

IN THE COUNTY COURT

Case No J15YJ983

Sitting at St Helens

on Thursday, 7 July 2022 (judgment reserved)

BETWEEN

Claimant Khan

and

Defendant Watford Insurance Company Europe Limited

Upon hearing Counsel for Claimant (Miss Openshaw) and solicitor for the Defendant (Miss Zeria)

Judgment

1. This matter comes before the Court pursuant to Civil Procedure Rules PD27B section 3.
2. It is a dispute as to quantum following a road traffic accident; it falls into the Road Traffic Act Small Claims (RTASC) procedure, and is commenced using Form RTASCQ.
3. The matter was listed for a preliminary hearing, and the order made clear that the Court would seek to assess damages. It was invited to do so by the Claimant, and proceeded on that basis
4. The relevant preliminary facts are as follows:
 - Date of accident 11/8/21
 - Date of medical examination 24/11/21
 - Date of Small Claims Notification Form 27/9/21

5. The Civil Liability Act 2018 applies in respect of all whiplash injuries (by reason of a road traffic accident) suffered after 31 May 2021. The Act defines whiplash injury thus:

“Whiplash injury” etc

(1) In this Part “whiplash injury” means an injury of soft tissue in the neck, back or shoulder that is of a description falling within subsection (2), but not including an injury excepted by subsection (3).

(2) An injury falls within this subsection if it is—

(a) a sprain, strain, tear, rupture or lesser damage of a muscle, tendon or ligament in the neck, back or shoulder, or

(b) an injury of soft tissue associated with a muscle, tendon or ligament in the neck, back or shoulder.

(3) An injury is excepted by this subsection if—

(a) it is an injury of soft tissue which is a part of or connected to another injury; and

(b) the other injury is not an injury of soft tissue in the neck, back or shoulder of a description falling within subsection (2).

6. The amount of damages recoverable for a whiplash injury is now governed by the Whiplash Injury Regulations 2021 SI 2021 No. 642. Those regulations create what is now known as a ‘tariff’ for injuries.
7. The medical report in this case discloses ‘tariff’ (whiplash) and ‘non-tariff’ injuries. The Court has read the medical report in full; although certain parts of that report are set out below, the report has been considered in the round.
8. The parties had agreed, before the hearing, that the whiplash injuries (which can be summarised as injury to the neck, shoulder and upper back, lower back with an 8 month prognosis) had a tariff value of £895.

9. There was non-tariff damages claimed in respect of injury to the left knee.
10. The medical report records the Claimant took painkillers which were ongoing at examination.

The knee had a slight reduction of movement, with discomfort at the extreme, with pain described as moderate and ongoing.
11. The medical report records the Claimant works as a part time egg supplier; had two weeks off work. He had pain and postural difficulties and difficulties in concentration.
12. The medical report records sleep disturbance over 5 months; and lifting and driving for long periods 'continues to give the Claimant exacerbations of pain'.
13. The medical report records difficulties in self care and shopping for 2 months.
14. The overall prognosis for the knee was 7 months.

Knee

15. Solicitors for the Claimant had advanced a figure of £3000 for the knee injury, prior to the hearing.
16. However, Counsel for the Defendant drew the court's attention to the Judicial College Guidelines 16th Edn chapter 7, sK(b)(ii) which states that

A soft tissue strain-type injury that does not significantly impact on daily activities and gradually resolves within six to seven months might be expected to attract an award in the region of £2,250.
17. The Court reminds itself that these are guidelines only.
18. On that basis counsel advanced a figure of £3,100 in respect of both the knee and the tariff damages (on the basis of a 'very modest') reduction for Sadler v Filipiak reasons.
19. For the Defendant Miss Zeria (re) confirmed that the tariff damages of £895.
20. However, she drew the Court's attention to section 6 of the medical report.

21. At 6.5 under the heading 'Impact' the report states 'The vehicle was stationary and was hit from behind by another car'.
22. At 6.7 under the heading 'Movement' the report states 'He was jolted backwards and forwards in the vehicle'.
23. The Defendant took the position that the medical report did not specify the mechanism of damage to the Defendant's knee, and that the burden of proving this fell on the Claimant.
24. The Defendant drew the Court's attention to the Small Claims Notification Form section E 'Injury details Multiple injuries' which says 'Soft tissue and whiplash type injuries full extent to be determined by way of a medical report'.
25. No reference was made to the Claimant suffering an injury to the knee.
26. Finally the Defendant invited the Court to infer that, had the Claimant been suffering from knee pain, he would have taken up the physiotherapy offered in the intervention letter, which he did not.
27. In the light of all the above, the Defendant made no offer as to the knee injury.
28. Counsel for the Claimant began by asserting that the Defendant's position ignored the clinical findings made by the doctor at examination; the Small Claims Notification Form words were entirely consistent with a knee injury; physiotherapy was not recommended by the expert, so the failure to take up that offered by the Defendant was not a factor upon which the Court could rely.
29. The Court has considered the submissions of both parties.
30. The Court notes that the medical report at Section 11 'Other Injuries,' sub heading 'soft tissue injury to the left knee' 'Opinion' at 11.6 which says: 'In my opinion the claimant's

