

SCOTLAND / JUDGMENT

Allan v Amlin UK Ltd [2013] ScotCS CSOH_156 (20 September 2013)

[2013] ScotCS CSOH_156

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SESSION

[2013] CSOH 156 PD1245/12 OPINION OF LADY WISE in the cause GERALDINE ALLAN Pursuer;
against AMLIN UK LIMITED Defenders:

Pursuer: C Smith; Thompsons Defenders: D Davidson; Brodies 20 September 2013

Introduction

- [1] In this action the pursuer who is 34 years old, seeks damages in respect of personal injuries which she suffered in a road accident on 11 November 2011. Liability has been admitted by the defenders and no question of contributory negligence arises. It is agreed that the pursuer sustained injury in the accident. The proof before me was accordingly only concerned with the quantification of damages.
- [2] At the outset of the proof there were two main issues in contention between the parties. First, the issue of solatium and secondly the question of the recoverability of certain car hire charges during a period of almost seven weeks while the pursuer's vehicle was being repaired.
- [3] The circumstances of the accident were that on 11 November 2011 at about 5.30pm, the pursuer was driving her BMW motor vehicle on Captains Road in Edinburgh. She required to stop her car to queue at a set of traffic lights there. Whilst she was in a stationery position, her vehicle was subjected to a rear end impact by a Vauxhall Insignia motor vehicle driven

by the defenders' insured. The pursuer suffered a violent jolt on impact. She was concerned for the safety of her child who was travelling in the rear of her vehicle. Her neck and back became stiff and uncomfortable and she suffered quite severe pain for at least 8 weeks following the accident. A contentious issue at proof was the extent to which the pursuer had suffered from persistent back pain over the years leading up to the accident. In the event, after evidence was led but prior to submissions, counsel advised that they had reached agreement in relation to solatium in the sum of £3,000. Chiropractic costs were agreed at £250, services at £500 and loss of use and inconvenience at £150. Accordingly, it was agreed that the damages should be at least £3,900.00. Agreed evidence

- [4] Counsel entered into a detailed joint minute agreeing the circumstances of the accident and various other matters. In so far as relevant to the sole issue left for my determination, namely the recoverability of the car hire charges, the following paragraphs are noted:- "4. As a result of the index accident, the pursuer's vehicle sustained damage.
5. As a result of the index accident, the pursuer's vehicle was under repair (and not available to the pursuers) during the period from 11 November 2011 to 30 December 2011.
 6. As a result of the index accident, the pursuer required to hire a car (of similar or equivalent specification to the pursuer's vehicle) while the pursuer's vehicle was being repaired and she did so.
 7. After the index accident, the pursuer hired and drove the following cars during the following periods: [a] Mercedes-Benz C220 from Drive Assist during the period from 12 November 2011 to 14 November 2011 (inclusive); and [b] BMW 3 Series Diesel Saloon 320d [184] Sport ("the BMW replacement car") during the period from 14 November 2011 to 30 December 2011 (inclusive).
 8. The document ("the Statement of Charges") dated 4 January 2012 and lodged as production 6/3 is a document addressed to the pursuer and headed "Statement of Charges". The Statement of Charges is what it bears to be.
 9. Accident Exchange Ltd ("AE Ltd"), Alpha 1, Canton Lane, Hams Hall, Coleshill, West Midlands, B46 1GA issued the Statement of Charges.
 10. After the index accident, the pursuer rented and used the BMW replacement car at a rate of £199.11 [including VAT and waivers] per day for 47 days.
 11. In the circumstances, it was reasonable for the pursuer to rent a car similar to the pursuer's vehicle for 47 days. The BMW replacement car was of the same specification and was similar to the pursuer's vehicle.
 12. The Statement of Charges includes a detailed and accurate breakdown of the credit hire charge relative to the pursuer's hire of the BMW replacement car during the period between 14 November 2011 and 30 December 2011.

