

JERSEY / JUDGMENT

Carvalho v Love [2024]

JRC 076 (02 April 2024)

[2024] JRC 076

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judgment

the deputy bailiff:

Introduction

1. The Plaintiff was born on 1 July 1970 and was fifty-one at the date of accident and fifty-three at the time of the trial. On 6 January 2022, the Plaintiff, whilst in the course of his employment, was driving a Fiat van along Victoria Avenue in the direction of St Helier. He stopped his vehicle at the traffic lights (which was showing red) before the turning to Rue du Galet. Seconds later, the Plaintiff's vehicle was hit from behind by a BMW Estate motor car driven by the Defendant. The Defendant was insured by the National Farmers Union and it is accepted that the accident was caused by the negligence of the Defendant. Liability was conceded on 21 April 2022. 2. Although liability was undisputed, many other matters were in dispute, including: (i) the precise mechanism whereby the Plaintiff came to be injured as a consequence of the collision; (ii) whether the accident caused some or all of the injuries of which the Plaintiff complained; (iii) when the Plaintiff ought to have returned to work after the accident; and (iv) the extent to which he should recover general damages, damages for lost earnings, other special damages and damages reflecting the loss, if any, of his future earning capacity. 3. On many of these issues, the Plaintiff's credibility was in issue. The witnesses at trial consisted of the Plaintiff and three expert witnesses who had prepared reports for the purpose of the trial, namely Mr Peter Torrie, a consultant orthopaedic spinal surgeon, currently a consultant in trauma and orthopaedic surgery at the Gloucestershire Hospitals NHS Foundations Trust; Mr Ivor Vanhegan, a consultant trauma and orthopaedic surgeon of the Salisbury Hospital NHS Foundation Trust; and Dr Katherine Boucher, a clinical psychologist currently practising in Jersey and London. Dr Boucher's evidence was prepared on the instruction of the Plaintiff's advocate and was not in dispute and we heard from her briefly at the end of the evidence. The evidence of the three other witnesses, including the Plaintiff, was in dispute to a greater or lesser extent. As a good deal of the evidence focussed on the Plaintiff, his complaints, his credibility, his account of his symptoms from time to time and his alleged failure to return to work timeously, it is appropriate to commence with our consideration of his evidence. The Plaintiff 4. The

Plaintiff was born in Madeira. He was the third of four children of parents who remained married until his father's death about six years ago. He had a good childhood, describing his mother as "excellent" and his father "even better". He got on well with his siblings, all of whom still live in Madeira. Dr Boucher said that there was an absence of any adverse childhood experiences in his upbringing. His young years were happy. He got on well at school and left school at fourteen years of age, although apparently he underwent a further year of schooling when he was twenty-three and is described as having completed secondary school when he was aged thirty as a mature student. After he left school, he worked in the printing business and at the age of nineteen joined the army and spent nine years working as a nursing assistant. After he left the army, he worked for the social security department for eight years and then the water department for seven years. He moved to Jersey when he was forty-four. He worked in construction, then for six years gardening and landscaping, then in either 2020 or July 2021 began working as a delivery driver for FerrySpeed, working up to sixty hours a week with overtime. 5. Accordingly, he has always worked, has generally worked hard and had an unblemished employment history. To date, he has had three significant relationships with women, the first producing two children; the second producing a third child (a son); and the third relationship resulting in another son who is now approximately ten years old. The Plaintiff is in contact with the children from his first and third relationships and pays maintenance to the mother of his ten year old child from the final relationship which ended in 2021, not long before the accident. 6. The Plaintiff had no history of mental health difficulties and he had no history of substance misuse. 7. As to the consequences of the accident, they are best described so far as we are concerned in the first expert report of Mr Torrie dated 12 September 2022. The making of the report followed a consultation with Mr Torrie attended by the Plaintiff in England on 8 August 2022. The accident 8. The Plaintiff told Mr Torrie that on the day of the accident he was driving a 3.5 tonne medium goods vehicle. The accident occurred at 1.30pm. The Plaintiff was wearing a seatbelt at the time. At the time of the accident, he was leaning forward to change the volume of the radio using his left arm and hand when he felt an impact directly from behind. In evidence to us, Mr Torrie said that at the moment of the accident, the Plaintiff's head was a long way forward from the headrest. Although his chest and torso were restrained by the seatbelt, his neck and head were not, and his neck was accordingly in a vulnerable position. The Plaintiff would not have been braced for an impact and in consequence the impact would have caused a hyperextension and hyperflexion of the cervical spine. He accepted the Court's observation that one ought to treat the account that someone gave as to what happened on impact with caution as they were not expecting the impact. Mr Torrie said that in any event it was not known whether greater hyperextension of the cervical spine correlated with the likelihood of a whiplash injury as the extent of a whiplash associated disorder did not necessarily correlate to the severity of a collision and the consequential effect of that impact. Mr Torrie told the Court "The severity of a collision is not necessarily a relevant consideration when assessing a whiplash injury". Nonetheless, he thought the mechanism of the injury was important and he said that this was a "classical" whiplash injury which was supported by the hospital and GP records, and Mr Armstrong,

the upper limb surgeon who saw the Plaintiff in November 2022. 9. The Plaintiff got out of his car without assistance. Mr Torrie says that the Plaintiff reported " immediately having neck pain after the accident and then developing right arm numbness ten minutes following the accident. There was no pain in the arms. The distribution of numbness in the right arm included the anterior biceps, the volar aspect (inside or palm side) of the forearm and the palm of the hand into the middle and ring fingers" . The Plaintiff contacted his work. They contacted the police and he was recommended to go to the Accident and Emergency Department but he decided to go home instead. Nonetheless he attended the General Hospital Emergency Department the following morning at 7.45am. The medical evidence 10. The hospital records were brief and spoke of a "whiplash injury". As to the injury, the following was noted " Worsening back pain / neck pain / RTC.... [after accident] Had immediate pain in lower back. Initially ok but pain worsening overnight. Crampy pain in lower back. Also reports neck pain which is worsened on movement. Denies pins / needles / change in sensation... Denies other injuries" . On examination he was noted to be " tender to palpation of C spine at C6 / C7 and lumbar spine" . Accordingly, there was objective evidence of soft tissue injury at that stage. X-rays of the back and neck revealed no fractures or other bony injury. They were certain degenerative changes noted in the lumbar and cervical spines but nothing of significance or relevant to the symptoms that the Plaintiff subsequently suffered. He was prescribed analgesia and discharged. 11. Much was made by the Defendant of the fact that the Plaintiff did not, at least according to the A&E notes, refer to the numbness in his right arm which the Plaintiff told Mr Torrie he had experienced ten minutes after the accident as described above. Mr Torrie said that he was on spinal call for patients admitted to the emergency department in his hospital and that A&E departments were very busy and under a lot of pressure. He said " Often the history of a patient is not recorded as thoroughly as one might like ". When Mr Torrie was cross-examined he said he could not say, as the Plaintiff claimed in his evidence that the Plaintiff had mentioned to the A&E doctor the numbness in his arm, or whether the A&E doctor heard or misheard the history being recounted to him and said that he was " sceptical of the information I get from ED " owing to the pressure that they are under. 12. The Defendant also relied on the fact that in visits to his general practitioner (albeit in the presence of an interpreter)

