

SCOTLAND / JUDGMENT

Emslie v. Bell [2004] ScotCS 202 (12 August 2004)

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[2004] ScotCS 202 [New search] [Help] Emslie v. Bell [2004] ScotCS 202 (12 August 2004) OUTER HOUSE, COURT OF SESSION OPINION OF LORD MENZIES in the cause ISEABAL EMSLIE Pursuer; against ANNE BELL Defender:

Act: Smith QC; Digby Brown S. S. C Alt: Lake; Simpson & Marwick W. S. 12 August 2004 [1] This is an action for damages for personal injuries sustained by the pursuer as a result of a road accident on about 6 June 1997. On that date the pursuer was driving her car in a south easterly direction through Dunecht Village, Aberdeenshire. She required to bring her car to a halt behind a vehicle in front which had stopped to turn right. The defender was driving her car in the same direction, behind the pursuer's car, and failed to stop as a result of which there was a collision between the defender's car and the rear of the pursuer's car. Liability to make reparation to the pursuer was admitted; the only issue before me was quantum of damages. [2] The pursuer avers that she was wearing her seatbelt and was thrown forward in the collision and suffered a jerking injury to her lower back, and a chipped front tooth. Shortly after the accident she began to suffer from lower thoracic and upper lumbar spine pain, pins and needles and tingling down both legs into her heels, and pain and tenderness in her sternum and rib area. She continues to suffer from persisting lower back pain, which is chronic and likely to persist indefinitely, intermittent knee pain, pain in her thoracic area on twisting or bending, and pain in the area of her sacro-iliac joint. These symptoms have restricted her ability to teach dancing and gymnastics, and have interfered with her sleep. She suffers from anxiety and depression. The defender avers that the pursuer had a history of back pain which pre-dated the accident, with episodes of lower back pain in 1979, 1982, 1989 and 1995. She also avers that the pursuer had a history of knee pain which pre-dated the accident, and that she sustained a twisting injury to her right knee in March 2000. I heard evidence on behalf the pursuer from the pursuer herself, from Mr Colin Mainds and from Dr Martin Livingstone. The only witness for the defender was the defender herself. In addition certain matters were agreed in a Joint Minute (no. 19 of process). Evidence [3] The

pursuer stated in evidence that she was aged 59 and employed as a Physical Education Teacher. She began to teach in 1965, and apart from a break of some years in the late 60's and early 70's, she had taught physical education since then. She stated that her car was written off in the accident - the driver's door was badly buckled and the back of the car was very badly bashed. Immediately after the accident she had a sore head, a sharp pain going up her back and an uncomfortable buzzing down both legs. She went to her doctor the next day and took a day off work. Thereafter she continued to have symptoms, although she worked until the end of the school term in late June or early July 1997. She has continued since then to suffer pain to the right side of the thoracic area. Initially she thought this was a torn ligament, which would heal within six months, but the pain has never gone away and is with her all the time. In addition she suffers pain in her left hip, with a nerve on the back of her leg and a buzzing pain which comes and goes. She can get rid of this by moving position, and initially she thought that this was a trapped nerve. She also had a sharp pain at her coccyx, which began some days after the accident and is still with her. She found this to be very disabling, and it is with her every step which she takes. She also continues to have pain her sternum, particularly if she sleeps on one side or if she engages in activities such as hoovering. She has difficulties going down stairs or getting into bed; although she feels better when moving, if she twists or turns she suffers pain. She stated that she has been in severe pain throughout the whole period since the accident, and she has to think about what she can and cannot do. Although she is house proud, she cannot Hoover at all. She cannot play golf, nor can she pick up a ball or lift anything heavy. In the course of her work she has experienced pain when pulling mats across the floor or adjusting equipment. Although she is able to engage in curling, she cannot do gardening. She described herself as being in pain every day all day, and although she did not feel pain as she was standing giving evidence, if she moved or twisted she would do so. She has been told to take an anti-inflammatory, Arthrotec 75, three times each day, but she only takes this once per day because she does not like taking pills. Despite this, she also requires to take co-proxamol as a strong painkiller on occasions. She can drive a car, but twisting to reach the seatbelt is very sore. As a result of her physical symptoms she stated that she has become very emotional, and feels that this is "the beginning of the end"; before the accident she was very fit and could engage in activities such as skiing, but since the accident she feels unfit and in pain. She frequently attends her general practitioner and also regularly receives physiotherapy. [4] In cross-examination the pursuer did not accept that the defender was driving quite slowly at the point of collision - she estimated that she was driving at anything between 30-40 mph. She denied that the defender rolled into the back of her car - rather, there was a screech of brakes and "she smacked into the back of me". [5] Counsel for the defender cross-examined the pursuer at length on apparent inconsistencies in the history which she gave to the various doctors who treated or examined her. On 6 June 1997 her GP noted that she had a full range of movement in her neck and back. She attended an osteopath, Colin Ross, and accepted that she had right sacro-iliac pain once before, but this resolved fairly quickly and she had had no problems thereafter. When faced with Dr Killian's report dated 17 April 2000 (no. 6/1 of process), in which it is noted that "at about December 1997 she feels she had no lower lumbar back ache" she said that all the pains that she has had have come and gone - she could not remember when she had pain and when she did not have pain. She could not remember what

