

Case Report – John Hancock v DHL Supply Chain Ltd

On 27th April 2017 Mr Recorder Blohm QC gave judgment following a heavily contested 3 day quantum trial at Bristol County Court. It is perhaps notable for:

a) the level of award for PSLA and b) an award for loss of congenial employment being made (£5000) for a lorry driver.

Key facts

The Claimant was a partner in a small family run agricultural haulage business in West Wales. On 20th March 2012 he was driving a 44 ton articulated lorry in convoy when a box lorry, approaching in the opposite direction, suddenly veered across the carriageway into the Claimant's vehicle causing a significant frontal collision to occur. It was described as an horrific accident from which, tragically the box lorry driver died.

The injuries and awards for Pain, Suffering and Loss of Amenity:

1. The Claimant suffered a **Type 2 fracture of his C2 vertebra** and was in hospital for 5 days and then in a neck brace for 7 months with physiotherapy thereafter. He was entirely reliant on his wife during this period and returned to light work duties after 9 months and full work activities by 12 months. Although able to drive a car and tractor he was never able to return to driving a lorry. He was left with restriction of motion in all directions in his neck, especially to the right, described as being a reduction of 20-30% of normal. He had constant background neck pain that was made worse by car driving or sitting at a desk. The neck pain could reach 6/10 and had been so severe that he had to lie in bed. He now occasionally took analgesics

Described by the Judge as a stoic individual who tended to underplay his symptoms he was awarded **£21,000**.

2. **Chronic Post Traumatic Stress Disorder**:- This diagnosis was heavily challenged by the Defence expert who asserted that the Claimant suffered a mild level of psychological distress that lasted only for 6 months.

The Judge preferred the opinion of the Claimant's expert psychiatrist, who had seen the Claimant on 3 occasions over the course of the past 4 years.

The following features were found to exist

1. It was a horrific accident in which the other driver died and this played on the Claimant's mind
2. The Claimant himself suffered a potentially very serious neck fracture from which he could have been paralysed

3. He suffered flashbacks and became sweaty and anxious when he attempted to sit behind the wheel of a lorry and despite treatment and several attempts he had not be able to drive a lorry
4. He was still apprehensive when driving especially when a lorry was nearby
5. He lived above the lorry yard and so could not avoid coming into contact with them. He was woken in the early morning when the lorries started up and would then get up and be fearful for the driver's safe return
6. He avoided any programmes or events involving lorries (whereas previously he had loved lorries)
7. He was more irritable and short tempered to his family and customers

Prognosis: – Whilst symptoms were likely to improve with further treatment, it was now 5 years *post-accident* and it was considered unlikely that they would fully resolve or that he would ever get back to lorry driving. Award **£15,000**.

Loss of congenial employment

1. The defence contended that a career involving driving an HGV cannot be fairly described as "congenial employment".
2. Alternatively they suggested that he had not in fact lost his employment and driving lorries was not the major part of his job.
3. Relying on the principles suggested by Foskett J in *Pratt v Smith [2002] All ER (D) 322* the trial Judge accepted that such employment does not have to be "vocational" to qualify for such an award and that in this case, the Claimant, who had been driving lorries for 30 years, lorry driving and being involved with lorries was very much a joy for him and now he avoided anything to do with them.

Award: **£5000**.

Past losses

An award of **£54,196** (plus interest) was made for lost profits, care and assistance, treatment, travel and miscellaneous

Future losses

An award of **£26,585** was made for future loss of profits (until age 70) and treatment.

Overall award: £123,926

Note:

As the Claimant had beaten not only the Defence Pt 36 of £65,000 but also their own of £120,000, there were also therefore all the consequences under Pt 36. 17. This meant that, with interest at 5% on his award plus a 10% uplift, the Claimant's eventual award was **£138,383**.

By Christopher Taylor – May 2017