

Pyrrhic victory as libel jury's verdict is restored

By Jonathan Barnes and Sara Mansoori

The House of Lords decision in *Grobbelaar v News Group Newspapers Ltd* [2002] 4 All ER 732 resulted in damages of £1 for Bruce Grobbelaar, the famous Liverpool and Southampton goalkeeper. Grobbelaar sued The Sun newspaper in libel over its allegations, made in 1994, that he had taken bribes intending to fix matches and had actually fixed matches. In July 1999 a jury found in his favour and awarded him damages of £85,000. The newspaper appealed and the Court of Appeal, in an unprecedented ruling ([2001] 2 All ER 437), allowed the appeal and quashed the jury's verdict, declaring it to be perverse. Grobbelaar then appealed to the House of Lords who (though unable to reach a unanimous decision) quashed the Court of Appeal's decision and restored the first instance finding in Grobbelaar's favour - but put the derisory value of £1 on his reputation.

Both parties agreed on the defamatory meaning borne by the articles complained of, namely that Grobbelaar (a) having dishonestly taken bribes had fixed or attempted to fix the result of matches in which he had played and (b) had dishonestly taken bribes with a view to fixing the result of matches in which he would be playing. However, their views differed when it came to consideration of the 'sting' of the libel. Grobbelaar contended that it was the allegation that he had actually fixed matches. He denied that this was something he had ever done and the expert evidence from former professional footballers at trial bore that out. For its part, the newspaper said the sting lay in the allegation that Grobbelaar had corruptly agreed to fix matches and had corruptly accepted payment for fixing matches. The Sun argued that whether he had actually fixed matches, or attempted to do so, was a matter of relatively minor significance. It pointed to Grobbelaar's admissions on audio and video tapes, where he had taken

payments from a Mr Vincent in return for agreeing to fix matches, and said that Grobbelaar's explanation that he was seeking Mr Vincent's trust and confidence in order to find out who else was involved in the scheme and expose them to the authorities was incredible.

We can never know how these complex factual issues were resolved by the jury. They were asked three simple questions: (1) Do you find for the claimant or the defendants? (2) What amount of damages do you award him? (3) Does your award contain any sum by way of exemplary damages? The answers were, respectively, 'the claimant', '£85,000' and 'No'. The issue that the Court of Appeal and subsequently the House of Lords had to contend with was whether this was a correct result. The Court of Appeal proceeded on the assumption, which was agreed between the parties, that because the jury had awarded Grobbelaar £85,000 they must have found that he was wholly innocent of corruption. This, they found, did not accord with the evidence before them, which included audio and video tape footage of Grobbelaar entering into corrupt deals with two men, Mr Lim and Mr Vincent, where he accepted money in exchange for agreeing to fix matches. Accordingly, the Court of Appeal found that the jury's verdict was perverse and should be quashed.

In the House of Lords, Grobbelaar applied to withdraw the concession made in the Court of Appeal that the jury must have found him wholly innocent. There was, he claimed, another possibility, namely that the jury had found that the sting of the libel was that he had actually fixed or attempted to fix matches and that they had found that the newspaper had failed to justify it. The withdrawal of the concession was allowed, although not unanimously. Lord Steyn dissented on the basis that the new interpretation was 'plainly inspired by tactical considerations' and that the agreed

basis upon which the case had been placed before the Court of Appeal, ie that the jury had found that Grobbelaar was not guilty of entering into corrupt agreements, was the most likely explanation. The other members of the House disagreed, Lord Hobhouse noting that a conclusion that a jury has acted perversely, in breach of their oaths, was a serious matter and not lightly to be inferred. If there was another 'more plausible explanation' of their verdict it should certainly be preferred. That more plausible explanation was that the jury had found the sting of the libel was the allegation of actual match fixing and that the sting had not been justified, but that they had then erred when considering damages, by failing to respond to a steer given by the judge and awarding Grobbelaar an excessive sum. The House of Lords held that it had the power to substitute for a sum of damages awarded by a jury such sum as appeared to it to be proper instead of ordering a new trial. To award substantial damages to a man shown to have acted in such flagrant breach of his legal and moral obligations would be an affront to justice. The House therefore quashed the jury's award of damages and substituted a nominal award of £1. On 26 November 2002 the House's disapproval of Grobbelaar and the hollowness of his 'victory' was underlined when it ordered him to pay two-thirds of the newspaper's legal costs, estimated to be over £1m.

The hearings before both the Court of Appeal and the House of Lords involved examination of the jury's verdict, and, in particular, speculation as to what they found to be the sting of the libel. Working backwards and looking at the quantum of a jury award to divine the jury's reason for awarding it is never going to be an exact science: even less so when there are two competing serious stings concerning the reputation of someone of Grobbelaar's profile. It proved an impossible task and led to starkly differing views, both between their Lordships and between the House of Lords and Court of Appeal.

The case raises questions about the continued existence of juries in libel trials. If they are to be retained then they must continue to be trusted. But if appeals from jury verdicts are to become more familiar, then perhaps juries ought to be given more detailed questions to answer when delivering their verdict. If this is not thought acceptable, then how long will it be before the libel judges take over altogether, as they are doing increasingly in the context of *Reynolds* newspaper immunity cases (see eg *Gregson v Channel Four Television Corporation* [2002] All ER (D) 66 (Jul))?

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