she said to Dr Killian, nor what she said to Mr Mainds. She accepted that although she attended her GP in September 1997 and February 1998, the doctor's notes contained no reference to any complaint of sore back on either of these occasions. She did not complain of back pain until 16 September 1998, but this was because she thought that she had torn a ligament and that this would improve. It was only when no improvement occurred that she mentioned this to her doctor. Although she received no medication for her back pain for the first two years after the accident, this was because of the attitude of her doctor, who was severely ill herself. She complained of a drop foot when she attended her doctor in October 1999, and stated that this is an ongoing problem which still causes her to trip a lot. This was the first occasion on which she was prescribed Arthrotec 75. Although there is no note of her complaining on this occasion of thoracic pain, she stated that this was dealt with at the same consultation. Although her GP refers (e.g. at 7/1 of process, page 72) to "intermittent low back pains since a road traffic accident in 1997", the pursuer stated that her pain never goes away totally; sometimes it is better than at other times, but she is never free of pain. [6] Counsel put to the pursuer the records of Woodend Hospital relating to treatment on 17 May 2001 (7/8 of process, pages 12 and 13). This related to an incident at work at Westhill Academy on 16 May 2001. The pursuer could not remember any work incident on the 16 May 2001, and stated that she had never worked at Westhill Academy. When faced with the letter written by Mr Bhattacharyya dated 19 July 2001 (pages 89 of no. 7/1 of process) in which the writer states that "the first thing the patient said to me was that she had been sent by you to get an MRI scan. She did not want to believe that she was not getting an MRI scan straightaway today", the pursuer maintained that it was Mr Bhattacharyya who suggested that she should have an MRI scan and who offered her one. She then said that her doctor would probably have told her that she was being sent there for a scan. She stated that she understood that Arthrotec 75 was not a painkiller but was an anti-inflammatory. When faced with the physiotherapy discharge summary from Woodend Hospital dated 9 April 2002 (no. 7/8 of process, Page 55), the pursuer denied reporting some improvement in her symptoms and that she was coping well. She stated that on some days her back was so sore that the physiotherapist could not touch it. [7] Doctor Bhattacharyya wrote on 5 August 2002 (no. 7/1 of process, page 93) that "she had been to Spain on her holidays and her pain disappeared". The pursuer expressed the view that perhaps her pain was alleviated by sunshine and relaxation, but that it certainly would not have disappeared. She accepted that she had suffered back pain before the accident when moving objects at work, but the pain on that occasion was in a different part of her back, and healed completely after about six weeks. She accepted that the last occasion on which she had consulted her GP was 27 January 2004. Under reference to Mr Killian's report of 28 August 2002, she accepted that she continued to play tennis at that time, although she was unable to throw the ball up, and she could garden although this caused her pain. [8] Mr Colin Mainds was a Consultant Orthopaedic Surgeon at Glasgow Victoria Infirmary. He performed between 250 and 300 back operations each year, and back pain was a particular area of interest or speciality of his. He examined the pursuer in May 2003 and spoke to his report, no. 6/6 of process dated 5 June 2003. He expressed the opinion that the pursuer had discogenic low back pain preceding her accident, and that as a result of her accident this pre-existing condition has been exacerbated, provoking a new thoracic back pain and a more constant low back pain with a new symptom of

