

Scales v MIB: a landmark High Court precedent on Spanish damages and penalty interest

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What we'll cover :

1. Facts and Procedural Chronology;
2. The pre-2016 Baremo, the injustice of this regime for Claimants, the key Spanish law issues in this case and a summary of how the Spanish Courts have dealt with these issues; and
3. A history of how the English Courts have dealt with cases of this nature, a summary of the key arguments put forward in this case, the Judge's findings and the potential impact that this decision will have on similar cases being pursued in the English Courts.

The Facts

- On 23 October 2015, Mr Scales was cycling in the mountains in Almeria, Spain with a group of friends.
- The group were cycling on the Camino de la Hoya road and Mr Scales was the penultimate cyclist in the group.
- The group were approaching a left bend when a black Mercedes car, driven by Ms Annika Elena van der Plujim, came around the bend travelling in the opposite direction and collided with both Mr Scales and another cyclist.
- Ms van der Plujim failed to stop at the scene but she later handed herself in to police.



The Facts

- Mr Scales suffered a traumatic brain injury, facial fractures, loss of dentition, an open, highly comminuted fracture of the left tibia and a partial loss of sight.
- The police attended the scene together with both road and air ambulances but unfortunately the police report placed Mr Scales on the incorrect side/middle of the road.



Proceedings

After considerable investigation in Spain, Ms van der Plujim was found to be uninsured. Proceedings were therefore issued in the High Court against the MIB pursuant to regulation 13 of the Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation Body) Regulations 2003 with Spanish law applying to all substantive law issues.



Liability Trial

- The case proceeded on a split trial basis and a two day liability trial was held in April 2018. Ahead of the trial, witness statements were obtained from the other cyclists in the group, whom the police had not taken statements from, along with accident reconstruction evidence and Spanish law expert evidence which placed Mr Scales on the correct side of the road and alleged that Ms van der Plujim had been speeding and had travelled into the incorrect side of the road and into collision with Mr Scales and the other cyclist.
- Ahead of the trial, the Claimant made a Part 36 offer on liability on a 80:20 basis in his favour. The Defendant did not make any offers.
- The Claimant won at trial on a 100% basis.

Quantum Trial

- The case then proceeded to deal with quantum and expert evidence was obtained in the fields Orthopaedics, Neurology, Neuropsychology, ENT, Oral and Maxillofacial, Ophthalmology, Gastroenterology, Respiratory medicine, Care/OT and Spanish law.
- Ahead of trial, Mr Scales made a Part 36 offer to settle his claim for £500,000. The Defendant, again, made no offers.
- The case proceeded to a four day quantum trial in Birmingham which was heard remotely via Skype in May 2020.
- After the trial and before Judgment was handed down, the Defendant made an offer to settle the whole of the claim for £393,076.
- Matthew will deal with the key points of the Judgment.

Spanish Legal Issues

- Old Baremo RTA matter between 01.08.2007-31.12.2015: The dark age.
- Section 1.6 of the Old Baremo: medical expenses are only recoverable until consolidation.
- Care and assistance only for the “GRAN INVALIDO” (grossly disabled).
- The so called “correction factors” in the Old Baremo (Table IV):
 - Total permanent incapacity: 19K-95K
 - Absolute permanent incapacity: 95K-191K



Spanish Legal Principles

- “Pump up principle”- Spanish Legal authorities Judgment of the Spanish Supreme Court of 25 March 2010 and Article by Xiol LJ. Utility of the principle in the New Baremo cases.
- Medical expenses only when long term sequelae over 30 Points.
- Statutory caps for medical and rehab expenses.
- Future loss of earnings in the New Baremo.
- Discretion of the English Judge.
- Considerable range of discretion.
- The Points system.
- The award for permanent loss of quality of life (1.5K-156K).

Punitive Interest

- Article 20 of the Spanish 50/1980 Insurance Contract Act.
- Statutory duty to make an interim payment for a reasonable amount within 3 months of the date of the accident or date of knowledge.
- A punishment for the lazy insurer who protracts payment.
- Punitive interest under article 20:
 - Legal interest increased by 50% (4.5%)
 - After two years, an invariable flat interest rate at 20% until full payment.



Punitive Interest

- Article 20 (8) - Exoneration if justified cause for delay.
- Principle of strict application of exoneration clause under Article 20 (8).
- More interim payments to come.
- Duty for claimants to provide information to insurers to value the claim – Article 37 (2) of the Baremo.



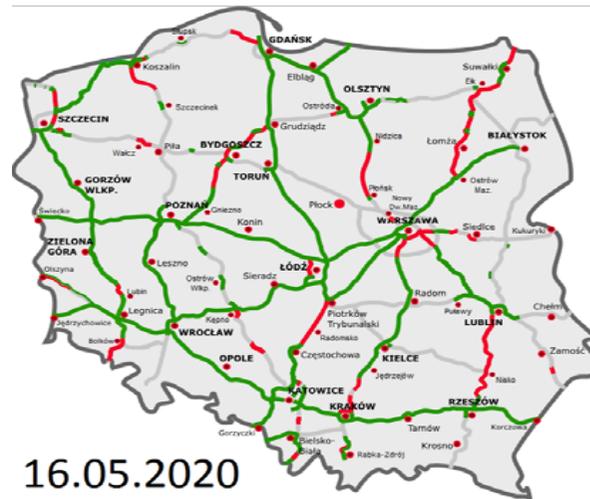
Spanish Law Adventures in Lockdown

- How does the English Court receive foreign law evidence?
 - Rome II (No 864/2007): Arts 1.3; 4.1 & 15(c).
 - *Wall v Mutuelle de Poitiers Assurances* [2014] 1 WLR 4263 (CA);
 - “*Soft law*” and “*hard law*”: practices, conventions, guidelines and “*any prevailing tariffs.*”



Novel arguments and judicial discretion

- *Syred v PZU SA* [2016] 1 WLR 3211 (QB).
- Making new (Polish) law ...



Spanish law discretion

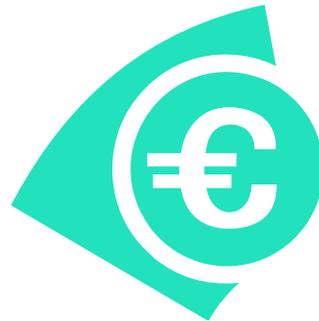
- The application of Spanish law discretion in the English Court;
- The ambitious argument: it's all about *restitutio in integrum*;
- The less ambitious argument: discretion to be exercised within the limits of (i) the old *Baremo*; and, (ii) the Spanish case law.



Significance of the decision?

- Exercise of discretion to “*bump up*” the non-pecuniary award to reflect under-compensation under the old *Baremo* (and its approach to future losses in particular);
- Spanish law penalty interest ...

(see, *Maier v Groupama* [2010] 1 WLR 1564 (CA); *Hyde v SARA* [2014] EWHC 2881 (QB); and, *AS Latvijas v Antonov* [2016] EWHC 1679 (Comm)).



Any questions?

