Claim No B43YM108

IN THE COUNTY COURT AT BIRKENHEAD

Before :

District Judge Doyle

Between :

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|  | Dawn Christine Luvin | Claimant |
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|  | v |  |
|  |  |  |
|  | Ageas Insurance Limited | Defendant |

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Hearing date: 17th September 2015

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District Judge Doyle:

This is an application by the Claimants’ solicitors for an interim payment within Part 7 proceedings.

Such an application is made pursuant to CPR 25 and the criteria which must be satisfied is set out in CPR 25.7 which provides that the court may only make an order where any of the following conditions are satisfied:

***25.7(1)(a)*** *the defendant against whom the order is sought has admitted liability to pay damages or some other sum of money to the claimant:*

***(b)*** *the claimant has obtained judgment against the defendant for damages to be assessed or for a sum of money (other than costs) to be assessed.*

***(c)*** *it is satisfied that, if the claim went to trial, the claimant would obtain*

*judgment for a substantial amount of money (other than costs) against the*

*defendant from whom he is seeking an order for an interim payment, whether or not that defendant is the only defendant or one of a number of defendants to the claim:*

In addition, ***CRP 25.7(4****)* provides that: *‘the court must not order an interim payment of any more than a reasonable proportion of the likely amount of the final judgment’.*

The claimants reasons for requesting an interim payment are not part of the criteria to be considered under CPR25, and unlike the rules within the portal, the claimant does not have to justify or prove the amount sought further.

This is a case involving a road traffic accident which occurred on 26.1.15, which commenced in the RTA Portal in accordance with the Pre-Action Protocol for Low Value Road Traffic Accidents (The Portal). Liability was admitted within the strict time constraints allowed and the criteria in CPR 25.7(1)(a) is therefore satisfied.

Turning to the amount of the interim payment now sought, this is £1,352.07, the claimant giving credit for an interim payment made within the RTA portal of £1,013.50. The balance sought is £338.57.

I have heard submissions from counsel for both parties today, and have considered their skeleton arguments and the rules at length.

It is not for the court at this stage to quantify the elements identified in the original request for payment within the portal. That is a self contained, separate scheme. Such quantification, for example, in relation to the amount of travel expenses or the appropriate fee for treatment, is a matter of evidence to be assessed at the final hearing.

The criteria which I am required to apply today is that within CPR 25 as set out above. As stated, CPR 25.7(1)(a) has been satisfied. On considering the current medical evidence, the claimant suffered injuries to her neck and right shoulder, each of which have a prognosis period of 16 months. She has attended hospital and her GP, and been referred for physiotherapy treatment. In my judgment therefore, the amount of the interim payment sought of £1,352.07 does represent *‘a reasonable proportion of the likely amount of the final judgment’* given that the Judicial College guidelines figure for a neck injury of one to two years is an between £3,520 - £6,380. Accordingly CPR 25.7(4) is satisfied and I will order the interim payment sought.

On the face of it, this was a simple uncontentious application. However, the background to the application raises other issues which this court has seen in a large number of applications recently involving this particular firm and I believe it is therefore appropriate for me to comment further, as it is clear in a great number of these cases the defendants are claiming that the case unreasonably exited the portal when the defendant failed to agree to make the interim payment claimed. This issue also goes to the question of the costs of the application today.

This court issues thousands of RTA Portal claims each year and is therefore very familiar with the scheme rules and the issues and arguments raised within it, although this issue of interim payments is, as far as I am aware, an issue which has only arisen recently.

I accept I cannot make any order limiting the claimants costs to portal costs at this stage as this can only be done when *‘a judgment is given in favour of a claimant’* as provided in CPR 45.36 (2).

However, I am under a duty under CPR 1.4(1) to further the overriding objective by actively managing cases. The overriding objective also requires me to ensure I allot an appropriate share of the courts resources to each case. I am aware of at least 12 cases in which such an application has been made in similar circumstances by this firm, all of which requested a listing time of 45 minutes. At present at least 8 hours 45 minutes of judicial time have been potentially allocated to this issue. That is without the additional listing time which will be required at the conclusion of each case to deal with the unreasonable issue point, which will necessitate hearing time of between 60-90 minutes in each case.