left side L5 Nerve Root Irritation. He considered that there was a possibility that, had the pursuer not had her accident, she would have developed low back pain which is very common in the general population; about 50 per cent of people aged 50 or over have demonstrable changes in their lumbar or thoracic spine, but it is common for these to be asymptomatic. He was in no doubt from the pursuer's history that the onset of her current symptoms and their severity and frequency were directly attributable to the accident. Although not qualified in psychiatric medicine, he regarded it as part of his remit to look for signs of psychological overlay. He had experience of illness behaviour. He found nothing in his examination of the pursuer to suggest that she was malingering. He also disputed the proposition that someone who does not attend their general practitioner frequently does not have pain - the patient may merely understand and accept the medical advice that treatment options are limited and that frequent attendance is unlikely to result in diminution of pain. [9] In cross-examination Mr Mainds confirmed that pages 1 and 2 of his report were effectively his summary of his conversation with the pursuer. He confirmed that his reference to acute pain at the foot of page 2 related to the left leg pain which caused the pursuer to limp and to have difficulty moving around. He observed that on 16 September 1998 the pursuer was complaining to her GP of ongoing back and leg pain. He expressed his opinion that the reference to "intermittent pain" in some of the reports and records may mean an underlying ache, with episodes of more acute pain. He accepted that some of the acute episodes of lower back pain were preceded by heavy lifting at work, but it was not his impression that these episodes were similar to the pre-accident episodes of back pain. He stated that Arthrotec 75 was an anti-inflammatory, the effect of which was to reduce pain. He accepted that if the pursuer had degeneration of her spine and exerted herself in 1995 then such exertion would be likely to have caused symptoms at that time. [10] Mr Mainds was shown Mr Killian's report of 28 August 2002 (no. 6/2 of process), in which the author expressed the view that "the present symptoms were initiated by her accident and have not resolved, but the ache itself has not been primarily caused by the accident. The cause is a combination of factors which are constitutional and environmental. On the balance of all probabilities the accident initiated the present symptoms but did not cause the chronic mechanical back ache" and again "mechanical back ache is quite common in the normal population and although the present symptoms were initiated by the accident, the accident itself is not the primary cause of these symptoms." Mr Mainds took issue with these views. He expressed the opinion that a high percentage of people have a degenerative condition in their spine which is asymptomatic. The pursuer's condition is symptomatic, and it is the accident which had provoked the symptoms. He considered that the onset of the pursuer's current symptoms can be directly attributed to the accident. In re-examination he expressed the opinion that on the balance of probabilities the pursuer may have had little or no symptoms but for the accident. [11] Dr Martin Livingstone had practised as a Consultant Psychiatrist since 1983 and is an honorary clinical senior lecturer at Glasgow University. He consulted with the pursuer on 16 October and spoke to his report (no. 6/3 of process). He also spoke with the pursuer on the first day of the proof, and again briefly on the morning on which he gave evidence. He expressed the opinion that the pursuer has developed a range of anxiety and depressive symptoms triggered by the accident and the problems which have arisen in terms of pain and dysfunction following it. Her symptoms include emotional

