



Neutral Citation Number: [2007] EWHC 2789 (QB)

Case No: 5BS 13797

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

St Dunstan's House  
133-137 Fetter Lane  
London, EC4A 1HD

Date: 30th November 2007

**Before:**

**HIS HONOUR JUDGE PETER COULSON QC**

**(Sitting as a Judge of the High Court)**

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**Between:**

**MR A L CONNER**

**Claimant**

**- and -**

**BRADMAN AND COMPANY LIMITED**

**Defendant**

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**Mr Hugh Hamill** (instructed by **Clarke Willmott**) for the **Claimant**  
**Mr David White** (instructed by **Cogent Solicitors**) for the **Defendant**

Hearing Dates: 13 and 14 November 2007

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HIS HONOUR JUDGE PETER COULSON Q.C.

**His Honour Judge Peter Coulson QC:**

**A. INTRODUCTION**

1. On 28 November 2002, the Claimant was riding his motorbike at the junction of the A4 and Sloane Street in Knightsbridge, when he was hit by a car driven by an employee of the Defendant. In consequence, he sustained a serious injury to his left knee. In these proceedings, the parties have agreed that the Defendant is liable to pay 75 per cent of the damages recoverable by the Claimant arising out of that collision. Accordingly, in this Judgment, I am concerned solely with the assessment of those damages.
2. The principal issue of fact between the parties is whether, on the medical evidence before me (much of which is agreed), the Claimant is “disabled” within the meaning of the Disability Discrimination Act 1995 (“the 1995 Act”). For reasons which will become apparent below, this is highly relevant to the Claimant’s claim for loss of future earnings. I deal with the evidence in respect of the Claimant’s injuries in **section B** below and, in **section C**, I address the issue of disability under the 1995 Act. Thereafter, in **sections D, E and F** below, I set out my assessment of each element of the Claimant’s claim for damages.

**B. THE CLAIMANT’S INJURIES**

**B1. The Immediate Aftermath**

3. It appears that, on impact, the Claimant fell down to the left with the motorbike on his left leg and his body twisted. He could not put any weight on his left leg when he got up from the road. Although an X-ray failed to identify any fracture, the Claimant’s left knee remained swollen and painful and, in December 2002, he was diagnosed as having sustained a medial collateral ligament injury as well as instability of the knee. In January 2003 he had a MRI scan which showed rupture of the anterior cruciate ligament as well as a bucket-handle tear of his lateral meniscus.
4. At the time, the Claimant was (and remains) a mechanic employed by Saab City Ltd. He originally had 4 weeks off work, which was subsequently extended to 3 months. When he went back to work, he was confined for some time to light duties. In October 2003, the Claimant had arthroscopic surgery on his knee. This also involved medial and lateral menisectomies. The surgery apparently resulted in a considerable improvement in the Claimant’s general mobility.

**B2. The Claimant’s Medical Examinations**

**B2.1 Introduction**

5. The Claimant was originally examined by a joint expert, Mr S C Amamilo. He examined the Claimant on 23 August 2003 and again on 3 April 2004. For reasons which it is unnecessary for me to explore, the Claimant was then seen twice by a fresh expert, Mr Glynn Evans, on 10 September 2005 and again on 11 September 2007. Those are the four relevant examinations for the purposes of this claim. I identify

below some of the important features of the report produced as a result of those four examinations. I do not, however, set out every relevant matter in the examination records, because Mr Amamilo and Mr Evans have recently produced a very helpful joint statement, dated October 2007, which I set out in detail in **section B3** below.

### **B2.2 First Examination by Mr Amamilo: 23 August 2003**

6. This examination recorded many of the details noted in paragraphs 3 and 4 above, although it took place before the Claimant underwent arthroscopic surgery. Mr Amamilo noted that the Claimant had suffered from initial shock and had flashbacks of the scene for two weeks. His sleep was disturbed for four months by pain and worry and when, after six months, the Claimant resumed riding his motorbike, he remained nervous and drove much more cautiously than before. He could not drive a car for three and a half months because he could not bend his left knee. He also suffered from depression and frustration due to diminished physical activities, particularly his inability to resume his basketball and football coaching. This examination record demonstrates that the collision had a serious effect on the Claimant's work and his everyday family life.
7. At this time, the Claimant's symptoms were described in these terms:
  - “1. Constant left knee pains with walking, being unable to squat, run and not fully able to straighten his leg.
  2. Occasional locking and giving way of the knee with associated swelling and wasting of the quadriceps muscle...”

As to the consequences of the injury, the Claimant said to Mr Amamilo that, having returned to work, he had to avoid heavy lifting and continued to experience difficulty with any job that involved a lot of bending and squatting. The Claimant was unable to cycle, could not climb ladders and his DIY and gardening were grossly limited.

### **B2.3 Second Examination by Mr Amamilo: 3 April 2004**

8. As noted above, Mr Amamilo's first examination of the Claimant happened before any surgical intervention and explains why Mr Amamilo noted in his first report that “the Claimant required arthroscopic assessment and anterior cruciate ligament repair in addition to excision of the bucket-handle tear of the meniscus”. By the time of the second examination on 3 April 2004, that operation had taken place, and the Claimant reported that it had “helped a lot as his knee is much easier and he is able to straighten it and bend it almost fully”. The Claimant said that, although he could now walk quite well, he could not run and his left knee still felt weak. He continued to experience a slight click in the left knee when walking, and that the knee “did not feel one hundred per cent back to normal”. He was still unable to return to his sports and hobbies because his left knee did not feel strong enough. He avoided quick activities such as climbing stairs in a rush.

9. Mr Amamilo noted that, with the anticipated deterioration in the Claimant's knee joint, he might have to retire early, or change to an occupation that would not require increased bending or squatting in about ten years' time. He might also need a replacement knee at a much earlier age than would have been the case but for the accident.

#### **B2.4 First Examination by Mr Evans: 10 September 2005**

10. Mr Evans noted that the Claimant's injury had caused lateral compartment degenerative changes in his left knee and that he was developing a significant valgus deformity. This was demonstrated in court; it means a considerable degree of sideways instability in the knee joint. Mr Evans noted that there was a chance that a total knee replacement operation could become necessary 'over the next two to three years' but this could probably be deferred until the Claimant was in his mid-fifties. He also noted that the Claimant would also need a revision knee joint replacement some time after his retirement. Even prior to having a knee replacement, Mr Evans concluded that the Claimant would have to give up his present occupation as a mechanic between one and five years of the date of the examination.
11. He recorded the Claimant as complaining of an occasional sharp pain at the front of the knee on the medial side of the joint, which he rated at about five or six on a ten-point scale. More generally, there was a dull ache in the knee which the Claimant rated at about three to four on the same scale. The pain was made worse by squatting or lifting. The Claimant walked upstairs without problems but was now unable to run up the stairs. He had episodes of swelling in the knee after exercise and a reduced range of knee flexion. The knee did not generally give way but felt unstable at times when the Claimant twisted on the knee. The knee continued to click from time to time, especially if the Claimant walked for more than a quarter of a mile. The Claimant could jog but could not run as the knee felt unstable.
12. As for the Claimant's work as a mechanic, Mr Evans noted that it was getting gradually more difficult for the Claimant to do certain aspects of his job, particularly squatting and kneeling. He noted that the Claimant was re-training to be a taxi driver as an alternative occupation in case he was unable to continue with his current job. Mr Evans also noted that the Claimant could no longer do DIY work involving ladders and had been unable to continue playing and coaching basketball and football.
13. Mr Evans recorded that after the knee replacement there would be some restriction in the range of knee flexion in the range of between 100 degrees to 130 degrees and that although such limitation usually did not cause much difficulty in ordinary activities, it prevented full squatting. After a knee replacement, strenuous lifting was not advised.

#### **B2.5 Second Examination by Mr Evans: 11 September 2007**

14. As Mr Evans noted in paragraph 3 of his second report, many of the Claimant's symptoms remained as they had been two years before. On his physical examination of the Claimant he noted that flexion of the left knee was about six inches less than that of the right and that the valgus alignment of the left knee had become more obvious. He described the knee as being "now quite unstable with in excess of 15 degrees of valgus deformity on passive testing with the knee in a few degrees of flexion". He also noted that the left anterior cruciate ligament was clearly deficient.

15. As a result of these observations, Mr Evans concluded that the degree of instability in the Claimant's knee had increased and that it was now clear that he would require a total knee replacement within the next year or so.

**B3. The Joint Statement of October 2007**

16. Mr Evans and Mr Amamilo have produced a very helpful joint statement dated October 2007. This contains the most up-to-date information in respect of the Claimant and the prognosis for his future. I therefore set much of it out verbatim as follows:

- “1. We agree that he sustained a major injury of the left knee as the result of a road traffic accident on 28 November 2002.
2. We agree that the MRI scan obtained on 21 January 2003 is reported to show the following:
  - a large joint effusion
  - synovial thickening
  - a complete rupture of the anterior cruciate ligament
  - intact posterior cruciate ligament
  - a bucket-handle tear of the lateral meniscus
  - early degenerative changes in the lateral joint compartment
  - a small osteochondral defect on the lateral femoral condyle
  - high signal deep to both medial and lateral ligaments
  - intact extensor mechanism
3. We agree that his left knee gives rise to a disability causing the following effects:

Activities of daily living

- He has constant knee pain when walking, is unable to squat, has to climb stairs slowly, can jog only for a very limited distance in constant pain and has difficulty kneeling
- He is able to do domestic chores but is limited by the difficulty in bending and squatting

- His social activities are limited in that he cannot dance or do sporting activities including cycling, golf, football or basketball
- He was a basketball and football coach and has been unable to return to this
- He is unable to climb ladders which affects his ability to do DIY activities
- He is able to look after his garden to a more limited degree than prior to the injury
- He has slowed down generally and has to be careful when twisting and turning
- The intimate relationship with his partner is affected by his continuing symptoms
- He has lost confidence in riding a motorcycle and no longer rides regularly

#### Ability to work

- The time off work after the accident was entirely reasonable given his injury
- He has returned to work as a motor vehicle technician with some difficulty
- He is in constant pain in his work and has great difficulty in bending and squatting
- He has to avoid the heavier aspects of his work which has to be done by others
- He will be unable to continue with this work for very much longer and will have to change his occupation at some point within the next twelve to eighteen months
- He is permanently disadvantaged in the open labour market in any job that entails bending, crouching or squatting
- He is re-training as a taxi driver which currently he will be capable of doing within his disability
- He may not be capable of undertaking this type of work to normal retirement age and early retirement or re-training could be required within a further ten years.

4. He will require a total knee replacement in the near future, probably within the next twelve months.
  5. He will require a minimum of three months off work at the time of total knee replacement. Following a total knee replacement he is likely to have a pain free knee but will have at least some restriction in flexion. He would remain restricted in his ability to carry out many activities of daily living. His walking ability would undoubtedly be improved but he would not return to football or basketball. His ability to climb ladders would also be affected. He would not be able to return to work as a motor vehicle technician; however a knee replacement would not prevent him working as a taxi driver.
  6. At some stage following knee replacement further deterioration will occur requiring revision surgery and in a further ten years he may be forced to retire or undergo further re-training due to an increased level of disability.
  7. Not all knee replacements are entirely successful and there is a 2% risk of infection following surgery. This complication carries a risk of leaving the patient significantly worse off than prior to knee replacement and could give rise to a permanent disability preventing him from working. The commonest late complication of knee replacement is loosening of the implant after 10-15 years requiring a revision knee replacement at that time and this is likely to require early retirement or a further change in occupation.”
17. Mr Amamilo and Mr Evans had disagreed about whether the early degenerative changes shown on the MRI scan pre-dated the accident. Mr Evans thought that such changes were due to the accident itself; Mr Amamilo thought that they pre-dated the accident. They set out this dispute at paragraphs 8-10 of the joint statement but they then went on to conclude that:
- “... the presence of very early degenerative changes in this knee would make very little difference to the prognosis following this injury and the major factor leading to the present and future disability in this case has been the acute trauma due to the accident.”
18. On a number of occasions, particularly during his cross-examination of Mr Evans, Mr White emphasized that one or two of the points made in the joint statement, particularly relating to the Claimant’s ability or otherwise to perform some of the ordinary activities of daily living, were new, and had not even featured in the report of Mr Evans’ examination a few weeks earlier. The suggestion, I think, was that such new evidence was unreliable. However, Mr Evans explained that the joint statement was a proper collaborative effort, with both himself and Mr Amamilo jointly responsible for the final text. He was unable to recall who had written each individual sentence in the joint statement, and the precise source of each point made.

19. As I explained to Mr White during the trial, I should be very wary of allowing any attempt to undermine a joint statement of this sort. A close textual analysis of which expert was responsible for which part of the statement, and an examination of whether or not the experts were right to agree matters in the precise terms that they have, seem to me to be wholly impermissible. The whole purpose of joint statements under CPR 35.12 is to reduce, rather than enlarge, the scope of the dispute between the parties. In this case, the joint statement was agreed and signed by both Mr Amamilo and Mr Evans. Only Mr Evans gave oral evidence, and he confirmed its contents. He said that the statement was a collaborative exercise. In those circumstances it seems to me that the statement records the fullest and most up-to-date evidence of the Claimant's current physical condition and likely future prognosis. It is therefore the best evidence of such matters before the Court, and I rely on it as such.

#### **B4. The Claimant's Own Evidence**

20. The Claimant's written statement for the purposes of the litigation dealt with his injuries and their consequences in a way that, unsurprisingly, was reflected in the notes of the examinations set out in **section B2** above. The statement, signed in January 2007, refers to the effect on his leisure activities and to the fact that the Claimant can no longer play and coach basketball and football. It also records the fact that the Claimant can no longer go jogging.
21. In his cross-examination, the Claimant confirmed that the longer that he put weight on his left leg, the more his knee ached so that, after the end of a full day at work, it throbbed. At work, he avoided lifting or moving heavy things. He confirmed on a number of occasions that his knee was getting worse and that he had been told that the only way it could improve was by way of a knee replacement operation. He said that now he suffered from a constant dull ache in his knee all the time, with occasional sharp pain, such as when he walked upstairs. Specifically he said that any activity which put extra weight on his left leg caused him pain; as a result, he no longer pushed the supermarket trolley. He said that any sideways movement of his knee made him feel very unstable and that twisting sideways was 'very suspect'. He said that he got a pain in the knee walking more than about fifty yards and when he walked he got clicking all the time.
22. The Claimant also described the effect of his injured knee on his daily activities. Whilst he could continue to mow the lawn, it affected other aspects of gardening because he could no longer bend and squat easily. He did not climb ladders. As for his daily routine, he said that it was difficult getting out of the bath in the morning and it was difficult coming down the stairs, and that walking up and down stairs always gave him a pain in the knee.
23. The reliability of the Claimant's evidence was challenged by Mr White in two ways. First, he pointed out to the Claimant that at least some of his oral evidence was new, in that it had not been raised by the Claimant during the medical examinations referred to above. I do not accept that criticism of the Claimant. It seems to me that the Claimant was right when he said that he could not identify every single symptom and restriction imposed by the injury to his knee during those examinations. He said that he simply answered the questions he was asked by the medical experts. Furthermore, I consider that the Claimant's symptoms, as described in his oral evidence, were the same as, or entirely consistent with, the symptoms described in the

reports produced by Mr Amamilo and Mr Evans. I therefore accept the Claimant's evidence as to the restrictions on his daily activities.

24. The other criticism of the Claimant's credibility was more substantial. It arose in this way. Prior to the original hearing date fixed for this trial in July 2007, the Claimant's evidence had always been that he intended to become a taxi driver once he had had his knee replacement operation. However, on the day when the case was originally due for trial in Lewes in July, the Claimant informed his legal team, for the first time, that he had in fact been working part-time as a taxi driver for some seven months or so, working on Friday, Saturday and Sunday nights from at least 8pm to midnight. There was nothing clandestine about this part-time working, because there were accounts for the period from November 2006 onwards, but the fact that he had already been working as a taxi driver was obviously relevant to the Claimant's claim for loss of future earnings, and the documentation relating to that work should plainly have been disclosed before.
25. These problems were compounded by the fact that, the day before the trial was due to start before me on 13 November 2007, the Claimant told his legal team that, whilst he had only started working as a self-employed taxi driver in November 2006, he had, for the two years prior to that, worked as an employed taxi driver in the mid-Sussex region, working from 8pm to midnight, 6 days a week. This meant that further documents, which had never before been seen by the Defendant, had to be disclosed at the outset of this trial. I deal with the contents of those documents when I assess the Claimant's claim for his loss of future earnings. At present, the point is whether the Claimant's evidence can be believed, given his lack of candour (twice over) regarding his part-time work as a taxi driver.
26. I am bound to say that, when giving his oral evidence, the Claimant struck me as a responsible and honest man. It was therefore surprising, not to say disappointing, that he had chosen, not once but twice, to be less than frank about his part-time working. However, I accept his explanation that, as a result of the wedding of one of his daughters and the university education of another, the Claimant had incurred debts of £50,000 with no obvious means of paying them back. Unsurprisingly, this caused him great anxiety. He decided to pay back the debts by working part-time as a taxi driver. However, he was frightened that his present employer, Saab, if they had found out about his other employment, might have been unhappy that he was working two jobs, and that he could have lost his job as a mechanic as a result. He therefore decided that the best thing to do was not to mention the part-time work at all in these proceedings.
27. Plainly there can be no excuse for the Claimant's failure to disclose, until the last possible moment, the fact of his part-time work and the relevant earnings information about that work as a taxi driver. However, I find that the explanation given for it, although not a justification for the Claimant's conduct, is entirely plausible, and the failure is not an indication of a wider tendency to dishonesty on the part of the Claimant. I do not accept Mr White's suggestion that the Claimant is prepared to lie in order to achieve a financial advantage. The Claimant was prepared to be less than frank because he feared for his job, but was plainly troubled about his conduct and, in the end, gave full disclosure of all relevant earnings. There was, as I have said, never any question of an attempt to defraud the Inland Revenue or anyone else and the Claimant has paid taxes on all his earnings as a taxi driver. Further, for the reasons set out in paragraphs 53-56 below, there was no advantage to the Claimant in keeping

back this documentation; if anything, it corroborated his pleaded claim for loss of future earnings.

28. In the round, therefore, I have concluded that the Claimant was an honest witness whose evidence about his symptoms, and their effect on his daily life and activities, is to be accepted. The Claimant made a serious mistake as to non-disclosure which he has accepted and acknowledged. That mistake does not, in my judgment, render the Claimant as someone whose evidence is to be disbelieved by this Court.

### **B5. The Prognosis**

29. It seems to me that, in all the circumstances set out above, the prognosis in respect of the Claimant can be simply stated. His left knee was seriously injured in the collision in November 2002 and although the arthroscopic surgery performed in 2003 has had a beneficial effect, the knee is now deteriorating rapidly. The Claimant will require a knee replacement operation within the next year. When he has had that knee replacement operation, the restriction on his movement will mean that he can no longer work as a mechanic for Saab. He will be able to work as a taxi driver. In about ten to fifteen years' time (so when the Claimant is in his early to mid 60's), he will require revision surgery. The evidence was that, following such revision surgery, he would find it difficult to perform certain peripheral tasks as a taxi driver, such as the carrying of heavy bags and the like, but he would still be able to drive his taxi.

## **C. IS THE CLAIMANT DISABLED WITHIN THE MEANING OF THE 1995 ACT?**

### **C1. The Relevant Parts of the 1995 Act**

30. The relevant sections of the Act provide as follows:

“1(1) Subject to the provisions of Schedule 1, a person has a disability for the purposes of this Act if he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities ...

#### **Schedule 1**

2-(1) The effect of an impairment is a long-term effect if –

- (a) it has lasted at least 12 months;
- (b) the period for which it lasts is likely to be at least 12 months; or
- (c) it is likely to last for the rest of the life of the person affected.

(2) Where an impairment ceases to have a substantial effect on a person's ability to carry out normal day-to-day activities it is to be treated as continuing to have that effect if that effect is likely to recur ...

4-(1) An impairment is to be taken to affect the ability of the person concerned to carry out normal day-to-day activities only if it affects one of the following –

- (a) mobility; ...
- (e) ability to lift, carry or otherwise move everyday objects; ...

6-(1) An impairment which would be likely to have a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities, but for the fact that measures are being taken to treat or correct it, is to be treated as having that effect.

(2) In sub-paragraph (1) “measures” includes, in particular, medical treatment and the use of a prosthesis or other aid ...

8-(1) Where –

- (a) a person has a progressive condition (such as cancer, multiple sclerosis or muscular dystrophy or infection by the human immuno-deficiency virus),
- (b) as a result of that condition, he has an impairment which has (or had) an effect on his ability to carry out normal day-to-day activities, but
- (c) that effect is not (or was not) a substantial adverse effect,

he shall be taken to have an impairment which has such a substantial effect if the condition is likely to result in his having such an impairment.”

## **C2. The Relevant Parts of the Guidance Notes**

- 31. The 1995 Act is the subject of a lengthy set of Guidance Notes issued by the Secretary of State concerning the definition of disability. The Guidance makes plain that, whilst it does not impose any legal obligations in itself, nor is it an authoritative statement of the law, Section 3(3) of the 1995 Act requires that an adjudicating body which is determining, for any purpose of the Act, whether a person is a disabled person, must take into account any aspect of the Guidance which appears to be relevant. It is therefore necessary for me to set out some at least of these Guidance Notes.
- 32. Section A contains general guidance as to the main elements of the definition of disability. Paragraph A2 notes that to be disabled within the meaning of the Act, a person must have an impairment which is either physical or mental; which must have

substantial adverse effects; which must be long term; and which must be adverse effects on normal day-to-day activities.

33. Section B deals with the meaning of ‘substantial adverse effect’. It indicates that relevant considerations include the time taken to carry out an activity; the way in which an activity is carried out; the cumulative effects of an impairment; the effects of behaviour; the effects of environment; and, importantly for the present case, effects of treatment. Paragraphs B11 and B12 of the Guidance Notes echo paragraph 6 of Schedule 1, and make plain that, where an impairment has been the subject of medical treatment or correction, that treatment or correction is to be disregarded, even if it has resulted in the effects being completely under control or not at all apparent.
34. Section D deals with the definition of ‘normal day-to-day activities’. The impairment must affect the ability of the person concerned to carry out normal day-to-day activities. It must affect that person in respect of one or more of a list of capacities, including mobility and the ability to lift, carry or otherwise move everyday objects. Paragraph D3 makes plain that the substantial effect is to be determined by looking at the effect on the particular day-to-day activity, not the relevant capacity. Paragraph D9 states that many types of work or specialist hobby, sport or pastime may still involve normal day-to-day activities and list examples such as sitting down, standing up, walking, running and lifting, moving or carrying everyday objects.
35. Paragraph D11 of the Guidance Notes deals with indirect effects, namely the situation where an impairment may not directly prevent someone from carrying out one or more normal day-to-day activities but where that impairment may still have a substantial adverse long term effect on how he or she carries out those activities. The example given is of pain or fatigue: where an impairment causes pain or fatigue in performing normal day-to-day activities, the person may have the capacity to perform the activity, but may suffer pain in so doing; or the impairment might make the activity more than usually fatiguing so that the person might not be able to repeat the task over a sustained period of time.
36. Paragraph D20 is concerned with mobility. That is described as covering moving or changing position ‘in a wide sense’. The Guidance states that account should be taken of the extent to which, because of either a physical or a mental impairment, a person finds difficult such day-to-day activities as, amongst others, climbing stairs, sitting, standing, bending or reaching. It goes on to say that it would be reasonable to regard as having a substantial adverse effect “difficulty in going up or down steps, stairs or gradients; for example, because movements are painful, uncomfortable or restricted in some way”.

### **C3. Conclusions**

37. I have concluded that the Claimant is disabled for the purposes of the 1995 Act. I reach that view for three principal reasons.
38. First, I consider that, on a proper interpretation of the 1995 Act, the restrictions on the Claimant’s mobility fall precisely within the statutory definition of ‘substantial adverse effect on normal day-to-day activities’. The most obvious example of this is that the Claimant has difficulty in going up and down the stairs. But the Claimant finds his movements generally both painful and restricted. He has difficulty getting

in and out of the bath; he has difficulty in walking more than about 50 yards; he has “always had difficulty in squatting and bending” since the injury. Most tellingly of all, the Claimant finds that if he has been on his feet all day, his knee is uncomfortable and swollen. Thus, the day-to-day activities in respect of which the knee injury has created a substantial adverse effect on the Claimant are many and varied. For these reasons, I accept Mr Hamill’s depiction of the Claimant as suffering from precisely the sort of disability set out at paragraph D20 of the Guidance Notes (paragraph 36 above).

39. Secondly, for the reasons noted at paragraph 33 above, it is necessary, for the purposes of the definition, to ignore the arthroscopic surgery which the Claimant underwent in 2003. I am in no doubt at all that, but for the palliative effects of that surgery, the Claimant would be in a significantly worse condition now. Mr Evans described the bucket handle tear as being “very significant” and that the surgery which was performed on that injury in 2003 meant that the Claimant was “very much improved”. But for that surgery, he said that the Claimant would have been in “more pain and [with] a greater feeling of disability”. Furthermore, when considering the issue of disability, I should also set to one side the knee replacement operation which the Claimant is going to have in the next 10 to 12 months, and without which, Mr Evans confirmed that “he would have a knee that gives way”. Again therefore, the evidence points unequivocally to the knee injury having disabled the Claimant within the meaning of the 1995 Act.
40. Thirdly, I have seen the Claimant’s knee and noted Mr Evans’ description of the disability which the Claimant suffers. I have seen the degree of valgus distortion in his knee, and in particular what Mr Evans described as its “sideways give”. The distortion is extensive. In my judgment it means that the Claimant can never be entirely sure that, when he puts any weight at all on his left knee, the knee will not slip or buckle. Mr Evans described the condition of the Claimant’s knee as demonstrating a “terrific amount of instability”. I agree with that conclusion. I find that such an extreme condition, and its effect on the Claimant’s abilities to perform day-to-day activities, renders the Claimant disabled for the purposes of the 1995 Act.

#### **D. GENERAL DAMAGES FOR PAIN SUFFERING AND LOSS OF AMENITY**

##### **D1. The Judicial Studies Board Categories**

41. It is agreed that the injury suffered by the Claimant to his knee is within the “severe” bracket identified by the JSB. However, there is a dispute as to which of the sub-categories within that bracket the Claimant’s injury falls into. The categories are as follows:
  - “(a) Severe
    - (i) Serious knee injury where there has been disruption of the joint, gross ligamentous damage, lengthy treatment, considerable pain and loss of function and an arthrodesis or arthroplasty has taken place or is inevitable.

- (ii) Leg fracture extending into the knee joint causing pain which is constant, permanent, limiting movement or impairing agility and rendering the injured prone to osteoarthritis and the risk of arthroplasty.
  - (iii) Less severe injuries than those in (a)(ii) above and/or injuries which result in a less severe disability. There may be continuing symptoms by way of pain and discomfort and limitation of movement or instability or deformity with the risk that degenerative changes may occur in the long term as a result of damage to the kneecap, ligamentous or meniscal injury or muscular wasting.”
42. Appropriate levels of general damages for injuries within category (a)(i) are put at between £40,750 and £56,000; damages for injuries within category (a)(ii) are put at £30,500 to £40,750; and damages for injuries within category (a)(iii) are put at £15,500 to £25,000. On behalf of the Claimant, it is contended that his injury comes within category (a)(i); on behalf of the Defendant it is submitted that his injury comes within (a)(iii).

## **D2. Comparative Cases**

43. Counsel referred me to a number of comparative cases. On behalf of the Claimant, Mr Hamill referred to **Sale v Sale** (Current Law Cases 07/July) where there was an award of £42,000 for pain, suffering and loss of amenity. However in that case the injuries were rather more severe than in the present case: there the claimant suffered other fractures in addition to the damage to his knee, had a closed concussion head injury with amnesia, and was detained in hospital for a period of 17 days. Mr Hamill also relied on **Symons v Warwickshire HA** (Current Law Cases Ref: 04/2943) in which the claimant suffered a serious rugby injury which resulted in a lateral meniscectomy, following which septic arthritis developed but, due to the negligence of the defendant, there was a significant delay in treating the septic arthritis which led to increased damage in the joint. The award was for £45,000 although that sum included an element for loss of congenial employment (working outdoors in Cornwall), because the replacement knee surgery that was required meant that the claimant would be confined to sedentary work.
44. Other cases relied on by Mr Hamill came from **Kemp and Kemp** and included **Davey v JMF Precision Welding** (1995), in which the claimant was awarded the equivalent of £48,300 as a result of injuries including a fracture of the left femur involving the left knee joint and the left patella. In that case, the claimant was hospitalised for 7½ weeks during which time a cast brace was applied to the left leg. The plaster cast was removed after about 4 months but the Claimant continued to suffer pain. The left knee had remained static for the 3 years preceding the trial and the claimant was in continuous pain as a result. He had to keep his knee elevated for most of the time and, if he sat with it bent for any period, the pain became worse.
45. Another case from **Kemp**, which I found of greater assistance, was **Farrington v BASF Plc** (2001), in which the equivalent of £34,000 was awarded by way of pain, suffering and loss of amenity. In that case the Claimant was hit by a 900 kg sack of

chemicals falling from a hoist and he suffered dislocation and ligamentous damage to his right knee. His leg was in plaster for 8 weeks and he underwent a further operation 21 months after the accident during which time he spent a further week in hospital and wore a knee brace for the following 2 months. He developed osteoarthritis in the knee and was left with permanent weakness. He required a knee replacement within 10 to 15 years.

