

Opinion

6 February 2004

Instructions

1. We have been requested to give a short Opinion on the merits of this case for the purposes of the Legal Services Commission. We will not set out the history of the case which is fully set out in the papers

Consultation

2. In the course of a lengthy consultation, Mr Walker was advised by Leading Counsel as follows:
 - a) He did not believe that the advice given to him in consultation with his then Leading Counsel on 29 March 1996 that he could face a finding of up to 50% contributory negligence was advice that no properly instructed barrister could give. This was advice which Mr Walker found very difficult to accept. However, questioning of him in consultation revealed his evidence as to the time that he was standing up on the JCB was markedly longer than the account that he gave in his signed statement of 6 February 1990. He was therefore on risk that the Court would have found that he had only been there a short time, although the Defendant's contention that he had jumped up for no reason was incredible. Further, there was a significant risk that he would be found negligent in getting up in any event whilst the engine was still running and the bucket still raised.
 - b) The advice given to him by his solicitors in their letter subsequent to the consultation and to Mr Walker's above knee amputation to the effect that quantification of his claim would have to wait until after the trial on liability, and the obtaining of further medical reports, was obviously sensible.
 - c) In those circumstances, no sensible counsel should have been willing to compromise his claim at the hearing on liability on 13 December 1996 without that further information, and the assertion that he ran the risk of losing altogether was untenable. The furthest that Counsel should have gone on that occasion was to settle liability on a 50% basis, although even

then it does not seem that Mr Walker was in any state to agree to such an apportionment.

- d) In those circumstances, on the basis of Junior Counsel's quantification of the likely quantum of the claim, once further information had been obtained, of £430,000, it looked as if Mr Walker was entitled to a further sum in the region of £120,000.
 - e) We appreciated that the costs / benefits aspect of this, and given that the solicitor Defendants had indicated a willingness to go to mediation, we strongly advised Mr Walker that this is what he should do, and do before any amendment had to be made to the Particulars of Claim, particularly as such would reveal that essentially the solicitors' advice was right and that of Leading Counsel was wrong.
 - f) Mr Walker was very unhappy with this advice but agreed to go away and think about it, it having been stressed to him that if he went to mediation he would have to do so on the basis that he would be willing to settle at or about the sum indicated above.
3. We understand that Mr Walker has now given written instructions to that effect and therefore we advise that his funding should be extended to take the case beyond the Case Management Conference and on to mediation.

**Lamb Chambers
Temple
London EC4Y 7AS**

Christopher Gardner QC

**Paul Stewart
6 February 2004**