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Updated ruling on Ali v HSF Logistics Polska SP. Z o.o

The recent ruling in *Majid Ali v HSF Logistics Polska Sp. Z o.o* [2023] EWHC 2159 (KB) has attracted significant attention within legal circles, particularly regarding the principles of illegality in credit hire claims.

Defendant insurers often encounter credit hire claims where it later emerges the claimant's damaged vehicle lacked a valid MOT, insurance certificate, or road fund licence at the time in question. In the past, the principles established in *Agheampong v Allied Manufacturing (London) Limited* ([2008] 6 WLUK 740) had been relied upon by defendants, a lower court decision examining the *ex turpi causa* doctrine in a credit hire claim involving an uninsured claimant to drive his own vehicle at the time of the accident. In this instance, the Court rejected a claim for damages in respect of vehicle hire charges on the basis that it was tainted by illegality.

This doctrine is frequently applied in cases involving various forms of illegality arising in credit hire claims, a recent example being *Agbalaya v London Ambulance Service* (Central London CC, 17 February 2022, HHJ Letham, unreported), which makes the distinction between 'a driveable car' and 'a useable car' in relation to lawful use and claims on the grounds of causation.

Case Background

On 20 February 2021, a Volvo XC60 belonging to the claimant, Mr Ali, was parked and unattended when it was struck by a lorry operated by HSF Logistics, the defendant, and rendered undriveable.

Following the incident, Mr Ali hired a replacement vehicle on credit for a period of 36 days while his own was under repair. It was undisputed that, at the time of the incident, Mr Ali's vehicle did not have a valid MOT certificate, having expired four and a half months earlier. Furthermore, there was no evidence to suggest Mr Ali intended to obtain an MOT certificate in the near future.

The claim had three heads of loss:

- Vehicle repairs of £2,184.22;
- Recovery charges of 3354.00; and
- Credit hire totalling £21,588.72.

Legal Context

The central legal issue revolved around whether Mr Ali's claim for credit hire charges could succeed, given that his vehicle did not have a valid MOT certificate and was therefore being used unlawfully on the road at the time of the accident, according to s. 47 (1) of the Road Traffic Act 1988. In this case, two primary legal doctrines were considered:

1. **Illegality Defence** (*ex turpi causa*): This principle posits that a claimant is unable to pursue a legal remedy if it arises in connection with their own illegal act. In this context, the argument was that Mr Ali's unlawful use of his vehicle without an MOT should prohibit his claim for hire charges.
2. **Causation**: This relates to whether the defendant's actions directly caused the claimant's loss. The argument was that since Mr Ali's vehicle was not legally permitted on the road due to the expired MOT, he did not suffer a legitimate loss of use; therefore, the hire charges incurred were not a direct consequence of HSF Logistics' negligence.

Court Proceedings and Rulings

- **First Instance Decision**: At County Court, the judge dismissed the illegality defence, deeming it disproportionate to bar the claim solely based on the expired MOT and that Mr Ali had a legitimate need to arrange an alternative means of transport.

However, the claim was rejected on causation grounds, with the Court determining that the absence of an MOT meant Mr Ali had not suffered a legitimate loss of use.

Whilst this impacted the recovery of the hire charges, it did not affect Mr Ali's claims to recovery and repair costs.

- **High Court Appeal:** Mr Ali appealed the decision, but the High Court upheld the lower court's ruling, agreeing that while the illegality defence was inapplicable, the claim failed due to a lack of causation.

Mr Justice Martin Spencer determined Mr Ali's failure to ensure his vehicle had a valid MOT in place 4.5 months before the accident constituted "*an alternative form of illegality*" defence concerning both causation and mitigation of loss. He concluded that "*but for*" the accident, he would not have obtained a valid MOT during the hire period.

- **Court of Appeal Decision:** On 4 December 2024, the Court of Appeal overturned the previous judgments, ruling that the absence of a valid MOT certificate did not preclude Mr Ali from recovering credit hire charges.

Lord Justice Stuart-Smith determined that HSF Logistics' tort directly deprived Mr Ali of the use of his vehicle, and the expired MOT did not sever the chain of causation. Furthermore, although driving without an MOT certificate was unlawful, it was a low-level offence, and it was disproportionate to refuse Mr Ali's claim on the grounds of *ex turpi causa*.

Future Implications

The judgment indicates the absence of an MOT certificate does not automatically invoke the illegality defence to bar recovery of damages. However, this does not mean future instances will attract the same judgment; further distinction may be needed to determine whether the absence of an MOT certificate was due to an innocent lapse or more deliberate oversight.

In this case, the Court ruled the failure to maintain an MOT certificate was a relatively minor offence. However, courts are likely to assess the proportionality and relevance of the illegality to the claim and rule other lapses, such as driving without insurance or with worn tyres, as more serious offences. These may provide an opportunity for relevant arguments in relation to the reduction of damages to reflect the likelihood of criminal prosecution or fine/disqualification.

The decision underscores the primary consideration of whether HSF Logistics' negligence caused Mr Ali's loss. An expired MOT, in isolation, may not be sufficient to break the chain of causation, but the lack of insurance or the presence of worn tyres might.

Had HSF Logistics' causation defence been accepted, the implications would perhaps extend beyond cases of missing MOT certificates to situations involving minor vehicle defects, such as faulty lights or windscreen wipers. This broad application could lead to disproportionate outcomes and bar claims for relatively trivial infractions.

Instead, the case establishes a nuanced approach to illegality that focuses on assessing particular aspects of a claim. It differentiates between claims unaffected by the expired MOT, such as recovery and repair costs, and those directly impacted, like credit hire charges for driving a vehicle unlawfully.

In cases where the latter applies, as in this case, the Court applies causation principles to determine the period of compensation, distinguishing between claimants who intended to remedy the illegality promptly and those who did not. This flexible approach balances the claimant's right to compensation with the defendant's protection from compensating unlawful use.

Finally, it should be noted that this decision also leaves the key case of *Agbalaya v London Ambulance Service* [Central London CC, 17 February 2022, HHJ Letham, unreported] undisturbed, with no judicial criticism. As a result, it remains an important precedent concerning both illegality and the causation defence and will be available to be pleaded in future cases where applicable.

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