Neutral Citation: [2018] NIQB 12 | *Ref:* **BUR10551**

Judgment: approved by the Court for handing down | *Delivered:* **31/1/18**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

JAMES MORGAN

Plaintiff/Respondent

And

BRYSON RECYCLING LIMITED

Defendant/Appellant

BURGESS J

[1] This is an appeal by the Defendant from a decree made by the County Court for the Division of Belfast dated 17 August 2017 whereby it was decreed that the Plaintiff was entitled to the sum of £2250.40 damages.

[2] The Plaintiff's claim arises from a road traffic accident on 9 June 2016 at or about Dunmore Street Belfast. The Plaintiff's car had been parked outside his home, on the highway, when it was crashed into by a car driven by a servant or agent of the Defendant. There were no injuries suffered by the Plaintiff, and the claim therefore related to what eventually was determined to be the value of the car, given the damage caused to it, the storage of the car and the hire costs for the hire of a replacement vehicle between 13 June 2016 and 30 June 2016. There were one or two other items of claim, but these are not relevant to the present dispute. Indeed, the replacement value of the car has already been agreed and discharged.

[3] In a Reply to the Plaintiff's Notice Requiring Particulars of Defence dated 10 November 2016, the defendant accepted liability but disputed the claim for hire of a car in its entirety, or for a loss of use of his own vehicle, due to the failure on the part of the Plaintiff to have a valid MOT Test Certificate at the relevant time, namely at the date of the accident. The result of this failure was that the insurance policy of the Plaintiff provided that the contract of motor insurance did not cover claims arising from any accident, injury, loss or damage that happened while the insured car was being kept or used without the current Department of Transport Test certificate, if one was needed.

[4] The defendant relied on the doctrine of *ex turpi causa non oritur damnum*. It is important to point out that while illegality has the potential to provide a defence to civil claims of all sorts, and in a wide variety of circumstances, the Defendant in this case does not seek to resile *per se* from their liability, but rather they dispute the heading of claim that the Plaintiff is entitled to hire a car to replace a car which the plaintiff could not have driven since to do so would have constituted two criminal offences - to drive without a MOT Certificate and as a result, to drive while uninsured.

[5] The Defendant also disputes the storage charge on the basis that no contract has been proved establishing the terms of any storage provision with Curry's Car Repair (who also hired the car to the Plaintiff).

[6] Mr C Ringland BL for the Plaintiff/Respondent, reiterates that this is not a case where the maximum of *ex turpi causa non oritur actio* applies, since liability has been accepted. However, as Clark LJ stated in *Hewison v Meridian Shipping Services PTE Ltd and others* [2002] EWCA Civ 1821 at paragraphs 28-29:

> "28. However, as I see it, the principle is closely related. It is common ground that there are cases in which public policy will prevent the claimant from recovering the whole of the damages which, but for the rule of public policy, he would otherwise have recovered. The principle can perhaps be stated as a variation of the maxim so that it reads *ex turpi causa non oritur damnum*, where the *damnum* is the loss which would have been recovered but for the relevant illegal or immoral act. A classic example is the principle that a person who makes his living from burglary cannot have damages assessed on the basis of what he would have earned from burglary but for the defendant's negligence.
>
> 29. To my mind the authorities support that approach. They seem to me to support the proposition that where a claimant has to rely upon his or her own unlawful act in order to establish the whole or part of his or her claim the claim will fail either wholly or in part. In the present context the principle can be seen from the decision of this court in Hunter v Butler [1996] RTR 396, although it has to be said that the case does give rise to some difficulties of interpretation."

[7] Having carefully considered all of the case law, both in the United Kingdom jurisdiction and other jurisdictions, Clarke LJ concluded at paragraph 43:

> "43…. In my judgment an English court should not deprive the claimant of part of the damages to which he would otherwise be entitled because of the defendant's negligence or breach of duty by reason only of some collateral illegality or unlawful act."

[8] I have listened carefully to the evidence of the Plaintiff, who gave his evidence in a straightforward manner, as to why the car had not been assessed for its MOT on or before 5 February 2016, some four months before the incident. I accept that the car had been taxed and would have been insured if it had been presented for testing and had passed that test. The car was manufactured in 2005 and therefore had been subject to this test for many years - and indeed until 2016 had been successfully tested. The Plaintiff owned the car for five years, during which time testing was required and undertaken by him. He was, or should have been, like all road users of cars of a certain age, fully cognisant of the need for the car to be tested. He would, or should, have been fully cognisant of the juxtaposition between the requirement for the Certificate and his insurance cover. Indeed the Plaintiff does not dispute that he in all probability would have received a written reminder of the necessity for testing before the expiry of his then present Certificate.

[9] While the court accepts that these offences are not at the most serious end of the legal calendar, nevertheless they are not insignificant offences. One addresses the roadworthiness of a car, which if not roadworthy can cause injury and even death. The requirement for insurance is recognised as important, to underwrite any indemnity for a loss incurred by other parties, and it is recognised in being part of an offence of causing grievous bodily harm or death by dangerous driving without insurance.

[10] In keeping with his forthright evidence, the Plaintiff does not dispute that if this incident had not occurred he would have driven the car, probably until his insurance came up for renewal in August 2016, well after the period of time for which he seeks to be compensated for the hire of an alternative car. Against that background the court has decided that he is not entitled to recovery under this head of damages, and to that extent the appeal is granted.

[11] As regards the heading of claim for storage of the car, this was necessitated by the presence of the third car, namely the car that was damaged, that which was hired and another car owned by the family. In evidence the Plaintiff stated that he did not wish to leave the car parked on the highway in that condition for what could be a period of time. The removal of the car for storage was directly linked to assessments to be undertaken as to the extent of the damage, and the consequences in terms of damages arising from that assessment. I believe that this was a perfectly reasonable decision. That then leaves the question of what is a reasonable amount per day for such storage. This issue was raised at the lower court. That allowed for any agreement with Curry's Car Repair to be produced. No evidence was given as to the basis of such daily amount. It was suggested that it was a matter for the Defendant

to show that it was unreasonable, but I do not accept that argument. The ordinary approach of a party proving the liability, and the quantum of any such loss of the Plaintiff pertains. In the circumstances, therefore, the claim for storage is also refused.

[12] I therefore grant the appeal on all grounds. Judgment will be entered for the Defendant/Appellant and costs will follow the event.