lability, sleep dysfunction, anger and frustration, some weight gain, a sense of foreboding and preoccupation about the future and a fear about her continued viability as a teacher of physical education. She has developed a mild to moderately severe adjustment disorder (DSM IV). This adjustment disorder is acting to maintain and exacerbate the pain and disability arising from what appears to be mechanical back pain and a vicious cycle has now developed. The pursuer is inclined to be poorly tolerant of pain and disability because she derives a great deal of her self-esteem from physically demanding work and because of her self-image as a fit and physically active person. Her method of coping is to "keep going" and "get on with it". The physical effects of the accident seem likely to continue to place limitations on work related activities and the pursuer's more physically demanding leisure pursuits. The psychiatric issues would serve to maintain and exacerbate this situation, and Dr Livingstone doubted whether the pursuer would be willing to submit to psychological treatment, or indeed benefit from such an approach. [12] Dr Livingstone did not form the impression that the pursuer was evasive. Having regard to the pursuer's demeanour and her complaint of pain from pseudo rotation Dr Livingstone reached a clinical judgment that there was a psychological element to her pain. He considered her response to all of what had happened to be "a little out of proportion", and he attributed this to her adjustment disorder. This was operating to magnify and exacerbate her perception of pain, but not to such an extreme extent as pain syndrome. Dr Livingstone saw the pursuer briefly in Parliament House during the week of the proof, and considered that she was still struggling to come to terms with the consequences of the accident. He considered that her self-esteem depended to a significant extent on her ability to perform psychically. She gave him no reason to believe that her symptoms had diminished. When asked about future prognosis for her adjustment disorder, he observed that the pursuer had not come to terms with her problems in the seven year period since her accident, and it was unlikely that she would do so now. [13] In cross-examination Dr Livingstone accepted that the history which the pursuer had given to other medical practitioners was different from that which she had given to him. For example, she was noted by Dr Killian (at page 10 of no. 6/2 of process) as stating that "driving was not a problem for her and she remained confident and did not have significant symptoms whilst driving", but she told Dr Livingstone that she experiences pain in the lower part of her back if her car takes off suddenly from rest. She told Dr Livingstone in October 2000 that she had had to reduce or eliminate strenuous leisure activities such as running, skiing and playing tennis, but she told Dr Killian in August 2002 that she had pain if she played tennis, decorated or undertook curling. Dr Livingstone accepted that adjustment disorder was capable of treatment, either by anti-depressant drugs (which treatment was often not very successful) or by psychological treatment, which would require a degree of motivation, together with medication to treat pain. However, he emphasised that it was impossible to separate the physical and psychological problems in this case, because they were very closely interlinked. He remained of the view that the pursuer fulfilled the diagnostic criteria for adjustment disorder. Under reference to Paragraph B of 7/9 of process, he considered that both headings (1) and (2) were met. The pursuer continued to show a degree of anger and frustration, and she was crying when he examined her some three years after the accident. He considered that her distress was in excess of what would be expected. Moreover, there is a degree of impairment of both occupational functioning and leisure

activities. [14] In re-examination Dr Livingstone confirmed his opinion that the pursuer's adjustment disorder was due to her back pain, and she was "locked in a vicious circle". He found her to be sincere and careful not to exaggerate, and he was very impressed by her. He was of the opinion that she was doing her best to keep on working and her whole attitude was not consistent with the suggestion that she was maximising her symptoms. He considered that non organic factors were important in the pursuer's present condition, and that these were involuntary. [15] The only witness for the defender was the defender herself, who gave evidence briefly about the circumstances of the accident. She stated that she was driving behind the pursuer's car through the village of Dunecht in a line of traffic. The pursuer stopped in order to allow a car into the line of traffic from the left, causing the defender to come to a standstill behind her. The vehicles then moved off and travelled about 200 yards before stopping again to allow the car in front of the pursuer's car to turn right; it was at this point that the collision occurred. The defender's car had therefore been stationary some 200 yards before the collision occurred, and she was not driving fast. She estimated that her speed at impact could not have been more than 10mph although she could not be accurate about this. She was not injured in the accident, and a passenger in the rear seat who was not wearing a seatbelt was not injured. In cross-examination she stated that the police officer who attended the accident observed that it did not merit calling an ambulance. It was not the defender's impression that the pursuer's car had been written off, nor was the car in front significantly damaged. She did not think there was a screech of brakes. She accepted that her speed at impact could have been 20mph, but no higher.

Submissions

[16] Counsel for the pursuer submitted that the pursuer was a credible and reliable witness. She painted a vivid picture of a lady troubled, in distress and pain as result of this accident. Her pain had become chronic; although she had good days and bad days, the pain never went away completely. It would have been all too easy for her to stop work, but she had "soldiered on". It would be unfair to draw the inference from the fact that she had not made frequent complaints to her general practitioner about back pain that her pain is not severe, or that she is exaggerating it: as Mr Mainds commented in his evidence, it was a false hypothesis that people who have pain always consult their doctor frequently - some listen to the medical advice that there is little that can be done to relieve the pain. Counsel invited me to accept the evidence of Mr Mainds and Dr Livingstone in its entirety. Each is experienced and an expert in his field, each conceded points which might be regarded as favourable to the defender, and neither was seriously challenged, nor was contradictory evidence led. Mr Mainds' opinion was clearly to the effect that although the pursuer suffered from an underlying pre-existing condition which might have given rise to symptoms, her current problems were caused by the accident. Counsel submitted that solatium in this case should properly be valued at £20,000 exclusive of interest. In support of this he referred me to *McWhinney v British Coal Corporation* 1993 SLT 467, *McNulty v Marshalls Food Group Limited* 1999 SC 195 and *Burke v Royal Infirmary of Edinburgh NHS Trust Limited* 1999 SLT 539. He accepted that each of these cases might be regarded as slightly more serious than the

present case, but having regard to the effect of inflation since these awards, he submitted that they supported an award of £20,000 by way of solatium in the present case. Interest at half of the judicial rate on two thirds of this figure added approximately £3,700 to date. In addition, the agreed fees for physiotherapy and reflexology treatment totalling £52 (referred to in paragraph 6 of the Joint Minute) is payable, together with interest at the full judicial rate since the date of the accident, making a total of £81.12. [17] Counsel for the defender accepted that the pursuer has suffered pain as a result of the accident, but submitted that she has exaggerated this and that she would have suffered pain as a result of her underlying condition even if the accident had not occurred. He submitted that the pursuer was neither credible nor reliable. Her memory was selective and she could not remember important dates such as a self admission to the accident and emergency department of Woodend Hospital after an incident at work. The history which she gave to the various medical men varied, and her evidence was at odds with contemporaneous notes made by her general practitioner and by treating surgeons and expert witnesses. She exaggerated the impact of the collision, and the defender's evidence as to this matter should be preferred. [18] Counsel submitted that the extent of the pursuer's pain and suffering should be assessed using objective indicators. She has been able to continue at work for the seven years since the accident. She has continued to play tennis and curling and it appears that she continued with other activities such as walking, decorating her house and gardening at least until 2002. She has a full range of movement. She was not prescribed any medication for her back pain, whether by way of painkillers or anti-inflammatories, until October 1999, and thereafter was prescribed relatively light medication. On her own admission the pursuer does not even take the full dose of medication which she has been prescribed. Her attendance at her general practitioner has been infrequent and associated with particular episodes of heavy work, which is the same pattern of treatment before the accident. Her pain was described by her general practitioner and by Mr Mains as intermittent; it resolved when she was on holiday, and elements of her complaints have disappeared from time to time. With regard to the psychological evidence, she has never attended her general practitioner in respect of emotional upset consequent upon this accident, and Dr Livingstone's involvement arose in preparation for this litigation and not as a result of a referral from the pursuer's general practitioner. Counsel submitted that the proper way to view the pursuer's present problems was that they amounted to no more than minor intermittent pain which could be controlled with medication, and which resulted in little restriction on function. [19] In any event, counsel for the defender submitted that the pursuer would have been suffering pain as a result of her pre-existing condition by the date of the proof even if the accident had not happened, and it is likely that she would have started suffering this pain at an earlier date. The evidence was that there were osteo-arthritic changes in the pursuer's spine at the time of the accident, which could give rise to symptoms simply by the undertaking of daily activities. The pursuer's job required her to undertake strenuous manual tasks, lifting, pushing and pulling, which were tasks which were likely to render her pre-existing condition painful in any event. There were episodes of pain after the accident, which were preceded by her carrying out heavy work at school. [20] Counsel for the defender submitted

that this was not a case which justified an award for solatium towards the top end of the scale of such awards, and that it was far less serious than the cases relied on by the pursuer. Counsel referred me to *Moohan v City of Glasgow Council* 2003 SLT 745, *Graham v Marshall Food Group Limited* 1998 SLT 1448 and *McCarvel v Strathclyde Fire Board* 1997 SLT 1015 and submitted that an appropriate award for solatium in the present case should fall towards the lower end of the spectrum, in the range of £4,000 to £5,000, all of which should be referable to the past. Decision [21] I found the pursuer to be generally a credible witness - that is to say, she appeared to me to be truthful, and I did not consider that she was deliberately exaggerating her evidence. I note that both Mr Mains and Dr Livingstone formed the same impression of the pursuer when they examined her. With regard to the reliability of the pursuer's evidence, it is apparent that the history which she has given to the various doctors who have treated her or who have examined her has not been consistent in every detail. Her recollection of some matters was clearly flawed. For example, I am satisfied from the medical records (which were agreed to be accurate in the Joint Minute) that the pursuer attended Woodend Hospital on 17 May 2001 complaining of back pain as a result of an incident at work at Westhill Academy on the previous day. The pursuer had no recollection of this attendance, maintained that she had never worked at Westhill Academy, and denied that this was an accurate record. There were also inconsistencies and discrepancies between the histories given to the various expert witnesses, and between those histories and the medical records. Moreover, the pursuer's recollection of the speed and force of impact at the collision is in my view mistaken, and the speed of the defender's vehicle at impact is more likely to have been in the range 10mph to 20 mph as described by the defender. [22] In many cases - indeed, perhaps in most cases - such observations on the reliability of the evidence of a pursuer might cause me to attach little weight to that evidence. However, in the particular circumstances of this case, where liability is not in dispute and where I have found the pursuer to be essentially credible, I do not consider that her evidence falls to be discounted because of such question marks over her reliability in some respects. The accident occurred almost seven years before I heard the proof in this action. Over the course of that time the pursuer has been treated by many medical men and has been examined for the purposes of reports by many others. She has had to give a history of her symptoms and problems on countless occasions. Throughout this period the main elements of the pursuer's complaints have remained constant. Some details have featured more prominently in some histories than in others. Some details have been absent from some histories, whether because the pursuer has failed to mention them, or because the examiner or practitioner has failed to record them. I do not consider that it would be fair to the pursuer to discount her evidence simply because of these discrepancies. [23] In assessing what weight to attach to the pursuer's evidence I accept that this accident has had a significant effect on her quality of life. I accept that she suffers from the pains which she described, particularly in her lower back, and that she has become emotionally upset as a result of the consequences of the accident. I formed the impression that she did tend to exaggerate her symptoms in some respects when giving her evidence (although, as I have indicated above, I do not consider that this was done deliberately with the intention of misleading the Court).

