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“Totally Unrealistic” Claims and Costs Implications

The Impact on Costs in the Conduct of Personal Injuries Litigation

The recent decision of the High Court in [*Dardis v Poplovka*](#) (Unreported, High Court, Barr J., 28 April 2017) [2017] IEHC 249 highlights the fact that while costs generally follow the event the court can look behind the rule and exercise its discretion in awarding costs.

The plaintiff in this case was awarded damages in respect of injuries arising out of a road traffic accident. In a subsequent application for costs submissions were made as to the application of the general rule under Order 99 of the Rules of the Superior Courts that costs follow the event unless the court otherwise orders.

The plaintiff claimed that in the circumstances where the claim had been successful and where the defendant could have protected themselves by making a tender offer or an offer pursuant to s. 17 of the Civil Liability and Courts Act, 2004 that they were entitled to their costs. They claimed that it is only when justice demands, should the general rule be departed from.

The defendant had made a tender offer and they conceded that given the fact that the level offered had been exceeded in the court’s judgment on the face of things the plaintiff would be entitled to their costs. However, further arguments were raised by the defendant as

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to the conduct of the trial and the pursuit of claims that were bound to fail. The defendant argued:

- when this case had been called on at the call-over of cases, it was indicated that the case would take approximately two days at hearing – the action took eight days at hearing
- a schedule setting out the plaintiff's claim for past and further loss of earnings, amounting to €620,042.00 was presented - the court in its judgment had effectively disallowed the entire of the claim for past loss of earnings and future loss of earnings, describing such claim as being “totally unrealistic” and had instead, allowed a modest sum of €20,000.00 for loss of opportunity on the job market

The defendant stated that the plaintiff had effectively lost the issue in relation to his loss of earnings claim and cost the court eight days at hearing where it was estimated to be a lot less. The decision of Clarke J. in *Veolia Water U.K. plc v Fingal County Council (No. 2)* [2007] 2 I.R. 81 was cited to bolster the assertion that the plaintiff was not entitled to their full costs where they failed on discrete issues which arose at hearing.

The defendant sought his costs for six days, being the period by which the trial had been prolonged in dealing with the issue in respect of loss of earnings, on which the plaintiff was ultimately unsuccessful. Counsel further submitted that the court should disallow the costs incurred by the plaintiff in retaining an accountant and an actuary, to give evidence and an actuarial report in relation to the calculation of the loss of earnings claim, which had been rejected by the court in its judgment.

Barr J. set out a number of key principles applicable to personal injuries litigation and costs which can be summarised as follows:

- The general rule which should be applied is that costs follow the event. However, the court has a discretion to depart from this rule when the justice of the case so demands.
- Where there was a stateable case on the part of the plaintiff, just because they do not succeed on a particular point should not mean that they are deprived of their costs.
- Where a plaintiff puts forward a distinct and separate claim, on which he loses completely, then it may be appropriate to deny the plaintiff his costs for the time spent at the hearing dealing with the discrete issue on which he has lost. If that is appropriate, he should also be denied the costs of his witnesses, who were called to establish that aspect of his claim.
- There must be a discrete issue which the plaintiff loses completely and the hearing of that issue must have led to a definite elongation of the hearing of the action.
- These principles apply in to the defendant also where the converse situation arises.

The court held that in the circumstances of this case while the plaintiff was prima facie entitled to their costs where they had brought forward a “totally unrealistic” claim for loss of earnings which cost the defendant to expend on witnesses and prolonged the case by approximately two days. Due

to this finding the plaintiff's costs were reduced to an award of costs for six days instead of eight days and costs were refused in relation to the witnesses called in support of the loss of earnings.

Conclusion

From a defendants' perspective the case serves to emphasise the importance of challenging unrealistic claims even at the risk of a longer trial. Costs will not automatically be awarded to plaintiffs in cases where they cannot substantiate their claim.

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