

**IN THE DISTRICT COURT  
AT MANUKAU**

**I TE KŌTI-Ā-ROHE  
KI MANUKAU**

**CIV-2018-092-000793  
[2021] NZDC 1164**

BETWEEN	GURPREET SINGH Plaintiff
AND	PRABH JI First Defendant
AND	EXPERT MATHS TUITION LIMITED Second Defendant

Appearances: D Purusram for the Plaintiff  
S C R Raju for the First Defendant

Judgment: 26 January 2021

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**SUPPLEMENTARY DECISION OF JUDGE R McILRAITH  
[In relation to costs]**

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[1] Mr Gurpreet Singh filed a claim against Ms Prabh Ji. As a result of Ms Ji's driving, she collided with the car driven by Mr Singh in 2017. The damage was sufficient to write Mr Singh's car off. After the insurance company who maintained a policy on Ms Ji's car refused to cover the damage inflicted upon Mr Singh's vehicle, Mr Singh was unable to convince Ms Ji, or the company that owned the car, to compensate him. He therefore commenced the proceedings.

[2] Mr Singh joined the company that owned the car as second defendant (Expert Maths Tuition Limited), on the basis that the company was vicariously liable for the actions of Ms Ji. In my Judgment dated 3 November 2020 I rejected this claim. The basis for my rejection was that Ms Ji was neither an employee of the company in question, nor acting in the course of any duty, on the night the collision occurred.

[3] The original claim against Ms Ji alone had been settled and therefore, aside from issues related to costs, I disposed of the case. I now address the issue of costs at the request of the parties which have filed extensive memoranda.

[4] As I stated in my Judgment, there can be no award of costs in relation to the claim of vicarious liability against Expert Maths Tuition Limited as the plaintiff was unsuccessful and the defendants unrepresented. All parties have accepted this decision. Therefore, the only remaining question is to determine costs applicable to the settled claim against Ms Ji.

[5] The costs regime is governed by Part 14 of the District Court Rules 2014. Costs are at the discretion of the court, but the costs regime is of a regulatory character and it is important that its integrity is maintained.

[6] I have read and I acknowledge the submissions as to costs from both sides.

[7] Counsel for Mr Singh submits that costs should be awarded to the plaintiff in the category 2 scale. This amounts to \$1910.00 per day, coming to a sum of \$16,608.87. The submission also requests an uplift, on the basis that the first defendant took a dilatory approach to the proceedings, raising hopeless defences. Additionally, a reasonable settlement offer of \$50,000 was made and refused at an early stage. The final settlement amount of \$40,000 demonstrates the reasonability of that offer. Further reasonable settlement offers were made and refused. Finally, the first defendant has breached a court related undertaking by failing to comply with her diversion scheme that arose from the careless driving that resulted in the collision.

[8] Counsel for Ms Ji rejects the submission that the defences raised were hopeless. Counsel notes that the damage to the vehicle comprised only \$30,000 of a claimed \$75,000 sum. Defences were therefore primarily intended to reduce the awardable damages that were not related to the economic damage to the car. It is submitted that the plaintiff's claim was inflated beyond reason. It is stated that earlier settlement negotiations failed on the basis that the plaintiff required lump sum payments and guarantees from the second defendant that were impossible demands. The second defendant rejected any liability, and the first defendant categorically

lacked the ability to make a lump sum payment of the size demanded. The \$50,000 amount offered as a condition for a settlement was reduced to \$40,000, and counsel for the first defendant submits that a reduction of 20% is not insignificant. Finally, the original claim was for \$70,000, and the final settlement amount was set at \$40,000, indicating that both sides secured some success. Therefore, costs should lie as they fall.

[9] Typically, the party who has failed with respect to a proceeding should pay costs to the party who succeeds. Nonetheless, the court may refuse to make a costs order for a variety of reasons related to the course of, conduct of the parties during, and outcome of, the proceedings. Where both parties have secured a degree of success, it may be appropriate to order that costs lie where they fall.

[10] The statement of claim of the Plaintiff was for an amount in excess of \$70,000. The case against Ms Ji was settled at an early stage, before any hearing had been required. On the basis of that settlement, Ms Ji filed an admission with the Court that she caused loss to Mr Singh and judgment in the sum of \$40,000 was entered against her.

[11] I do not accept the submission by counsel for the plaintiff that Ms Ji took a dilatory approach to her defence. The settlement came at an early stage in the proceedings, and I accept that the plaintiff placed a great deal of weight on efforts to secure a second guarantor for compensation. This position was reinforced when the plaintiff attempted to join the second defendant as vicariously liable despite settlement of the primary claim. The plaintiff unsuccessfully pursued this position before me, suggesting that it was a less than reasonable demand during settlement negotiations given the lack of a factual basis for vicarious liability.

[12] As settlement with Ms Ji occurred before any hearings took place, the content and quality of the defences raised by her are not of significant import. No evidence was ever tested in relation to this proceeding and it is difficult to conclude that a defence would be hopeless merely from a preliminary statement of defence.

[13] The alleged failure to comply with the Police Adult Diversion Scheme is not an undertaking related to the Court and has not contributed to unnecessary delay under any of the grounds in Rule 14.6. The undertaking is to the Police and is made in exchange for a decision not to prosecute. It is not amenable to consideration for increased costs.

[14] On this basis, there are no grounds for an award of increased costs.

[15] Additionally, the settlement amount agreed to was approximately half of that which the plaintiff sought in the statement of claim. It appears that the claims of special damages were abandoned during settlement negotiations. On this basis, there has been success on both sides, as the plaintiff established by admission that Ms Ji was responsible for the collision, and she successfully excluded much of the alleged damage. Given the mixed success of both parties, the fact that settlement occurred very early in the proceedings, and the ultimately unsuccessful persistence of the plaintiff in seeking a second guarantor of compensation, I consider that an award of costs would be inappropriate under rule 14.7 of the District Court Rules 2014.

[16] Costs lie as they fall.

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Judge R McIlraith  
District Court Judge

Date of authentication: 27/01/2021  
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