

IN THE COUNTY COURT

Case No J15YJ959

Sitting at St Helens

(on 7th July 2022, judgment reserved)

BETWEEN

Claimant Phillips

and

Defendant IQUW Corporate Member Limited

Upon hearing counsel (Miss Openshaw) for the Claimant, counsel (Mr Bradley) for the Defendant

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 14/10/21
 - Date of medical examination 14/12/21

- Date of Small Claims Notification Form 9/11/21

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 a 5 month neck injury) had a tariff value of £. 495

9. The non-tariff injuries were a 4 week laceration to the forehead, and a period of 4 months of chest pain .

Laceration

10. The medical report records laceration as resolving '4 weeks from the date of accident.
11. There was no reference to any scar.

Chest Pain

12. The medical report records the pain ongoing at time of examination. The Claimant attended casualty twice, and his chest was x-rayed.
13. He undertook exercises, and took pain killers as required
14. A machine operator, the Claimant took 1 day off work. At time of examination he still had difficulty with bodily movements required to perform his duties.
15. A prognosis for 4 months from accident was given

Impact on lifestyle

16. The medical report records that Claimant's sleep had been severely restricted; the problem was moderate at time of examination
17. His ability to cook, and undertake shopping and lifting had been severely restricted; these problems were moderate at time of examination

Quantum

18. Counsel for the Claimant advanced a figure of £2500 for the non-tariff damages. This had been proposed by her instructing solicitors and was, she suggested, if anything too little.

19. To that counsel added non-tariff damages and suggested there was no overlap, and the total award should be £2995.
20. For the Defendant, counsel advanced a figure for non-tariff damages of £1700. The Defendant emphasised that whilst Claimant was a machine operator he had only one day off work, and the regular painkillers ended after 5 days. No physiotherapy was required. Adding the tariff damages would be £2,195 which counsel assessed as an appropriate figure overall.
21. No specific reference was made to the Judicial College Guidelines by either party- but the Court notes that the minor injuries chapter 13 indicates a recovery in 3 months may attract an award of up to £2450.
22. (Chapter 6 deals with 'Injuries to Internal Organs'. Part A deals with chest injuries, but the lowest bracket is for 'Fractures of ribs or soft tissue injuries causing serious pain and disability over a period of weeks only' which is inappropriate for the injury in this case.)
23. The Court reminds itself that these are guidelines only.
24. The Court has considered the submissions of both parties.
25. The Court notes the prognosis for the chest, and the additional laceration to the forehead (moderate, not minor), of 4 weeks. The Court notes the impact on the Claimant's sleep, issues with regard to shopping lifting and cooking, severe initially and ongoing at the 2 month stage.
26. The medical report does not ascribe particular restrictions to particular injuries, and 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 chest injury alone, or laceration, alone.

27. Doing the best it can, noting that the Judicial College Guidelines chapter 13 confines itself to a 3 month injury whereas the chest prognosis was four; the Court assesses the non-tariff damages at £2,600.

28. To this must be added the tariff award.

29. 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.'

30. The Court is aware of no basis to depart from that decision, and thus adopts a *Sadler v Filipiak* approach.

31. Applying *Sadler v Filipiak* the Court assesses general damages in the total sum of £2850.

32. 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.

33. 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.

34. 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

Thursday, 14 July 2022