicle.

Following an initial failed attempt to reach agreement at a Joint Settlement Meeting, a further JSM was listed just five days before the case was listed for a trial on liability. At that second JSM a lump sum payment of £1.6 million with periodic payments of £230,000 per annum were agreed, together with costs on the standard basis to be assessed if not agreed. A bill was subsequently served with a success fee of 75%. In their Points of Dispute the MIB challenged this and offered 30%.

At the detailed assessment hearing Master Rowley considered the risks that the Claimant's representatives had presented for justifying the success fee; the risks assessed by them as high were lack of independent witnesses, contributory negligence, quantum, expert evidence and risk of a well-placed Part 36 offer. Master Rowley held that the Defendant driver would have been hard pressed to have escaped a finding of liability against him. He found that in reality the risks considered by the Claimant's representatives in this case revolved entirely around the risks of a Part 36 offer and the complications that may have ensued from any findings of contributory negligence.

The Costs Judge compared the risks in this case with those in *C v W[2008] EWCA Civ 1459*. In both cases there was a risk of a carefully proposed Part 36 offer. The Master held that:

"Where a percentage of the damages may be removed for contributory negligence, the parameters of a well-placed offer increase and the risk of rejecting an offer increase as well."

In *C v W* the Court of Appeal considered a 20% success fee to be appropriate. In this case, as liability was not admitted, the Master awarded a higher success fee as the costs judge's view was that 30% reflected the real risk taking into account all relevant circumstances. He found that Irwin Mitchell's assessment of risk was too pessimistic.

On appeal Slade J (sitting with Master Campbell) agreed with Master Rowley that the main risks for Claimant solicitors were the risks associated with the making of a Part 36 offer and the complications that may have arisen following the finding of contributory negligence.