The issue of the payment of interim payments within the RTA protocol generally is governed by

***Para 7.12 of the Pre-Action Protocol for Low Value Claims in RTAs****:*

*‘Where the Claimant needs to obtain a subsequent expert medical report or a non-medical report, the parties should agree to stay the process in this Protocol for a suitable period. The claimant may then request an interim payment in accordance with paragraphs* ***7.13*** *to* ***7.16****.*

*Request for Interim Payment*

***7.13*** *Where the claimant requests an interim payment of £1000, the defendant should make an interim payment to the claimant in accordance with paragraph 7.18*

***7.14*** *The claimant must send to the defendant the Interim Settlement Pack and initial medical report(s) (including any recommendation that a subsequent medical report is justified) in order to request the interim payment.*

***7.15*** *The claimant must also send evidence of pecuniary losses and disbursements. This will assist the defendant in considering whether to make an offer to settle the claim.*

***7.16*** *Where an interim payment of more than £1000 is requested the claimant must specify in the Interim Settlement Pack the amount requested, the heads of damage which are the subject of the request and the reasons for the request.*

***7.17*** *Unless the parties agree otherwise-*

*(a) the interim payment of £1000 is only in relation to general damages and*

*(b) where more than £1000 is requested by the claimant, the amount in excess of £1000 is only in relation to pecuniary losses.*

*Interim Payment of £1000*

***7.18****Where paragraph 7.13 applies the defendant must pay £1000 within 10 days of receiving the interim settlement pack.*

*Interim Payment of more than £1000*

***7.19*** *Subject to paragraphs 7.24 and 7.25, (which relate to cases requiring a CRU certificate and provide that this must be applied for as soon as possible and extends the time for payment to 30 days) where the claimant has requested an interim payment of more than £1000 the defendant must pay-*

1. *the full amount requested less any deductible amount which is payable to the CRU;*
2. *the amount of £1000; or*
3. *some other amount of more than £1000 but less than the amount requested by the claimant,*

*within 15 days of receiving the interim settlement pack.*

***7.20*** *Where a payment is made under paragraphs 7.19(2) or (3) the defendant must briefly explain in the Interim Settlement Pack why the full amount requested by the claimant is not agreed.*

***7.21*** *Where the claim is valued at more than £10,000 the claimant may use the procedure at paragraphs 7.13 to 7.20 to request more than one interim payment.*

*Interim Payment - supplementary provisions*

***7.28*** *Where the defendant does not comply with paragraphs 7.18 or 7.19 the claimant may start proceedings under Part 7 of the CPR and apply to the court for an interim payment in those proceedings.*

***7.29*** *Where the defendant does comply with paragraph 7.19(2) or (3) but the claimant is not content with the amount paid, the claimant may still start proceedings. However, the court will order the defendant to pay no more than the Stage 2 fixed costs where the court awards an interim payment of no more than the amount offered by the defendant or the court makes no award.*

***7.30*** *Where paragraph 7.28 or 7.29 applies the claimant must give notice to the defendant that the claim will no longer continue under this Protocol. Unless the claimant’s notice is sent to the defendant within 10 days after the expiry of the period in paragraphs 7.18 7.19 or 7.25 as appropriate, the claim will continue under this protocol.*

In his witness statement dated 15.9.15 Marco Bartalotta, a partner in Landsdale Holdsworth, submits that *‘a stay in accordance with paragraph 7.12 is not necessary to allow a claimant to seek interim damages in accordance with paragraph 7.13 - 7.17’.* I am not satisfied that this interpretation is correct.

Para 7.12 specifically states that

*‘Where the Claimant needs to obtain a subsequent expert medical report or a non-medical report, the parties should agree to stay the process in this Protocol for a suitable period. The claimant may then request an interim payment in accordance with paragraphs 7.13 to 7.16.*

Just because these paragraphs have a separate heading, this does not imply any separate right to apply for an interim payment. There is no other paragraph within the protocol giving the right to an application for an interim payment to be made.

This interpretation is supported by reference to the aims of the protocol, which are

*‘to ensure that*

1. *the defendant pays damages and costs using the process set out in the protocol without the need for the claimant to start proceedings*
2. *Damages are paid within a reasonable time and*
3. *The claimants legal representatives receives the fixed costs at each appropriate stage.*

and the provision in 7.70 that if damages cannot be agreed, the defendant must pay to the claimant a *‘non-settlement payment’* of ‘*the amount of their final offer within the court proceedings pack’*. This in effect amounts to an interim payment pending the Stage 3 hearing.

I am also supported in this interpretation by the notes in the White Book at *C13A-002 (Page 2866)* which state: *‘further there are numerous provisions enabling the claimant to request and the defendant to make interim payments* ***where there is a stay of the Stage 2 process (para 7.12 et seq)*** *(my emphasis).*

It is the claimants case that if 7.12 only allows them to request a stay if a further medical report is recommended, and therefore 7.13-7.17 does not give rise to an automatic right to an interim payment, the claimant will be prejudiced as they will have to wait until they are ready to settle for any interim payment of damages, and also they will be unable to fund recommended treatment. It is the defendants case that a stay is a prerequisite of any application for an interim payment, but both parties submit that a stay can only be requested if a further medical report is recommended. I disagree with this last submission.