- a matter to which we will return - the Plaintiff initially failed, if the GP records are accurate, to mention the symptoms in his right arm. He attended his GP on 17 January 2022 and was recorded as being " in clear pain " and tender in his lumbar spine; again on 31 January 2022 where he was in " a lot of pain " and was having " more pain in the neck " and tender in his cervical spine; on 14 February 2022, when it was noted that he had been " struggling with a lot of pain in his cervical and lumbar spine ", that he could not walk without a limp and unable to work. There were further attendances on 21 February 2022 with the Plaintiff complaining of pain and having difficulty sleeping; on 14 March 2022 when he was noted to be in pain. On 16 March 2022, it was noted that he had been seen regularly in the surgery since the accident and he was still struggling with pain in his cervical and lumbar spine with physiotherapy recommended. He had seen the physiotherapy team at Hotel de France, and

he was told that he would need further sessions, but his work was not agreeing to that. At least six sessions were needed. The first reference to pain in the right arm was a reference on 11 April 2022 to the Plaintiff "still struggling", needing physiotherapy and the note reads "pain on the right wrist - likely referred from neck". There are subsequent references to pain in the right arm and indeed the first report of the occupational therapist, Joanna Cartwright, dated May 2022, under "Medical history" says at the outset "the following injuries were sustained: soft tissue injuries to neck and back; altered sensation in right arm". 13. We will come to our overall findings in relation to the credibility of the Plaintiff in due course but we were satisfied, whether or not he reported it, that the Plaintiff from the outset - that is to say from the time shortly after the accident - suffered symptoms of numbness in his right arm, even though it is not recorded in the A&E notes or the first contact with his GP. Mr Vanhegan conceded that it was likely that the Plaintiff's arm symptoms related to the accident if they were felt by him within ten minutes as described to Mr Torrie. Accordingly in view of this finding, there can be no doubt that all the symptoms suffered by the Plaintiff were a consequence of the accident. Nonetheless, we do give further reasons below for rejecting Mr Vanhegan's theory that in fact the symptoms in the Plaintiff's right arm, particularly his right hand, were a consequence of compression of the ulnar nerve, also known as cubital tunnel symptom ("CTS"). CTS is recognised in particular to cause numbness and pain in the little finger and half of the ring finger and can also cause pain in the forearm. 14. During 2022, the Plaintiff underwent a good deal of treatment - largely organised by the Defendant's insurers - and was fully compliant with all the treatments offered to him. 15. This treatment was considered in a number of reports prepared by the occupational therapist, Joanna Cartwright, and the physiotherapist, Kyle Dougherty, neither of whom gave evidence. 16. The instruction of these persons came about in the following way. On 21 April 2022, the Defendant's insurers wrote to the Plaintiff's advocates saying that on a joint instruction the insurers would fund the occupational therapist who would assess the Plaintiff, with all parties receiving a copy of the OT's report. The OT would thereafter provide support to the Plaintiff and consider ways of assisting "an early return to work". The Plaintiff was asked to complete a medical consent authority and an employment access authority form, with all reports and correspondence from the OT disclosed to all parties for the purpose of coordinating treatment and "if appropriate, a return to work". Accordingly, it was clear from this correspondence that one of the main, if not the principal, reasons for the Defendant's insurer funding these experts was to promote the Plaintiff's early return to work, which is ostensibly in the interests of both Plaintiff and the Defendant's insurer. 17. The initial physiotherapy assessment was dated 31 May 2022 and noted that the Plaintiff was unable to swim, which he formerly did; was unable to play football or walk for any length of time; and had limitations of movement in his cervical spine, shoulder and lumbar spine. In respect of treatment, the author said that they expected there to be "a long rehabilitation process of three to four months with intensive physio input and then slow progressive exercises". They referred to "widespread pain" and "hyperalgesia / allodynia". A minimum of twelve sessions were recommended, as was psychological input owing to the "possible" hyperalgesia and allodynia. Hyperalgesia is an increased sensitivity to pain and an extreme

response to pain which may occur in various circumstances. Allodynia is a type of neuropathic pain, i.e. nerve pain. It was accepted by the Defendant's expert, Mr Vanhegan, that the Plaintiff was genuinely experiencing such pain. 18. The Plaintiff saw Dr Chad Taylor at the Pain Clinic twice in 2022. He first saw him on 24 June 2022 and his letter to the occupational therapist of the same date records his findings. He noted that the Plaintiff had suffered pain after the accident. This included pain in the right shoulder and down the right arm, including pins and needles in the C7 distribution of the right hand. In relation to this finding, he said " There could potentially then be some nerve irritation at the cervical spine level ". The Plaintiff also experienced pain in the lower back which increased with sitting and improved with movement. He said the Plaintiff's pain severity score was twenty-six out of forty on a particular scale. Dr Taylor said that there was " a major impact, both psychosocially and functionally and a significant sleep disturbance " , with a pain interference score of fifty-three out of seventy. The Plaintiff was taking painkillers which Dr Taylor said should continue. Dr Taylor noted on examination that " when he was distracted he had a better range of neck and shoulder movement than under formal examination conditions. That is not infrequently the case because of a fear of being hurt during the examination ". 19. This last finding was seized upon by the Defendants as evidence of exaggeration of symptoms on the part of the Plaintiff, although Mr Torrie said, echoing what Dr Taylor had said, that it was usual for there to be a " fear of pain response ". He said if someone says to a patient " I'm going to move your neck " where the Plaintiff was experiencing pain in that part of the body then it was normal for the patient to have a degree of apprehension. We accepted Mr Torrie's evidence on this issue. Mr Torrie went on to say that individuals can exaggerate symptoms and members of the medical profession tried not to inaccurately label people as malingerers. He said he had come across malingerers in his practice, but it was rare, and the Plaintiff was not one of them. We accepted this evidence. Dr Torrie said " most people don't want to go back and forward to see GPs, physiotherapists and in this case back and forward to the United Kingdom to see specialists. Most people don't do that unless they have genuine symptoms ". In his letter of 22 June 2022, Dr Taylor also said that the Plaintiff " is keen to get back to work which I would recommend. Unfortunately he has not worked since the accident ". 20. Dr Taylor reviewed the Plaintiff again on 29 July 2022. Dr Taylor noted that the Plaintiff was working with physiotherapists to try and do more and Dr Taylor said " Hopefully over time then his symptoms will gradually reduce and his functionality will gradually improve ". He said " From a medical perspective there is nothing he should be advised not to do ". The combination of saying that the Plaintiff should return to work and that there was nothing that he could not do were described by the Defendant as an exhortation that the Plaintiff return to work immediately. We do not read the correspondence from Dr Taylor in that way. In both of Dr Taylor's letters, he spoke of the continuing treatment that the Plaintiff required. For example, in his first letter he recommended that the Plaintiff carried on working with his physiotherapist and also obtain psychological support. The Plaintiff attended private physiotherapy with a Laura Besnard funded by his employer. He then attended the Jersey sport and spinal physiotherapist on 19 May 2022 with an interpreter and it was that that led to the referral to Dr Taylor. Ongoing

