



Press Summary

26 March 2024

Hassam and another (Appellants) v Rabot and another (Respondents)

[2024] UKSC 11

On appeal from [2023] EWCA Civ 19

Justices: Lord Reed (President), Lord Lloyd-Jones, Lord Hamblen, Lord Burrows, Lady Rose.

Background to the Appeal

Although the sums at stake in the two test cases in this appeal are small, it is clear that many thousands of cases are potentially affected by this decision. Statutory reforms were made by the Civil Liability Act 2018 (“**the 2018 Act**”) to claims for whiplash injuries (“**WLI**”) caused by negligent driving. The question at issue on this appeal is how should damages for pain, suffering and loss of amenity (“**PSLA**”) be assessed, where that PSLA was caused by both a WLI and a non-whiplash injury (“**NWLI**”) suffered in the same road traffic accident?

Generally, claims for PSLA damages in the tort of negligence (a form of civil wrong) are determined by applying common law principles. Where there are multiple injuries, a judge assesses the damages for PSLA caused by each separate injury by reference to well-established guidelines, before “stepping back” to look at the total PSLA for all injuries. The judge may then adjust the total to avoid over- or under-compensating the claimant.

However, when Parliament passed the 2018 Act the approach to WLI claims was changed significantly. The amount to be awarded for PSLA for a WLI was fixed by regulations at a “**tariff amount**”, that varies only by reason of the duration of the WLI and is significantly lower than the damages that would be awarded for WLIs at common law.

The two claimants in this appeal, Mr Rabot and Mr Briggs, were injured in separate car accidents caused by the negligence of other drivers (the defendants). Both claimants suffered WLIs and NWLIs which caused them PSLA. District Judge Hennessy heard both cases.

In Mr Rabot’s case, the District Judge assessed the tariff amount for the WLI at £1,390 and the NWLI damages, assessed at common law, at £2,500, producing an initial total of £3,890. As Mr Rabot’s PSLA was concurrently caused by the WLIs and NWLIs, the District Judge stepped back and reduced Mr Rabot’s total damages to £3,100.

Mr Briggs' tariff amount was assessed at £840 with NWLI damages at £3,000, producing an initial total of £3,840. Again, the PSLA was caused concurrently by WLIs and NWLIs. The District Judge reduced Mr Briggs' total damages to £2,800.

The defendants appealed to the Court of Appeal, arguing that any PSLA caused by both WLIs and NWLIs was already compensated for in the tariff amount, so that only PSLA caused exclusively by NWLIs could be compensated for in addition to the tariff amount. This was referred to as the "**first approach**". The claimants cross-appealed, arguing that the tariff amount and the PSLA damages for the NWLI should have simply been added together without any deduction for overlap. This was referred to as the "**second approach**".

By a majority, the Court of Appeal found that the District Judge's approach, in adding the tariff amount and NWLI PSLA damages together and then reducing the latter to avoid over-compensation for concurrently caused PSLA, was correct (although the overall award to Mr Briggs was increased to £3,500). This was referred to as the "**third approach**". The Master of the Rolls (in his dissenting judgment) endorsed the first approach.

The defendants now appeal, and the claimants cross-appeal, to the Supreme Court.

Judgment

The Supreme Court unanimously dismisses the appeals and the cross-appeals. The majority of the Court of Appeal took the right approach (as essentially did the District Judge) in assessing damages for PSLA concurrently caused by WLIs and NWLIs. Lord Burrows gives the sole judgment, with which Lord Reed, Lord Lloyd-Jones, Lord Hamblen and Lady Rose agree.

Reasons for the Judgment

The third approach is correct. The correct interpretation of both the statutory wording and the underlying purpose of the 2018 Act is that the legislation was directed specifically towards the damages available for WLI (not NWLI) claims. The 2018 Act does not, therefore limit the PSLA damages recoverable at common law for NWLI. [9], [37] – [43].

The first approach was rejected for four main reasons. First, there is nothing in the 2018 Act or accompanying materials to suggest that NWLI damages fell within the scope of the reforms. Second, the first approach requires an unrealistic level of precision from claimants in distinguishing NWLI-only from concurrently caused PSLA. This would increase the costs and complexity of these claims, contrary to the objective of the reforms as a whole. Third, it could have the bizarre result in claimants receiving lower PSLA damages for both WLIs and NWLIs than they would if they claimed just for a NWLI. Fourth, it would be a more significant departure from the common law than the third approach; conflicting with the presumption that legislation affects common law as minimally as possible. [7], [43] – [48].

The second approach is rejected because it ignores the issue of overcompensation. The common law adjustment ensures that the claimant is not compensated twice for the same PSLA. The tariff amount dictates the appropriate compensation for PSLA caused by a WLI and the whiplash reforms would be undermined if overlapping PSLA was ignored. [6], [10] – [18], [43], [49] – [50].

Lord Burrows then summarised, step by step, the correct third approach. Where a claimant seeks damages for a WLI and NWLI, a judge should: (i) assess the tariff amount for the WLI; (ii) assess the common law damages for the NWLI; (iii) add these amounts together; (iv) step back and consider whether an adjustment to the total to avoid over- or under-compensation for concurrently caused PSLA is appropriate; (v) make any such adjustment to the common law damages (not the tariff amount, which is fixed); but (vi) ensure that the total damages

award is not lower than would have been awarded as common law damages for the NWLI if the claimant had made no WLI claim. [51].

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)