

**COURT:** SUPREME COURT OF TASMANIA

**CITATION:** *Raper v Bowden* [2016] TASSC 35

**PARTIES:** RAPER, Holly (by her mother and litigation guardian RAPER, Elaine)  
v  
BOWDEN, David  
BOWDEN, Jocelyn

**FILE NO:** 959/2014

**DELIVERED ON:** 15 July 2016

**DELIVERED AT:** Hobart

**HEARING DATES:** 25-29 April,  
3, 4 May 2016 (on Commission)  
11-13, 16-19, 23-25 May,  
3, 6-9 June,  
15 July 2016

**JUDGMENT OF:** Estcourt J

## Future transport

409 The plaintiff's claim under this head is particularised as follows:

"Future Transport

The Plaintiff needs a suitable vehicle, such as a VW Caravelle Executive.

Total Capital Cost: £63,640

(Including adaptation costs)

Replacement every 5 years: £12,728 pa

Additional running costs.

Insurance: £1,136 pa

Additional mileage: £400 p.a. (1,000 @ 0.40 ppm)

Valeting: £480 pa (£40 per month)

Total Annual Costs: £14,744 or £283.54 pw

The plaintiff claims £14,744 for life, discounted at 3% is £228,249.00 plus £63,646 = Total: £291,895.00".

410 The plaintiff's submissions under this head are as follows:

"Holly's transport needs and the reasonable value thereof – the claim for the past has been accepted by the defendants. It is in the sum of £93,696 (P37) to 31st May 2016 and continuing to the date of judgment at £89.00 a day.

To date, Holly has rarely been able to leave her home, despite having a vehicle fit to transport her. Her ability to access sensory stimulus outside her home is dependent on suitable transport to get her, her parents and carers to places of interest to Holly. The evidence from Mr Kiely established the price to purchase a similar vehicle to the one she has.

The defendants say Holly's transport costs should be met through a government subsidised scheme (Motability) and, in any event, a vehicle at a lower price is reasonable.

For the reasons set out under the section entitled 'pecuniary losses' any benefit that accrues to Holly via the Motability Scheme should be disregarded.

The vehicle proposed by Mr Kiely for purchase is reasonable for the following reasons:

- i it is the same vehicle that Holly has used (albeit a newer model) without complaint or difficulty;
- ii Mr Kiely and Elaine tested that vehicle (the VW Caravelle) and found it to be suitable for Holly's needs, including climate adjustment in the rear of the vehicle;
- iii Holly requires a vehicle, modified with a lower floor to enable wheelchair access;
- iv the vehicles provided by Motobility may not have the necessary modifications to the chassis to lower the floor and provide wheelchair access;
- v the modifications to the vehicle require replacing every 5 years;

The defendants' criticism of Mr Kiely – to the effect that he profited from the short term lease arrangement - was grossly unfair. He gave evidence that he was not approached to change 'that vehicle or look for alternatives' and he provided a quote for the purchase of a suitable vehicle (rather than continuing a lease) on 4th July 2013, within months of entering into the lease arrangement with Elaine Raper."

411

The defendants' submissions are as follows:

"9.281 The Plaintiff claims a need for a vehicle such as a VW Caravelle Executive but when considering the evidence of Ms Dennehy, including her comment at T 14, is clear that such a vehicle is a desire rather than a need. In any event the Plaintiff's needs can be most effectively met by the Motobility Scheme.

9.282 The evidence of Mr Kiely should be completely disregarded as it is clear from his past behaviour that is a man not to be trusted or believed because the way he has grossly overcharged the Plaintiff and now seeks to justify such charges. It is pertinent to note that Ms Dennehy was able to obtain a quote for a similar vehicle being rented to the Plaintiff from Mr Kiely's organisation for a significantly lesser sum. Mr Kiely was charging on average £2823 per month plus insurance whereas Angel Vehicle Hire would provide a similar vehicle for £1278 per month including full insurance (Ex D5, p 5).

9.283 Mr Kiely did not even check the far cheaper quotes obtained by Ms Dennehy despite being in receipt of her report (T 9). The only inference that can be drawn is that he knew that if he checked her quotes he would find that

they were accurate and confirm his overcharging. Furthermore his failure to check leaves Ms Dennehy's evidence uncontradicted on that point.

9.284 Mr Kiely was dismissive of the Motobility Scheme but all his 'concerns' were comprehensively refuted by Ms Dennehy who was very experienced in the relevant areas. As she noted (T 11);

*'Personally if I was in that position I would always use the Motobility Scheme it's an absolutely fabulous scheme. All you have to do is put fuel and oil in your vehicle, it is insured, the tyres are covered, there is a breakdown cover for you, when they service it they'll come and collect it and take it away because of Holly's predicament, you know, it's seamless.'*

9.285 She noted that you'd never come across a situation where a vehicle is not available suit a person's particular needs and also noted that it was the largest motor vehicle leasing company in Europe with 501 models available from different providers (p5).