physiotherapy took place under Kyle Dougherty. As noted above, the physiotherapist initially requested twelve sessions to include, according to the second report of occupational therapist Joanna Cartwright, " progressive exercises, manual therapy for pain and range movement, neurodynamic work and progressive strengthening and education ". In order to help him sleep, the Plaintiff was prescribed an orthopaedic neck pillow which, in evidence, he said made some positive difference to his sleep. 21. The OT was in contact with the Plaintiff's manager at FerrySpeed at the end of June 2022. They confirmed that the Plaintiff's job remained open to him and that when he returned to work it would be on reduced hours and lighter duties. The employer advised that the Plaintiff " needs to return to work fit to ensure he does not sustain an injury at work" and said that the employer did not have an occupational health department. 22. So, it was plainly the understanding of those responsible for the Plaintiff's day-to-day care that he ought to return only when he was fit to work. The physiotherapy treatment summary prepared by Kyle Dougherty on 27 October 2022 indicated that he had treated the Plaintiff on 13 July, 4, 11, 18 August, 8, 15, 22 and 29 September, and 6, 20 and 27 October 2022. It was also noted that the Plaintiff was putting " effort " into his home exercise programme, which supported the Plaintiff's evidence on this issue. There was an improvement in the Plaintiff's symptoms and his ability to dress himself had improved but there was still some pain present. He was now able to get in the water for rehabilitation purposes although not able to swim a normal stroke. In relation to any further treatment required, Kyle Dougherty recommended " Further progressions of cervical and shoulder strength and thus function associated with occupation ". He said " There have been marked improvements. However, there is still significant deficit in shoulder and neck function that would inhibit full return to work. I would suggest a further period of rehabilitation and exercise progression on a weekly basis for another six to eight weeks, with further review at this time ". 23. In evidence, Mr Vanhegan said that the Plaintiff should have returned to work six to eight weeks after the accident. The position of the Defendant at the end of the evidence was that the Plaintiff should have returned to work by the end of June 2022 at the latest. In view of the evidence, effectively commissioned by the Defendant's insurer to which we have just referred, together with the other evidence to which we consider below, we unhesitatingly reject the submission that the Plaintiff was unreasonable in not returning to work in early 2022. 24. When Mr Torrie saw the Plaintiff in the clinic in August 2022, he observed that the Plaintiff's symptoms had improved globally by 40% from the time of the accident, although he continued to experience a range of different symptoms including neck pain with any movement of his neck and a reduced range of extension, flexing and lateral rotation, limitation in the movement of his right shoulder and reduced power in his right upper limb owing to pain. These symptoms were consistent with whiplash injuries / whiplash associated disorder (to which we will return) and whether his symptoms would fully resolve was at that stage " undetermined and difficult to predict" . Based on his clinical assessment in August 2022, Mr Torrie said " He would currently be limited in his capacity to resume his previous post at FerrySpeed as a delivery driver due to being unable to lift heavy goods...that he is required to deliver ". 25. Unconnected to the litigation, on 15 November 2022 the Plaintiff saw Mr Patrick Armstrong, consultant orthopaedic and upper

limb surgeon, at his clinic in St Helier. He said the Plaintiff's diagnosis was " whiplash type injury cervical spine ". He described the Plaintiff's history, including that immediately after the accident " his pain got a lot worse and he has had quite significant stiffness in his neck and right shoulder, with the pain in his neck radiating to his shoulder and down his arm ". He had been unable to go back to work at FerrySpeed. He had been having physiotherapy and had seen " significant improvement " since this began in May 2022 but was still experiencing significant symptoms. Mr Armstrong described the extent of the pain in some detail which we summarise as pain in the neck which affected his sleep (which had improved since the provision of the orthopaedic pillow), a struggle to get dressed as he had difficulty lifting his right arm; tenderness on the right shoulder and marked tenderness along the right side of the cervical spine. The Plaintiff had some restriction in shoulder movement and tenderness on the right hand side of his neck, with a markedly restricted range of movement in certain directions. 26. Mr Armstrong said: "My clinical impression is that most of this gentleman's pain is coming from his neck and that his shoulder pain is secondary to that. The symptoms he describes do seem very typical of someone involved in this type of accident who has sustained a collection [should be 'flexion'] extension type of injury.... I think he is doing all the right things by attending therapy and trying to get back to a normal life. He told me today that he hoped to get back to work on a phased return in January which I think is achievable looking at him today. To summarise, I think this gentleman's pain is entirely in keeping with the accident in which he was involved. He is improving slowly with physiotherapy, which is what one would expect, I do think in the longer term he should be able to get back to his former activities." 27. Mr Torrie said that he entirely agreed with Mr Armstrong's analysis. Mr Vanhegan did not. He agreed that it was appropriate to instruct an upper limb specialist such as Mr Armstrong. He accepted that Mr Armstrong's examination was similar to the one that Mr Vanhegan carried out a few weeks later and said that it was " easy to package this as a whiplash issue ". However ultimately Mr Vanhegan accepted that perhaps there was not a great deal of difference between his opinion and Mr Armstrong's. Mr Vanhegan said in evidence " He is calling it whiplash and I am calling it neck pain with secondary chronic pain with psychological issues ". Mr Armstrong's conclusion that the Plaintiff's injuries were caused by a whiplash injury is different from Mr Vanhegan's analysis, to the extent that Mr Vanhegan believed that the Plaintiff's hand and arm symptoms were a consequence of CTS. 28. In Joanna Cartwright's report dated 24 November 2022, which is described an " update in respect of Mr Carvalho's rehabilitation ", she said that physiotherapy was ongoing, referred to Mr Armstrong's recent report and the Plaintiff's current symptoms, including the fact that neck movements " are the most painful " and the Plaintiff had experienced a recent flare up " due to him trying too hard to progress ". The report confirmed that the Plaintiff was " working on return to work goal of lifting 5+ kg - aim for RTW in the new year as things continue to progress ". There was an exchange of emails between Ms Cartwright, the occupational therapist, and the Plaintiff's advocate in January 2023 in relation to a " phased return to work ". In early February, Ms Cartwright wrote again to the effect that the HR department at FerrySpeed " have instructed Occupational Health to do an assessment" and that the Plaintiff was planning a phased

