

IN THE COUNTY COURT

Case No J15YJ960

Sitting at St Helens

on Thursday, 7 July 2022 (judgment reserved)

BETWEEN

Claimant Nadeem

and

Defendant EUI Limited

Upon hearing Counsel (Miss Openshaw) for the Claimant

And Upon the Defendant having failed to file an Acknowledgment of Service, Mr Baron of
counsel present but not heard

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. No acknowledgment of service has been filed within the prescribed time limits.
4. PD27B section 3 prescribes that

*Where the defendant has failed to file an acknowledgment of service and the time period for doing
so has expired—*

(a) the defendant is not permitted to rely on any of the evidence provided by the defendant contained in the relevant Court Pack; and

(b) the defendant may attend any hearing of the claim, but may not take part in the hearing unless the court gives permission.

5. No formal application having been made, and no permission granted, the Defendant attended - by counsel - but took no part in the hearing.

6. 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

7. The relevant preliminary facts are as follows:

- Date of accident 16/9/21
- Date of Small Claims Notification Form 21/9/21
- Date of medical consultation 15/11/21

8. 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).*

9. 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.
10. 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.
11. The parties had agreed, before the hearing, that the whiplash injuries (which can be summarised as a 4-6 month neck and shoulder injury) had a tariff value of £495.
12. The non-tariff injury was to the Claimant’s left knee, described as severe initially and moderate by examination. The Claimant had taken four days off work as a mill worker. The Claimant had difficulty in lifting heavy items, shopping, sleep all of which were mildly continuing at time of examination. All left knee movements were painful; no restrictions were recorded. He attended hospital the day after the accident; he took painkillers daily for 8 weeks, then on an as-and-when-required basis
13. The Claimant sought an assessment based on a 5 month knee injury and referred the Court 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.*
14. The Court reminds itself that these are guidelines only.

15. The Claimant solicitors had adopted a simple addition of the tariff and non-tariff damages approach, but counsel for Claimant conceded that a *Sadler v Filipiak* [2011] EWCA Civ J1010-1 approach was necessary. (For reasons set out above, no submissions were heard from counsel for the Defendant as to any other approach which the Court might take.)
16. The Court reminds itself of paragraph 34 of the judgment of Pitchford LJ:
- '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.'*
17. The Court is aware of no basis to depart from that decision, and thus adopts a *Sadler v Filipiak* approach.
18. Having regard to the above counsel advanced a claim for £2500 in damages for the combined tariff and non-tariff injuries.
19. The Court undertaking the exercise of placing a value on this claim notes the Judicial College Guidelines for a knee injury of 6 to 7 months may attract an award of £2250; the Claimant's injury was anticipated to recover at 4-6 months of the accident, and the Court adopts 5 months as the mid point.
20. The 'effect on life' section of the medical report does not ascribe particular effects to particular injuries; the Court takes judicial notice that pain in the knee is likely to impact on

an ability to lift items; further the Court's assessment is that the knee injury does not significantly impact on daily activities.

21. Having regard to the above, the general damages for the knee injury are assessed at £1900.

22. Applying the Sadler v Filipiak approach to general damages overall, the total damages for pain, suffering and loss of amenity are assessed at £2300.

23. 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, and it is awarded at a rate of 2% from date of issue to date of hearing.

24. 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.

25. 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 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

Thursday, 14 July 2022