Neutral Citation No. [2012] NIQB 103

Ref:	McCL8697

Certified Ex Tempore Judgment
*(approved by the court subject to editorial corrections)**

Delivered:	31/12/12

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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Between:

FELIM BATES

Plaintiff;

-and-

WILLIAM P KEEGAN

Defendant.

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McCLOSKEY J

[1] In this appeal from the district judge the dispute between the parties related to the cost of repairing a motor vehicle. The amount claimed by the Plaintiff was £948.26. The repair invoice had a breakdown, one component whereof was the amount charged in respect of labour, which was £455. This broke down to 13 hours at the rate of £35 per hour. The judge awarded damages to the Plaintiff on this basis.

[2] The Defendant's case was that the total recoverable damages should not be £946.26 but should, rather, be £806.06 based on a lower hourly rate for labour. The Defendant contended for a lower hourly rate of £26 which, multiplied by 13 hours, equals £338. As a result, the contest between the parties was one of £26 per hour versus £35 per hour for labour, grossing at £455 at the higher rate and £338 at the lower rate, the parties thereby being separated by the princely sum of £117.

[3] Thus it was proposed by the appeal brought by the Defendant that the High Court should adjudicate on this dispute over £117. Some initial probing of the issues separating the parties enabled the Court to express the strong exhortation that a dispute over such a miniscule amount should be capable of being resolved

consensually with the deployment of the skills of the parties' respective senior counsel. Happily such exhortation proved efficacious and I commend the parties on their achievement, which, as I understand, essentially entails an affirmation of the first instance decree.

[4] The general principles operative in this sphere of litigation were expressed by this court in the case of Stokes –v- McAuley [2010] NIQB 131. The decision in Stokes is not to be viewed as authority for any proposition of law because, applying the doctrine of precedent, what the court in Stokes did was to articulate the governing principles to be distilled from various binding authorities of some considerable vintage and pedigree. Thus, as one might do in an early undergraduate law class in the subject of tort, I began with the hallowed principle of *restitutio in integrum* and advanced from that point.

[5] The second principle to which the Court referred in Stokes is a general principle. It is appropriate to bear in mind that the common law is littered with general principles, one of its outstanding attributes being the absence of exhaustive and rigid canons and precepts. The Court said:

> "(B) As a general rule the appropriate measure of damages is the cost of repairing the damaged goods."

Adding:

> "In common with every general rule or principle this is not absolute or universal in character. Whether the general rule applies will depend on the evidential matrix in the particular case".

In other words, every case must be decided on the basis of the evidence adduced before the Court. I now progress to principle (F):

> "The Court's resolution of disputed issues in litigation belonging to this sphere must give full effect to the burden and standard of proof, while acting on evidence as opposed to anything else (for example judicial instinct or suspicion)."

The Court also observed:

> "There is limited scope for the operation of the doctrine of judicial notice in this sphere".

And finally:

> "The more likely scenario in these cases is that both parties will adduce evidence and the Court will be required to resolve any conflict".

As in the present case, I would observe.

[6] In that recitation of the governing principles, I also highlighted the consideration of **reasonableness**, stressing that the general rule, which is that the appropriate measure of damages should generally be the cost of repairing the damaged goods, contains a discernible element of objectively assessed reasonableness. To give effect to this principle in any given case requires evidence and/or agreed facts. If there is conflicting evidence then it is a matter for first instance court to resolve such conflict - judicially, clearly, rationally and also giving effect to the burden and standard of proof.

[7] Later, this Court had occasion to review these principles in the case of Matchett –v- Hamilton [2011] NIQB 131, when some further observations were made. I refer particularly to paragraph [7]:

> "Common law principles do not entail or reflect matters of exact science either in their formulation or in their application. Thus where, as here, the Court is required to adjudicate on the reasonableness of a sum of money claimed there is no single correct solution. Rather, it is incumbent on the Court to decide whether the amount claimed by the Plaintiff exceeds the bounds of what is recoverable in law. In its adjudication the Court does not apply some arithmetical scale."

The undercurrent of all these pronouncements is the need for evidence i.e. the evidence which the parties choose to adduce, coupled with the performance of the witnesses, the Court's assessment of what the more convincing and stronger evidence is and the findings and conclusions made accordingly. This is the recurring theme of all these cases. The observation that the Court does not apply some arithmetical scale has a certain resonance in the present context.

[8] I pose, rhetorically, the elementary question: what were the rationale and outcome of Matchett –v- Hamilton? The answer is simplicity itself. The Court adjudicated on competing hourly labour rates, it gave due weight to evidence which it considered should receive more weight in preference to evidence to which it accorded less weight – for the reasons expressed- and decided accordingly. Its conclusion was that in the particular evidential matrix of Matchett a certain hourly rate should prevail over its competitor.

[9] There is one message stamped all over the judgment in Matchett –v- Hamilton, as in the earlier decision of Stokes –v- McAuley, namely that all cases are decided on the evidence adduced and/or agreed facts and judges make their findings and conclusions accordingly. If one were to try to extrapolate from Matchett –v- Hamilton a *ratio decidendi* to the effect that the recoverable rate for labour in every claim for damages for the cost of repairing vehicles at this point in time in the evolution of Northern Ireland society is £26 per hour, this would represent a fundamental misunderstanding, firstly, of the court's decision and, secondly, of the doctrine of precedent. That is not what Matchett –v- Hamilton decided.

[10] It was confirmed helpfully to this court by the parties' respective senior counsel that, in the present case, the judge at first instance did precisely what this court did in Matchett: the judge adjudicated upon conflicting evidence regarding what was a reasonable hourly rate for labour for repairing the Plaintiff's damaged vehicle and, in the particular evidential matrix, made a conclusion that one particular hourly rate was to be preferred over the other, applying the burden and standard of proof. This is a paradigm example how all of these cases are to be decided.

[11] If there is one final observation to be made, in parenthesis, it is that citizens are at liberty to compromise their disputes in whatever way they see fit. Thus if, in the industries concerned, i.e. the motor insurance and claims handling industry and the vehicle repairing industry, it is convenient to some or all of the players involved to give effect to a rule of thumb of £X per hour for the labour cost of repairing damaged vehicles, that is to be welcomed, as it is a mechanism for saving court costs and for resolving disputes expeditiously and cheaply. *Interest rei publicae ut sit finis litium*. This, however, is to be properly regarded as a sensible tool of convenience as opposed to the operation of a principle of law decided by Matchett: a distinction to be noted carefully. If the decision in Matchett has had some further and broader impact, namely, that it provides operators in the industry with a convenient mechanism for resolving disputes at a particular hourly rate - of whatever amount - this, while obviously welcome, is properly to be viewed as a purely incidental effect. Of course, the broader the effect in practice of any judicial decision the greater the promotion of the values of certainty and predictability, with the commensurate promotion of the overriding objective as an added bonus. Ultimately, in avoiding undue and unnecessary recourse to the courts, the players in the industry are themselves the arbiters of reasonableness in its various facets in this sphere of litigation. Reasonableness, of course, is a value, or concept, which, by its very essence, is susceptible to evolution and, in its operation and effect, is invariably contextual in nature.