Case No: H56YY150

IN THE COVENTRY COMBINED COURT

149 Much Park Street,
Coventry,
CV1 2SN

Date: 8 March 2023
Start Time: **14:32** Finish Time: **14:50**

Before:

RECORDER JACK

- -

Between:

BLAIR

Claimant

- and -

JABER

Defendant

- -

- -

MS KATIE FEENEY (Counsel) appeared for the **Claimant**
MS SORCHA DERVIN (Counsel) appeared for the **Defendant**

- -

JUDGMENT

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RECORDER JACK:

1. This is a claim for damages for personal injury sustained in an accident on 28th October 2020. The claimants, Mr and Mrs Blair, say they were in a taxi being driven by the defendant, Mr Jaber, along Vicarage Street, Nuneaton. As they reached the Coton Roundabout, they say Mr Jaber slammed the brakes on, causing them to fall from their seats. Mr Blair sustained a broken clavicle. Mrs Blair sustained pain and a laceration in her left shin which has left a scar. I shall return to the details. Neither were wearing seatbelts.

2. The defendant accepts the claimants fell off their seats in the taxi, but he denies it was caused by excessive braking. He agrees that, as he approached the roundabout, a car came around the roundabout from his right. However, he says that he braked in a perfectly smooth, normal way. The claimants say that immediately after the accident the defendant said that a car had just cut him up and that is why he had to slam the brakes on. Mr Jaber denies saying that.

3. Ms Dervin, on behalf of the defendant says that that fact was not pleaded. That is true, but it is irrelevant in my judgment. What has to be pleaded are facts, not evidence. What the defendant said is evidence, and it is evidence of a fact which had to be pleaded, which was that the brakes were slammed on. That averment was made in the particulars of claim.

4. It is common ground that Mr Jaber drove the Blairs home after the accident. When he saw Mrs Blair's injuries, he offered to drive them to hospital, but they declined. He waived his fare.

5. I turn to my determination on liability. I remind myself of the limitations of reliance on the demeanour of witnesses. I shall therefore commence with the

overall probabilities. The central difficulty with the defendant's case is that it provides no plausible explanation for how the claimants came to sustain their injuries. People do not end up on the floor of taxis with a broken clavicle and a bleeding shin unless something has gone wrong. Ms Dervin says that this is reverse engineering, but I disagree. The inherent probabilities are in the claimants' favour.

6. This applies too to the "cutting up" remark ascribed to Mr Jaber. It would only be natural for the claimants, who had been talking to each other and not paying any attention to the road, to ask, after they had sustained their injuries, what had happened. On Mr Jaber's account, they did not. Further, the explanation which the defendant is said to have given is perfectly consistent with the overall probabilities. Another motorist cutting the defendant up would explain very well a sudden braking.

7. I turn, lastly, to demeanour. The claimants gave evidence in a very open way and were willing to make concessions in cross-examination. The defendant was a less satisfactory witness. I bear in mind that English was not his first language. Nonetheless, he showed uncertainty and hesitation on matters which could be simply answered.

8. Standing back and looking at the evidence in the round, I prefer on the balance of probabilities the claimants' case to that of the defendant. I find that the defendant left it too late to brake safely at the Coton Roundabout and that this caused the accident.

9. I turn then to contributory negligence. Counsel were agreed that the principles in *Froom v. Butcher* [1976] 1 QB 286 applied. This says, reading from the headnote:

> "The reduction in damages for failure to wear a seatbelt should be 25% for those injuries which would have been prevented by wearing a belt, and 15% for those injuries which would have been less severe. There should be no reduction if the injuries would have been the same if a belt had been worn."

10. Ms Feeney for the claimant submitted that 15% should be deducted. Ms Dervin submitted 25%. I have little doubt that the accident would not have happened if the claimants had been wearing seatbelts. The sole issue is whether the injuries would have been less if a seatbelt had been worn. Mr Blair suggests in evidence that he might have suffered whiplash instead of a broken clavicle if he had worn a seatbelt. There is, however, in my judgment no satisfactory evidence of this.

11. The medical report on Mrs Blair suggests that her shakiness and neck pain would have been the same if she had worn a seatbelt, but this is a very minor part of the claim. Her neck pain completely resolved within three days. In these circumstances the standard deduction of 25% should, in my judgment, be applied.

