

High Court disallows trial advocacy fee and skeleton argument sum where trial settles the day before

Judgement handed down on 13 July 2020

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3PB Barristers

John Coleman v Daniel Townsend PHW 1806767

Facts

This decision arises following a road traffic accident on 9 November 2015. Claims were pursued for personal injury, pre-accident value, hire and other special damages. The matter proceeded by way of the Portal and a CNF was sent to the Defendant's insurers on 25 November 2015. Following exit from the Portal, proceedings were commenced on 13 July 2017, and a Defence was filed admitted liability. Direction were made on 9 November 2017 requiring the exchange of Skeleton Arguments two days before trial. The trial was set down for 26 April 2018 to be heard in Romford County Court. The Defendant's Part 36 offer was accepted on the afternoon of 25 April 2018.

The key costs provisions for this matter are set out in CPR 45, Table 6B:

TABLE 6B

Fixed costs where a claim no longer continues under the RTA Protocol				
A. If Parties reach a settlement prior to the claimant issuing proceedings under Part 7				
Agreed damages	At least £1,000, but not more than £5,000	More than £5,000, but not more than £10,000	More than £10,000	
Fixed costs	The greater of— (a) £550; or (b) the total of— (i) £100; and (ii) 20% of the damages	The total of— (a) £1,100; and (b) 15% of damages over £5,000	The total of— (a) £1,930; and (b) 10% of damages over £10,000	
B. If proceedings are issued under Part 7, but the case settles before trial				

Stage at which case is settled	On or after the date of issue, but prior to the date of allocation under Part 26	On or after the date of allocation under Part 26, but prior to the date of listing	On or after the date of listing but prior to the date of trial	
Fixed costs	The total of— (a) £1,160; and (b) 20% of the damages	The total of— (a) £1,880; and (b) 20% of the damages	The total of— (a) £2,655; and (b) 20% of the damages	
C. If the claim is disposed of at trial				
Fixed costs	The total of— (a) £2,655; and (b) 20% of the damages agreed or awarded; and (c) the relevant trial advocacy fee			
D. Trial advocacy fees				
Damages agreed or awarded	Not more than £3,000	More than £3,000, but not more than £10,000	More than £10,000, but not more than £15,000	More than £15,000
Trial advocacy fee	£500	£710	£1,070	£1,705

Furthermore, disbursements are dealt with under CPR 45.29I as follows:

“45.29I(2) In a claim started under the RTA Protocol... the disbursements referred to in paragraph (1) are

(a) ... (g)

(h) Any other disbursement reasonably incurred due to a particular feature of the dispute.”

The High Court

The Appellant (and Defendant below) appealed the decision of Costs Officer Martin on 22 May 2019, which was an oral review of a provisional assessment. The appeal focused on 2 items:

1. Counsel’s abated brief fee for the trial of £852.50
2. Counsel’s fee for a skeleton argument at £370.00

The Appellant's submissions were essentially that:

- Table 6B only provided for a trial advocacy fee where a claim settled on the day of trial, or alternatively at trial and that therefore the trial advocacy fee was not recoverable at any earlier point in time, even if the brief fee was incurred
- Save for the recoverable disbursement of an Advice on Quantum, the absence of any other recoverable disbursements for counsel's fees in CPR 45.29I was significant and that it was neither reasonable nor proportionate for the fee for a skeleton argument to be a recoverable disbursement

Master Howorth invited parties to submit further written submissions following the handing down of the decision by the Court of Appeal in *Aldred v Tyreese Sulay Alieu Cham* [2019] EWCA Civ 1780.

Master Howorth allowed the appeal and disallowed both Counsel's abated brief fee and the fee for preparation of the skeleton argument for the following reasons:

The costs in Table 6B set out the recoverable costs for each stage of the claim which no longer continues under the RTA Protocol and include all the work which could reasonably be expected to be carried out for each stage. In relation to Table C that specifically includes the trial advocacy fee and implicitly the costs of preparing for the trial which self-evidently would include a skeleton argument. That stage was not reached in this case. The day of the trial was not yet at hand. It follows that both the claim for the preparation of the skeleton argument and an abated brief fee fall within Table B, which includes all work "on or after the day of listing, but prior to the date of trial".

Commentary

This is a helpful decision for Defendant solicitors in an unsurprisingly common scenario. The consideration of the recently handed down Court of Appeal decision of *Aldred v Cham* is also of note to practitioners.

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