return to work at the beginning of March, with physiotherapy up until April to support him. Ms Cartwright was planning a call with his interpreter next week to discuss things with the Plaintiff. 29. The Plaintiff tried to return to work on 6 March, but he was told by his employer that he could not do so as his sick note was still in force, and he had to wait for a further week. It was clear from the email of 3 March 2023 from the Occupational Therapist to the Plaintiff's advocate that the Plaintiff was wanting to return to work but was worried that his employer might still be concerned following a recent occupational health assessment. A planned phased return to work commenced on 20 March 2023 with the Plaintiff gradually building up his hours over seven weeks resulting in a full return to normal working hours. During the first four weeks of the phased return, the Plaintiff was unable to carry out heavy lifting and under no circumstances permitted to lift items more than ten kilograms in weight without assistance. 30. The physiotherapy support that the Plaintiff enjoyed in 2022 continued up to and after his return to work. The report from Kyle Dougherty dated 26 April 2023 showed that the Plaintiff attended physiotherapy for treatment, in addition to the dates set out above, on 1 and 8 December 2022; 5, 12 and 23 January 2023; 9 and 27 February 2023; 9 March 2023; and 5 and 26 April 2023. It was noted that there was still further progression of the cervical and shoulder strength needed to assist with his work and a further five sessions of physiotherapy were recommended in order to build up his strength and to manage the residual pain and cervical extension restriction. 31. The final report of Ms Cartwright dated May 2023 noted that the Plaintiff had returned to work but had to stop for a week owing to back pain. Then he returned to work after a week of rest and physiotherapy advice. Ms Cartwright said that she spoke to the Plaintiff through an interpreter on 5 May 2023 and that her case with him had now been closed, with her wishing him well for the future. 32. On 14 June 2023, Mr Dougherty said that the Plaintiff had attended physiotherapy that day for rehabilitation following "his whiplash injury", and noted that there had been improvement in terms of pain and movement. The Plaintiff was still struggling with having to pick up parcels of above fifteen kilograms, with latent neck pain in the evening and the following morning if he tried to do so. He was capable of lighter loads. 33. On 25 September 2023, Mr Dougherty wrote to the Plaintiff's advocate saying that the Plaintiff "is experiencing chronic pain symptoms which is not unusual after this type of injury". Mr Dougherty said that the Plaintiff needed to continue to manage his pain and that managing his workload to tolerance levels took time and was difficult. He said that the symptoms would continue, and regular physiotherapeutic input would be beneficial to the Plaintiff - with an interpreter beneficial to convey any information imparted. 34. We felt it important to complete the chronology setting out the circumstances in which the Plaintiff returned to work and the advice that he received from Mr Dougherty, Mr Armstrong and Ms Cartwright during this period, prior to considering further the report of Mr Vanhegan which was dated 21 January 2023 and followed an examination in London of the Plaintiff on 7 January 2023. 35. Mr Vanhegan's report noted that there could be misunderstandings when information was provided through an interpreter. There certainly were misunderstandings in this case as, for one reason or another, Mr Vanhegan came to believe that the Plaintiff was under imminent threat of having to leave Jersey and return to Portugal "for good" owing to the fact that he

had a ten year licence and nine years had elapsed. This was not the case and the Plaintiff can live in Jersey for the rest of his life. It was not at all clear how this misunderstanding arose.

36. Nonetheless, Mr Vanhegan described the Plaintiff's hobbies accurately as football, swimming and going to the beach, with the Plaintiff formerly - prior to the accident - playing football twice a week and swimming in the open water on a weekly basis throughout the year. The Plaintiff was previously a good swimmer having completed lifeguard training in Portugal.

37. Having spoken to the Plaintiff, Mr Vanhegan gave a slightly different description from Mr Torrie as to how he thought the accident had occurred. He accepted that the Plaintiff told him that he was leaning forward in his seat adjusting the radio with his left hand and had received a strong impact which, according to Mr Vanhegan, caused the Plaintiff's upper torso to be displaced forwards and then backwards. Mr Vanhegan appeared to take the view that the Plaintiff's description of the accident could not have led to a significant injury and he added, perhaps rather dismissively, that the Plaintiff "has a short thick neck which is a protective factor". He said "I look for absolutes". He said there was no acute injury and the Plaintiff had simply sprained his neck.

38. Mr Vanhegan, perhaps rather unusually, had a difficulty in accepting whiplash diagnoses and it is not overstating matters to suggest that he was hostile to such a diagnosis. He volunteered, somewhat to the Court's surprise, that whiplash was not something recognised in Greece and Lithuania. He went on to say that he found academic papers in relation to whiplash (some of which Mr Torrie had referred to) as "bamboozling". He said that such studies were limited in their methodology. When he was asked about whiplash cases, he said that his experience of treating whiplash cases was "nil", but that five or so of his thirty-five medico-legal cases a year were whiplash cases. He said "I try and avoid whiplash cases". When asked why, he said them to be "contentious... confused and confusing". He said that whiplash was something that was "not examined on at medical school". He was disappointed with the whiplash diagnosis given at A&E and subsequently by Dr Armstrong. Mr Vanhegan said "As soon as he was branded whiplash by the A&E doctor he was sent down a separate route. He was not given a positive message. It was a self-fulfilling prophecy".

39. Whiplash injuries have been long recognised by doctors and the Courts. The Judicial College guidelines which assist the Courts in England and Wales in awarding damages in personal injury cases have a whole section on whiplash injuries and there are in the United Kingdom Whiplash Injury Regulations.

