



Neutral Citation Number: [2023] EWHC 2977 (KB)

Case No: QB-2017-001454

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24 November 2023

Before:

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

Between:

ZSY **Claimant**
(a protected party by EZY, his Litigation Friend)

- and -

AAA **Defendant**

**Christopher Wilson-Smith KC and Ben Bradley (instructed by Barratts Solicitors,
Nottingham) for the Claimant**
Simeon Maskrey KC (instructed by Weightmans) for the Defendant

Hearing date: 13 November 2023

Approved Judgment
.....

DEXTER DIAS KC

Dexter Dias KC:

(Sitting as a Deputy High Court Judge)

1. This is the judgment of the court.
2. In this personal injury claim, the court must rule upon whether damages agreed in the compromised claim should be approved by the court in respect of a protected party (CPR 21.2(1)).
3. There is an anonymity order in place. Therefore, the claimant will be known as “ZSY”. He is now 35 years old. Being a protected party, a litigation friend must conduct the proceedings for him (CPR 21.2(1)). Indeed, he appears by his litigation friend “ESY”, who is also his professional deputy. She is a highly experienced deputy and personal injury lawyer. The claimant is represented today by Mr Bradley of counsel. Mr Wilson-Smith KC has been leading counsel on behalf of the claimant.
4. I have granted an anonymity order in respect of the defendant in this case to prevent what is known as “jigsaw identification”, the indirect identification of the claimant. Therefore, the defendant shall be known as “AAA”. The defendant is represented by Mr Maskrey KC.
5. I recognise that anonymity orders have a dehumanising effect and risk reducing the living, breathing human beings at the heart of this sad case to ciphers. 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. There were no counter-representations from the press.

Background

6. The claimant is a Latvian national who was injured in a road traffic accident whilst working in the UK. As a result, the claimant received very severe injuries, chiefly traumatic brain injury and skull fracture. He has subsequently returned to Latvia.
7. Apportionment of liability was agreed between the parties at 57.5/42.5 per cent in favour of the claimant. Judgment was approved by Master Davison on 1 April 2020. The case thus resolved into a question of quantum of damages, and the case was set down for a trial on damages due to start on 13 November 2023, today’s date.
8. There was a Joint Settlement Meeting on 22 September 2023 at which the parties reached a mutually acceptable agreement. The structure of that compromise is set out below and awaits the approval of the court.

Approval

9. 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. Today, Mr Maskrey KC most responsibly explained how the defendant is very glad to reach a mutually satisfactory agreement in this case.
10. 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 is a protected party. 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.”
11. 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.
12. 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 and any financial advice. The confidential advice of Mr Wilson-Smith KC and Mr Bradley is dated 2 November 2023. It is a comprehensive document of great assistance to the court. 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 what they term the “orthodox risks” and uncertainties of litigation and the strengths and weaknesses of the evidence.
13. I have also read the detailed and complex expert reports that speak to this case. The structure of the settlement is as follows:

Gross lump sum		£1,500,000
	<u>Plus</u> periodical payment per annum (<i>Converted to Euros as at the date of the approval hearing and index-linked to be paid in Euros thereafter as described below</i>)	£16,000 Per annum
	<u>Less:</u> Interim payments	£-330,000
Total:		
Net lump sum:		£1,170,000
Capitalised value (conservative):		£2 million approximately

14. The defendant's liability under the Social Security (Recovery of Benefits) Act 1997 to the Compensation Recovery Unit is certified at nil.
15. Should the proposal of the award include periodical payments, the court is obliged to consider the appropriateness of the payment structure. CPR 41.7 provides that the court must:

“... have regard to all the circumstances of the case and in particular the form of award which best meets the claimant's needs, having regard to the factors set out in the practice direction.”
16. Part 41 of the Rules and Practice Direction 41BD taken together list the relevant factors including the scale of the annual payments and the preferences of both the claimant and the defendant.
17. The court has read the confidential independent financial advice, provided with the confidential advice of counsel. It confirms the advantages of periodical payments within the structure of an award that is required to meet lifetime needs that may extend over many years.
18. Since the proposed structure includes indexation, the court must consider whether the method to be adopted is appropriate. The Court of Appeal in *Thompsonstone v Tameside and Glossop of Acute Services NHS Trust* [2008] EWCA Civ 5 approved the criteria

set down by Mackay J in *RH (A Patient) v United Bristol Healthcare NHS Trust* [2007] LS Law Med 535. At [71], the judge stated that the court should examine the:

- “(i) accuracy of match of the particular data series to the loss or expenditure being compensated;
- (ii) authority of the collector of the data;
- (iii) statistical reliability;
- (iv) accessibility;
- (v) consistency over time;
- (vi) reproducibility in the future;
- (vii) simplicity and consistency in application.”

19. Expert advice was obtained from Professors Wass and Matthews about how best to effect indexation in the best interests of the claimant. Mr Holt advised on behalf of the defendant. What is proposed is that there is indexation in line with the wage index in Latvia, the Latvian Monthly Wage Index, published on 1 March each year. This is a insulate to the extent possible the claimant against fluctuations and volatility in the currency markets and the growth of the Latvian economy. There is also advice from Richard Cropper, who has liaised with Professor Wass, and the intention is that there will be an uplift of the periodical payment in May of each year.
20. I agree that this is a sensible structure from the claimant’s point of view. I find that this settlement level and with the attendant structured arrangements are in the claimant’s best interests. On that basis I approve the settlement under CPR 21.10.
21. To conclude, I would like to say something about the claimant’s life presently, and the difficulties he continues to suffer from. Due to his head injury, he cannot recollect the accident. He continues to experience problems with concentration and suffers from intermittent dizziness and seizures. These seizures and his occasionally unpredictable behaviour and mood has resulted in his losing friends and a social life. Everything in his life has changed as a result of the accident and his injury. He feels frustrated, depressed and angry. He had been a young man in his twenties, happy and enjoying life and work in the United Kingdom. He states that the negative impact on every aspect of his life is “almost impossible to describe”.
22. The court conveys to the claimant that it appreciates that no amount of money can turn back the clock and put him in the position he would have been in had the injury 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 he continues to experience in many different ways. 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.
23. I have emphasised that this judgment will be published to the National Archives so that a copy will always be available to the claimant - this is his case.

24. That is my judgment.