12. I deal next with special damages. The figures here, as for general damages, are 100% figures which will have to be reduced by 25% to arrive at the judgment sum after the allowance for contributory negligence. Mr Blair claims specials under two heads: the first is loss of earnings; and the second care provided by his wife and his mother. As for the first, he says he was employed as a postman. As such he received a basic wage. On top he earnt up to 31 hours per week in

overtime. The main point made by Ms Dervin was that he had failed to produce his payslips, and instead relied on his bank statements to show the loss.

13. I agree with Ms Dervin's submission that the payslips should have been produced as part of the claimants' standard disclosure obligations, but I note too that the defendant's solicitor never asked for them, as (in accordance with the Overriding Objective) one would have expected them to do if such a major point was to be made. In this situation, I have to do the best I can with the evidence available, bearing in mind always that the burden of proof is on the claimant and that inferences, if appropriate, can be made against those who fail to produce documents.

14. Standing back, in my judgment, the bank statements adequately justify the losses claimed. It is not in dispute that Mr Blair could not work after the accident so that there would be a loss of overtime. The bank statements justify the sum of £2,427.60, and that is the sum I shall award under this head.

15. As to care, the claim for two hours a day for eight weeks is, in my judgment, reasonable. The remaining issue is the hourly rate. The lowest hourly wage of carers in fact and figures was £9.43 per hour. Deducting 25% would give an hourly rate of £7.07, which is more than the £6.95 claimed. I allow the £778.40 in full.

16. Mrs Blair claimed £35 in miscellaneous damages. No evidence was adduced to justify the figure and I disallow it in full.

17. I turn then to general damages. I first make a general point about the Judicial College Guidelines. The current edition was published on 11th April 2022,

nearly a year ago. The figures in this latest edition were probably finalised earlier. Since then, we have had inflation such as has not been seen since the 1970s. The Office of National Statistics figure for January 2023 released on 15th February 2023 showed the Retail Price Index at 13.4% per annum. The source of that is www.ons.gov.uk/economy/inflationandpriceindices, accessed on 8th March 2023.[1]

18. The Judicial College Guidelines, unlike the Northern Irish Green Book, do not take future inflation into account. I need to consider whether the figures in the guidelines should be increased to take the unexpected and massive increase in inflation into account. Ms Dervin submitted that I should not. That is, she submitted, a matter for the Judicial College to consider. I disagree. The Judicial College Guidelines are just that – guidelines. If there is a change in circumstances between April 2022 and today, that is a matter to take into account when assessing damages. The very substantial drop in the value of money which has taken place since April 2022 is just such a circumstance. Accordingly, the Judicial College figures needs to be increased by, in my judgment, about 12%.

19. Turning then to the circumstances of the individual claimants, the main medical report on Mr Blair says this at page 67 of the bundle:

> "Mr Blair was travelling in a taxi with his wife. The taxi was a Citroen people carrier. They were unrestrained by the seatbelts. Weather conditions and road surfaces were satisfactory. Suddenly the taxi driver did an emergency stop as somebody cut

[1] On the day of the trial, a hard copy of the Judicial College Guidelines was not available. It is apparent from the foreword of Lambert J that the figures for general damages in the 16th Edition are based on prices as at September 2021. The RPI was 308.6 in September 2021 and 367.2 in March 2023: see www.ons.gov.uk/economy/inflationandpriceindices/timeseries/chaw/mm23. This is an increase of 19.0 per cent.

> him and came into his path. Mr Blair was thrown forwards. He was sitting sideways and took most of the brunt on to his left shoulder against the folded seat. They were not expecting the incident to happen and therefore not braced up. In brief, Mr Blair was involved in a road traffic collision as an occupant in a taxi, resulting in injuries. Mr Blair sustained a minimally displaced comminuted fracture of the lateral end of the left clavicle."