40. Mr Vanhegan's dislike for and reluctance to concede such a diagnosis generally and not merely specifically in this case led us to consider his evidence on certain matters with a degree of caution.

41. Mr Torrie and Mr Vanhegan produced a joint statement on 20 June 2023, having had a telephone discussion on 20 May 2023. However, neither expert knew when making the joint statement that the Plaintiff had returned to work in March 2023 and by then was back at work full time. Mr Torrie accepted that the fact that both experts thought the Plaintiff was still not working coloured their views. In any event, we placed greater weight on the oral evidence of the experts than their joint statement as in many respects the contents of the joint report appeared to have been either inaccurate, overtaken by events or, when explained to us, suggested that the experts had agreed in areas when they had not actually agreed. For example, the expert joint report recorded that the experts agreed that the

Plaintiff's symptoms in his neck and lower back would have been expected to have significantly improved within three to six months of the accident with analgesia and targeted physiotherapy. Mr Torrie explained that was consistent with the 40% improvement that he recorded in August 2022 which was in line with his expectations and this agreement. 42. Further, the suggestion in the joint report that the experts had "agreed" with Mr Vanhegan's assertion that the Plaintiff's phased return to work would have been possible by six to twelve weeks following the accident was explained by Mr Torrie on the basis that the Plaintiff could have tried to return to work but he would have likely failed owing to his health at that time. He confirmed "an early return would likely have failed - he was reasonable in returning to work when he did in March 2023". Mr Torrie said that much of the rehabilitative work in this case came by working with therapists and that the Plaintiff had built up a rapport with the physiotherapists working with him. By contrast, Mr Torrie and Mr Vanhegan only saw the Plaintiff once. The experts went on to agree that the diagnosis of CTS could be objectively proved or disproved with electrophysiological testing - neither of them knowing that by that time the Defendant's insurers had refused to fund this rendering it difficult to carry out owing to the Plaintiff's limited means, which were well documented in various applications for interim payments which were made (many of which were contested by the Defendant's insurers). Further, the "partial agreement" recorded in the joint report in respect of the prognosis for the Plaintiff's recovery had been, Mr Torrie said, so far as he was concerned, "modified" by the evidence that he heard in Court and the fact that twenty-five months later the Plaintiff was still reporting symptoms. 43. The experts went on to agree that the Plaintiff suffered from anxiety, feeling of shame and failure and that these could be a factor in explaining the persistence of his symptoms. Nonetheless, Mr Torrie said in evidence that the Plaintiff still had neck and arm problems which he did not have before the accident which put him in the group of long-term sufferers of whiplash. 44. We have referred above to cubital tunnel syndrome. Mr Vanhegan said that the Plaintiff began to suffer from this condition in April / May 2022 and that it was wholly unrelated to the whiplash injuries he suffered in January the accident for which the Defendant was responsible. 45. As set out above, as we are satisfied that the injuries to the Plaintiff's right arm were present from the time of the accident, consideration of CTS does not really arise. But as we heard a lot about this condition as a consequence of the evidence of Mr Vanhegan, we have made certain findings. 46. Mr Vanhegan said that in his opinion the Plaintiff's right shoulder was not directly injured as a result of the accident and that his complaint of numbness in his right arm, most noticeable in the little and ring fingers of the right hand, was evidence of ulnar nerve entrapment at the elbow, namely CTS, which was a separate condition. He said his opinion was supported by a Clinical TINEL test. Mr Vanhegan said that the presence or absence that CTS could be conclusively determined by a neurophysiological test which Mr Torrie said was quite straightforward and would cost about £1,000. The evidence showed that in fact the Plaintiff indicated that he was happy to undergo such a test but in February 2023 the Defendant's insurers declined to fund it as they said it was not necessary for the purpose of the Plaintiff's recovery. 47. Mr Torrie rejected Mr Vanhegan's evidence on this issue. He was prepared to accept that if the right arm symptoms

were limited to effects present in the little finger and ring finger only which could be numb or tingling, then this might be a symptom of an ulnar nerve compression. Mr Torrie also observed, and Mr Vanhegan accepted, that such a condition if it exists can resolve spontaneously and at the date of trial the Plaintiff no longer suffered from such symptoms. 48. However, Mr Torrie said that the distribution of discomfort over the Plaintiff's arm as a whole of which the Plaintiff complained was inconsistent with CTS and he said that it was "categorically not an ulnar nerve compression" because there was an additional finger affected and a different sensory distribution extending both to the anterior bicep and part of the lower arm. Mr Torrie said that it was much more likely that these symptoms were a consequence of a whiplash associated disorder and that remained his opinion even if the symptoms presented themselves weeks or months after the accident. 49. We prefer the evidence of Mr Torrie on this issue and indeed his evidence overall where it conflicts with the evidence of Mr Vanhegan. We find that the Plaintiff's symptoms were part of a whiplash associated disorder, although we prefer the term "whiplash type injury". 50. Mr Torrie referred to a number of academic studies in relation to whiplash associated disorders ("WAD"). One indicated that approximately 50% of those with WAD report neck pain symptoms one year after their injuries. Greater initial pain, more symptoms and greater initial disability predicted slower recovery, and few factors related to the collision itself (for example, direction of the collision) were prognostic. However, some passive factors such as depressed mood were prognostic for slower or less complete recovery. Resolution of litigation may also be a factor assisting in recovery. Other studies suggested that most patients recover within a few months, but a significant proportion did not and continued to suffer from ongoing symptoms years later. Mr Torrie, and Mr Vanhegan agreed with him on this point, said that whiplash sufferers could be divided into those suffering from mild or moderate or severe symptoms. Mr Torrie said that it was not possible to say at the outset which trajectory a person would follow and he felt that the Plaintiff was on the borderline between moderate and severe in terms of the consequences of the injury. 51. Mr Torrie also saw whiplash patients infrequently, probably only two or three times a year, as he did not come across such cases in the acute settings in which he generally worked - but did so privately in his elective practice. 52. The Court proceeded on the footing, as accepted, that the Plaintiff's original symptoms had improved by 40% as at August 2022 as reported by Mr Torrie and 50% as at January 2023 as reported by Mr Vanhegan. 53. We also accepted Mr Torrie's evidence that any continuing symptoms at this stage, i.e. twenty-five months after the accident, were now likely to be permanent. 54. As to the credibility of the Plaintiff, Mr Torrie called him an honest and straightforward witness, who was forthcoming in his answers and full in his replies. When this description was put to Mr Vanhegan he rejected it. Dr Boucher told us that she found the Plaintiff to be genuine in his presentation. She told us that the Plaintiff was required to complete two questionnaires and his answers in those questionnaires were consistent with what he had said in the clinical interview. Dr Boucher said when people whom she saw exaggerated there could often be a disparity between their written answers and the contents of the interview. 55. We regarded the Plaintiff, not merely by virtue of the views expressed by Mr Torrie and Dr Boucher as, in our assessment, an

