



NINESTJOHNSTREET
PERSONAL INJURY

Shaw v Wilde
[2024] EWHC
1660 (KB)

**NOTE ON HIGH COURT
JUDGMENT**



Fundamental dishonesty finding in £1.2M orthopaedic injury claim

NOTE ON HIGH COURT JUDGMENT

Introduction

- 1) On 27.6.24 His Honour Judge Sephton KC, sitting as a Judge of the High Court, handed down Judgment in the case of **Shaw v Wilde [2024] EWHC 1660 (KB)**.
- 2) The Claimant sustained very serious polytrauma orthopaedic injuries in a road traffic accident resulting in over 20 separate surgeries. He suffered particularly serious injuries to his left wrist and to his right femur, with a sustained period of non union, leaving him with a permanently shortened right leg of between 31 – 42mm. The Defendant accepted that the Claimant had sustained very serious injury but alleged that he had been fundamentally dishonest and invited the court to dismiss his claim.
- 3) The Court assessed the genuine value of the claim to be £1,230,145.60 but accepted the Defendant's case that he had been fundamentally dishonest. The judge was not persuaded that there would be substantial injustice to the Claimant if his claim were dismissed and he proceeded to do just that.
 - i) He needed a stick to walk a maximum of 100 – 200 yards. He used to undertake hiking, climbing, sky diving and base jumping. He had not resumed any of these activities.
 - ii) He required a pavement scooter and quad bikes (to access areas for off-road sporting events).
 - iii) He required 30 hours care for life plus a significant loss of services claim and a nanny care claim for his young son.
 - iv) He needed an adapted automatic motorcar with a steering ball and electronic fingertip controls.
 - v) He required single-storey accommodation.
 - vi) He required business class flights for all travel.

The Facts

- 4) Prior to the accident the Claimant was a keen BASE jumper and outdoor pursuits enthusiast.
- 5) During proceedings the Claimant sought an interim payment of £300,000, having previously invited the Defendant to make a voluntary interim payment of £1.5 million, supported by a statement from his case manager, a transport expert and a witness statement by the Claimant. A Schedule of Loss placed a value on the claim of £6.47 million (in addition to a claim for future aids and equipment).
- 6) The Claimant had alleged that:-
 - 7) The Claimant disclosed a day in the life video demonstrating significant restrictions including a practically immobile left arm. He used a walking stick in his right hand consistently.
 - 8) The Defendant challenged the basis of the interim payment application in correspondence contending that the Claimant was materially less restricted and less in need of equipment than the in evidence in support of application contended. The Defendant invited the Claimant to withdraw his application. He did not do so.
 - 9) The Defendant subsequently disclosed surveillance evidence which demonstrated the Claimant was able to walk further than he alleged without the use of a walking stick and at no point was he shown using a pavement scooter. The Claimant was shown riding an electronic mountain bike to the shops. The Defendant amended its Defence to allege the Claimant had been fundamentally dishonest.
 - 10) The Claimant contended the surveillance of his walking distance without a stick and mountain bike use were both isolated instances and did not





represent the true picture of his day to day life, he had miscalculated his ability to walk specific distances and he disclosed photographs of him using his mobility.

- 11) The Claimant called evidence from 19 lay witnesses to support his claimed level of pain and disability over the 5 ½ years since the accident. He contended that he was not seen doing anything that he had denied, his pain fluctuated and the extent of his activities were known to his treating rehabilitation team indeed they formed part of the treatment recommendations. The Claimant maintained his claims for care, equipment, transport, and accommodation. He also alleged in a Reply that he had never been up a mountain on a mountain bike since the accident.
- 12) The Defendant contended that in fact the Claimant not only had been mountain biking but had cycled up Mount Snowdon. The Defendant obtained the Claimant's bank records which demonstrated he had been abroad on several occasions post-accident to Italy (twice), Amsterdam and Poland.
- 13) The Defendant disclosed social media evidence which suggested the Claimant had participated in base jumping activities, although these were denied by the Claimant and acquaintances with whom he was present who gave supportive evidence on his behalf. Some of the images showed the Claimant carrying a large backpack and a helmet in a known landing spot for BASE jumpers which the Defendant maintained were consistent with him having completed a BASE jump.

