Smith v Finch

Case Report: [2009] EWHC 53 (QB)

The facts: In this case, the claimant was a cyclist who suffered serious head injuries when he collided with a motorbike ridden by the defendant. The motorcyclist was found liable for the accident but argued that damages should be reduced because the claimant was not wearing a helmet.

Decision: This was an English High Court decision that indicated that in some circumstances a cyclist could have damages reduced for contributory negligence for failing to wear a helmet. However, it is up to the person defending the claim to show that, in this particular case, injuries would have been reduced by wearing a helmet.

The court referred to comments in an earlier decision (Froom v Butcher [1975]) about the sensible practice of wearing motorbike helmets, which the court held should also apply to the wearing of helmets by cyclists. The fact that cyclists are not legally compelled to wear helmets did not matter, as there could be no doubt that the failure to wear a helmet might expose the cyclist to a risk of greater injury. However, it is up to the person defending the claim to show that, in the particular case, the claimant had failed to take proper care for their own safety, and that the failure to wear a helmet was a contributory cause of the injury. In this case, the court found that the cyclist’s injuries would not have been reduced or prevented by the wearing of the helmet and contributory negligence, therefore, did not apply.

See also:

McCluskey v Lord Advocate 1994 SLT 452 (N) (3.1 above) Brown v South Lanarkshire Council (3.1. above)
Trueman v Aberdeenshire Council (3.1 above)
Dawson v Scottish Power 1999 SLT 672 (3.2 above)