honest witness who did not exaggerate his symptoms. For example only, he was pleased to report that there had been an improvement in his residual symptoms between the making of his last witness statement in December 2023 and the trial only two months later. There was no aspect of the account that he gave when he spoke about the consequence of the accident and his determination to get back to work that we found exaggerated. Continuing symptoms on the date of trial and their consequences 56. The Plaintiff still suffered from certain effects of the accident. Recently he had been signed off sick (a couple of weeks before the trial) because he had picked up something too heavy. He had to take a week off work. Commenting at trial on his list of continuing symptoms referred to in the statement he made in May 2023, he said that: (i) he experienced pain in the neck at the end of the day if he did overtime and felt tired. His overtime duties were heavier than his normal duties. When he did some work he felt pain in his neck and sometimes in his back; (ii) he experienced pain in his right shoulder when having to deliver, for example, a kitchen worktop weighing twenty kilograms; (iii) the swelling and tingling in his hand was no longer a problem and he was now able to raise his arm and turn his head, although he still did some of the exercises; (iv) he still needed the orthopaedic pillow to sleep and would only take a strong painkiller, which he had obtained in Portugal (Dafalgan) in what he called an "SOS situation". However, it became clear in his evidence that this was on a not infrequent basis. Often he would take one painkiller at lunchtime and one in the evening, and would need to do so after overtime that evening and the following day. He still had trouble sleeping and most nights he found it difficult to sleep. 57. In his final witness statement made in December 2023, he spoke of a difficulty turning his head on the right side at the end of the working day and the need for pain medication if he did overtime which generally involved working up to ten hours a day. He confirmed that his income was now £3,000 per month net and his long-term incapacity allowance (he was assessed at 30% disabled) was to end at the end of March 2024. He said he needed to work overtime in order to pay his rent and to pay maintenance towards his son. As to the continuing effects of the accident, he said he could not do work that involved heavy lifting. Recently he had been asked by his employer to carry out such lifting and he had to decline the request. He said that this made him worry about his future at FerrySpeed. He said "For now they have been very supportive. Sometimes I refuse to do a job that is too heavy for me. It all depends on the supervisor". He said that FerrySpeed have been supportive to him, colleagues had had problems and "it may come knocking on my door". We were left with a picture of a hard working Plaintiff who has done his best to recover from the accident, but is anxious about the future on account of his residual disabilities consequent upon the accident. The evidence of Dr Boucher 58. Dr Boucher saw the Plaintiff for three hours in February 2023. The history in relation to the Plaintiff's childhood, work and relationships we have already summarised above. The day after the accident, the Plaintiff could not move when he got out of bed owing to the pain in his neck and shoulder. He tried to go to work and drove in but could not park his car. He was told to go to hospital. After the accident he spent a lot of time sitting because it was too painful to get up if he lay down. He only left his flat to go to the doctors, which was next door. He found the physiotherapy very helpful and over a year later was still attending

physiotherapy regularly. He was also lifting weights at home to try and build the muscle around his shoulder as recommended. For six months after the accident he was unable to lift anything. He used to enjoy swimming, but he cannot swim in the way he used to. He no longer plays football and that remained the case. When he returned to driving, he initially had special mirrors as he was unable to turn his head. The accident left him feeling powerless, lost and in a low mood. He was worried about the impact on his son as he was unable to take him to the beach or play. When his employer stopped paying in April 2022, he had many financial worries. He was unable to pay his rent, the maintenance towards his son, and had to borrow money from friends. He could not buy his son what he wanted for Christmas and became tearful in interview as he felt he was letting down his son as a father. He was unable to go on holiday as he had no money and worried about what his colleagues at work would think of him when he returned to work and because he had not been at work. He had been struggling but had not asked for any psychological treatment. Psychometric tests showed that he was experiencing mild depression, moderate anxiety and was analysed as suffering from an adjustment disorder which could not be treated. These were all consequences of the accident as was his consequential inability to socialise with others and his anxiety involving work. Some of these things were likely to resolve once he returned to work. 59. Dr Boucher told us that the accident caused the Plaintiff anxiety, financial stress, concerns about his ability to parent his son, concerns about how others perceived him and all the matters set out in her report, which were all a direct consequence of the accident. 60. We accepted Dr Boucher's evidence, which in any event was unchallenged. Failure to mitigate loss 61. As set out above, we accepted that the Plaintiff acted reasonably in returning to work when he did and how he did. Nonetheless in view of the suggestion that he ought to have gone back to work earlier and should not recover the claim of lost earnings, we directed ourselves in relation to the principles on mitigation of loss. We have regard to the provisions in *Charlesworth and Percy on Negligence* which states at paragraph 4-54: "What is reasonable for a plaintiff to do or attempt to do in mitigation of his damage is not a question of law but a question of fact in each case, the burden of proof that the plaintiff has acted unreasonably being upon the defendant to discharge." 62. We were satisfied on the evidence that the Plaintiff acted reasonably in the way that he went about taking all advice and treatments offered to him, complying with the advice given and returning to work when he did at a time which was, in the event, dictated to him by his employer on the advice that they received. Accordingly, we are satisfied that he acted reasonably and in any event the Defendant has failed to persuade us that it was unreasonable in returning to work when he did, still less that he has failed to mitigate his loss. 63. Having considered the evidence in this case, we now turn to the question of damages. General damages 64. We have considered and summarised the evidence in relation to the injuries the Plaintiff suffered above and do not set that out again. Both parties drew our attention to the Judicial College guidelines in relation to personal injury awards, 16th edition. Those guidelines were last updated in November 2021 and according to the introduction are supposed to reflect increase in the UK Retail Price Index. We remind ourselves that since November 2021, Jersey RPI has increased significantly, and according to the Government of Jersey inflation calculator, between

