

Neutral Citation Number: [2019] EWHC 232 (QB)

Case No: HQ15P04934 & HQ15P04395

IN THE HIGH COURT OF JUSTICE QUEEN'S BENCH DIVISION

Royal Courts of Justice Strand, London, WC2A 2LL

Date: 08/02/2019

Before:

MRS JUSTICE YIP DBE

Between:

MRS CLAUDIA CRISTINA GAVIRIA CORREA (1)
MISS ISABELA ESTRADA GAVIRIA (2)
MISS LUCIANA ESTRADA GAVIRIA (3)
consolidated with:
MRS NICOLA LOUISE JOHN (4)
MASTER RALPH THOMAS JOHN (5)

Claimants

- and –

BP PLC (1)	Defendants
BP EXPLORATION OPERATING COMPANY LIMITED (2)	
BP AMOCO EXPLORATION (IN AMENAS) LIMITED (3)	

MR ANDREW RITCHIE QC & MR SHAHRAM SHARGHY(instructed by IRWIN MITCHELL LLP) for the CLAIMANTS
MR PRASHANT POPAT QC (instructed by HERBERT SMITH FREEHILLS LLP) for the DEFENDANTS

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MRS JUSTICE YIP DBE

Mrs Justice Yip:

Introduction

- 1.It is a matter of public record that Carlos Estrada Valencia and Sebastian John were unlawfully killed by terrorists in an attack at the In Amenas gas production facility in Algeria in January 2013. Both were there in the course of their employment with the second defendant.
- 2. Mr Estrada was aged 44 and Mr John just 26. Each had dependants. Claims were mounted on behalf of the dependants seeking damages under the Fatal Accidents Act 1976. The fact that there were three defendants reflects some legal complexity in identifying the scope of any duties owed by the particular entities involved. It is to be noted that the In Amenas facility was run as a joint venture with other companies outside the BP Group. For these purposes, it is wholly unnecessary to explore in detail the scope of the individual defendants' responsibilities. In very simple terms, the claims were employer's liability claims against BP alleging that they had failed to sufficiently discharge their duty as employers to guard their employees against foreseeable risks.
- 3.BP strongly denied all the allegations made against them, including allegations of breach of duty. Liability was due to be tried over a period of 9 weeks. If the claimants succeeded, damages would then have been assessed at a later trial. The trials would have been extremely costly. They would undoubtedly have been stressful, particularly for the families. In those circumstances, the parties were bound to explore settlement. I commend everyone involved for the effort that has gone into disposing of the claim without the need for the court to determine whether or not any of the BP companies bore legal responsibility for the tragic deaths. The parties have been able to come to terms, which they wish to keep confidential.
- 4. The settlement does not represent a victory for anyone. Settlement of claims are often reported on the basis that claimants have "won damages". It would be offensive to describe these claimants as "winning" anything. They have suffered the most terrible loss for which they are to receive some compensation. The defendants have not admitted any breach but have been prepared to enter into an agreement to bring these claims to the end.
- 5. It is my view that all parties have been entirely sensible and reasonable in finding a consensual solution that does not require the court to determine any issue of liability.

Confidentiality

- 6. The matter comes before me today only because some of the dependants are children. Settlement of their claims therefore requires the approval of the court. Were that not the case, the parties would be entirely free to enter into any agreement they wished without it being aired in court and to agree to the terms being kept confidential. The function which the court has now is essentially one of a protective nature. The exercise of that function produces a tension between the principle of open justice and respect for the privacy of claimants whose cases appear in open court only because of the need for approval.
- 7. In <u>JX MX v Dartford & Gravesham NHS Trust</u> [2015] EWCA Civ 96, the Court of Appeal gave guidance as to how judges conducting approval hearings might protect the privacy of claimants and their families, consistently with the principle of open justice. The suggested approach involves listing the hearing in public and conducting

the hearing in open court but making an anonymity order protecting the identity of the claimant, unless it is not necessary to do so. That approach has been embraced by practitioners and first instance judges and has become routine. In the majority of cases, it allows reporting of matters of public interest (including the nature of claims and identity of defendants) without bringing the identity of claimants into the public gaze. I believe the consistency of approach has been useful for all involved, not least the Press Association who, in my experience, are sensitive to the interests of claimants in matters of this kind.

- 8. Here, the position is slightly different from usual. The identities of the deceased are already in the public domain. This claim is an unusual one and any reporting that includes the circumstances that gave rise to the action and the identity of the defendants will inevitably lead to what is often referred to as "jigsaw identification". Therefore, the usual anonymity order which prevents the reporting of the claimants' identities would not in reality serve any real purpose or provide protection of their privacy.
- 9. Naturally, the dependants have suffered dreadful loss, going far beyond any financial losses for which damages can be awarded. It seems to me that it is important to protect the privacy of the children concerned as far as possible. They will not be protected parties when they reach their majority. They will therefore have control of the monies allocated to them. It is not uncommon for parents to be concerned about the additional responsibility that brings at a young age. Making the details of the settlements public is likely to add to that concern.
- 10. Having said that, the Court of Appeal made it clear in <u>JX MX</u> that approval hearings do not lie outside the scope of the principle of open justice. The guidance given was intended to strike the right balance in most cases. However, the Court of Appeal stressed that the task of the court is to decide what form of order will provide the necessary protection while at the same time ensuring that the derogation from the principle of open justice is kept to a minimum. Orders should not be made merely because the parties agree and/or because there is no objection from the press. It is the court's duty to consider whether a derogation from the principle of open justice is necessary.
- 11. I accept there is legitimate public interest in these claims. It was right that the approval hearing should take place in open court. Properly, no application was made for any order preventing reporting of the hearing or the fact of settlement. That would have been too great a departure from open justice and would be more than is necessary for the protection of the child claimants. Further, no anonymity order is sought given that the families' identities are already in the public domain.
- 12. In the circumstances, there is nothing to prevent or restrict the reporting of the fact that these proceedings have been settled before trial without any admission of liability.
- 13. However, the parties have agreed that the terms of the agreement should remain confidential. Had all the claimants been of full age and capacity, they would have been free to compromise their claims without recourse to the court. In the circumstances, I direct that the terms of the settlement shall remain confidential. The parties have provided for confidentiality by agreeing an order that does not refer to the terms of the settlement, which are recorded in a separate confidential schedule. I