The Findings of the Court

- 14) The court rejected the Claimant's account of his mobility, inability to return to sporting activities, his care and transport needs and alleged requirement for business class travel. The court rejected arguments that the Claimant's symptoms fluctuated and that he had miscalculated his distances.
- 15) The court held that the evidence in support of the Claimant's interim payment application was misleading and untrue. The court rejected the Claimant's defence that he did not realise he was advancing exorbitant claims because he had

relied on his experts and his legal team to present his case. The court held that the Claimant had been climbing both indoors and outdoors and that he had gone up Snowdon on his electronic mountain bike and that he knew this when he signed his Amended Reply. The court held that the Claimant had carried out a BASE jump in 2022 despite his denial. The court held that the Claimant had already travelled economy class and that care claims advanced by his mother was significantly overstated. He knew he could drive an un-adapted vehicle.

- 16) The court held the Claimant would have been advised to consider carefully the case he was presenting in light of the Defendant's email around the time of the interim payment application warning the Claimant that his case was overstated but that he chose not to set the record straight.
- 17) The Judge valued the claim at £1,230,145.60 (inclusive of interest).
- 18) The court held that the Claimant's dishonesty was more than mere exaggeration, which might be excused, and that the conduct was dishonest by the standards of ordinary people. The court held but for the Claimant's lies the case would have been relatively straightforward and would highly likely to have settled after joint statements.

Substantial Injustice

- 19) The Claimant sought to argue that denial of compensation would amount to substantial injustice within the meaning of Section 57(2) of the Criminal Justice and Courts Act 2015 ("the 2015 Act").
- 20) The court rejected this argument and weighed up the issue of substantial injustice as follows:
 - i) The court was obliged to dismiss the claim unless the Claimant persuaded the court he would suffer substantial injustice.
 - ii) The loss of legitimate damages alone was not a sufficient reason to find substantial injustice would be occasioned to a claimant, see [London Organising Committee of the Olympic and Paralympic Games v Sinfield \[2018\] EWHC 51](#).





- iii) It was helpful to consider the situation whereby a person was injured in a similar capacity to the Claimant but there was no solvent tortfeasor to sue.
- iv) The Claimant may be required to pay an interim payment of £150,000 which he had spent.
- v) The decision may result in an order for cost against the Claimant.
- vi) The Claimant may have incurred significant debts.
- vii) The Claimant had a limited earning capacity.
- viii) The Claimant had ongoing needs for care, assistance, and equipment albeit some support would be provided by the state. His basic needs will be met.
- ix) The blameworthiness and effect of the Claimant's dishonest conduct was relevant. He lied to experts. He was aware of the potential consequences of his dishonesty but despite this maintained the lie and was unrepentant.
- x) Rather than admit his error he persisted in his lies affectively gambling that his lies would not be found out or the court would excuse them. Accordingly, despite significant financial hardship to the Claimant it would not inflict substantial injustice upon him to dismiss the claim and he had only himself to blame.

Analysis

21) The following points emerge from this Judgment:

- This is the first reported authority in which a claimant has been found to be entitled to a £million+ sum of damages but the claim has been rejected on the grounds of fundamental dishonesty. The highwater mark of the Claimant's case had been a Schedule of Loss during proceedings which valued the claim at £6.47M.
- The multiplicity of lay witnesses advanced by the Claimant was insufficient to persuade the court against making findings of dishonesty. Following cross-examination, some of the witnesses gave the impression that they were partisan including the Claimant's mother. Some witnesses were unconvincing and

other witnesses, whilst doing their best to give recollections, had relatively brief encounters with the Claimant but were unable to confidently present a complete picture of his condition.

- The application of the substantial injustice test grants the court a wide discretion and it is for the Claimant to satisfy the burden to demonstrate substantial injustice will occur.
 - **Shaw** reaffirms the decision in **LOCOG** that the loss of damages alone does not result in substantial injustice. The importance of **Shaw** is its application of that principle to a multi-million pound claim for damages.
 - The comparison of a similarly injured individual by a non-solvent tortfeasor provides a useful yardstick to measure the issue of substantial injustice.
 - The case management fees were reduced by 42.9%. The court was influenced by the fact that the case manager was a defensive witness who was very reluctant to accept of obvious conclusions. She was evasive in response to questioning about invoices for care during periods when the Claimant had been abroad. Her evidence was to be treated with caution.
 - The correspondence from the Defendant warning the Claimant of his misleading evidence and providing him with opportunity to "set the record straight" was a touchstone in the litigation on which the Judge relied both in respect of his findings of fundamental dishonesty and whether or not substantial injustice was made out.
- 22) The Defendant was represented at trial by Christopher Kennedy KC and Matthew Snarr who were instructed by Mike Pope and Ryan Hodgkinson of Keoghs LLP acting on behalf of Hastings Direct.
- 23) Click here to view the CV's of [Chris Kennedy KC](#) and [Matthew Snarr](#).
- 24) A copy of the judgment can be found [here](#).

