

Insurance & Personal Injury

Exaggerating a claim may lead to unfavourable costs order even if the claimant succeeds in trial

Introduction

It is not uncommon for claimants in personal injury claims to seek the highest possible sum of compensation. However, in a recent judgement in *Singh Bal Winder v IWS Waste Management Co Ltd And Another* [2018] HKCFI 2242 (12 October 2018), the Court criticised the unreasonableness and the exaggeration of claim advanced by the claimant. Ultimately, the Court even penalised the claimant by reducing a significant portion of his legal costs that he should have been entitled to but for his unreasonable behaviour.

Case background

The case concerned a personal injury claim arising from a slip and fall accident at work. The claimant, who was working as a lorry driver employed by the defendant company, originally claimed a sum of around HK\$4,300,000 plus interest.

The defendant had made sanctioned payments to the Court in an aggregated sum of HK\$460,000 (to be discussed in the section below). The claimant did not accept the same and the case went all the way to trial in which the Court awarded around HK\$475,000 in favour of the claimant. By comparing the final award with the sanctioned payments, the claimant has beaten the sanctioned payment by around HK\$15,000. Therefore, the claimant should be entitled to recover all his costs under normal circumstances.

Principles of sanctioned payment

A sanctioned payment is a sum of money put into the Court by a defendant to seek to settle the dispute with the claimant out of court. In the event that a claimant accepts the same within the prescribed time period, such sum would be paid out of Court to the claimant and the proceedings would be settled without going to trial. The claimant is also entitled to his/her costs of the legal proceedings up to the date of serving the notice of acceptance of the sanctioned payment.

In the event that a claimant refuses to accept the sanctioned payment which is higher than the sum ultimately awarded to the claimant after trial, the Court may disallow the claimant the costs incurred after the latest possible date of acceptance of the sanctioned payment.

Even if a claimant is only able to recover more than the sanctioned payment by “a small margin”, the claimant would still be considered to have succeeded and should be entitled to

recover all his costs. However, such principle does not take away the discretion of the Court to award costs in a way that it sees just and reasonable.

The unreasonable conducts of the claimant

Therefore, under normal circumstances the claimant in *Singh Bal Winder* should be entitled to recover all his costs of the proceedings as he succeeded in trial and achieved a sum higher than the defendant's sanctioned payments. The Court however found that the claimant's conducts were culpable.

In particular, the amount of claim in the sum of over HK\$4 million was considered to be "striking" by the Court as the ultimate sum awarded was merely 10% of the claim due to the dismissal of the majority of the claim concerning the loss of earnings. The experts for both parties also accepted that the claimant had exaggerated his symptoms.

Whilst the claimant contended that his complaints were all along "consistent", the Court held that just because the complaints were "consistent" would not necessarily mean that they were truthful. Further, the Court found that the claimant did not behave like what one would expect of a reasonable person with the alleged symptoms and disabilities. In particular, if a victim truthfully believes that he/she is suffering from the alleged pain, he/she will likely take very active actions to seek medical assistance. Nevertheless, it was not the case here.

The Court also considered that the claimant lied in Court that he was conducting "test-driving" a lorry of his friend in an attempt to establish his case that he was suffering from burning pain in the back of thigh and to maintain his claim that he could not return to job.

In view of the above, the Court considered it has all along been a conscious effort for the claimant to malingering and not to return to his previous work in order to make a larger loss of earnings claim. Whilst the Court opined that the defendant could be criticised by not making a slightly higher sanctioned payment, upon consideration of all the facts of the case, it was held that in the absence of the claimant's malingering behaviour the proceedings would not have unnecessarily prolonged and costs could have been saved. As such, the Court ordered that the defendant is only liable to pay 50% of the claimant's costs of the action.

Takeaway points

It must be noted that when exercising its discretion on costs, the Court maintains a wide discretion to consider all circumstances of each particular case, including but not limited to the conducts of the claimant in pursuing his/her claims against the defendant. The *Singh Bal Winder* case shows that exaggerating a claim together with unreasonable conduct would result in considerable reduction of the award of legal costs even if the claimant succeeds in trial and in beating the sanctioned payment made by the defendant.

For enquiries, please contact our Insurance & Personal Injury Department:

E: insurance_pi@onc.hk
W: www.onc.hk

T: (852) 2810 1212
F: (852) 2804 6311

19th Floor, Three Exchange Square, 8 Connaught Place, Central, Hong Kong

Important: The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

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