



Neutral Citation Number: [2024] EWHC 24 (KB)

Case No: QB-2021-001453

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/01/24

Before:

DEXTER DIAS KC
(Sitting as a Deputy High Court Judge)

Between:

FLR
**(a child at settlement, appearing by MLR, her mother
and Litigation Friend)**

Claimant

- and -

Dr Shanthi Chandran

Defendant

Giles Mooney KC (instructed by **Boyes Turner LLP) for the **Claimant****
Gareth Compton (instructed by **BLM Law) for the **Defendant****

Hearing date: 5 December 2023

Approved Judgment

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DEXTER DIAS KC

Dexter Dias KC:

(Sitting as a Deputy High Court Judge)

1. This is the judgment of the court on the question of approval. It should be read in conjunction with the liability-only judgment I handed down on 5 July 2023 following the contested trial before me. That other judgment is published with the neutral citation of [2023] EWHC 1671 (KB).
2. This is an application for the court to give its approval, pursuant to the court’s inherent jurisdiction, of a settlement of damages in a personal injury claim. The claimant was a child when the settlement of the claim was reached, being 17 years of age, and thus the court’s scrutiny of the arrangement is necessary (CPR 21.2(1)).
3. There is an anonymity order in place. Therefore, the claimant will be known as FLR. She is now 18 years old. She has appeared throughout proceedings by her litigation friend, who is her mother, and who shall be known as MLR. The claimant is represented by Mr Mooney KC. The defendant is Dr Shanthi Chandran. The defendant is represented by Mr Compton of counsel.
4. While acknowledging the vital importance of the open justice principle and the “public watchdog” function of the press (*Thoma v Luxembourg* [2001] ECHR 240 at [5]), I judge that the Article 8 ECHR right to privacy and private life imperatives here significantly outweigh the Article 10 ECHR freedom of expression rights of the press and public. That is why I have granted an anonymity order in accordance with *JX MX v Dartford and Gravesham NHS Trust* [2015] EWCA Civ 96. The order conforms with the latest APIL / PIBA template order.
5. The hearing was conducted remotely at the request of the parties. It was held on the MS Teams platform. I am satisfied that no party was prejudiced by this approach, and the case was placed in the public court list in the usual way for members of the public and the press to attend.

Background

6. On 15 January 2018, the claimant, then 12 years old, left her home in Oxfordshire to go to school on a dark and rainy Monday morning. Those prevailing weather conditions are significant.
7. Her route required her to cross the Buckingham Road at a controlled pedestrian crossing. At about 7.20am, she stepped into the northbound carriageway when she was struck by a vehicle.
8. This was a BMW i3 Range Extender driven by the defendant in this case Dr Shanthi Chandran. The child’s skull struck the nearside windscreen of the car, causing the glass to shatter and the claimant to sustain serious head injury. This caused a subarachnoid bleed to the brain. She also sustained a left collarbone fracture. As noted by the attending police officer PC Vale, with the force of the collision, the child’s body was

“thrown” or carried 11 metres beyond the pedestrian crossing and almost to the entrance of a nearby petrol station. The claimant was left with cognitive and psychiatric problems as a result of incident and suffered from headaches.

9. The defendant is a consultant physician who was on her way to work at Milton Keynes hospital. Dr Chandran told PC Vale that she was looking ahead while driving when she became aware of a “thud” and her window “smashed”. She immediately stopped her car and saw that a young girl had been struck. It was the head and body of the child that smashed Dr Chandran’s window. The police found what they call a “bullseye” fracture on the front left of the windscreen, a radiating fracture of the protective glass, something like a spider’s web, caused by the child’s body.
10. The claimant’s case was that the incident was caused by the negligence of the Dr Chandran. The defendant was driving too fast given the prevailing conditions and if she were driving at a safe and reasonable speed, the collision would not have happened. The defendant stated that the incident was caused by the claimant stepping out into the road when the traffic light was green for vehicles to proceed. Dr Chandran was driving at 28 mph (the pleaded and agreed speed), which was below the applicable speed limit of 30 mph and appropriate for the conditions. The defendant was not reported by the police for any criminal offences. Therefore, at trial the defendant denied breach of duty (negligence) and causation. Dr Chandran maintained that the liability for this incident lay fully with the claimant.
11. Following a contested trial, the claimant proved duty, breach and causation. There was obviously serious damage. The court apportioned liability. It found that the defendant was primarily responsible for the collision and apportioned liability 60/40 in the claimant’s favour. Thus, the court determined a 40 per cent reduction in damages because of the contributory negligence of the claimant stepping out into the road while the traffic lights were green for traffic.
12. The question then became one of quantum of damages. However, a settlement was reached between the parties on 8 November 2023. It is that settlement that is before the court for approval.