13. The document ("the Rental Agreement") dated 14 November 2011 and lodged as production 6/4 is a Vehicle Rental Agreement between the pursuer and AE Ltd relative to the BMW replacement car.
 14. The Rental Agreement is what it bears to be and was signed by the pursuer on 14 November 2011.
 15. The pursuer's claim for past services under Sections 8 and 9 of the Administration of Justice (Scotland) Act 1982 has been agreed at £500 (inclusive of interest).
 16. The pursuer's claims for loss of use of the pursuer's vehicle and inconvenience have been agreed together at £150 (inclusive of interest)." Submissions for the pursuer
- [5] In addressing me in relation to the issue of the car hire charges and their recoverability, counsel for the pursuer referred to the averments at statement 5 in the record to which are in the following terms: "The pursuer's vehicle sustained damage as a result of the impact. It required to be repaired. Whilst without her vehicle the Pursuer required to hire an equivalent replacement. In so doing she incurred a liability for hire costs in the sum of £9,598.98. The Pursuer was not in a financial position at point of hire such as would have permitted a hire at basic hire rates." She submitted that the evidence, mostly as agreed in the joint minute supported a contention that the pursuer required to hire a car during the period she was without her vehicle as a result of the accident together with the costs of that hire. The pursuer had spoken in evidence to the contract number 6/4 of process which made clear that she was obliged to repay the full charges. She returned the car at the end of the hire period. It was noteworthy that it had been agreed that it was reasonable for her to hire a replacement vehicle. The costs that she incurred in doing so, which are enforceable against her, represented the full amount of her loss. The issue between the parties related to the issue of on whom the onus lay to prove that the pursuer was not entitled to credit hire rates where she has not proved the impecuniosity pled on record.
- [6] The argument on behalf of the pursuer was that absent any evidence that she acted unreasonably she must be entitled to the full amount claimed. There was no record for a case that she did not act reasonably or indeed for what other sum would have been reasonable in respect of hire charges. Reference was made to the leading authorities in England in relation to the issue of the recoverability of credit hire charges.
- [7] In *Dimond v Lovell*
- [2002] 1 AC 384 the primary issue had been the unenforceable nature of a particular car hire agreement. However, Lord Hoffman's speech set out the background to the issue of recoverability of car hire charges. In *Dimond* it is explained that a gap in the market had been filled by certain "accident hire companies" which enabled owners of cars damaged in accidents to have a replacement car without cost, trouble or risk. The companies concerned clearly have to be compensated for the credit and additional services that they provide and so claims by accident hire companies are generally thought to be at a rate

substantially above the marked or "spot" rates that an ordinary hire company would charge when hiring out a car for cash. Against that background many motor insurance companies have tried to resist such claims (see page 392 - 393 of Dimond). In that particular case, the court ultimately found that while Mrs Dimond acted reasonably in going to such a company, she had obtained not only the use of a car but additional benefits as well, such as the necessity of laying out money to pay for the car and the trouble and anxiety of pursuing a claim against Mr Lovell or his insurance company. She was relieved of the risk of having to bear the irrecoverable losses of successful litigation and the risk of having to bear the expense of unsuccessful litigation. Ultimately Lord Hoffman expressed the view that a court cannot ignore the fact that additional benefits have to be paid for and that a charge for these would be billed into the hire cost. He accepted that a determination of the value of the benefits which must be brought into account would depend on the facts of each case. However the principle to be applied was that the recoverable equivalent spot rate would ordinarily be the net loss after allowance had been made for the additional benefits which the accident hire company had provided (see page 402f-403a).

- [8] Counsel submitted that while the Dimond v Lovell case was authority for the proposition that credit hire offers additional benefits that are not properly recoverable in mitigation of damage, it was clear from the speech of Lord Hoffman that such additional benefits should simply be "brought into account" in the calculation of damages where reasonable steps have been taken to mitigate loss. The case proposed that one way to value the additional benefits was to compare the higher rate with the equivalent spot rate or ordinary car hire cost. Counsel submitted that the requirement to "bring into account" the additional benefit did not amount to authority for the proposition that only spot rates were recoverable. Any comparison between ordinary hire rates and credit hire rates must be based on evidence. In Lagden v O'Connor
- [2004] 1AC 1067 , the House of Lords decided that the rule in Dimond allowed for an exceptional category for the impecunious. Counsel suggested that this rule would be better formulated as an exceptional category for those who did not have a choice. The dicta of Lord Hope in particular was relied upon. At paragraph 30 of Lagden Lord Hope discussed the situation of the injured party who had no choice in that the only way he could minimise his loss was by expending money which resulted in an incidental and additional benefit which he did not seek but the value of which could nevertheless be identified. In that scenario it would be contrary to the rule that the purpose of an award of damages is to place the injured party in the same position as he was before the accident as nearly as possible were he to be unable to recover the full amount. Accordingly, at paragraph 34 Lord Hope opined that it is for a defendant who seeks to deduct something from expenditure made by the pursuer to make out the case for doing so. It is not enough that an element of betterment can be identified. It had to be shown that the claimant had a choice and that he would have been able to mitigate his loss at less cost.