9.286 The cost for the Plaintiff of using the Scheme for a five year period was an upfront payment of £5415 (Ex D5 p10) and the foregoing of £14,937 of the Plaintiff's higher rate component of a disability living allowance.

9.287 Because of the limited mileage that the vehicle would do (bearing in mind that to date it has done only 5000 miles per year and we don't know how many miles it had travelled before being rented to the Plaintiff) Ms Dennehy disputed Mr Kiely's requirement for a replacement vehicle every five years, even allowing for the wear and tear of the internal equipment the precise nature of which was not articulated by Mr Kiely. The evidence suggests that the vehicle would travel only about 2,000 miles per year with a running cost for fuel of between £227 and £260 per year depending on the size of the engine (Ex D6, p 5). It also should be noted that it would be far cheaper to replace the interior harnesses than the entire vehicle and there would not seem to any other interior equipment that would wear prematurely.

9.288 Assuming that a new vehicle is acquired every five years and a 15 year life expectancy the total cost for future transport will be £61,957.05. This amount will be considerably lower if, as is highly likely, the vehicle was to be retained for any period longer than five years. A small charge for valeting could also be allowed but bearing in mind the limited use of the vehicle that amount should be no more than £200 per year adding a further £3000 to the above cost.

9.289 Ms Dennehy also notes that if a vehicle was to be purchased it would be a waste of money purchasing a Caravelle rather than a transporter and at T 5 stated:

'My professional view is that the Caravelle is marketed in the UK as a luxury people carrier, it's a high-end vehicle with lots of sort of additional features, a lot of the inside of the vehicle has to be ripped out and actually just thrown away to enable conversion to a wheelchair accessible vehicle to take place. So I wouldn't recommend it on that precedent alone, the other thing is I believe that a lot of the features and refinements on the Caravelle are such that they're just desires people may purchase as a passenger carrier.'

9.290 If the court finds that the Plaintiff should be compensated for the cost of purchasing a motor once again any estimates provided by Mr Kiely should be disregarded.

9.291 Ms Dennehy obtain quotes for appropriate vehicle for £30,500 from Atlas Mobility Conversions and £28,920 from GM coach works. Allowing for a vehicle changeover period of 7½ years the annual purchase costs will be £4067 and £3856 respectively to which would have to be added fuel costs of up to £260 per year, insurance of say, £800 per year and valeting of £200 per year resulting in a maximum annual cost of £5327 or £79,905 over a 15 year period. The Motobility Scheme is clearly a cheaper and more convenient option and it would be unreasonable for the Defendants to be required to pay more than that option.

9.292 There will be an insurance cost per year about which there was no conclusive evidence as we were not aware of the Plaintiffs driving record. The Plaintiff has particularised this cost at £1136 per annum but as a charge covered by the Motobility Scheme it would not be relevant if the court accepts the submission that this is the most reasonable option."

412 I agree that the criticism of transport consultant Mr Kiely is unfair, however it is apparent that the plaintiff has been paying far more than is necessary for transport.

413 I accept the defendants' submission that the Motobility Scheme is the most reasonable means of the plaintiff paying for the cost of her future transport. Ms Dennehy was a very experienced assessor for people with disabilities in respect of their ability to drive or to be carried as a passenger.

She was a most impressive witness. She was in no doubt as to the quality of the Motobility Scheme. She described it "as an absolutely fabulous scheme". She said it was "seamless".

414 In my view it would be objectively unreasonable for the plaintiff not to avail herself of the facilities of Motobility. The situation is quite unlike the position with future care where, irrespective of any other considerations, it was both objectively and subjectively unreasonable to require the plaintiff to rely on

the NHS. Nor is there, in my view, any subjective reason for the plaintiff not to use the Motobility Scheme. Not to do so would be a failure to mitigate her damage.

415 The Motobility Scheme enables disabled recipients to lease a new car for five years by sacrificing their government funded allowance, in the case of Ms Raper some £57.45 per week, and in addition paying an advance payment, in the case of a Volkswagen Caravelle an amount £10,995.

416 At the end of the five year period there are various options open to a person leasing the vehicle. They can apply to buy the vehicle from the scheme, or they can simply hand the vehicle back and then lease another vehicle, paying another advance payment and again sacrificing the government funded allowance of £57.45 a week.

417 In my view it is not unreasonable for the plaintiff's vehicle of choice to be a Volkswagen Caravelle, and in view of the obvious preference for reliable transport I would think that it would be reasonable for the plaintiff to take a new vehicle each five years.

418 On my calculations the future cost of a Volkswagen Caravelle leased now and then replaced each five years during the balance of Ms Raper's life expectancy, discounted at 3%, results in a sum of £64,000. To that figure must be added valeting which I allow at £3,000 and mileage at £4,500.

419 I allow for future transport the sum of £71,500. However, from this sum there needs to be deducted an amount to represent Ms Raper's transport costs during her present life expectancy had she not been injured. I assess that amount in the sum of £24,315.38. The resultant total amount under this head is **£47,184.62.**