

Case No : OMA26070

MANCHESTER COUNTY COURT

Manchester Civil Justice Centre
1 Bridge Street West
Manchester Greater
Manchester
M60 9DJ

9th September 2011

BEFORE:

DEPUTY DISTRICT JUDGE JONES

EVE LAMB

Claimant

- v -

EQUITY RED STAR

Defendant

Approved Judgment

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Approved Judgment

1. **Deputy District Judge Jones :** Yes. It is a difficult case. Let me go through first of all the findings I make on the evidence; there is of course no evidence from Mr Miller.
2. First of all we have what is described as stage 1, which is the beginning of this story really. A fare picked up by Mr Batty. Clearly I believe and find that both passengers were the worse for drink at that stage, the evidence is pretty clear in that regard. And I can take notice of what is the obvious and well known affects of 6 hours drinking alcohol. I do not know what to say about the cocaine; I do not think it could have helped the claimant's demeanour. Mr Miller had already been in a fight at that stage in the night, during the night.
3. There was then a dispute about the payment, I am not too sure that this takes us very far to be honest. It is not of great importance. Save that so far as what I believed happened with regards to the dispute I accept the evidence of Mr Batty. The alternative is that Mr Batty was trying to swindle the 2 passengers, they being in a drunken state perhaps. Dishonesty clearly. But I am satisfied on the evidence that the note that was proffered was not a £20 note. As I say I do not think it takes us anywhere near the nub of this case.
4. Mr Batty then decided that he would have the matter resolved by the police. He drove off. The doors were not locked, but the fact that he had driven off made it unsafe for passengers to leave the vehicle; they clearly wanted to leave the vehicle and that certainly was made clear to Mr Batty by the claimant, if not by Mr Miller.
5. Mr Miller lost his temper. Quite violently really. But the claimant was not acting in concert with him in that regard with regard to violence. It is clear to me that the claimant was in a state of panic. Again I am not too sure how far that takes us, certainly not to the nub of the case.
6. Mr Batty has a duty of care to his passengers and to other road users. He did not act lawfully in detaining them. But again that is not the end of his argument. He did drive off in search of the police station. I accept that the first police station was effectively closed; it is quite common, it is known that some police stations have a telephone outside and in fact one gets through to headquarters usually, rather than that particular station. But Mr Batty was not in a position to do that in his own mind because he was fearful of stopping. So he decided to drive to Longsight Police Station.
7. In a fairly early part of the journey, certainly by the time Hyde Road had been reached, Mr Miller was acting very aggressively; shouting at Mr Batty; swearing at him; threatening him; kicking the petition which is made of Perspex, which separates the driver from the passengers; the claimant was in a state of panic.

8. I do not know whether clinically she had a panic attack, but in the general broad sense of the word she was in a panic. She did not join in any assault. Her beating on the Perspex was as to ensure that the driver let them out, that was her intention and indeed for Mr Miller, that was his prime motivation. What Mr Batty had in the back were 2 drunken people, one of whom was a male who was acting very aggressively, kicking his vehicle trying to get at him during the course of this journey from the scene of the initial dispute to the police station.
9. I am sure Mr Batty believes he is acting reasonably in taking that journey. However it is a subjective test of course. During the course of the journey I find that the Perspex petition was broken and Mr Miller was able to get one arm around Mr Batty's neck which had a throttling action. Mr Batty describes how with one hand he attempted to keep that arm away from his neck and his throat and drive with his other hand, but he kept on driving.
10. And that is where we get to the difficult nub of the case, because I have a choice here. On the one hand it is said by Mr Batty that he continued driving because he was in fear for his life and indeed he describes how he began, just began the process of losing consciousness at the time the accident happened really.
11. So he says his case is that he made the right decision, the right choice, in fact the only choice. He is entitled to protect himself. He was able to drive towards the police station until the accident occurred. On the other hand as I have already said he has a duty to his passengers and to other road users and it is suggested that ... and I say again that whatever his perception, the claimant was not joining in that assault and his option is therefore to stop. It is clearly the case that both passengers want to get out of the vehicle. It is not a case where it is obvious that Mr Miller is going to remain and exact a vengeance upon Mr Batty. The aim of both passengers is to get out of the vehicle.
12. So his option at various points in that journey is to stop. Now if that is wrong and Miller is to continue with his violence, I just wonder what worst position Mr Batty is in. Of course if he could make the police station safely, he is likely to be protected. If he stops and Miller continues the assault, well I suppose if he is able to he can drive again. If Miller gets out he can drive off before being assaulted by Mr Miller. But the real question is how we balance his responsibility to his passengers and other road users at certain stages of this journey, with his belief expressed today that he felt he was going to lose consciousness.
13. There are different stages to the journey and I am going to take a hard line so far as Mr Batty is concerned and say that he does bear responsibility at a number of those stages to make a different choice.
14. Once he has passengers in the rear of his vehicle who had been detained by him unlawfully; banging on the petition; one of them apparently hysterical; the other one violent; it is not safe at that stage to continue driving.

15. Once Mr Miller gets his hands on him whilst his choice is more difficult and because he is in more jeopardy at that stage than when the passengers are merely causing damage, it is not safe to keep going.
16. He can't know that very shortly he would make the police station, in fact he does not make the police station. And I am afraid, I am sorry for Mr Batty, it is a hard choice to take but he does bear some responsibility in this case, some liability.
17. It is a long journey along Hyde Road when these things are happening. Continuing to drive in those circumstances is not a proper option to take. It is culpable and negligent, it is a breach of duty to these passengers.
18. It is not the sort of case where he makes that decision in a crisis because it is a long journey, it is over a mile and I have indicated that even prior to that, prior to the violence that is, the actual laying hands on him he should at that stage have desisted from driving.
19. It is clear that Mr Miller is responsible, directly responsible and there will be judgment against him. But as I have indicated the reason I have given, I feel also that then there has to be judgment against the first defendant, which in fact of course is the insurance company.
20. We need to deal with the question of contributing negligence with regard to the seatbelt. I can't believe that ... sorry Mr (Inaudible) is really seriously telling the court that in an accident of this nature had the claimant been wearing a seatbelt she would not have suffered injury. She clearly would have suffered some injury. I think what the doctor is saying is that the very nasty injury she suffered to her hip and leg would not have happened.
21. I do take that as an accurate version of events and I am just going to dismiss the thought that perhaps there would have been some injury anyway and therefore it has reduced the serious nature of the hip and leg injury, the doctor says would have been avoided.
22. So guidelines, this is a 25% reduction case because I do feel that she had an opportunity to fasten the seatbelt at many stages of the journey, that starting off of the journey was not very dramatic a U turn has to be at a slow-ish speed, I think the claimant probably because of the alcohol she had taken, did not give any thought to the seatbelt but rather concentrated upon attempting to get herself out of the vehicle. So there was an opportunity to use the belt.
23. Now I have not heard any address on quantum, so I need to do that now.
24. **Counsel** : I am grateful for the time Sir. My learned friend and I have agreed a judgment sum of £13,250.
25. **Deputy District Judge Jones** : Right. Does that take account of the (Inaudible).

26. **Counsel** : After (Inaudible).
27. **Deputy District Judge Jones** : Right. I have recorded that, so I will record judgment ...
28. **Counsel** : Judgment for the claimant ...
29. **Deputy District Judge Jones** : Against first defendant ...
30. **Counsel** : Judgment, yes.
31. **Deputy District Judge Jones** : ... as to 15% ...
32. **Counsel** : I was going to say it is ...
33. **Deputy District Judge Jones** : ... and second defendant (Inaudible) in the sum of £13,250.
34. **Counsel** : Well no Sir, I think the order should say this; ...
35. **Counsel 2** : It is the first and second defendant.
36. **Counsel** : Yes there will be judgment for the claimant against the first and second defendants.
37. **Deputy District Judge Jones** : Yes.
38. **Counsel** : In the sum of £13,250.
39. **Deputy District Judge Jones** : Yes. Because of course that has to be cleared anyway.
40. **Counsel** : Net of contributory ...
41. **Deputy District Judge Jones** : Yes.
42. **Counsel** : ... net of contributory negligence (assessed at 25%) and inclusive of interest. 2 ...
43. **Deputy District Judge Jones** : Hang on. Yes.
44. **Counsel** : Paragraph 2 it is recorded that as between the first defendant and the second defendant, the first defendant is (Inaudible) can I just ask Sir the 15% is that 15% of 75 or 15% of 100?
45. **Deputy District Judge Jones** : I intended 15% of 100.

46. **Counsel :** I am grateful. Then in that case it should be recorded that as between the first defendant and the second defendant, the first defendant is 15% liable and the second defendant is 60% liable for damages in this case. That makes it right doesn't it?
47. **Counsel 2 :** Yes.
48. **Deputy District Judge Jones :** Yes. Yes.

End of judgment

We hereby certify that this Judgment was approved by Deputy District Judge Jones on 14th November 2011.

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