

Cross-Border Claims: English Courts Apply Spanish Law in Serious Injury Case

by Yasmina Villar-Lopez, Associate at law firm Weightmans

email: Yasmina.villar-lopez@weightmans.com

Summary of the case

The case dealt with issues of jurisdiction and applicable law as well as the applicability of the Spanish penalty interest. At trial, the judge found the Claimant to have contributed to his own accident by 65% and significantly reduced the value of the claim, awarding him a total of £213k (as opposed of the over £3m claimed).

Summary of the facts

The case relates to a personal injury claim arising out of a road traffic accident in Spain and brought against the MIB in England. On 21 July 2017, the claimant who was a young British man, attended a wedding in Mallorca with his girlfriend. In the early hours of the morning, the claimant left on his own to find a taxi back to the hotel. When he was close to the centre of a nearby road, a white minivan (which it transpired was uninsured), collided with him and dragged him under its axle along the road surface for nearly 200 feet. The claimant sustained severe brain injuries as a result.

Jurisdiction and applicable law

The claimant opted to issue court proceedings in England rather than in Spain, and not against the driver, but against the United Kingdom's Motor Insurers' Bureau ("MIB") who stands in for the Spanish compensation fund. Despite the claim being pursued in England, Spanish law and its principles of compensation were applicable to the claim.

Liability and quantum

Although primary liability of the uninsured Spanish driver, and therefore liability of the MIB, had been admitted prior to the commencement of the 14-day trial (which took place in the High Court) in November 2024, contributory fault and quantum remained in dispute. The claim was pleaded at over

£3,000,000.

Trial and conclusions

A general judgment¹ and a separate short judgment² (on the issue of the application of Spanish penalty interest alone) were finally handed down on 31 July 2025.

It is worth mentioning the following interesting points arising from the judgments:

1. Particularly notable is the high level of contributory negligence found, (assessed at 65%) which resulted in an award for damages of approximately £213,000.
2. The Spanish system of compensation is based on a strict Baremo of fixed tariff

damages for different types of injuries. The court was presented with an argument that Recital 33 of the Rome II Regulation could undermine the effects of the Baremo. The court [EB1] provided for the first time formal guidance as to the applicability and effect of Recital 33, and concluded that the same cannot have any effects on the application of the Baremo rules. This is a helpful point for defendant practitioners as this judgment will serve as precedent to prevent claimants from “escaping” strict foreign law rules on quantum on cases where Rome II is applicable.

3. The importance of choosing the right foreign experts. In England, foreign law is treated as a question of fact which each party must prove with their own expert evidence from a qualified lawyer in the relevant jurisdiction. However, any foreign lawyer must be an independent expert with obligations to the court and not to the instructing party. Unfortunately for the claimant in this case, the court found that the claimant’s Spanish law expert failed in her duty to the court resulting in harsh criticism of her evidence, which ultimately had a detrimental impact on the claim.

The High Court ruled that Spanish substantive law applied to the claimant’s injury claim given that the accident had occurred in Spain, and that the payment of interest under Spanish law was also a question of substantive law. The judge determined that the relevant statutory provision for the calculation of penalty interest in claims against insurers in Spain is Article 20 of the 50/1980 Insurance Contract Act of 8 October 1980 (“Article 20”). Article 20(9) provides for a specific regime that applies to insurers in the position of a guarantee fund.

In addition, Article 20(8) provides that no penalty interest may be imposed when the delay in the payment of a minimum amount is justified or not attributable to the insurer.

Unfortunately, the MIB on this case failed to make any “minimum” interim payments to the Claimant within the three months from the date of notification of the claim. This was due to a number of issues (ie. liability was denied at the time, inability to quantify the claim at that stage, etc).

The court considered that none of the two exceptions applied on the current case and imposed that penalty interest must be awarded to the Claimant.

It is therefore extremely important for insurance companies and/or the MIB to make a prompt payment to avoid the potentially detrimental effects of the imposition of penalty interest.

Conclusions

Overall, save as for the imposition of penalty interest issue, which was already an issue almost impossible to reverse given the long history of unfavourable decisions in the matter, this case represents, generally, a positive outcome for the MIB and a clear example of the importance of choosing the right experts and ensuring that they understand the requirements of English procedure and their duty to the court.

Article first published by law firm, **Weightmans**.

Reference

¹ [2025] EWHC 2002 (KB)

² [2025] EWHC 2038 (KB)

