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PERSONAL INJURY UPDATE

A concise, practical update, for busy practitioners

THIS ISSUE:

Part 36 - Enhanced interest on damages

Pankhurst v White & MIB [2010] EWCA Civ 1445

SUMMARY

- This case concerns the consequences when a claimant beats his Part 36 offer.
- Enhanced interest will be awarded on damages, unless it is unjust to do so.
- However, there can be no enhanced interest on damages for future losses.
- An effective offer by a defendant is more potent than one made by a claimant.

THE FACTS

- This claim concerned a RTA on a Devon lane.
- The claimant cyclist was struck by an uninsured driver.
- He suffered catastrophic injuries.
- The claimant obtained judgment on liability, subject to contributory negligence.
- The claimant made a Part 36 offer of £3.4 million.
- After a trial, the claimant was entitled to damages on the basis of full liability.
- The MIB offered, effectively, £6.8 million.
- The claimant was awarded about £6.1 million (including £5 million future losses).
- Both the claimant and the defendant had beaten their Part 36 offer.

- The claimant had to pay the defendant's costs for the 5 day quantum trial.
- The claimant was awarded enhanced interest of £17,000.
- There was no award of interest on future losses.

ON APPEAL

- The court was bound by *McPhilemy v The Times (No 2)* [2001] EWCA Civ 933.
- Enhanced interest can only be awarded on heads of damage that attract interest.

NOTE

- The “old” Part 36 rules applied at the material time.
- The provisions were substantially re-enacted from April 2007 within CPR 36.14.

CPR 36.14 Costs consequences following judgment

- (1) This rule applies where upon judgment being entered -
 - (b) judgment against the defendant is at least as advantageous to the claimant as the proposals contained in a claimant’s Part 36 offer.
- (3) Subject to paragraph (6), where rule 36.14(1)(b) applies, the court will, unless it considers it unjust to do so, order that the claimant is entitled to -
 - (a) interest on the whole or part of any sum of money (excluding interest) awarded at a rate not exceeding 10% above base rate for some or all of the period....
 - (b) his costs on an indemnity basis....; and
 - (c) interest on those costs at a rate not exceeding 10% above base rate
- (6) Paragraphs (2) and (3) of this rule do not apply to a Part 36 offer-
 - (a) that has been withdrawn;
 - (b) that has been changed so that the terms are less advantageous to the offeree.....
 - (c) made less than 21 days before trial, unless the court has abridged the relevant period.

PRACTICE POINTS

- Clearly, this case is not relevant where future losses are not claimed.
- Claimants with future losses receive less reward for making an effective offer.
- An effective offer by a defendant is far more potent than one made by a claimant.

- It would be odd if the reasoning applied here to damages did not apply to costs.
- Do costs attract enhanced interest (36.14 (3) (c)) when they do not attract interest?

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