[9] Counsel submitted that as there was no evidence of choice in this case, the issue of whether the pursuer could have chosen a cheaper form of car hire did not arise. It would have been for the defenders to aver and prove that she could have done so. Absent any evidence of choice they could not make the case for deducting anything from the clearly quantified loss that the pursuer has proved. In other words, the defenders had not proved that the pursuer had received something additional to basic hire and if so what that betterment might be. In this context reference was also made to the two cases (heard together) of *Pattni v First Leicester Buses Ltd* and *Bent v Highways and Utilities Construction and Allianz Insurance*

[2011] EWCA Civ 1384 ,

[2012] PIQR Q1 . In those cases the Court of Appeal dealt with the methodology of assessing the "spot rate" or ordinary hire charge and confirmed that it was always for a defendant to demonstrate by evidence that there was a difference between the credit hire charge and the basic hire rate. Further, if it was reasonable for a claimant to hire on credit terms, because he was impecunious, then provided it was a reasonable rate to pay in the circumstances, the claim would be satisfied in full. In *Gee v Axa Corporate Solutions* [Sheriff Principal Stephen, 27 August 2012, unreported], a decision of the Sheriff Principal of Lothian and Borders, the defenders successfully argued that the onus was on a pursuer to raise and prove impecuniosity if a pursuer sought to rely on it. Counsel for the pursuer submitted that quite apart from distinguishing that case on the facts it was of course not binding and the arguments were in any event not well reasoned. Reliance was also placed on *McGregor Damages* , at paragraph 7-018 in further support of the proposition that the onus in all aspects of mitigation of loss was on the defenders. In summary, the pursuer's position was that the defenders had failed to make any averments about what choices had been open to the pursuer and they had not averred that she had failed to mitigate her losses or that she had acted unreasonably. Further, there were no pleadings in relation to any additional benefit it might be claimed the pursuer had received as a result of the action she took in relation to hiring a car. There was nothing on which the court could rely to quantify any such additional benefit if there was one. In all the circumstances it was submitted that the pursuer is entitled to the full amount of the credit hire claim. Had the defenders pled and proved that the pursuer's claim was in some way unreasonable, a different result could ensue but the onus was on them to do so and they had done nothing. Submissions for the defenders

[10] Counsel for the defenders invited me to pronounce decree for the sum of £3,900.00 representing the agreed damages. He began by making certain observations on the pleadings in chapter 43 cases. It is clear from the rules of court that pleadings in personal injuries cases conducted under chapter 43 are to be as brief as possible. They set out only the heads of loss and these are fleshed out by the statement of evaluation of claim. In this case there was a specific averment whereby the pursuer offered to prove that she was not in a financial position to hire at basic hire rates. Thus she had raised the issue of impecuniosity and it was that which entitled her to proof on the issue of credit hire charges. Counsel for

the pursuer had advised counsel for the defenders immediately before the proof that impecuniosity was not to be relied upon. Turning to the pursuer's statement of valuation of claim no 10 of process it could be seen that while the pursuer had vouched the hire costs to be put forward there was nothing to support any claim of impecuniosity. In response, the defenders' statement which had been lodged timeously raised the issue of the lack of vouching of impecuniosity or production of comparative higher rates. In short, the defenders' position was that where (A) represents the total loss incurred under this head of claim and (B) represents lack of choice, a claimant such as the pursuer could not recover (A) without first proving (B). Only because the pursuer was offering in her pleadings to prove lack of choice did the defenders allow the matter to go to proof without argument. In the absence of proof of lack of choice, the pursuer's claim must fail. Reference was then made to Traynors Latin Maxims (W Green/Sweet and Maxwell 1993) and in particular to the maxim *affirmanti incumbit probatio*. This well-known maxim confirmed that the burden of proof lies with the party affirming and that anyone alleging a fact is bound, when it is disputed, to prove it. It was noteworthy that the pursuer came to court offering to prove both the amount of her loss through having to hire a car and also lack of choice and never deleted the averment that amounted to a lack of choice. As the onus in the case was on the pursuer she should have made averments about basic hire rates once she knew she was not seeking to prove impecuniosity.

- [11] Mr Davidson agreed that the Law of Scotland could be taken to be the position stated by Lord Hoffman in *Dimond v Lovell*. It was clear from the House of Lords authorities that recoverable loss will usually be the basic hire rate after additional benefits have been deducted. At most, in the absence of impecuniosity or some other compulsitor a party could recover only net loss, ie basic car hire rates. It was very much for the pursuer to plead any exception to that. So far as the case of *Lagden v O'Connor* was concerned, nothing in Lord Hope's speech contradicted what Lord Hoffman had said in *Dimond*. While Lord Hope defined the exception to the general rule, it did not alter the position that in the absence of proof of the exception to the rule, only basic hire rates could be recovered. In the recent decision of Sheriff Principal Stephen in *Gee v AXA Corporate Solutions* (27 August 2012, unreported) it was decided, following *Dimond v Lovell* and *Lagden v O'Connor* that the onus was on the pursuer to bring her or himself within the impecunious category referred to in those cases.
- [12] Counsel discussed an analogous situation where the court had been faced with a position that no evidence had been led on an issue that required determination to resolve the case. In *Clark v Sutherland* 1993 SC 320, a personal injuries case, the evidence in relation to wage loss was deficient. It was there held that if there was sufficient for the court to assess the minimum amount of gross earnings, it could do so even if no evidence of appropriate deductions for tax had been led. A deduction of one third for tax could be made to fill in the gap. In this case counsel argued that the basic recoverable loss was the cost of ordinary car hire. The evidence led by the pursuer in the form of the agreed production 6/4 of process did not contain any information that would allow the court to calculate what the basic hire rate

was. For that reason it was submitted that this was not a case where the court could "fill in the gaps". It was accepted by the defenders that the pursuer had acted reasonably in this case. The issue was whether or not the controversy was truly in the territory of mitigation of loss. Counsel submitted that the issue of "additional benefit" was not one of mitigation of loss, notwithstanding that the sheriff principal in *Gee* had described it as a "sub species" of mitigation. The discussion was not about mitigation, it was about recoverability. The defenders' position was that on the authorities available, car hire charges were not a recoverable head of loss. Reference was made to the passage in *McGregor on Damages* about the meaning of the term mitigation at 7-002. It was submitted that the issue of contention in this case could be characterised as one of competence. It was clear from *Dimond* and the other authorities referred to that the additional cost involved in credit hire charges was not recoverable. Pursuer's reply

- [13] Counsel for the pursuer argued in reply that the defenders' position on the impecuniosity averments in the pleadings was a red herring. The defenders appeared to have conflated the issues of (i) proving whether there is a choice available to the pursuer and whether she had received additional benefits and (ii) whether or not there was impecuniosity. The analysis required to be sequential, not concurrent. While the initial onus in any case such as the present was on the pursuer to prove that the defenders were liable for payment of damages and that she had sustained loss in the form of liability to pay for a replacement car, as soon as it was accepted that the steps she had taken were reasonable the onus shifted to the defenders who required to show that there was a choice. It was incumbent on the defenders to show that there were cheaper alternatives available. In cases where the defenders were able to quantify various choices with a view to showing that the pursuer should have taken a different route, it was then that the pursuer had to try to bring herself into an exceptional category such as impecuniosity and if she did so could claim the full credit hire rate. It was noteworthy that in the *Bent* case the defenders had failed to prove that there was a differential between the basis hire rate and the credit hire rate such that the pursuer had received an additional benefit. It is only where the defenders can prove the differential that they may be able to escape the credit hire rate. It is only in that situation that arguments about impecuniosity become relevant. The fact that the pursuer flagged up a possible impecuniosity issue in the pleadings should not have deflected the defenders from the obligation on them to prove any such differential if it existed.
- [14] Further counsel for the pursuer argued that *Dimond* was not authority for the proposition that a party such as the pursuer was only entitled to ordinary hire rates if additional benefits had been identified. It is authority for the proposition that the general rule requires additional benefits obtained in mitigation of loss to be taken into account. The only principle that could be derived from *Dimond* was that additional benefits, if proved, ought not to be awarded. In this case there had been no proof of any additional benefits. Counsel for the pursuer agreed that this was not a case where the court could calculate some sort of reasonable figure. Any assumption that the basic rate hire charges would have been less than the sum claimed by the pursuer was wrong. Credit hire companies have sought in

many cases in England to argue that there is in fact no difference in cost due to the competition in the market. Counsel was however prepared to have a deduction of £60 made from the sum sought by her in respect that the contract made clear that there was a delivery and collection charge of £120 contained within it and the evidence was that the pursuer had delivered the car herself. Discussion

[15] The issue in this case is on whom the onus lays to prove that a pursuer who has required to hire a car following an accident has not mitigated her loss if she has incurred credit hire charges. Importantly, there is no suggestion that the pursuer acted unreasonably in renting a car similar to the BMW vehicle she was driving at the time of the accident. The question is whether, after a proof at which neither party led evidence of the charges that would have been incurred if the pursuer had organised a straightforward basic car hire contract, the pursuer can recover the agreed amount of her loss. That agreed amount is £9,598.98, say £9,599, less the sum of £60 that the pursuer conceded in submissions should be deducted.

[16] In *Dimond v Lovell*

[2002] 1 AC 384 the House of Lords decided authoritatively that any additional benefits over and above what one would incur under an ordinary car hire contract received by a claimant in such circumstances had to be brought into account in the calculation of damages. Lord Hoffman expressed the following view on the approach to be taken to that calculation in the circumstances of the case before the court: "How does one estimate the value of these additional benefits that Mrs Dimond obtains? It seems to me that prima facie their value is represented by the difference between what she was willing to pay 1 st Automotive and what she would have been willing to pay an ordinary car hire company for the use of a car. As the judge said, 1 st Automotive charge more because they offered more. The difference represents the value of the additional services which they provided. I quite accept that a determination of the value of the benefits which must be brought into account will depend upon the facts of each case. But the principle to be applied is that in the British Westinghouse case

[1912] AC 673 and this seems to me to lead to the conclusion that in the case of hiring from an accident hire company, the equivalent spot rate will normally be the net loss after allowance has been made for the additional benefits which the accident hire company has provided."

[17] Lord Hoffman's dicta presupposes that the decision maker will at least have before him evidence of (a) the full credit hire charges and (b) the quantum of any additional benefits contained within those charges. If those are both available then normally a calculation of (a) minus (b) will provide the equivalent basic car hire rate which will usually be the net loss recoverable. There may be an underlying assumption in *Dimond* that the basic car hire rate will invariably be lower than the credit hire rate because the discussion centred on the charge to the client of the additional services offered by those credit hire companies. However, the decision does not address the situation with which the court has been

presented in this case, namely that neither party has offered evidence that in the pursuer's case the cost of credit hire was greater than basic car hire and on that basis what the differential was.

[18] In *Lagden v O'Connor*

[2004] 1 AC 1067 the House of Lords had occasion to revisit the issue of credit hire charges by claimants following an accident. Lord Hope expressed the issue (at paragraph 28) as being whether the principle in *Dimond* that requires additional benefits to be brought into account when damages are being calculated could be subject to modification, for example where, if he is to minimise loss, the claimant has no choice but to accept those additional benefits. It was decided that the rule could be subject to modification in circumstances where otherwise a claimant might be worse off than he was before the accident. Otherwise the outcome would be contrary to the elementary rule that the purpose of an award of damages is to place the injured party in the same position as he was before the accident as nearly as possible. Again, however, the *Lagden* case does not assist in approaching a case where there is no proof of any additional benefits received or their quantum.

[19] The final decision from England that is instructive on this issue is that of the Court of Appeal in the two cases of *Pattni v First Leicester Buses Ltd* and *Bent v Highways and Utilities Construction and Allianz Insurance*

[2012] PIQR Q1 . These cases raised something more analogous to the present situation in that the issue of onus in relation to demonstrating the difference between the credit hire charge agreed by the claimant and the basic car hire charge was raised. The Court of Appeal held that it is always for a defendant to demonstrate that difference, it being for a defendant to show that the cost incurred by the claimant was more than what would have been reasonable. As counsel for the pursuer in this case pointed out, in the *Bent* case, the court was not satisfied that the defendants, on whom the onus lay, had proved that the basic hire rate for the Aston Martin hired by the plaintiff was lower than the credit hire rate he had actually incurred. This decision must be afforded considerable respect and seems to bear upon the very issue before me. It supports the contention of the pursuer in this case, namely that it is for the defenders to prove that there were cheaper rates available and that in the absence of any proof that the credit hire charges incurred were higher than the cost of basic car hire, no such assumption can be made.