It then describes his being taken to George Eliot Hospital where it was noted that:

> "He had been involved in a road traffic accident and had sustained a left shoulder and head injury. On examination, there was reduced range of motion in the shoulder. An x-ray showed a fracture of the lateral end of the left clavicle. He was given a broad arm sling and painkillers and a fracture clinic appointment.
>
> He took analgesia for about three weeks. He was reviewed in the fracture clinic on 8th September 2020. The overlying skin was normal. There was bruising over the shoulder. The sensation over the axillary nerve was found to be intact. X-rays showed a comminuted fracture of the lateral end of the clavicle. It was noted that the acromioclavicular distance was maintained, excluding ligamentous injury. He was then reviewed on 29th September 2020. He was quite comfortable. There was no paresthesia. Overlying skin was intact. Alignment was satisfactory.
>
> Mr Blair was then seen by an orthopaedic surgeon on 27th October 2020. Range of motion was improving. Forward flexion and adduction were 120 degrees. Internal rotation was up to lumbosacral disc. External rotation was 30 degrees. He was asked to continue with physiotherapy treatment and discharged from the clinic.
>
> Mr Blair received three sessions of physiotherapy, telephonic consultations, and was asked to undertake a range of motion and strengthening exercises. Mr Blair continues to experience minor pain in his left shoulder (2 – 3 on the VAS scale) and takes painkillers as and when required.
>
> Mr Blair did not develop any psychological symptoms as a result of the above accident."

There was a supplemental report, but it does not add anything material to that.

20. The parties were agreed that the relevant part of the Judicial College Guidelines was paragraph 7(C)(e), which says this:

> "Fracture of Clavicle. The level of the award will depend on the extent of the fracture, the level of disability, residual symptoms, whether temporary or permanent, and whether union is anatomically displaced. Unusually, serious cases may exceed this bracket and regard may be had to [a bracket above]."

The range suggested by the Judicial College is £5,150 to £12,240. Ms Dervin submitted that a figure of £6,000 was appropriate. Ms Feeney submitted that £8,500 was right, but she did not, it would seem, add any uplift to the Judicial College figures to reflect inflation.

21. In my judgment, Ms Dervin's figure is near the bottom of the range and is too low. Before adjusting the Judicial College figures for inflation, I would award £8,000. With a 12% uplift, that gives £8,960. However, I will limit the award to the £8,500 sought by counsel.

22. As to Mrs Blair, her injuries were fortunately less serious. The report at page 95 of the bundle describes the symptoms in this way:

> "Left shin – pain. Current status: resolved after four weeks. Developed severe pain to left shin immediately after the accident. She stated it resolved after four weeks. It was due to a direct trauma.
>
> Bruising – left shin. Current status: resolved after one week. Sustained mild bruising to the left shin three weeks after the accident. She stated that it resolved after one week. It was due to a direct trauma.
>
> Laceration - left skin. Current status: resolved after three weeks. Sustained a laceration, a puncture wound in the left shin. She stated that it resolved after three weeks. It was due to a direct trauma.
>
> Neck – pain. Current status: resolved after three days. Developed severe pain to neck immediately after the accident.

> She stated that it resolved after three days. It is due to a muscular ligamentous sprain causally related to the accident.
>
> Shock and shakiness. Current status: resolved after two days. Developed shock and shakiness after the accident. She stated that it resolved within two days.
>
> Swelling – left shin. Current status: resolved after two weeks. Developed moderate swelling to left shin on the same day after the accident. She stated that it resolved after two weeks. It was due to a direct trauma.
>
> Scars – left shin. Current status: developed scars in the left shin. It is currently unresolved."

She is not receiving any further treatment. She attended casualty once after the accident and was given dressings on the left shin, was advised to take painkillers, anti-inflammatories and had a slow tissue injury. An x-ray showed no bony injuries. She self medicated with paracetamol and ibuprofen after the accident.

23. In addition, I have seen today the residual scar on her left leg. It is a discoloured oval about one inch by three-quarters of an inch. It is not disfiguring, but it is visible. Ms Dervin submitted that £1,000 was appropriate. Ms Feeney submitted £3,500. The lower band for scarring in the Judicial College Guidelines is £2,370 to £7,830. In my judgment, the scar which Mrs Blair has falls at the very bottom of the category, but, in addition, she did have the significant acute pain which was caused by the accident itself. In my judgment, a figure of £3,200, including the 12% uplift, is appropriate. I will leave counsel to work out the arithmetic on the contributory negligence.
