



IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO: G2024-0142

BETWEEN:

JOHN SHAW

Plaintiff

-and-

KEELEY-SHAYE NICOLE EBANKS

Defendant

Appearances: **Mr Delroy Murray of Murray & Westerborg for the Plaintiff**
 Mr Colm Flanagan and Ms Sara Brady of Nelsons for the Defendant

Before: **The Honourable Justice Jalil Asif KC**

Heard: **14 November 2024**

**Ex tempore judgment
delivered:** **14 November 2024**

**Finalised judgment
approved:** **18 November 2024**

*Motor vehicle accident claim—limitation period—whether court has any power to extend limitation period—
interrelation between Motor Vehicle Insurance (Third Party Risks) Act, s.17 and Limitation Act, s.39*

JUDGMENT

1. This is my judgment on the Defendant's application by summons filed on 3 September 2024 to strike out this claim as being statute barred.
2. I can set out the underlying facts very briefly. Mr Shaw was the victim of a road traffic accident on 9 January 2021, in which he alleges that he suffered personal injuries as well as damage to his car. Mr Murray, who has appeared on the Plaintiff's behalf before me this morning, has explained that assembling the medical evidence in support of the Plaintiff's intended claim took some time to achieve, and when the draft writ was finally ready to be issued at the end of 2023, Mr Shaw either was not available to approve the writ or did not have the funds to hand to enable the writ to be issued. In the event, Mr Murray applied *ex parte* to the court on 21 May 2024, prior to issue of the writ, for an extension of the limitation period pursuant to s.39 of the Limitation Act.
3. That application came before me, and I dismissed it at that stage as being premature in circumstances where the writ had not yet even been issued, and in addition, where it seemed to me that the summons ought to be heard on an *inter partes* basis.
4. Following that, the writ was issued on 16 July 2024 and served shortly thereafter, and on 3 September 2024 the Defendant issued her summons to strike out the claim on the basis that it is statute barred, as I have indicated.
5. Mr Murray on behalf of Mr Shaw, does not dispute that the writ was issued more than three years after the date of the accident but invites me to extend time for Mr Shaw to bring his claim, relying on s.39 of the Limitation Act.
6. Briefly, s.39 provides as follows:

“39(1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which –

- (a) section 13 or section 16 prejudices the plaintiff or any person whom he represents; and*
- (b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents,*

the court may direct that those provisions shall not apply to the action, or shall not apply to any specified cause of action to which the action relates.”

7. Section 13 of the Limitation Act is the well-known provision that provides for a 3-year limitation period for personal injury claims, where the three years runs either from the date of the injury or the Plaintiff's date of knowledge, whichever is later.
8. Section 39(3) of the Limitation Act then sets out certain criteria which the court is required to take into consideration when determining how to exercise its discretion.
9. Mr Murray prays in aid of the Plaintiff's argument that it would be equitable to extend the limitation period that the Defendant's insurance company in this case has apparently admitted liability and paid for the repairs to Mr Shaw's vehicle. He contends that it would be, for that reason amongst others, unfair for the Defendant's insurance company now to say that it is not liable to pay Mr Shaw compensation in respect of the personal injuries that he also suffered in the accident in question.
10. The fundamental question, though, is whether s.39 is available to Mr Shaw at all.
11. Mr Flanagan, who appears for the Defendant, contends that it is not available, having regard to the provisions of s.17 of the Motor Vehicle Insurance (Third Party Risks) Act (2012 Revision). Section 17 of that Act provides.

“17. Notwithstanding anything contained in any other law or in any rule of law or equity no action shall be brought in any court, by or on behalf of any person after the end of the period of 3 years from the date on which a cause of action accrued for any injury or damage against or in respect of which a vehicle is required to be insured under this Law.”

12. I asked Mr Murray to explain how he contends that the opening words of s.17 of the Motor Vehicle Insurance Act do not exclude the operation of the Limitation Act generally, and s.39 of the Act in particular. His answer was that it was a question of justice, and it could not sensibly have been Parliament's intention that the Motor Vehicle Insurance Act should override the discretion within s.39 of the Limitation Act to extend limitation periods in personal injury cases where it is appropriate to do so.
13. This question has been considered twice in previous cases that I was shown by Mr Flanagan. First of all by Ramsey-Hale J, as she then was in, *Andrade v Frederick* (unreported 2 February 2021), and more recently by Walters Actg. J in *Powis v Crawford* (unreported 24 March 2023).
14. In *Andrade*, Justice Ramsey-Hale disagreed with a previous decision of McMillan J in *Bennett v Diaz* that s.17 of the Motor Vehicle Insurance Act had been impliedly repealed by s.13 of the Limitation

Act. She explained how the two were compatible and held that s.17 does apply to motor vehicle accidents within the Islands.

15. In a fully reasoned judgment, Walters Actg. J followed that decision in *Powis v Crawford*, as I mentioned a moment ago.
16. I have given very careful consideration to the arguments Mr Murray has put forward on behalf of Mr Shaw. I cannot see how I can refuse to give effect to the plain words of the opening clause of s.17 of the Motor Vehicle Insurance Act, which, as I have set out, expressly states that “**Notwithstanding anything contained in any other law or in any rule of law or equity, no action shall be brought ...**” (emphasis added). It seems to me that it is plain from those words that s.17 of the Motor Vehicle Insurance Act trumps any other statutory provision or rule of law regarding limitation periods. In my judgment, s.39 of the Limitation Act is therefore simply not available in a case like this. Harsh though it may seem to Mr Shaw in his particular case, given that the Defendant’s insurers have accepted liability, Parliament has made the decision that a three-year time limit to commence a personal injuries claim is to be applied strictly in motor vehicle accident claims and that, as a result of the operation of s.17 of the Motor Vehicle Insurance Act, there is no discretionary power under s.39 of the Limitation Act to extend time to bring a claim.
17. Parliament has taken the view that, in the context of road traffic cases, three years for a plaintiff to put together the materials to commence their proceedings is an adequate period. I simply have no power under the legislation to extend time in the Plaintiff’s favour.
18. In those circumstances the Defendant's summons must succeed, and the action must be struck out.
19. In respect of costs, Mr Flanagan informed me that there are two further cases, pre-dating McMillan J’s judgment in *Bennett v Diaz*, which reached the same conclusion on the exclusion of s.39 of the Limitation Act as did Ramsey-Hale J and Walters Actg. J, and as I have done. The Defendant’s attorneys wrote to the Plaintiff’s attorneys on 29 July 2024 explaining the Defendant’s argument and inviting Mr Shaw to concede that the claim was time barred and to withdraw the proceedings. They indicated that the Defendant would issue a summons to strike out the claim and would seek costs on the indemnity basis if the Plaintiff did not do so. Mr Shaw did not withdraw his claim. The Defendant issued her summons and it has been argued before me this morning, taking up court time and time of the attorneys. Mr Murray did not put forward before me any reasoned basis to support his argument

as to the availability of s.39 of the Limitation Act in motor vehicle claims other than by way of a resort to broad concepts of justice. He did not grapple with the statutory wording of s.17 of the Motor Vehicle Insurance Act or the previous authorities at all.

20. In the circumstances, and having regard to the letter from the Defendant's attorneys on 29 July 2024, I have reached the conclusion that it was improper and unreasonable to continue with the proceedings after 29 July 2024, within the meaning of GCR O.62, r.4(11). I therefore order that the Plaintiff is to pay the defendant's costs on the standard basis up to 29 July 2024 and on the indemnity basis from 29 July 2024 onwards.

Dated 14 November 2024



**THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT**