

QUANTUM IN CP CLAIMS

SEPTEMBER
2019
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ABC V (1) XCC (2) Churchill Insurance Co (2016)

- 2001 RTA Claimant's Mother injured whilst pregnant
- Claimant born prematurely and developed kernicterus= led to Cerebral Palsy
- Very severe disability. In need of 24 hour care for life (life expectancy of 32)



Pleaded Claim

- Loss of Earnings
- Care (Past and Future)
- The Accommodation Claim (*Roberts v Johnstone*)
- Hydrotherapy
- Educational Needs

Loss of Earnings



- Difficulty with Claimant who has never worked
- Factors to consider:
 - Family work history
 - Sibling educational attainment
 - Average earnings

Care and Case Management



- Past Gratuitous Care
- Separating out “but for” care from care required as a result of injury
- 25%/ 33%
- Aggregate Rate/ Basic Rate

Care and Case Management

- Gratuitous Case Management
- Time family taken arranging hospital visits and dealing with health professionals
- Defendant’s stance – parents would have been involved in extensive liaison work and activities for a healthy child so no loss.
- Significant qualitative difference between hospital appointments and arranging and participating in healthy child’s life

Care and Case Management

- Future Care
- How many weeks in a year? – 60
- *XXX v A Strategic Health Authority*
- ERNIC
- NEST
- Hourly rates

Accommodation

- *Roberts v Johnstone*
- Cost of Suitable accommodation - £720,000
- Life time multiplier 13.61
- The calculation $£720,000 \times 2.5\% = £18,000$
- $£18,000 \times 13.61 = £244,980$
- Shortfall £475,020



Potential Alternatives to R v J

- Defendant buys a property and allows the Claimant and family to live rent free
- Defendant makes up the capital by way of loan repayable upon sale of the property after the Claimant's death
- Mortgage taken out on the Claimant's behalf and then paid by the Defendant by way of PPO
- Rental of property

The Discount Rate Change

- The RvJ problems have been compounded by the change in the discount rate.
- Claimants cannot recover under the formula when the discount rate is negative.
- An alternative formula based on mortgage interest?
- *JR v Sheffield Teaching Hospitals NHS Foundation Trust* [2017] EWHC 1245 (QB) and *Porter v Barts Health NHS Trust* [2017] EWHC 3205 (QB)

Accommodation Claims

LP v Wye Valley NHS Trust [2018] EWHC 3039

- D's position was zero capital award (cf *JR v Sheffield Teachings Hospitals [2017]*)
- C's position was:
 - 4% (SVR on an interest only mortgage)
 - Or 1.3% for '*conservative rate of rtn if investing over 30 years as identified by the Government Actuarial Department in its PI discount rate analysis document dated 19.7.17*'.

Accommodation

Credit to be given for:

- Past rental of old family home
- Future rental of old family home
- *Ellison v United University Hospitals of Morecambe Bay NHS Foundation Trust*
- *Iqbal v Whipps Cross University Hospital NHS Trust*

Water Based Physio

- Claim for £220,000 for installation of hydrotherapy pool
- Need to show “clinical requirement”
- *Whiten*
- However, hope in the cases of *Ellison* and *Robshaw*
- *HS v Lancashire Teaching Hospitals NHS Trust*

Educational contingency

- Children and Families Act 2014
- Education available up to 25 years
- Risk of education authority changing chosen school at age 16
- Need to appeal any decision
- Indemnity?
- Contingency