

Maximising Damages in Personal Injury and Clinical Negligence cases

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General Damages

Special Damages dealing predominantly with:

- i. Loss of Earnings
- ii. Care

Case Studies

Practical considerations when running a claim

Two Key Principles

1. Principle of Full Compensation

Wells v Wells [1999] AC 345 HL

"It was common ground between all parties that the task of the court in assessing damages for personal injuries is to arrive at a lump sum which represents as nearly as possible full compensation for the injury which the plaintiff has suffered."

2. Qualification: Reasonableness

Heil v Rankin [2000] 2 WLR 1173 CA

"The aim of an award of damages for personal injury is to provide compensation. The principle is that 'full compensation' should be provided...This principle of full compensation applies to pecuniary and non-pecuniary damage alike...Compensation must remain fair, reasonable and just. Fair compensation for the injured person. The level must also not result in injustice to the defendant, and it must not be out of accord with what society as a whole would perceive as reasonable."

General Damages for PSLA

Medical Records

Witness Statements

Additional Evidence

Identify the appropriate expert

JC Guidelines + comparable cases from Kemp/Lawtel. Be cautious when using comparable cases – often they are reported when overvalued or undervalued and/or often represent out of court settlements and not court awards.

Other heads of General Damages

Future Disadvantage on Labour Market

- i. Smith/Blamire – there is a difference!
- ii. Evidence
- iii. Where do you pitch it? – on the high side!

Loss of Congenial Employment

- i. Witness evidence
- ii. Case specific

Past Loss of Earnings

Evidence – both for principle and quantum

Medical Evidence

Different scenarios bring different issues:

- i. Adult Claimant employed at date of injury
- ii. Adult Claimant unemployed at date of injury

Loss of Chance of a business opportunity

Future Loss of Earnings

Multiplier/Multiplicand– conventional approach

Medical Evidence (and possibly other experts in more serious cases) needs to support:

- i. Impact on future ability to work
- ii. Helping determine C's residual earning capacity

Specific case examples:

Child Claimants?

Loss of specific job opportunity or career

Care

Gratuitous Care: care provide must “go distinctly beyond that which is part of the ordinary regime of family life”

Witness Evidence (from friends/family who have provided care)

Medical Expert support

- i. your existing experts
- ii. In some cases, a care expert, rehabilitation expert etc

Other special damages (not an exhaustive list!)

- Medical treatment
- Alternative therapies
- Increased household bills
- Increased cost of holidays
- Accommodation

A PI case study – Mr D

- Employers liability – accident at work;
- Worked as a carer;
- Stabbed by one of his patients;

General Damages

- PSLA – predominantly a psych injury but also two scars
- Future Disadvantage on the Labour Market:
 - i. Supported by medical evidence;
 - ii. Limitation in type of work;
- Loss of Congenial Employment:
 - i. Supported by witness evidence;
 - ii. Loss of job satisfaction, Mr D had greatly enjoyed his job, had felt 'privileged' to be in that position - new job was more 'routine'

Specials

- Care
- Medication
- Travel
- Damaged clothing
- Future loss – medical treatment and travel

A Clin Neg case study – Mrs M

- Fatal claim arising out of negligent nursing treatment upon discharge from hospital;
- Resulted in Mrs M falling in her home and being left on the floor, unattended, for five days;
- Caused multiple injuries – several pressure sores, renal injury, psychological injuries (mixed anxiety and depressive disorder), urinary tract infection

General Damages for PSLA

- Mrs M eventually died at home– our medical evidence supported the pressure sores and infection causing death;
- Five months of significant pain and suffering;
- Mrs M lost all independence, was bed-bound in hospital, then discharged home but similarly bed-bound and reliant on care from family;

JC Guidelines (13th Edition)

- 1((E) Mental Anguish - fear of impending death/reduction in expectation of life: £3, 550 (£3, 910)
- 4(A) Psychiatric Damage Generally
(d) Less Severe – the level of the award will take into consideration the length of the period of disability and the extent to which daily activities and sleep were effected: £1, 170 to £4, 450 (£1, 290 to £4, 900)

Comparable cases

- *Siverns v Mid Staffordshire NHS Trust* (2013) Kemp, updated general damages award of £7, 544.23. This involved an 83 year old claimant who suffered a grade 2 to 4 pressure sore on his sacrum as a result of delayed diagnosis and treatment by the Defendant. It caused the Claimant three months additional pain and suffering in addition to the pain and suffering which caused his cancer;
- *S v Plymouth Hospitals NHS Trust* (2012) Kemp, updated general damages award of £15, 373.97. This involved an 87 year old claimant who suffered from three pressure sores on her right foot due to delayed and/or failed treatment upon her admission to hospital in October 2008. The pressure sores limited the claimant's mobility in the last few weeks of her life and the need for pain relief and debilitation as a result of the pressure ulcers also significantly affected the quality of her life. She was admitted in October 2008 and died in January 2009 – her death was unrelated to the negligent treatment.

PSLA?

- £10,000 - £15,000;
- Case specific – look at witness evidence and focus on loss of amenity in more difficult cases;
- Justification via evidence gathering as well as medical evidence

Specials - Care

- Split into two sections – the care provided whilst Mrs M was in hospital and the care provided when she was discharged home;
- The description of the care provided whilst in hospital is such that a judge could reasonably conclude that at least some of it is facilitating ordinary social contact;
- The care provided whilst Mrs M was at home was clearly a more onerous task and more significant;
- Professional carers had attended;
- Family providing “reassurance, changing bedding, liaising with carers and assisting the carers” risks falling outside the gratuitous care that is capable of being recovered

Specials - Travel

- Travel cost of family visiting hospital to visit Mrs M;
- General rule: the reasonable costs incurred of a C's family and friends visiting C in hospital will be recoverable as damages;
- As with care, travel to facilitate ordinary social contact tends to be distinguished from travel to visit to assist with a claimant's recovery ;
- Such claims are usually subject to a three stage test (the first two limbs of which are particularly important):
 - i. It must have been reasonably necessary for the costs to have been incurred;
 - ii. The out of pocket expenses incurred must be reasonable;
 - iii. The Claimant holds any damages recovered under this head of loss for the person who incurred them.

Practical Considerations when running a claim

- Evidence and keeping records;
- Medical records management;
- Delay can sometimes be beneficial;
- Analysing C's instructions to ensure appropriate and complete medical evidence is obtained;
- Involving counsel;
- Schedules;
- Witness Statements;
- Assessing C's credibility;
- Being aware of liability and causation risks.

Any questions?