In my view, the intention of these rules is clear. If the Claimant is content for their case to be disposed of on the current medical evidence, it will be dealt with quickly within the portal. In effect, the provisions of 7.70 provide for an interim payment to be made to them equal to the defendants valuation of the claim, which will often be likely to be more than any interim payment they could expect under CPR 25.7.

However the claimant may wish to delay settlement for a number of reasons:

1. The GP medical report may recommend a further medical report, for example, a psychiatric or psychological report, or a report from another specialist discipline such as a plastic surgeon, or other consultant, or a further report after a period of time from the GP.
2. Alternatively, as in this case, the report may give a provisional prognosis, which may be a lengthy one, with a proviso that if the claimant fails to recover in accordance with that prognosis a further report will be required.
3. Finally, the report may give a final prognosis, which again may be a lengthy one, but the claimant may wish to delay settlement, either to seek any treatment recommended, such as physiotherapy, or simply to be sure that they will recover as predicted.

This is why, in my view, the word ‘any’ is used, rather than ‘the’ in 7.14, as in (b) and (c), there will not be such a recommendation at present.

If situation (b) or (c) exists, I am satisfied that the claimant can request a stay under 7.12, giving their reasons. This will then allow them to apply for an interim payment and the provisions set out in the rules will apply too both parties. This interpretation avoids any prejudice to the claimant in having to delay settlement, or being unable to fund recommended treatment, or the need for them to start proceedings, and therefore accords with the aims of the protocol above.

I am therefore satisfied that on any reading 7.12 must be a prerequisite of 7.13-17 and that on the evidence before me today the claimant has acted unreasonably in causing this claim to exit the portal because unless they have requested a stay they were not entitled to request an interim payment within the portal.

I should add that, although I have not heard argument on this point as it did not arise in this case, if the claimant requests a stay in the circumstances in (b) and (c), in my judgment the defendant should consent to this.

If they refuse to consent to a stay to enable the claimant to apply for an interim payment, this would in my view be unreasonable, because it cannot have been the intention of the portal rules to require a claimant to settle their claim on the basis of a prognosis period which has not expired if they do not wish to do so, or to be unable to fund recommended treatment. It also cannot have been intended to put them in a less favourable position than a claimant who chooses to settle on the available medical evidence so by being unable to obtain an interim payment in respect of general damages until the conclusion of the case. In such circumstances if the claimant then chose to exit, my view at present is that this would not amount to the claimant acting unreasonably in causing the claim to exit the portal.

With regard to the defendants contention that this is an abuse of process, I do not consider this to be made out on this case alone. However I do not rule out the prospect that if findings of unreasonable exit are made in large numbers of cases involving this firm on the same facts, that a court could not find this in the future.

I am also not satisfied that it was an abuse of process because it was disproportionate to exit when the amount in dispute was only £338.57. As I have stated, the application is for an interim payment of £1,352.07, with credit being given, which in my view is correct.

7.27 provides that *‘Where the defendant does comply with paragraph 7.18(2) or (3) but the claimant is not content with the amount paid, the claimant may still start proceedings.  However, the court will order the defendant to pay no more than the Stage 2 fixed costs where the court awards an interim payment of no more than the amount offered by the defendant or the court makes no award’.* If the claimant was only able to apply for an interim payment for the balance in dispute, **7.27** would not make sense, as *‘the amount offered by the defendant’* would already have been paid within the portal. The interim payment must therefore be for the full amount demanded, which is not disproportionate.

I will therefore order the interim payment in the sum of £1,352.07, with credit given for the payment already made but I will reserve the costs of this application, as if the claimants costs are limited to portal costs only, there will be consequences for the costs of this application. I will also reserve this case to myself and order it to be listed for disposal on the first available date after two months as requested by both parties, as stay is not sought in this case.

Karen Doyle

District Judge

The County Court at Birkenhead

17.9.15

Claim No B43YM108

IN THE COUNTY COURT AT BIRKENHEAD

Between

Dawn Christine Luvin

v

Ageas Insurance Limited

ORDER

1. The Defendant shall make an interim payment of £1,352.07, the claimant giving credit for a voluntary interim payment made within the RTA portal of £1,013.50. The balance payable is £338.57.
2. The costs of this application are reserved to the final hearing.
3. The case shall be listed for disposal on the first available date after 18.11.15, with an estimated length of hearing of 30 minutes, reserved to District Judge Doyle.