- endorse this approach and direct that the confidential schedule shall not be retained on the court file and will not be open to inspection.
- 14. Making such an order will protect confidentiality in matters touching upon the private financial affairs of the claimants. Further, doing so recognises that, by virtue of Article 14 of the European Convention on Human Rights, the child claimants are entitled to the same respect for their private lives as litigants of full age and capacity, who are free to settle their claims confidentially without revealing the terms in court.

Approval and apportionment

- 15. The background to these claims is already in the public domain as a result of the inquest held in 2014 2015. The assistant coroner HHJ Hilliard QC delivered a narrative verdict. The In Amenas facility was targeted by terrorists. In the attack, which began on 16 January 2013, many innocent people lost their lives. The two men with whom these claims were concerned died in the afternoon of 17 January 2013. The terrorists had taken them hostage and used them as human shields. They were caught in crossfire between the terrorists and the Algerian Military and/or Gendarmes. The circumstances of their deaths are horrifying and hugely distressing for their families.
- 16. The allegations made against the defendants were essentially that they failed to properly assess and manage the risk of a terrorist attack at the facility. Generally, security was alleged to have been inadequate. That is to express things in very simple terms. The pleadings were long and complex. Had the matter proceeded to trial, there would have been very many issues to consider before reaching a final conclusion on liability.
- 17. The defendants vigorously resisted the claims. They entered very full defences. Issues were raised as to the nature and scope of the duties owed by the individual defendants; breach of duty; foreseeability of risk and causation. The claims would have been fully contested at trial.
- 18. A large amount of evidence, including expert reports had been obtained on both sides. It is fair to say that this would have been a difficult trial.
- 19. I have had provided to me, on the usual confidential basis, the opinions of Counsel, Mr Andrew Ritchie QC and Mr Shahram Sharghy, to assist me with consideration of whether the settlements should be approved. I am indebted to them for the attention they have clearly given to this exercise and for the detailed analysis provided.
- 20. It is worth noting that any trial of a personal injury or fatal accident claim is something of a blunt instrument. In this case, the court would have been required to consider multiple difficult and overlapping issues. In the end, the only options would have been to find for the claimants or to find for the defendants. One result would lead to full compensation, the other would leave the claimants recovering nothing. Settlement can, of course, explore the middle ground. The parties can also take account of other factors and decide that it is not in anyone's best interests to have a contested trial. For this reason, even when parties have very different views about the merits of the claim they are often able to arrive at a settlement.
- 21. The trial which was due to take place starting next week was to determine liability only. Had the claimants succeeded, it would then have been necessary to assess

quantum. The financial claims would not have been straightforward. I agree with Counsel's view that the quantum trial is unlikely to have taken place before 2020. While I believe the claimants' representatives have done what they can to ease the burden, the stress of litigation of this nature should not be underestimated. Exploring quantum in detail inevitably involves focusing on all that has been lost. For families struggling to rebuild their lives this can seem cruel. There is undoubtedly a benefit to settlement that cannot be measured in purely financial terms.

- 22. I have read what Counsel say about the basis on which damages were calculated for settlement purposes. Again, I have been provided with detailed and helpful analysis. I can see that all relevant issues were fully considered before arriving at a sensible and realistic position. It is not necessary or appropriate to go into further detail as to the valuation of each claim. Suffice it to say, that I am entirely satisfied that the overall settlement in each case is one that properly balances all the considerations and protects the interests of the children.
- 23. I have not the slightest doubt that all the children involved benefit from the devotion of loving mothers who have done all that they can in the most tragic circumstances to provide for them and will do so throughout their childhoods. In those circumstances, the conventional approach of apportioning the bulk of the damages to the widow and modest sums to the children is proposed in each case. I am content to approve apportionment on that basis.
- 24. In summary, having considered all the material before me, I am entirely confident that the parties have adopted a sensible approach and one which has appropriately protected the interests of the child claimants. I am therefore happy to approve the settlements and the suggested apportionments. I commend everyone involved for the huge amount of work that has gone into achieving a fair and reasonable outcome without the need for the financial and human cost that would inevitably have been associated with a lengthy trial. The parties may not have agreed as to the merits of the claim but they have been able to agree a solution that, in my view, is undoubtedly in the best interests of all the parties.
- 25. All that remains is to wish the claimants well for the future. I know that no amount of money can truly compensate for the loss of a loved one. However, I very much hope that the conclusion of the litigation will be a comfort to them and that the monies they are to receive will go some way towards easing the burden the widows have had to carry since their husband's deaths.

MRS JUSTICE YIP DBE Approved Judgment