

IN THE COUNTY COURT

Case No J15YJ037

Sitting at St Helens

on Thursday, 7 July 2022 (judgment reserved)

BETWEEN

Claimant Rahman

and

Defendant Davies Motor

Upon hearing Miss Openshaw, counsel for the Claimant; Mr Joyce 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 8/8/21
- Date of medical examination 10/11/21
- Date of Small Claims Notification Form 13/8/21

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 pain in left hand side neck, radiating into left shoulder, and pain and stiffness in lower back, prognosis for each of 9 months) had a tariff value of £895.
12. For non-tariff injury the Claimant had a soft tissue injury to the right (dominant) wrist, with a prognosis of 7 months. Examination revealed slight restriction on movement, with pain at the extremes.
13. The Claimant attended his GP; painkillers were prescribed, and being taken regularly at time of examination.
14. The medical report records No time was taken off work, as an application analyst, but some light duties undertaken; he had fatigue, pain, postural difficulties and reduced concentration at work.
15. The medical report records at home there were problems with cleaning, vacuuming, child care, ironing, shopping DIY.

16. The medical report records he had problems in driving.
17. The medical report records he engaged in gym and football, and in regular sporting and leisure activities 2-3 times per week, which were prevented.
18. He has disturbed sleep.
19. The medical report does not record which symptom arose from which specific injury; counsel suggested that most of his work and home activities were probably limited by reason of the wrist.

Wrist

20. With regard to the wrist, counsel for the Claimant referred the Court to the Judicial College Guidelines 16th Edn chapter 7, sH(f) states that

Very minor undisplaced or minimally displaced fractures and soft tissue injuries necessitating application of plaster or bandage for a matter of weeks and a full or virtual recovery within up to 12 months or so.

have a value of £3,530 to £4,740. This is the lowest described injury for wrist, currently.

21. The Court reminds itself that these are guidelines only.
22. Having regard to the impact on Claimant's life and prognosis counsel suggested the appropriate award for the wrist was £2,800.
23. Further, the Court must considered the tariff award set out above. Counsel suggested that because the sites were anatomically separate, the tariff and non-tariff damages should be added together coming to a figure of £3,695.
24. 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.'

25. The Court is aware of no basis to depart from that decision, and thus adopts a *Sadler v Filipiak* approach.
26. The Court has considered the medical report, and the submissions. As set out above, 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 wrist 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 £3,350.
27. 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.

28. 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.

29. 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