

SCOTTISH CASES – CASE UPDATE

CASE UPDATE – To 27th July 2015

S F –v- Quarriers [2015] CSOH 82

Decision of Lord Bannantyne in an historic child abuse case to exercise his discretion under Section 19a and allow the action to proceed.

Of interest to anyone involved in dealing with these types of historical child abuse cases with very detailed submissions (particularly on behalf of the pursuer) considered by the Lord Ordinary.

D M –v- Lothian Health Board [2015] CSOH 89

Decision of Lady Clark in relation to certification of experts.

Accident at work case which eventually settled by way of Tender and Minute of Acceptance of Tender in the sum of £25,000 net. The pursuer has sued for £500,000 and valued the case actually significantly higher than that. Reports had been obtained from an Orthopaedic Surgeon, Consultant Psychiatrist, Occupational Therapist, Vocational Consultant and an Actuarial Consultant. Shortly before Proof the defenders produced video surveillance evidence and expert evidence to suggest the pursuer was exaggerating or malingering. They produced a Minute of Amendment which was never moved. The Tender of £25,000 followed and was accepted. The pursuer moved acceptance and certification of the experts. The defenders opposed certification of the Occupational Therapist, Vocational Consultant and Actuarial Consultant on the basis that they would not have been instructed by the pursuer's agents had she not been exaggerating her symptoms. In allowing certification of all the pursuer's experts Lady Clark noted that liability was never admitted and that there may be a number of reasons for a pursuer accepting a Tender significantly lower than the potential value of the case. She indicated that in these circumstances and without having heard any evidence she was unable to find the pursuer had deliberately falsified her symptoms and therefore saw no reason to penalise her in relation to expenses.

Boyd –v- Gates, Scottish Agricultural Industries Limited and National Grid Gas Plc [2015] CSOH 100

Asbestos case which settled extra judicially by an offer of £6,300 provisional damages together with a right to apply to the court for further damages where he could develop diffuse pleural thickening, lung cancer or mesothelioma.

Dispute as far as the Joint Minute is concerned as one of the defenders sought to reserve the right to put the pursuer to Proof on liability in the event that he made an application for further damages if he were to develop any of those conditions. The pursuer maintained that an offer by a defender to settle a case by way of payment of provisional damages in impliedly carries with it an admission of liability by that defender.

Brief Judgement. Lord Uist confirms he agrees with the pursuer's position that an offer to pay provisional damages carries with it an implied admission of liability.

A W –v- Greater Glasgow Health Board

Medical negligence case arising out of an alleged negligent delivery resulting in the child developing cerebral palsy.

Very detailed decision on the evidence which took 51 days in total by Lord Brailsford. Eventually found that the pursuer was unable to establish causation granting Decree of Absolvitor.

Murray –v- Admiral Insurance Co. Ltd [2015] SCGRBB 53

Decision Sheriff Principal Murray on expenses in another road traffic case.

The case proceeded under the voluntary pre action protocol. Following negotiation a pre litigation offer of £11,500 plus protocol expenses was made by the defenders. This was rejected by the pursuer who raised proceedings. The case ultimately settled by Tender and Minute of Acceptance of Tender in the sum of £7,750 one day before Proof was to proceed. The pursuer sought his expenses to the date of the Tender conceding expenses after the Tender. The defenders sought modification of the pursuer's expenses to nil on the basis that the pursuer had acted unreasonably in rejecting the pre litigation offer. The Sheriff rejected the defender's arguments and allowed the pursuer his expenses up to and including the date of the Tender. The defenders appealed. On Appeal to the Sheriff Principal found that the Sheriff had erred in the factors he had taken into account and that the matter was open for him to decide. He decided to award the pursuer expenses up to the date of the Tender but to modify those to the amount offered with the pre litigation offer (voluntary pre action protocol expenses).

Yet another decision on expenses for pursuer's agents to carefully consider. Of note here was the Sheriff Principal taking into account that the defender's insurers had not admitted liability as they should have done in terms of protocol but simply offered to deal with the case on a without prejudice basis and subsequently raised liability as an issue in the litigation which followed.

From that I think any pre litigation offer with voluntary pre action protocol expenses may have to be considered almost on the same basis as a judicial Tender. i.e. that if you subsequently fail to beat that offer you may have some difficulties on expenses of the litigation.