December 2021 and December 2023 the percentage change in RPI was 21.1%. In any event, we take judicial notice of the fact that the cost of living is higher in Jersey than it is in England. 65. In respect of neck injuries, the guidelines at chapter 7 draw a distinction between severe, moderate and minor injuries. Minor injuries include minor soft tissue injuries where, it appears from the guidance, a full recovery takes place within one to two years. In this case, there has not been a full recovery, but we note that the " moderate " category includes cases involving soft tissue injury of the more severe type resulting in serious limitation of movement and permanent or recurring pain. In the circumstances, bearing in mind that the " moderate " bracket ranges from, in this context, £13,740 to £24,990, and the " minor " bracket is from £4,350 and £7,890, we think the appropriate award would be between the top of the minor and the bottom of the moderate band, but closer to the former than the latter. A total award of £8,500 for this injury would be appropriate. 66. Shoulder injuries are also contained in chapter 7. The Plaintiff argued that this was a " minor " injury where there was soft tissue injury to the shoulder with considerable pain, but almost complete recovery in less than two years yielding a band of £4,350 to £7,890. The guidance says that only in cases at the very bottom of the bracket would be worth less than £5,000. In our judgment this injury merits an award of £6,500. 67. Finally, in relation to the psychological effects of the accident as evidenced by the Plaintiff and Dr Boucher, we have regard to chapter 4 titled ' Psychiatric and Psychological Damage ' and agree with the Plaintiff that this is a case of " less severe " damage - the lowest category - where the award should take into account the length of the period of disability and the extent to which daily activities and sleep were affected. The guidelines propose an award between £1,540 and £5,860. In the circumstances, we agree a total award of £4,000 would be appropriate. 68. The total of these three sums is £19,000. 69. However, it is clear that it is not always appropriate to award such a sum as there may be an overlap between the effect of the injuries, particularly where more than one injury is of physical nature and the Court should, in any event, stand back and look at the effect on the Plaintiff as a whole when considering the appropriate award on account of general damages. In this regard, our attention was drawn to the case of *Sadler v Filipiak*

[2011] EWCA Civ 1728 , a decision of the Court of England and Wales in which the judgment of the Court was given by Pitchford LJ. 70. Pitchford LJ said at paragraph 34 et seq the following: "34. 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 JSB 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.

35. In this case there was in my view no significant overlap between the psychological and physical damage suffered. The appellant's PTSD arose not from the perception of the injuries but from the horror of the accident. The grief reaction was an important component of the appellant's psychological suffering. It arose from the loss of her friend in the same horrifying accident. There was, however, by reason of the nature of the judge's approach, an overlap created by the separate awards in which scarring was reflected. There were in all three separate assessments which represented either in whole or in part an allowance for the effect of scarring. There was also, it seems to me, a significant degree of overlap between individual orthopaedic injuries. Clearly the principal injury was that to the appellant's left femur. It was the consequence of that injury which caused a prolonged period of recovery."
71. Earlier in the judgment, the Court noted the decision of Kennedy LJ in *Dureau v Evans* 30 October 1995, where Kennedy LJ said: "'In deciding what the award should be in respect of pain, suffering and loss of amenity, the learned judge considered, as he was invited to, tables which had been prepared by the Judicial Studies Board and which were placed before him by counsel then acting on behalf of the plaintiff. He also considered the figures which were put to him by way of example on behalf of the defendant. He came to the conclusion that some benefit was to be obtained from the earlier type of figures; a conclusion which is disputed by Mr Murphy, on behalf of the defendant. It seems clear to me that the learned judge did not simply focus on those figures. He arrived at his conclusion by using them as a tool in addition to the figures which he had been invited by Mr Murphy to consider. In that way he arrived at his figure of £45,000 ... It is submitted by Mr Murphy that, nevertheless, the learned judge reached a figure which was too high and that the figure should have been in the region of £35,000. He submits that the learned judge was led into that error because of the weight which he gave to the separate figures advanced by the Judicial Studies Board in respect of the separate heads of injury. He invited us to look at the way in which the argument had been put on behalf of the plaintiff and the different heads which had been given to different types of injury which this plaintiff had sustained. Mr Murphy submits that was a wrong approach and no weight should have been given to it at all. He has invited our attention to some awards of damages reported in *Kemp*. Miss Dureau, acting on behalf of her father with great skill and courtesy, has done the same in relation to some other awards, taking also advantage of the skeleton argument prepared by Mr Bishop at an earlier stage in the preparation of this appeal. Needless to say, we have looked at the awards to which our attention has been invited, as well as the figures which have been put forward as being the figures set out by the Judicial Studies Board. Help is to be obtained from any source where it happens to be available. To a limited extent, in a case where there are multiple injuries, the figures in the Judicial Studies Board table can help but I accept Mr Murphy's criticism of them that, where one has a multiplicity of injuries, it is necessary to take an overall view. The off-setting process may mean it is not possible to derive a great deal of benefit from that particular source. One then looks to see if anything can be gained from looking at a comparable award, if one is to be found, in another other case. Even that may not prove to be a particularly fruitful source of inquiry. It may be necessary, if it be possible, to select what may be the most serious head of injury to see if a comparable award can be found in

relation to that and, if so, build on it to allow for the other heads of injury which have been sustained by the plaintiff in the instant case." 72. On the facts in *Sadler v Filipiak*, the Court of Appeal felt that the judge's award was too low and awarded a greater sum for pain suffering and loss of amenity on appeal. 73. In this case we have not been provided with a previous comparable award made in relation to injuries similar to those caused to the Plaintiff in this case. However, even if we were, it might have been of limited assistance as every case is different. 74. Doing the best we can, we think the appropriate award by way of general damages is £15,000. We award interest at the rate of 2% since the accident totalling £666.35. Special damages 75. In respect to past loss of earnings, we note that the Plaintiff calculated the same by reference to his net earnings in the five month period prior to the date of the accident (which generally included overtime) yielding a total of £31,638, representing the period from when his employer stopped paying him on 11 April 2022 to when he returned to work on 20 March 2023, and in addition during the interim, worked short shifts until he returned to work full-time on 21 May 2023. We award £31,638.37 and interest calculated at 0.75%, half the Court rate, per annum, until 20 February 2024, namely £436.52. 76. We award the Plaintiff his past medical costs in full which come to the modest sum of £353.04 including interest. 77. We disallow his claim in relation to a future psychological assessment as there was no evidence for such an assessment. Loss of earning capacity 78. The final matter of contention was the extent to which the Plaintiff should receive an award on account of his future disadvantage in the labour market which is colloquially known as a "*Smith v Manchester*" award. The Plaintiff sought two years net salary under this head of loss amounting to in excess of £64,000. The Defendant said that no such award should be made in this case. 79. We considered this matter with care and directed ourselves in accordance with the principles set out in *Williams v Fox*