[20] The only Scottish decision in point is that of the Sheriff Principal of Lothian and Borders in *Gee v AXA Corporate Solutions* (27 August 2012, unreported). The issues in that case were slightly differently characterised. The pursuer had incurred credit hire charges and had averments of impecuniosity with a view to bringing herself within the exception in *Lagden*. The sole issue at proof before the sheriff had been the impecuniosity or otherwise of the pursuer. The defenders had objected to such evidence as was led of her circumstances on the basis that she had nothing other than a bald averment of impecuniosity. The sheriff had

allowed the evidence to be led and had found for the pursuer. One of the issues at appeal was the question of on whom the onus of proving impecuniosity laid where the pursuer had sought to rely on that impecuniosity as a reason for claiming credit hire charges. The sheriff principal held that such onus clearly lay on the pursuer. To that extent the ratio of the case is of no assistance here, as the pursuer in this case did not seek to prove impecuniosity at proof. While she had an averment to that effect on record, counsel had quite properly advised defenders' counsel before proof that she would not be attempting to prove impecuniosity. What is at issue here is not on whom the onus of proving impecuniosity arises but on whom the burden of proving that a pursuer, who has taken a reasonable course and incurred certain charges, has failed to mitigate her loss.

- [21] Having considered the various authorities presented to me I have reached the conclusion that, in a case where impecuniosity or other lack of choice to credit hire charges is not relied upon by a pursuer, it is for the defenders to prove that the charges incurred are unreasonable. As Lord Hope reiterated in *Lagden*, the basic rule is that the purpose of an award of damages is to place the injured party in the same position as he was before the accident as nearly as possible. Where a pursuer produces evidence of a reasonable course of action taken and proves the cost of that, it is for the defenders to prove that a cheaper method was available and thus seek to prove that the pursuer has not mitigated her loss. The initial onus of proving loss is on the pursuer. But all she requires to do is prove that loss. The defenders must then either accept the quantification or explain why they consider that she could have claimed less and on what basis she could have done so. In a case of this sort, that would involve the defenders proving that basic car hire would, in the particular circumstances, have been cheaper than the credit hire charges actually incurred. No attempt was made at proof to lead that evidence. In the absence of any such evidence, I have no material on which to conclude that, for this pursuer, basic rate car hire would have been less than the charges actually incurred.
- [22] Of course the defenders in this case make the point that they had understood that the pursuer would seek to prove that she had been impecunious and that she had required to incur credit hire charges as a result. Only on the eve of proof were they advised that she did not intend to do so. However, scrutiny of the documents lodged and agreed by the joint minute should have alerted the defenders to the lack of any evidence of the differential between basic car hire charges and the charges the pursuer incurred. In other words, it was clear that there was no proof of the pursuer having gained any additional benefits of the type under discussion in *Dimond* and *Lagden*. In my view, when those decisions are read together with the more recent decisions of the Court of Appeal in *Pattni* and *Bent* referred to above, it becomes clear that the issue of deduction of additional benefits only arises where there has been proof of such benefits and that the onus of proving the presence and value of any additional benefit lies on a defender. Such a reading is consistent with the general rule about the purpose of an award of damages emphasised by Lord Hope in *Lagden*. Faced with the pursuer's decision not to seek to prove impecuniosity the defenders in this case could have sought to lead evidence of basic car hire rates, or at least to discharge the proof to

gather such evidence if they were not in a position to do so. Instead what occurred was that each side decided to lead no evidence of either impecuniosity or additional benefits and to leave the matter to be decided according to onus. In the slightly unsatisfactory situation that results from such a course, my decision is that the pursuer is entitled to be reimbursed for the loss she has incurred by the reasonable hiring of a replacement car while her BMW was being repaired as a necessary consequence of the accident for which the defenders accept liability. I will allow her to recover that loss. Decision

[23] For the reasons given above, I quantify the pursuer's recoverable losses at £13,439 (£3,900 + £9,599 less £60) as at the date of proof. I shall have the case brought out by order so that parties can make further submissions on any issues of interest and expenses before I pronounce a final interlocutor. BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII URL: <https://www.bailii.org/scot/cases/ScotCS/2013/2013CSOH156.html>

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