

Ho (Respondent) v Adelekun (Appellant)

Case ID: 2020/0102

Case summary

Issue

This appeal relates to the construction and effect of a procedural rule in relation to the costs of legal proceedings that applies to all personal injury claims. In particular, the issue before the Court is whether there is jurisdiction in a personal injury claim that attracts the application of Part 44 Section II of the Civil Procedure Rules ("CPR"), which relates to Qualified One-way Costs Shifting ("QOCS"), to allow the set-off of an order for costs made against the Claimant against an order for costs made in the Claimant's favour.

Facts

The appellant, Miss Adelekun, was involved in a Road Traffic Accident in 2012 and sustained personal injury. She subsequently brought a claim seeking damages against the respondent, Mrs Ho. Mrs Ho made an offer to settle the claim under Part 36 of the CPR in April 2017, which Miss Adelekun accepted. The parties agreed that, as a result, Mrs Ho was liable to pay Miss Adelekun's costs of the claim. A dispute arose as to whether Miss Adelekun's costs should be paid on a 'Fixed Recoverable Costs' basis pursuant to CPR 45.29B, as Mrs Ho contended, or on the conventional 'standard basis', as Miss Adelekun contended. That issue was ultimately decided in Mrs Ho's favour on the second appeal to the Court of Appeal, and is not under appeal. Mrs Ho was awarded her costs of the appeals as well as the hearing at first instance. That award of costs is not under appeal. The parties also accept that CPR Part 44 Section II (QOCS) applies to Miss Adelekun's claim, including the appeal proceedings. The question arose whether, in light of the QOCS provisions in CPR Part 44 Section II, the Court had jurisdiction to make an order that the costs order in Mrs Ho's favour be set-off against the order for costs in Miss Adelekun's favour in respect of the costs of her claim, and if so, whether any discretion to make such an order should be exercised in Mrs Ho's favour. Determining this question as a first instance decision, the Court of Appeal held that it was bound by its own previous decision in *Howe v Motor Insurer's Bureau (no.2)* [2017] 7 WLUK 84 that the court did have jurisdiction to make such an order, whilst stating that it would have been inclined to conclude to the contrary if not bound by *Howe* and that there was "a powerful case for calling the decision in *Howe* into question". By this appeal, Miss Adelekun appeals the decision that the court had jurisdiction to order such a set off in light of CPR Part 44 Section II (QOCS).

Judgment appealed

[\[2020\] EWCA Civ 517](#)

Parties

Appellant(s)

Miss Seyi Adelekun

Respondent(s)

Mrs Siu Lai Ho

Appeal**Justices**

Lord Briggs, Lady Arden, Lord Kitchin, Lord Burrows, Lady Rose

Hearing start date

29 June 2021

Hearing finish date

30 June 2021

Watch hearing

29 June 2021 [Morning session](#) [Afternoon session](#)

30 June 2021 [Morning session](#)

Judgment details**Judgment date**

6 October 2021

Neutral citation

[2021] UKSC 43