



Neutral Citation Number: [2023] EWHC 2652 (KB)
Ref. QB-2019-003832

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION**

Royal Courts of Justice
Strand
London, WC2A 2LL

Before DEPUTY HIGH COURT JUDGE DEXTER DIAS KC

IN THE MATTER OF

AXC

(A PROTECTED PARTY, BY DXF, LITIGATION FRIEND)

Claimant

-v-

UK INSURANCE LTD

(Defendant)

MR A AXON appeared on behalf of the Claimant

MR L EVANS appeared on behalf of the Defendant

JUDGMENT

6th JUNE 2023

(APPROVED)

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(ANONYMISATION APPLIES)

DEXTER DIAS KC:

(sitting as a Deputy High Court Judge)

1. This is the judgment of the court.
2. In June 2016 this claimant, who was then in his early 50s, was knocked from his motorcycle while he was driving along a main road. He suffered severe brain and brachial plexus injuries as a result of the collision. This has changed virtually every aspect of his life. He sustained extended post-traumatic amnesia. Initially he needed life-sustaining support and intervention. Post-hospital discharge, he spent seven months in a critical rehabilitation unit. This has resulted in him having impairment in processing speed, memory, executive function, insight and understanding.
3. Regrettably, there have been behavioural and neuropsychiatric consequences and his personality has changed organically. These deficits are permanent, and his future management will always be challenging. He also lacks capacity to conduct proceedings and to attend to his financial affairs. He is a protected party.
4. This is an approval hearing and the court extends the anonymity order in the case. The order has been granted and extended to protect the privacy of this particularly vulnerable claimant. Therefore, the claimant will be known as AXC. He has no close relatives to help him and, therefore, these proceedings are brought on his behalf by his professional litigation friend DXF.
5. AXC is represented by Mr Axon of counsel, who is instructed by Minster Law Solicitors. The claimant is now 58. The defendant is UK Insurance Ltd, an insurance company, and the defendant is represented by Mr Evans of counsel who is instructed by Kearns. The court is grateful to both legal teams, and, in particular, to counsel for the great care with which they have prepared and conducted this case and the sensitivity with which they have provided documentation to the court.
6. The central issue today is whether the settlement that has been agreed between the parties in respect of AXC should be approved by the court. The parties attended a joint settlement meeting on 26 November 2021. Despite considerable efforts to reach a compromise, that meeting ultimately was unsuccessful. The matter, therefore, proceeded and was listed for trial on quantum for 6 June 2023, which is today's date.
7. However, on 24 April 2023 the parties met for a further joint settlement meeting. At that meeting, terms of settlement were agreed between parties, subject to the approval of the court, and that is the purpose of this court hearing.
8. The court is required to approve the terms of settlement because AXC is a protected party. This, of course, involves questions of judgment. The court's duty is to act in the interests of justice, and, also, in the best interests of the protected person, and the court, in doing so, must have regard to the overriding objective.
9. The objective of such hearings and the court's function were, as ever, succinctly enunciated by Lady Hale in the case of *Dunhill v Burgin* [2014] UKSC 18, where the Judge said: "The purpose is to impose an external check on the propriety of the settlement." This

is reinforced by Part 21 of the CPR and, in particular, Rule 21.10. That provides, insofar as it is material, that:

“No settlement, compromise or payment, including any voluntary interim payment, no acceptance of money paid into court shall be valid so far as it relates to the payment by, on behalf of, or against the child or protected party without the approval of the court.”

10. I have had the benefit, and use the word advisedly, of reading the confidential advice of Mr Axon, which is dated 23 May 2023. This is a meticulous analysis of what are the most important issues in the case. Mr Axon sets out with great clarity why it is that the settlement that is proposed is considered by the claimant’s legal team to be the best one for him. In an informed and authoritative way, it looks at the question of recoverable loss and weighs the risks and uncertainties of litigation and the weaknesses and the strengths of the evidence.

11. In this case there are complicated expert reports. The court has reviewed them. It is satisfied that the settlement figure is suitable in the circumstances of this case. The structure of the settlement is as follows. It is for a gross lump sum of £4,752,203.17. That is inclusive of interim payments of £381,000 and the compensation recovering unit recoverable benefit of £71,203.17.

12. The court has also read the report of Ms Jenny Stone, an independent financial advisor. Her report is dated 2 May 2023 and Ms Stone concludes that the proposed settlement strikes the right balance between, as she puts it, “security, flexibility and tax efficiency.” She says that although a lump sum offers less security than periodical payments, it provides great flexibility to meet this particular claimant’s needs. She concludes at paragraph 3.6 of her report that in her opinion the settlement represents an appropriate level of award in the claimant’s best interests.

13. The court agrees. This is an eminently sensible settlement structure from his point of view. A lump sum payment is absolutely appropriate in his particular circumstances. Therefore, and on that basis, the court approves the settlement under CPR 21.10.

14. Often in these cases a claimant who is protected will have relatives or people who love them attending to support them and sometimes to say things on his or her behalf. What is particularly striking in this case and, if I may say so, tragic, is that AXC has nobody here for him. But what has happened, in the best traditions of the legal profession, is that responsible practitioners have stepped in and have ensured that his best interests have been protected. It does all of them great credit.

15. The court particularly wants to pay tribute to Mr Jonathan Bamforth, the senior solicitor, who AXC instructed right at the start. It appears Mr Bamforth fought and struggled and advocated on behalf of this vulnerable person. Regrettably, Mr Bamforth passed away on 23 January of this year following a diagnosis of cancer. Despite his diagnosis and the poor prognosis, he still remained committed to AXC and worked relentlessly with his associate, Ms Victoria Claridge, who tried this case to a satisfactory conclusion. The court is grateful to everybody who has assisted in reaching the position today that unquestionably is the best thing for this claimant.

16. That is the judgment of the court.

This transcript has been approved by the Judge