46. The final case from **Kemp** specifically referred to by Mr Hamill, on behalf of the Claimant, was **Saint v PolyGram (Britannia Music Co) Ltd** (2000) in which the claimant, suffering and loss of amenity award was £39,930 at current figures. In that case the claimant damaged his knee when falling at work. As a result the claimant underwent an arthroscopic examination and a partial menisectomy. His symptoms were aggravated by exercise, ascending stairs and inclines and the knee occasionally gave way on standing. He suffered almost constant pain and walked with a limp. Three years after the accident an arthroscopy was performed which showed debris in the joint and areas of thinning of the cartilage. Three years and three months after the accident the knee was constantly painful and swollen with multiple episodes of locking daily and a feeling of instability. The prognosis was that the injury was progressive and that arthroplasty was likely to be required. There are many similarities between that case and this.
47. The specific cases referred to me by Mr White, on behalf of the Defendant, also came from **Kemp & Kemp** and included **Whillis v Bodman** (2003), where there was an award of £24,570 at current rates. In that case, the claimant suffered a depressed fracture to his right knee which had to be treated by surgery and thereafter wore a leg brace for about 3½ months. Crutches and pain killers were needed for a lengthy period after the accident. At the time of the trial he could no longer participate in his hobbies of running and playing football and stairs had to be taken slowly. The claimant also had depression and anxiety as a result of the collision. It was held that the knee injury fell within the mid-part of (6)(a)(iii) and, but for the psychiatric injury, the physical injuries would have attracted an award of general damages of £18,000. In that case there was no suggestion of arthroplasty either having been carried out or being required in the near future.
48. Other cases from **Kemp** referred to me by Mr White included **Lightly v Howard** (2004), where there was an award of £23,610 at current rates in a case where the claimant suffered considerable restrictions on her mobility as a result of a fracture of the right patella, and **Lambert v Warrington** (2003) where the general damages award was £21,970 at current rates, and where there was some restriction of movement and a risk of future knee replacement surgery.

### **D3. Conclusions**

49. I do not consider that the Defendant is correct to say that the injury falls within category (a)(iii). That category, and the cases where awards of £15,500 to £25,000 have been made, covers the situation where the injury to the knee is severe, but not so severe that arthroplasty is inevitable or even likely. That is not this case where, such is the nature of his injury, the Claimant's knee replacement surgery (the need for which has been caused by the collision for which the Defendant is 75% responsible), must be carried out within the year. At the same time, I do not consider that the injury falls within category (a)(i) either, since the Claimant's original treatment could not be

described as lengthy. Furthermore, whilst the Claimant has suffered pain and loss of function, such pain and loss of function could not, I think, be described as “considerable”. They are, in my judgment, less severe than those identified in the bulk of the authorities on which Mr Hamill relied.

50. I am in no doubt that the injuries to the Claimant, and the consequences of those injuries, fall fairly and squarely within JSB category (a)(ii). Those are cases where the range of general damages is said to be from £30,500 to £40,750. Furthermore, that range is entirely consistent with my conclusion that the two most relevant cases for comparison purposes, of all those noted above, were **Farrington v BASF Plc** and **Saint v PolyGram (Britannia Music Co) Ltd**: see paragraphs 45 and 46 above. In those cases, the awards for general damages, at current rates, were respectively £34,000 and £39,930.
51. In all the circumstances, I consider that the right figure for pain, suffering and loss of amenity in this case is **£37,500**. That is the sum I award by way of general damages.

## **E. LOSS OF FUTURE EARNINGS**

### **E1. Is There Likely To Be A Loss Of Future Earnings?**

52. The Claimant currently earns £20,327 net per year as a mechanic for Saab. To the extent that it was suggested that the Claimant would not have continued to work as a mechanic for Saab until he was 65, I reject that: the evidence was that there was no reason why, but for his knee injury, the Claimant could not have worked as a mechanic for Saab until the usual retirement age. Now, however, it is common ground that the Claimant needs a replacement knee within the course of the next year and that, following that surgery, he will be unable to return to work as a mechanic. It is the Claimant’s intention to turn his part-time employment as a taxi driver into a full time job. The agreed average earnings statistics for this case identify a gross annual earning of £17,500 for taxi and cab drivers, which equates to a net annual earning of £13,645. On those figures there would be a loss of future earnings.
53. There are figures available that demonstrate what the Claimant has earned as a taxi driver working on Friday, Saturday and Sunday nights. I consider that the figures relating to the period before November 2006, when the Claimant was an employed taxi driver working 6 nights a week, and which show that, for example, he earned £10,473 gross for the year up to April 2006, are broadly consistent with the £17,500 gross taken from the average earning statistics which form the basis of the pleaded claim. This is particularly so when the £10,473 is adjusted to reflect the fact that, although the Claimant was not working a full week at this time, he was working the most lucrative hours for a taxi-driver. For the period between April 2006 and April 2007, the Claimant’s accounts showed lower earnings at £6,306, although the difference was largely explained by the purchase of the car and vehicle plate; when allowance is made for that one-off expense, the gross annual earnings figure is not very different to the previous year.
54. The calculations carried out by Mr White for the period between October 2006 and October 2007 show a profit of £6,447.55. Mr White then extrapolates this figure by reference to a 40 hour week and arrives at a net annual income of £16,163, which is higher than the figure from the statistics relied on by the Claimant. If I adopted this

figure, there would still be a loss of future earnings, but it would be significantly less than the sum claimed.

55. However, I consider that the principal difficulty with that calculation is that the Claimant's current earnings (namely his profit in the last year of £6,447.55 on Mr White's figures) were earned on Friday, Saturday and Sunday nights when, on his evidence, he was working close to 15 hours in total. Those are, as I have already noted, the most profitable times for any taxi driver. I do not consider that those figures can be extrapolated on a pro rata basis, as Mr White has done it, to a 40 hour week; the resulting earnings figure is inevitably over-stated. Furthermore, it seems to me that the Claimant is entitled to say, as he did when giving evidence, that he wants to try to work more regular hours, namely 9am to 5pm Monday to Friday. Whilst it is plain that the Claimant will probably have to work some evenings and possibly some parts of the weekend, at least from time to time, I do not think that it is fair to calculate his loss of future earnings by assuming that he will or must work every Friday, Saturday and Sunday night.
56. I consider that, if an adjustment is made to the Claimant's actual earnings, to allow for the fact that the Claimant is not obliged to work every Friday, Saturday and Sunday night, then the consequent reduction in the extrapolated figures would lead to a conclusion which is entirely consistent with the average earning figures of £17,107 gross and £13,695 net for taxi drivers relied on in the Claimant's Schedule of Loss. In other words, I consider that when proper allowance is made for reasonable working hours, the Claimant's actual earnings as a taxi driver are broadly consistent with the figure in the available average earnings statistics. They certainly do not lead me to conclude that I should take a figure other than the £17,107 gross/ £13,695 net identified in those statistics and used in the Claimant's Schedule of Loss.
57. For completeness, I should also say that I accept Mr Hamill's contention that Mr White's calculations do not appear to make full allowance for all of the Claimant's expenses, including insurance. Whilst I do not accept that this omission is so significant that it makes the Claimant's likely income *less* than the average earnings figure (which was Mr Hamill's case), it is a further reason why, in my view, I am justified in using the figures from the average earnings statistics on the facts of this case.

## **E2. Has The Claimant Failed To Mitigate His Loss?**

58. On behalf of the Defendant, Mr White also contended that the Claimant's decision to become a taxi driver was the result of a failure to mitigate his loss and that, instead, the Claimant should have explored with Saab ways in which he might stay working for that organisation after his knee replacement surgery.
59. The principal difficulty with this argument was that, as the evidence demonstrated, the range of jobs available at Saab was limited. The Claimant is and has always been a mechanic. He likes working with cars. He does not believe that he has the aptitude to be a salesman, and in particular he said that he could not deal with the stress that they habitually suffer. He smiled wryly at the suggestion that he could work in the offices for Saab: his evidence made clear that the Claimant is not, and is happy not to be, a natural office worker. There was no evidence of any alternative employment

within Saab that I consider was remotely suitable for the Claimant, or which the Claimant would be unreasonable to refuse.

60. It was suggested that the Claimant had failed to investigate with Saab in proper detail what alternative jobs he could have performed. I do not accept that criticism. The matter was raised with Saab and they were, perhaps understandably, entirely non-committal. Of course, Saab have an obligation to endeavour to find alternative employment for the Claimant, given the nature of his disability. But the fact that, when the matter was raised with them, Saab were unable to identify any possible alternative employment, actually supports the Claimant's position, which is that there is no such alternative employment available with Saab. If there was an obvious job for the Claimant within Saab following his knee replacement surgery, then I would have expected either the Claimant or Saab to have identified it.
61. The Claimant has spent all his working life in and around motor cars. He likes driving and the accident has not put him off driving. In those circumstances, it seems to me that it was a very sensible decision on his part to conclude that, once he could no longer be a mechanic, he would be best suited to being a taxi driver. Accordingly, I do not accept that there has been any failure to mitigate on the part of the Claimant. He is not obliged to seek alternative employment to which he would not be suited and for which he has no obvious aptitude or experience. He is obliged to find alternative employment which he can reasonably do and, in my judgment, he has done that. Thus, for these reasons, I conclude that there will be a loss of future earnings, and that that loss has been caused by the collision for which the Defendant is 75% liable. In my judgment, the Claimant has not failed to mitigate that loss.
62. In my judgment, reference to the relevant authorities dealing with the Claimant's obligation to mitigate his loss only supports that conclusion. In mitigating his loss, like any claimant, Mr Conner is only required to act reasonably, and the standard of reasonableness is not high in view of the fact that the defendant is an admitted wrongdoer: see **Banco de Portugal v Waterlow** [1932] A.C. 452 and paragraph 7-064 of **McGregor on Damages** (17<sup>th</sup> edition, 2003). The Claimant is "not bound to nurse the interests of the defendant": see **Harlow and Jones v Panex (International)** [1967] 2 Lloyd's Rep 509. Whilst the Claimant must act with the defendant's interests in mind, as well as his own, I consider that, for the reasons set out above, that is exactly what he has done.

### **E3. How Should Loss Of Future Earnings Be Calculated?**

#### **E3.1 The Conventional Approach**

63. The conventional approach to the calculation of loss of future earnings is to use what are commonly known as the Ogden Tables. In **Wells v Wells** [1999] A.C. 945, Lord Lloyd said at page 379:
- “49. I do not suggest that judges should be a slave to the tables. There may well be special factors in particular cases. But the tables should now be regarded as the starting point rather than a check. A judge should be slow to depart from the relevant actuarial multiplier on impressionistic grounds or by reference to “a spread of

comparable cases” especially when the multipliers were fixed before actuarial tables were widely used.”

64. I also note that paragraphs 31 and 32 of the introduction to the sixth edition of the Ogden Tables also make the point that the conventional approach is to treat them at least as the starting point. The relevant paragraphs read as follows:

“31. The methodology proposed in paragraphs 33 to 42 describes one method for dealing with contingencies other than mortality, which replaces that set out in earlier editions of the Ogden Tables. If this methodology is followed, in many cases it will be appropriate to increase or reduce the discount in the tables to take account of the nature of a particular claimant’s disabilities. It should be noted that the methodology does not take into account the pre-accident employment history. The methodology also provides for the possibility of valuing more appropriately the possible mitigation of loss of earnings in cases where the claimant is employed after the accident or is considered capable of being employed. This will in many cases enable a more accurate assessment to be made of the mitigation of loss. However there may be some cases when the *Smith v Manchester Corporation* or *Blamire* approach remains applicable or otherwise where a precise mathematical approach is inapplicable.

32. The suggestions which follow are intended as a ‘ready reckoner’ which provides an initial adjustment to the multipliers according to the employment status, disability status and educational attainment of the claimant when calculating awards for loss of earnings and for any mitigation of this loss in respect of potential future post-injury earnings. Such a ready reckoner cannot take into account all circumstances and it may be appropriate to argue for higher or lower adjustments in particular cases. ... However, the methodology does offer a framework for consideration of a range of possible figures with the maximum being effectively provided by the post-injury multiplier assuming the claimant was not disabled and the minimum being the case where there is no realistic prospect of post-injury employment.”

### **E3.2 Lump Sum Awards**

65. There are conventionally two types of lump sum awards which can be made in circumstances where the Ogden Tables are not followed. Those are referred to in paragraph 31 of the introduction referred to above. An award in accordance with **Smith v Manchester Corporation** (1974) 17 K.I.R. 1 is not concerned with a

continuing loss. It is an award for a contingent future loss, in the event of the claimant losing his current job where, as a result of the accident, he would then be at a handicap on the labour market, at which he would not have been but for the accident. The other kind of lump sum award, which takes its name from **Blamire v South Cumbria Health Authority** [1993] P.I.Q.R. Q1, is appropriate where the evidence shows that there is a continuing loss of earnings claim, but there are too many uncertainties to adopt the conventional multiplier and multiplicand approach to its quantification. The important differences between these lump sum awards are explained by Hughes LJ at paragraph 22 of his judgment in **Ronan v Sainsbury's Supermarkets Ltd & Anor** [2006] EWCA Civ 1074.

