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FOIL UPDATE 3rd May 2022

The evidential status of credit hire agreements

Armstead v Royal Sun Alliance Insurance Company Limited (2022) EWCA Civ 497

IN BRIEF

The Court of Appeal held that the claimant/appellant, could not rely on terms which she agreed with the hire company who rented the motor car to her, to establish the quantum of her claim for damages against the insurers of a negligent driver of another motor car, who had driven into the claimant's hire car.

This appeal raised the issue of whether the hirer of a motor car, the claimant/appellant, could rely on terms which she agreed with the hire company (Helphire) who rented the motor car to her, to establish the quantum of her claim for damages against the insurers (the defendant/respondent) of a negligent driver of another motor car, who had driven into the claimant's hire car.

The claimant had a road traffic accident for which she was not at fault in which her own motor car was damaged. Liability for the accident was admitted by that other person who had collided with her car. That first road traffic accident explained why the claimant was driving a hire car at the time of the second and material road traffic accident.

The claimant was provided with a Mini Cooper motor car by Helphire pursuant to a vehicle credit hire agreement ("the Helphire agreement"), while her original car was being repaired. The daily rental charges under the Helphire Agreement for a 1–6-day period was £168.30; for a 7–27-day period was £145.30; and for a period over 28 days was £130.

As a result of the material accident, the claimant brought proceedings against RSA pursuant to the provisions of the European Communities (Rights Against Insurers) Regulations 2002 ("the 2002 Regulations") for

losses caused by its insured's negligent driving. Under "vehicle damage" it was pleaded that "following the index accident, her vehicle of which she was bailee, suffered damage and a consequent immediate diminution in value". The cost of repairs to the Mini Cooper were pleaded at £1,990.65. Under the heading "losses consequent on negligent vehicle damage" it was pleaded that pursuant to clause 16 of the Helphire Agreement, the claimant was obliged to pay the lessor, Helphire, a sum equal to the daily rental rate set out in the agreement. It was claimed that the repair "took 12 days to carry out, during which time the hire vehicle was unavailable to the lessor", and hire costs for the 12 days that the Mini Cooper was being repaired were £1743.60.

In its defence RSA denied that the claimant could bring the claim against RSA pursuant to the 2002 Regulations, and it was pleaded that RSA was refusing an indemnity to its insured. RSA noted that the invoice for the cost of repairs was made to Total Accident Management and therefore denied that the claimant had suffered any loss and denied that she could bring a claim for subrogated losses.

A District Judge considered that the current case was similar to claims for pure economic loss "as the claimant did not have any proprietary interest in the property. She does not hold title to the goods and simply held the vehicle as the hirer …". The no recovery rule was justified by both proximity and fairness. The District Judge specifically noted that Helphire had not brought the claim in their own name. The District Judge therefore dismissed the claims.

On appeal, a Recorder also dismissed the claimant's appeal because the sums claimed were relational economic loss, and in any event, it was not fair, just and reasonable to impose liability on RSA for the claimant's liability to Helphire, and because RSA's insured did not owe a duty of care to the claimant to avoid her incurring a contractual liability.

Having set out the relevant legal principles in some detail, the Court of Appeal held that it was possible to identify some relevant propositions. First a claimant must have legal or possessory title to bring an action for the costs of repairs and consequential economic losses to a chattel such as a motor car. Secondly, the claimant was a bailee of the Mini Cooper motor car and had possessory title to the motor car. The claimant was therefore entitled to bring an action for the cost of repairs and the consequential economic or financial loss for the loss of use of the "income generating" hire car. It was common ground that the claim might also have been made by Helphire, as owner of the Mini Cooper motor car, but in this case it was not. Thirdly if a bailee recovered damages for the bailor in excess of her personal loss as bailee, then those damages were held on trust (as between the bailee and bailor) by the bailee for the bailor.

During the course of argument, the claimant accepted that she could not claim damages under clause 16 of the Helphire agreement if the losses claimed did not represent a genuine and reasonable attempt to assess the likely losses to be incurred as a result of loss of use of the motor car. The Court of Appeal held that the claimant was not entitled to recover against RSA as damages, the sums payable by her under clause 16 of the Helphire Agreement. This was for a number of reasons set out below.

First clause 16 of the Helphire agreement represented damages that the claimant (as bailee) was liable to pay Helphire (as bailor). This was an internal arrangement between the bailee and bailor. As far as principle was concerned, the internal contractual arrangements between the bailor and bailee could not be a basis for recovering losses. This was because the law of bailment treated the bailor and bailee as having one set of rights to claim for the damage and loss of use of the motor

car. There was a loose analogy between the attempt to quantify damages by reference to clause 16 of the Helphire agreement and a situation where one branch of a large company might invoice another branch of a large company (under the company's own internal arrangements) for losses caused by an incident for which a third party was liable. The invoiced sum might or might not accord with the losses which might be proved in an action by the company, but such an internal arrangement could hardly form the basis for proving the loss and bind the third party to pay the invoiced sum.

So far as common sense was concerned, it might fairly be noted that clause 16 in the Helphire agreement was in an agreement under which the claimant had no expectation of paying anything because she had collision damage waiver insurance from the insurers of the Mini Cooper motor car, who were providing insurance to Helphire for the Mini Cooper motor car. There was no arm's length negotiation between the claimant and Helphire over the terms of clause 16, and the claimant's only interest was that she should not pay anything.

Secondly this case was different from those cases where one party had, by reason of the negligence of a third party, suffered damage to their property and as a result incurred contractual liabilities reasonably agreed with an independent third party. This was because there was no true independent agreement made by the claimant and Helphire about the likely losses to be suffered by Helphire in the event of damage to the hired car.

Thirdly clause 16 of the Helphire agreement did not represent a genuine and reasonable attempt to assess the likely losses to be incurred by Helphire as a result of loss of use of the motor car. The full loss was claimed for a credit hire daily rate, even if the sum was reduced to the daily rate for periods of hire in excess of 28. The actual assessment of damages for loss of use by a party such as Helphire would be for decision in future cases, but this analysis showed that clause 16 did not represent a reasonable sum to claim against RSA's insured driver.

Fourthly, the loss claimed for damages under clause 16 of the Helphire agreement was, in the particular circumstances of this case, an economic loss which was remote and not foreseeable. This was because the liability arose from the internal agreement between Helphire and the claimant.

Fifthly, in these circumstances the loss was, as a matter of law not reasonably foreseeable and too remote to be recoverable. This is because a reasonably foreseeable loss which was not too remote, would have been one pursuant to a clause which represented a genuine and reasonable attempt to assess the likely losses to be incurred as a result of loss of use of the motor car.

Accordingly, the claim for damages representing the claimant's liability to Helphire under clause 16 was not a recoverable head of loss in the claim for damages for negligence.

Emma Fuller, a member of the Credit Hire SFT and a partner in **DAC Beachcroft** (who defended the appeal on behalf of RSA) comments:

It is hoped that this judgment will prevent credit hire companies seeking to use hirers as a veil, in an attempt to seek damages above and beyond those that they are entitled to in law, by attempting to make claimants liable for losses where they themselves are victims of non-fault accidents in their vehicles.

The full judgment is available at: [Armstead v Royal Sun Alliance Insurance Company Ltd [2022] EWCA Civ 497 (28 April 2022) (bailii.org)]

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