Approval

13. I am grateful to both legal teams for the great care with which they have prepared this case and the obvious sensitivity with which they have presented it.
14. The purpose of today's hearing is for the court to consider whether the proposed settlement of damages agreed between parties is in the best interests of the claimant. The court is required to approve the terms of settlement in this case as the claimant was a child at the point of settlement. It is an elementary proposition that court approval engages questions of judgment. It must act in the interests of justice and the best interests of the protected person and have regard to the overriding objective. As stated by Lady Hale in *Dunhill v Burgin* [2014] UKSC 18 at [20], the purpose of approval hearings in accordance with CPR 21.10(1) is

“to impose an external check on the propriety of the settlement.”

15. Part 21 of the CPR includes rule 21.10. Its subheading is “Compromise etc. by or on behalf of a child or protected party”. The rule provides insofar as it is material:

21.10

(1) Where a claim is made –

(a) by or on behalf of a child or protected party;

no settlement, compromise or payment (including any voluntary interim payment) and no acceptance of money paid into court shall be valid, so far as it relates to the claim by, on behalf of or against the child or protected party, without the approval of the court.

16. In a case where the court’s approval under the inherent jurisdiction is sought, the court should be provided with an opinion from the claimant’s legal representatives on the merits of the settlement or compromise. Mr Mooney’s confidential advice is dated 17 November 2023 and is an invaluable and comprehensive document. It sets out with great clarity and precision why the settlement is considered by the claimant’s legal team to be appropriate, by reference to an assessment of the quantum of recoverable loss, weighing the risks and uncertainties of litigation and the strengths and weaknesses of the evidence.
17. I have also read the expert reports that speak to this case, from Professor Michael Vloeberghs, Consultant Paediatric Neurosurgeon and Dr Cheryl Newton, Consultant Paediatric Neuropsychologist. Professor Vloeberghs noted that the claimant had sustained a left collar bone fracture and traumatic subarachnoid bleed and scalp laceration injuries. She remained intubated and ventilated for 3 days and remained in hospital for a total of 10 days. No surgery was required. When the claimant came home, she was independent although she suffered from severe headaches which subsided over time and were only occurring once per month at the time of examination. Professor Vloeberghs found no physical problems but was of the view that the claimant had sustained a diffuse axonal injury. She has a lifetime risk of epilepsy of 2.5 per cent which is approximately 2.5 times that of the general population.
18. Dr Newton saw the claimant in April 2021. She noted that the claimant had suffered nightmares after the accident, but these had resolved. She had been more anxious and suffered PTSD-type symptoms for the first year after the accident, but that also largely subsided.
19. The structure of the agreed settlement is as follows:

Gross lump sum		£225,000
	<u>Less:</u> Liability split (60/40)	£-90,000

Net lump sum:		£135,000

20. For the avoidance of doubt, the defendant's liability under the Social Security (Recovery of Benefits) Act 1997 to the Compensation Recovery Unit is nil.
21. I am satisfied that I have been able to perform the required *Dunhill* propriety check. I agree that the settlement level is in the claimant's best interests. On that basis I approve the settlement under CPR 21.10.
22. To conclude, I would like to say something about what this young person is like. She has obtained GCSE results mostly better than her predicted grades and is progressing well in her A Level studies. She is coping impressively with her life. She plans on going to university and then pursuing her passion for visual arts with a career in the creative media industry.
23. I must pay tribute to the immense dignity and restraint shown by the claimant's parents, who sat through the entire trial hearing very distressing details about the circumstances in which serious injury was inflicted upon their daughter. At no point did they visibly display any anger or even incredulity while listening to the evidence, even when, as I found, Dr Chandran gave answers that simply could not have been right. In this, they showed great respect for the court process and all parties.
24. What has happened has without question been life-altering for both of them and their daughter. The collision and resultant injury have unquestionably been a tremendous strain on the claimant and her family. The court appreciates that no amount of money can turn back the clock and put their family in the position they would have been in had the injury to the claimant not occurred. Money cannot do that. It is simply the best we can do. A proxy for the quantification of the pain and suffering, heartbreak and anxiety that they have had to endure. But I do hope that the end of these proceedings will be a relief and this long-awaited financial settlement will make life a little easier.
25. I have emphasised to the claimant's parents that this judgment will be published to the National Archives so that a copy will always be available to the claimant - this is her case. I wish her family, and the claimant especially, the very best for the future.