Horwich Farrelly

THE *large & complex injury* SPECIALISTS

Insight

from Horwich Farrelly's Large & Complex Injury Group

Issue #175 | 01 October 2020

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Welcome to Insight

Welcome to this week's edition of Insight in which we report a case relating to:

- A claimant recovering the costs of attending an inquest

And we bring news of an amendment to the Fatal Accidents Act 1976

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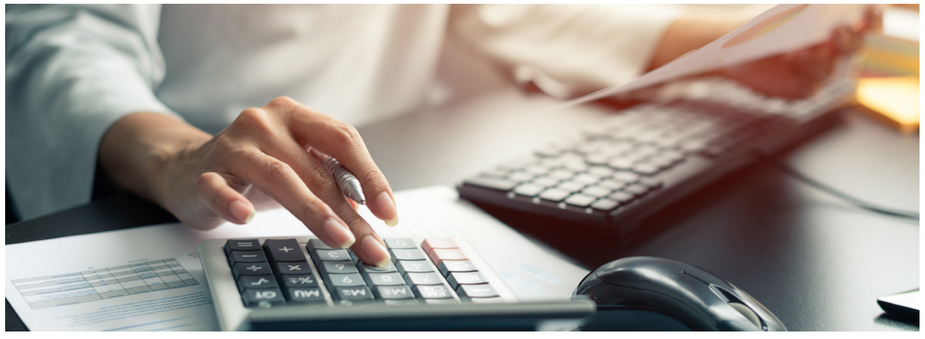

Fatal accident/ inquest

Greater Manchester Fire Service v Veevers (2020) EWHC 2550 (Comm)

The deceased, the claimant's son, was a firefighter employed by the defendant/ appellant who was killed in the course of his employment in a fire at the premises of the second defendant. Liability was admitted within the proceedings, the first defendant compensated the claimant for her losses and also agreed to pay her reasonable costs. Those costs were referred for assessment.

During the assessment process, an issue arose as to whether the claimant was entitled to recover the costs of preparing for and attending the inquest into her son's death. The claimant attended the inquest with legal representation during the period 4th April 2016 to 18th May 2016. Those costs were substantial, about £141,000 out of a total bill of just over £334,000.

The defendant argued that there had been communications between the parties prior to the inquest which made attendance by the claimant unnecessary. It was the claimant's case that the statements in those communications relating to liability were ambiguous such as to render preparation for and attendance at the inquest both a cost of and incidental to the civil claim arising from the deceased's death and, in principle, reasonable and proportionate.

It was the first defendant's case that the costs of preparing for and attending the inquest were not properly recoverable as being of and incidental to the claim for damages and/or could not be considered reasonable and/or proportionate in light of the communications between the parties.

A Deputy District Judge, sitting as a Regional Costs Judge, held that the costs were in principle recoverable, subject to the detailed assessment of those costs.

The County Court Judge hearing the appeal held that the relevant law could be summarised as follows:

(a) Inquest costs might be recoverable in so far as reasonable and proportionate, so

long as they could properly be said to be incidental to the civil claim;

(b) Such costs would not be recoverable if liability was no longer in issue between the parties, since the costs were simply not incidental to something in issue in the civil claim;

(c) In determining whether liability was in issue, the court must look at all the circumstances of the case, but the central issue was likely to be whether the prospective defendant had admitted liability or otherwise indicated a willingness to satisfy the claim;

(d) Liability would not be in issue if it had been admitted, since such an admission was binding unless the court subsequently permitted it to be withdrawn pursuant to CPR 14.1A.

(e) However, the Costs Judge was entitled to look with care at anything less than an unqualified admission to see whether the prospective defendant's position was one from which it might resile or which left matters in issue between the parties.

(f) In particular, if the defendant's position was not one of unqualified admission in circumstances where such an admission could have been made, the Costs Judge might be entitled to find that the failure to make an unqualified admission justified the conclusion that the defendant might exercise its right to resile from the admission and that therefore the costs of the inquest could properly be said to be incidental to the civil claim.

(g) If the costs could be justified upon these principles, the mere fact that there were other reasons why the family of the deceased should wish to be represented at an inquest, most obviously to avoid the inequality of arms between unrepresented family members and a represented public body did not mean that the costs were not recoverable. It was enough that the attendance to secure relevant evidence in relation to matters in issues was a material purpose for the attendance.

'…despite the statements made by the defendant, it had declined to make an admission…'

The judge held that despite the statements made by the defendant, it had declined to make an admission in circumstances where, had one been made, it would have been binding, subject to the provisions of CPR 14.1A.

The defendant had advanced the argument that a responsible public body in its position, might wish to make clear that it would make payment of compensation to a person at an early stage and without admission of any particular basis of a claim. However, the judge found that the argument that in some way a statement in such circumstances that was not in form an admission should have the same weight as an admission was not sustainable, for the following reasons:

(a) If the public body was ultimately going to admit liability in the litigation or at least consent to judgment being entered against

it, there was no reason not to make such an admission at an early stage. The benefit to the defendant in not admitting liability in general terms at an early stage was that it could subsequently resile from its position without having to apply under CPR 14.1A;

(b) CPR 14.1A set out a clear procedure for making a formal admission. It would be undesirable if uncertainty were created by giving equal effect to other communications that did not satisfy that description. If the defendant chose to make a communication which was not an admission within the meaning of the CPR, that document would be one factor in the case, but the availability of a route to making a formal admission that put liability beyond argument would mean that the court was entitled to place less weight on it in the overall conclusion.

Accordingly, there was no error in the judgment of the District Judge and the appeal was dismissed.

Beyond this point of principle, the question of whether the amount of those costs was reasonable and proportionate remained a matter for assessment by the Costs Judge in dealing with the remainder of the assessment process, to which the usual principles applied.

The claimant was represented by Thompsons Solicitors

The first defendant was represented by Berrymans Lace Mawer

Comment

The lesson for defendants here is that if, following a fatal accident, there is to be an inquest, they must either make a binding admission of liability before the hearing, or accept that the claimant's costs of attendance will almost certainly be recoverable if the claim succeeds.

The Fatal Accidents Act 1976 (Remedial) Order 2020

This order was made on 15th September 2020 and will come into force on 6th October 2020.

It relates to the damages that may be awarded in respect of a claim for bereavement under S1A of the Fatal Accident Act 1976 (the Act) and it applies only to causes of action which accrue on or after the date it comes into force.

The amendment to the Act reflects the Court of Appeal ruling in the case of Jacqueline Smith v Lancashire Teaching Hospitals NHS Foundation Trust and others (2017).

The order amends S1A of the Act to provide that a cohabiting partner may be eligible for bereavement damages, in addition to the wife, husband or civil partner of the deceased (or, in the case of a minor who has never married or been a civil partner, the parents of the deceased). For these purposes cohabiting partner means any person who, immediately prior to the deceased's death, had been living as wife, husband or civil partner of the deceased for a period of at least two years.

Article 2(4) amends S1A (4) of the Act to provide that, where more than one person is entitled to an award of bereavement damages, the award must be shared equally between them. Previously this provision applied only where both parents may be entitled to an award under S1 A(2)(b), because there was no possibility of an award being payable to more than one person under S1A (2)(a) or an award being payable under both S1A(2)(a) and (2)(b). A possibility now exists for an award to be payable to more than one person under subsection (2)(a) and (2) (aa) as a result of the amendments made by article 2(2) and (3), and the amendment made by article 2(4) caters for that possibility.

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