

JERSEY / JUDGMENT

Blackmore -v- Amplus Limited

[2014] JRC 086 (31 March 2014)

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judgment

the master: 1. This is an application by the plaintiff to adduce expert evidence in the form of an employment expert to address the issue of the plaintiff's future earning capacity. 2. The plaintiff was involved in a tragic incident when a crane lorry he was operating at a building site fell on him causing severe injuries to his left leg and ankle. Liability is admitted although an allegation of contributory negligence remains to be resolved. The plaintiff has not worked since suffering his injuries. 3. At paragraph 45 of the plaintiff's amended order of justice, it is pleaded that the plaintiff has the potential for a return to work albeit he would not be able to return to the activities of running, climbing ladders and walking on uneven ground. The plaintiff has no relevant qualification enabling him to take up immediate employment in another field at the same level of earnings. The issue is therefore what role he might be able to perform in the future and what he might be able to earn. The plaintiff wishes to call an employment expert in support of his case. 4. The relevant test as to whether the court should allow expert evidence was considered in Attorney General-v-Bhojwani

[2009] JRC 207A . At paragraph 21 Commissioner Clyde-Smith stated as follows:- "Whether a witness is competent to give evidence as an expert is for the trial judge to determine (Archbold 10-65). The accepted formulation of the test under English law is that by King CJ in the South Australian case R-v-Bonython

(1984) 38 SASR 45 (see Archbold 2009 at paragraph 1065) in which he sets out two questions for the judge to decide:- "The general rule is that a witness may give evidence only as to matters observed by him. His opinions are not admissible. One of the recognised exceptions to this rule is that which relates to the opinions of an expert. This exception is confined to subjects which are not, or are not wholly within the knowledge and experience of ordinary persons. On such subjects a witness may be allowed to express opinions if the witness is shown to possess sufficient knowledge or experience in relation to the subject upon which the opinion is sought to render his opinion of assistance to the court. Before admitting the opinion of a witness into evidence as expert testimony, the judge must consider and decide two questions. The first is whether the subject matter of the opinion falls within the class of subjects upon which expert testimony is permissible. This may be

divided into two parts:- (a) whether the subject matter of the opinion is such that a person without instruction or experience in the area of knowledge or human experience would be able to form a sound judgment on the matter without the assistance of witnesses possessing special knowledge or experience in the area, and (b) whether the subject matter of the opinion forms part of a body of knowledge or experience which is sufficiently organized or recognized to be accepted as a reliable body of knowledge or experience, a special acquaintance with which by the witness would render his opinion of assistance to the court. The second question is whether the witness has acquired by study or experience sufficient knowledge of the subject to render his opinion of value in resolving the issues before the court." 5. Before me it was accepted by both parties that the discipline of employment experts is sufficiently organised or recognised to be accepted as a reliable body of knowledge or experience which could render the opinion of such an expert of assistance to the court. I have therefore proceeded on this assumption without deciding the point. 6. The issue I therefore have to decide is whether the Royal Court is able to form its own judgment on the issue of what the plaintiff might be able to earn in the future without the assistance of an employment expert. 7. After considering the careful submissions of Advocate Boothman and Advocate Dorey, I have reached the view that the Royal Court and, in particular the Jurats, will be able to form their own view of the plaintiff's future earning capacity and that expert evidence in the field of an employment expert is not necessary. My reasons are as follows. 8. Firstly, the Jurats will have the benefit of medical expert evidence. That evidence I was told will extend to what types of physical activity the plaintiff will be able to carry out following his injuries and therefore what fields of work may be open to him. In particular, the medical experts will consider how far he will be able to carry out the sort of manual work he was carrying out prior to the accident and what range of physical activities would be reasonable to expect him to be able to carry out in the work environment as a result of his injuries. Other types of issues the medical experts can address may include questions such as whether the plaintiff will be able to carry out any manual work at all, if so how much, could he drive and if so for what periods, or does any role have to be desk based? They will also consider by reference to his injuries whether he can work full or part time and if the latter for what length of time. 9. Secondly, there are helpful statistics available from the States of Jersey statistics unit setting out average earnings by sector. This will be useful information for the Jurats in assessing the plaintiff's earning capacity depending on the areas of work that might be open to him from a medical perspective. The relevant statistics can be produced to the court and submissions made on them. 10. Thirdly, the plaintiff himself will be able to explain what steps he has taken in light of his injuries to try to find alternative work. This is part of his duty to show he has mitigated his loss of earnings. That evidence will extend to discussions he has had with recruitment consultants/agencies, the Social Security Department and any other government bodies offering specialist help. I note, as an example, that the Social Security Department contains a special team of advisers to help and support individuals with special employment needs or employment barriers. The plaintiff is entitled to give evidence about any information or guidance he has received as

to his prospects before the court in support of his case as to his future prospects. 11. I accept that the Jurats will have to make a judgment about the ability of the plaintiff to return to paid work. However I consider that the Jurats are extremely well placed to form the assessment required in this case with the benefit of the above information. One of the key criteria for selection of a Jurat is the extent of their knowledge and experience of people as well as of the Island. This is why they are able to assess to what extent the plaintiff will be able to return to work and at what level with the benefit of the material I have described. I do not therefore consider that an employment expert is needed to help the Jurats make the assessment they will have to make. 12. Finally, I also do not regard this case as being sufficiently out of the ordinary to warrant an employment expert. While the injuries that have been suffered by the plaintiff are tragic and serious, the point for the court to decide is relatively straightforward and can occur on the basis I have suggested. 13. I therefore refuse the plaintiff's application. Authorities Attorney General-v-Bhojwani

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