symptoms are related to a soft tissue injury and are consistent with the index accident'. This section was not drawn to the Court's attention by the Defendant.

31. The Court notes that there appears to be no way within this process to admit liability but to dispute quantum.
32. The Court acknowledges that the burden of proof is on the Claimant.
33. The Court notes that this is a new system, and that it is designed very specifically to be a low cost system (noting that these claims now fall to be dealt with in the small claims track, with negligible costs recoverable by a Claimant). The Court further notes that the system is supposed to be used by litigants-in-person.
34. A clear analogy can be drawn from Stage 3 cases where the Court rarely has witness statement evidence from a Claimant and relies wholly upon what a doctor's medical report records a Claimant as having reported. No such reports which this Court has seen contain a narrative description of an accident, or the mechanism of injury: those reports are invariably in a format which allows for them to be swiftly produced and swiftly read.
35. The Court makes clear its understanding that the Road Traffic Act Small Claims (RTASC) process is different from a Stage 3 process; it carries, as set out above, lower recoverable costs for a Claimant and is supposed to be litigant-in-person friendly. In those circumstances, the Defendant cannot realistically expect - especially as all parties begin to come to grips with new rules and processes - a narrative description of an accident within a medical report to be the only way in which a non-tariff injury can be proved by that report.

36. The Court is satisfied that the evidence of the doctor at paragraph 11.6 amounts to evidence upon which the Court can properly rely in determining whether a Claimant has discharged the burden of proof.
37. In this case, the Claimant has done so.
38. The Defendant made no submissions as to value in the alternative to its primary case. The Court notes the submission of counsel for the Claimant; the Court also considers the impact on the Claimant's home and work life.
39. The Court reminds itself of paragraph 34 of the judgment of Pitchford LJ in *Sadler v Filipiak* [2011] EWCA Civ J1010-1:
- 'It is in my judgment always necessary to stand back from the compilation of individual figures, whether assistance has been derived from comparable cases or from the [Judicial College] guideline advice, to consider whether the award for pain, suffering and loss of amenity should be greater than the sum of the parts in order properly to reflect the combined effect of all the injuries upon the injured person's recovering quality of life or, on the contrary, should be smaller than the sum of the parts in order to remove an element of double counting. In some cases, no doubt a minority, no adjustment will be necessary because the total will properly reflect the overall pain, suffering and loss of amenity endured. In others, and probably the majority, an adjustment and occasionally a significant adjustment may be necessary.'*
40. The Court is aware of no basis to depart from that decision, and thus adopts a *Sadler v Filipiak* approach.
41. The report does not make clear what restriction applies to what injury; however the Court notes that the restrictions are of a type often found in whiplash-only cases, and there is no impact on the Claimant's work or home life set out in the report which the Court can - in the absence of specific evidence - find to have arose as a consequence of the knee injury alone.

Applying *Sadler v Filipiak* the Court assesses general damages in order properly to reflect the combined effect of all the injuries upon the injured person's recovering quality of life in the total sum of £3,100

42. Interest is not pleaded. There is no way to plead it. It was sought by the Claimant. The Court has a general discretion to award interest pursuant to s69(1) of the County Courts Act 1984. This is not ousted by the Civil Liability Act 2018, (as it could have been had Parliament so intended) and it is awarded at a rate of 2% from date of issue to date of hearing.
43. The matter having been pursued via the Road Traffic Act Small Claims (RTASC) procedure, small claims costs apply. The Defendant must pay the Claimant's issue fee, solicitors fixed costs on issue of £80, and the medical report fee of £216.
44. Parties must submit a finalised order to the Court within 7 days of this judgment being emailed to them. The draft order should specify a formal date, agreed by the parties, for the handing down of this judgment, failing which it is deemed handed down on the date when emailed to the advocates for the parties.

District Judge Timothy J Gray

Monday, 11 July 2022