For example, she stated that she could not Hoover, and when she did this she was "crippled". She said that she was in pain everyday all day, but went on to state that she did not feel pain as she was standing giving evidence. I am not persuaded that the painful consequences of this accident were as severe for the pursuer as the consequences narrated in the authorities relied on by her counsel. Notwithstanding this, pain is a subjective matter. Whether because of the adjustment disorder from which Dr Livingstone found the pursuer to be suffering, or from her own pre-existing emotional makeup, I am persuaded that the pursuer genuinely regards herself as being disabled by pain and that this has had a significant adverse effect on her functioning and on her quality of life. [24] I am satisfied that the histories given by the pursuer to Mr Mains and to Dr Livingstone were sufficiently accurate in their essentials, and that any omissions or discrepancies were sufficiently minor, to justify the opinions expressed by these two expert witnesses. I accept Mr Mains' evidence that, on the balance of probabilities, the pursuer may have had little or no symptoms from her pre-existing spinal condition if this accident had not occurred, and that the onset of her current symptoms and their severity and frequency are directly attributable to the accident. I accept Dr Livingstone's evidence that the pursuer has developed a mild to moderately severe adjustment disorder, which is acting to maintain and exacerbate her pain and disability. I accept that the prognosis for improvement of the pursuer's pain and disability in the future is poor. [25] Turning to valuation of the pursuer's claim, I do not consider that this is a case in which an award of solatium in the region of £20,000 is appropriate. Each case must of course depend on its own facts and circumstances, but I have not found the cases relied on by counsel for the pursuer to be of much assistance. *McWhinney v British Coal Corporation* involved a 41 year old man who, as a result of an accident, was able to walk only 50 yards at a time and that with the assistance of a stick, and who was described as being for all practical purposes unlikely to ever work again. *McNulty v Marshalls Food Group Limited* concerned a pursuer who had no pre-existing degenerative condition of his lower spine, although he had degenerative changes in his cervical spine. As a result of an accident he sustained a prolapsed inter vertebral disc in his lumbar spine as a result of which he required a discectomy, and he also sustained an injury to his neck which precipitated symptoms of pain and restriction of movement. *Burke v Infirmary of Edinburgh NHS Trust Limited* concerned a much younger pursuer than the present case. In that case a 26 year old man who had no pre-existing condition sustained damage to his lumbar spine in a fall. He suffered from constant lumbar pain and also sudden shooting pains through his left buttock and thigh to his knee. He developed an abnormal pain disorder, and was forced to retire from work on medical grounds about nine months after his accident. Each of these cases appears to me be significantly more serious than the present. [26] On the other hand, the present case is more serious than those relied on by counsel for the defender. In *Moohan v City of Glasgow Council* it was accepted that any symptoms experienced by the pursuer after a date some twenty eight months after the accident did not relate to the accident. That case appears to have been a reasonably straightforward accident involving a stretching or twisting movement, which gave rise to no psychological consequences and in which the symptoms resolved in a relatively short time. *Graham v Marshall Food Group Limited* involved a

tripping accident in which the pursuer sustained bruising of her buttock and ligamentous and muscular strain involving the lumbar and lumbo-sacral region of the spine and the left shoulder joint. The pain in her shoulder resolved after about nine months, and her lower back pain only occasionally recurred by the date of the proof, some two and half years after the accident. Again there was no question of any adjustment disorder or other psychological consequences. The award in *McCarvel v Strathclyde Fire Board* proceeded on the basis that the pursuer's previously asymptomatic pre-existing condition would have become symptomatic by the date of the proof. The valuation of £5,000 proceeded on the basis that the pursuer's symptoms and disabilities up to the date of the proof were attributable to the accident, but that for the future they were not so attributable. That basis is quite different from the situation which I have found to exist in the present case. [27] In this case (perhaps not entirely surprisingly) I consider that the appropriate award for solatium falls between the figure argued for by counsel for the pursuer and that argued for by counsel for the defender. I consider that £12,000 is an appropriate award before the application of interest. Of this figure two thirds relates to the past and one third to the future. Interest on two thirds of this figure adds about £2,290 to date. This, together with the fees agreed in the Joint Minute and interest thereon results in a total award of damages of £14,371.12. I shall sustain the first plea-in-law for the pursuer, and the second plea-in-law for the pursuer restricted to this sum. BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII URL: <https://www.bailii.org/scot/cases/ScotCS/2004/202.html>

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