[2023] JRC 026, which both counsel agreed represented a correct statement of the law. Those principles (and their application on the facts in *Williams*) were set out in the judgment in that case at paragraphs 66 to 74 inclusive, which we now reproduce: "66. In her schedule of loss the Plaintiff made a claim on account of lost earning capacity. It was not quantified in the schedule or indeed during the trial and neither party drew the Court's attention to any authorities until their closing addresses, and even then no substantial submissions were made on this issue nor was the Court's attention drawn to *Kemp and Kemp*. *Kemp and Kemp* says at paragraph 10-026: "*Smith v Manchester* awards are made to compensate claimants for the loss of earnings which they may suffer in future if various eventualities occur. The loss is predictable but speculative." 67. *Kemp and Kemp* notes that the prognosis for the claimant is the trigger for a claim for loss of capacity on the labour market. If the claimant's condition is resolved by the time of the trial or settlement or (and this example is given) the back injury has led to a five year acceleration period but the acceleration period has ended before or at trial then no such award can be made. However, 'If the acceleration period extends into the future then an award may be made'.

68. This, for the reasons set out above, is such a case. Further, to warrant an award, it is necessary that the symptoms will interfere with the claimant's future capacity to work or earn. In our view, there may be a substantial interference with the Plaintiff's future earning capacity for the five year period with which we are concerned, although the extent of that limitation is uncertain. Both experts were clear that the Plaintiff will be disadvantaged on the open labour market in such circumstances. Having established that the injuries gave rise to the potential claim, and that such a claim may interfere with the Plaintiff's earning capacity, the third pre-condition for making such an award is the likely arrival of the claimant on the labour market at some point before normal retirement age, i.e. 67 in Jersey. Kemp and Kemp suggests that there will be a real or substantial risk that the claimant will be on the job market before retirement if there is, on the evidence, a risk of 25% or more that the claimant will lose their job between the trial and their likely retirement.
69. In *Robson v Liverpool*
- [1993] PIOR Q78, the English Court of Appeal held that the trial judge was wrong to dismiss the claimant's claim for damages on the basis that the level of risk (25%) was insufficient to trigger an award. The Court of Appeal said that such a risk was high enough to be real and substantial.
70. Further, even if a claimant decides to leave their job voluntarily prior to retirement and enters the labour market then they are still *prima facie* entitled to an award. Kemp and Kemp notes: "It would not be right that a claimant should be tied to one employer simply because he had suffered an accident."
71. As to the way in which *Smith v Manchester* damages are calculated, in *Forey v London Buses* [1992] PIQR Q48, Taylor LJ said: "Finding the appropriate figure ... must necessarily be imprecise It must involve weighing up all the circumstances as best one can and taking a stab ... One cannot say that it is precisely right because no figure can be arithmetically calculated in a case of this kind ... "
72. We note from the table of awards for handicap on the labour market in Kemp and Kemp that there are several instances of the Court awarding one year's net income as appropriate compensation under this head of loss.
73. The Courts take a broad brush approach and Kemp and Kemp goes on to say that it is possible to 'glean some guidance' from various decisions which the editors of Kemp and Kemp then go on to provide. They say that there are four relevant factors: (i) The net annual income of the claimant at the time of trial. This 'should be used as the basis for any S&M award'. In this case the Plaintiff's annual net income is approximately £32,000 per annum. (ii) The length and remainder of the Plaintiff's working life. This is perhaps of limited relevance in this case as the restriction on the labour market will be of five years' duration towards the end of the Plaintiff's working life. However, the key factor to bear in mind is the length of the restriction, i.e. five years. (iii) The level of risk that the Plaintiff will be on the labour market and the number of times that is likely to occur. Each time the Plaintiff is

searching for work she will be exposed to further loss as a result of the restriction on the labour market caused by her injuries. Although the Plaintiff is content in her current employment, she has only been so employed for a few months. It is in our view very likely indeed that during the next twenty plus years, she will change job, perhaps on many occasions, and in those circumstances she will be, during the period of the five years we are concerned with, likely to be exposed to the restriction on the labour market caused by the injuries to which we have referred. We also take into account the fact that her current employer is a charity whose sources of income vary from year to year and are, on the evidence we heard, uncertain. (iv) The effect of her disability / handicap on her work capacity. The Plaintiff will be affected when she is in her late fifties / early sixties and although the extent of the disability will be substantial it is unlikely to prevent her from working altogether but will make her less attractive on the labour market. She will doubtless make full disclosure of her symptoms to any prospective employer and it is possible that she may only be able to work part-time.

74. Doing the best we can, we have decided that the appropriate *Smith v Manchester* award to make on the facts of this case is £30,000." 80. The Defendant's case was that the Plaintiff's symptoms had fully resolved (which was not entirely accurate), that the Defendant's employer had been good to him to date, and that there was no evidence to support the claim that his earning capacity had been adversely affected. 81. On the evidence we heard from the Plaintiff, as summarised above, and having regard to the medical evidence we received, we drew the following relevant conclusions. 82. First, the Plaintiff plans to live and work in Jersey until retirement. Secondly, having regard to his work history and the general nature of the employment market today, the strong likelihood is that the Plaintiff will, one way or another, re-enter the job market prior to his retirement on more than one occasion prior to that retirement. In those circumstances, although he will not be prevented from obtaining employment, he will be adversely affected by his continual inability to lift heavy weights and may be affected by the need to make disclosure of his injuries. It is likely that he will be restricted in the range of jobs that he can do when he re-enters the employment market and, in those circumstances, there is a substantial possibility, if not likelihood, that on the occasions that he changes job, he may be delayed in securing employment at an appropriate wage. 83. We note that the Plaintiff's employer has indeed been fair to him, but we note and accept his expressions of concern stemming from his refusal to carry out heavy tasks that he would have been able to carry out prior to the accident. 84. Doing the best we can and noting that the Plaintiff said that his net income was now £3,000 per month, we make an award on account of loss of earning capacity in the sum of £18,000, equivalent to six months' salary. No interest is due on this sum. 85. Accordingly, we award the Plaintiff the sum of £65,427.93, plus, where appropriate, interest to be calculated. Taking into account the five interim payments made by the Defendant's insurer prior to the trial, amounting to £13,500, the sum of £51,927.93 plus interest (as set out in paragraph 74 above) is due to the Plaintiff in damages. 86. We also order the Defendant to pay the Plaintiff his legal costs on the standard basis to be assessed if not agreed. Authorities *Charlesworth* and *Percy on Negligence*.

Judicial College guidelines in relation to personal injury awards, 16 th edition. Sadler v Filipiak

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