



QB-2021-003477

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

[2022] EWHC 394 (QB)

Royal Courts of Justice
Strand, London, WC2A 2LL

23 February 2022

Before :

MASTER DAVISON

Between :

BSC **Claimant**
(A child, by his father and litigation friend DSC)

- and -

TGL

Defendant

Mr Christopher Walker (instructed by **Veale Wasbrough Vizards LLP**) for the **Claimant**
Mr Marcus Dignum QC (instructed by **BLM**) for the **Defendant**

Hearing date: 13 January 2022

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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1. This approval hearing came before me on 13 January 2022. It concerns an accident to a boy who (though anonymised as “BSC”) I will call “Lucas”. Lucas was struck by a taxi on the Chiswick High Road on 18 April 2018. He was then aged 11. The accident is most easily described from the perspective of the taxi driver who struck him. The road had two opposing carriageways. The westbound carriageway was sub-divided into two lanes. The inner lane was reserved for buses and taxis. The outer lane was for other traffic. It was then governed by a 30mph speed limit (since reduced to 20mph). The taxi was in the inner lane. To its right, the traffic was slow-moving or stationary. By contrast, the taxi was travelling at the speed limit, i.e. 30mph. Just west of the junction with Silver Crescent, there was an uncontrolled pedestrian crossing. The taxi driver’s view of that crossing (and of persons on it) was obscured by the vehicles to his right and, in particular, a van which had come to a complete halt at the crossing. Lucas was amongst a small group of people who were crossing the road at that point. He was on a scooter. He crossed in front of the stationary van. But as he scooted over the nearside lane (without looking to his left before he did so) he was struck by the taxi, which had not, or barely, slowed down. The collision was captured on the dashcam of a car approaching the crossing from the opposite direction and is shocking. Lucas was thrown a distance of some 17 metres.
2. He sustained a traumatic brain injury which has left him with cognitive and neuro-psychiatric impairments.
3. Settlement discussions were initiated and two joint settlement meetings took place. The first was on 8 July 2020. Although the meeting was intended to explore liability issues, the insurers made a monetary offer in the sum of £1.75 million. This was rejected by Lucas’s litigation friend (his father) on the advice of his legal team. There was, at that stage, insufficient information for them to make a proper assessment of the likely long-term effects of the injury. There was a further joint settlement meeting on 16 July 2021. At that point, Lucas’s advisers had obtained reports / draft reports from an accident reconstruction expert, an educational psychologist, a neurosurgeon and a care expert. These were not disclosed to the defendant. Reports from a neuropsychiatrist and a neuropsychologist had also been obtained and these were disclosed.
4. The defendant’s insurers had obtained (and disclosed) only a report from a neuropsychologist.
5. Because proceedings had not been issued, there were no pleadings. In particular, there was no schedule of loss and no counter-schedule. In terms of written documents, there was only a Position Statement from the claimant’s side (which was not placed before me).
6. After negotiation, the claim settled for a lump sum of £2.35 million. This was the figure I was asked to approve at the hearing on 13 January 2022. For the purposes of that hearing, Mr Christopher Walker had prepared a detailed Advice in which he commended the settlement. I was told that the offer was accepted on the basis of a one third reduction for contributory fault and that on a full liability basis the settlement was therefore worth £3.525 million. The Advice valued the various heads of loss at figures that came to a total of approximately this amount.
7. Having considered the Advice, the dashcam footage, the accident reconstruction report and the medical evidence (both disclosed and undisclosed), I had three broad concerns, which were:
 - (i) Lucas was only 15 years old and the prognosis for his brain injury was unclear.
 - (ii) Because of the lack of pleadings (or medical evidence from the defendant’s side), it was difficult for me to form a view as to the likely value of the heads of loss – in particular the ‘big ticket’ items, which were care, loss of earnings and Court of Protection costs.
 - (iii) A reduction of one third for contributory fault was too much.
8. I directed that the parties should prepare a Table with four columns, setting out (1) each head of loss, (2) the claimant’s claim in respect of that head, which was to include, where appropriate,

the relevant multiplier, (3) the defendant's response with the amount (if any) counter-offered and with brief reasons to include, where appropriate, reference to the medical reports or records and (4) the claimant's estimate of the range of likely court awards. (The final column was to remain privileged.) Such a Table is a very useful tool for approval hearings.

9. I have now been supplied with that Table as well as the Position Statement and a summary of liability apportionments involving child pedestrians.
10. I will approve the settlement for the following reasons, which I will express briefly.
11. I remain of the view that the reduction for contributory fault is too high.
12. However, Lucas's advisers have, in my judgment, valued the quantum of the claim (before any deduction for contributory fault) very optimistically. In particular, I can see considerable force in the stance that the defendant has taken on the claims for loss of earnings, care and case management and Court of Protection costs. I think that the likely award of a court, were this matter to go to trial now, would be much nearer to the defendant's figures than those of the claimant.
13. On that basis, the overall sum is generous and it is in Lucas's best interests for him to have accepted it and for me to approve it. By way of illustration only, if the reduction for contributory fault were to be 20%, the overall value of the defendant's offer is £2,937,500. That figure is about £1,000,000 in excess of the defendant's valuation.
14. Whilst the prognosis for Lucas's brain injury remains unclear, there are advantages for him (as, indeed, there are for the defendant) in settling the case now on the basis of a generous assessment of his future needs. This is not a case where there is an identifiable, future point in time where his condition and prognosis may undergo some significant step-change. Similarly, so far as the medical evidence is concerned, although it comprises only the core reports on Lucas's side and only neuropsychology on the defendant's side, those reports are broadly in alignment. A settlement now – on the proposed terms – does not involve an unacceptable level of risk as to future uncertainties.
15. Lucas is fortunate to have the support of a close and loving family, for whom I have the greatest admiration. I would like to commend all of them, but particularly Lucas himself and his parents, for the courage and determination they have shown in overcoming adversity. Lucas has made a remarkable recovery. He will be well-provided for in the future.
16. As to that, I wish him the very best.