### **E3.3 Which Approach?**

66. It seems to me that lump sum awards under either **Smith v Manchester** or **Blamire** are inappropriate in the present case. A **Smith v Manchester** award is to compensate a claimant in circumstances where he has not lost his present job (and there is no immediate reason to believe that he might) but, if he were to do so in the future, he would suffer a disability on the labour market as a result of his injuries. That is not this case. The Claimant is going to have a knee replacement operation in the next few months which means that he can no longer continue his employment with Saab. He is therefore definitely going to suffer a loss of future earnings, for the reasons explained above. A **Smith v Manchester** award is inappropriate in such circumstances.
67. Likewise a **Blamire** award is also inappropriate in the present case. That is a lump sum award necessitated by uncertainties as to the nature, scope and extent of any future loss of earnings. None of those uncertainties exist in the present case. The Claimant is going to work as a taxi driver because he can no longer work as a mechanic, and the Claimant will suffer a loss as a result of this change of job, for the reasons explained above.
68. On the other hand, all that is required for an award in accordance with the Ogden Tables can be found in the evidence with which the Court has been furnished. I can be entirely confident that the Claimant will suffer a quantifiable loss of earnings for an appreciable time and that this is not an exceptional case where there are too many uncertainties and imponderables; accordingly, in accordance with the view expressed at paragraph 10-006 of **Kemp and Kemp**, the Ogden Tables must be the starting-point for my assessment. There is no possible reason for departing from such a course.

### **E3.4 Should There Be An Adjustment To The Figures In The Tables?**

69. The parties are agreed that, if I use the Ogden Tables, then the appropriate multiplier is 11.40. In order to calculate the Claimant's earnings but for the injury, that should be discounted according to Ogden's Sixth Edition Table A, Column GE-A (qualified trade mechanic), for a man aged 51, by 0.82, so that the overall multiplier becomes 9.3548. Thus, if the Claimant had remained employed by Saab he could have earned  $\pounds 20,327 \times 9.3548 = \pounds 190,155$  to age 65.
70. I have already found that there was a net loss of earnings and that the right annual figure for the calculation of the Claimant's residual earning capacity is  $\pounds 13,645$  net. In circumstances where, as here, the Claimant is disabled, the Tables indicate that the

agreed multiplier of 11.40 should be discounted by 0.49, to reflect the fact that disabled employees often do not remain in work as much as was previously thought. That gives a multiplier of 5.586. Thus, the Claimant's residual earning capacity as set out in the Schedule of Loss identifies those residual earnings as £13,645 x 5.586, to give a total of £76,220.

71. It is in the discount of 0.49 that the remaining dispute between the parties can be discerned. I have found, for the reasons set out at paragraphs 30-40 above that the Claimant was disabled. On the face of the Ogden Tables, the 0.49 adjustment should be used. However, Mr White maintains that, on the evidence, given that the Claimant is going to have a new knee and that he will then work as a taxi driver for 10 to 15 years before any revision operation, it would be wrong to apply such a low figure. In addition, Mr White made the point that, although Mr Evans believed that, following the revision surgery, Mr Connor might find it difficult to lift heavy bags and the like, he was also clear that he could see no reason why the Claimant could not continue to work as a taxi driver, because the revision surgery would not affect his ability to drive at all.
72. I have considered this point with some care. On the one hand I am sympathetic to Mr Hamill's point that the Ogden Tables are based on detailed actuarial evidence and should not be the subject of impressionistic 'tinkering' by the judge. On the other hand, the introduction to the Tables themselves (set out at paragraph 64 above) makes plain that they are not to be taken as inviolable where, on the facts of a particular case, the evidence demonstrates the need for an adjustment. In addition, I note that paragraph 10-015 of **Kemp and Kemp**, having referred to the introduction to the Tables, goes on to say that "the relatively low threshold required to the definition of 'disabled' will result in the need for potentially significant adjustment depending on the extent of the claimant's disabilities. This will have to be considered on a case by case basis."
73. In the end, I have concluded that the figure of 0.49 should be adjusted in this case. I consider that, on all the evidence, it is very likely that the Claimant will work as a taxi driver for more than half of his remaining working life. Indeed, I consider that he has made the move to becoming a taxi driver precisely because he considers that he will be able to work for much of the next decade or more in that capacity. There is no medical reason why he will not be able to do so. Indeed, as I have said, even after the second revision surgery, which might not take place until the Claimant's mid-60's anyway, there is no real reason to believe that he could not continue working as a taxi driver if that is what he chooses to do.
74. As I have said, the figure in the Ogden Table for a disabled claimant is 0.49. The figure for a claimant who is not disabled is 0.82. It seems to me that I should accede to Mr White's suggestion that the figure of 0.655 should be utilised as a middle course between these two extremes in this case. I find on the facts that the figure of 0.655 produces the most realistic assessment of the Claimant's claim for loss of future earnings.
75. Thus, for the reasons set out above, I find that:
  - i) The Claimant's earnings but the accident would have been £190,155.

- ii) The Claimant's residual earning capacity should be calculated, as pleaded, by reference to the net figure of £13,645 per annum. However the multiplier should be adjusted so that it is not  $0.49 \times 11.40$  (5.586) but instead  $0.655 \times 11.40$  (7.467). Thus the Claimant's residual earnings would be £101,887.21.
- iii) In those circumstances the loss of future earnings would be £190,155 less £101,887.21 = £88,267.79. This figure must be reduced for accelerated receipt by 0.9756, which produces a total net loss of earnings figure of **£86,114.05**.

## **F. AGREED FIGURES**

76. The parties have reached agreement as to the following figures:
- i) Past loss of earnings: £2,845.36.
  - ii) Knee replacement surgery: £8,500.
  - iii) Revision surgery: £8,704.80.
77. The figure for the claim for loss of pension (based on the assumption that the Claimant would seek, and obtain, early retirement from Saab on the grounds of ill-health) was agreed at £64,470. The figure for the claim for the loss of the widow's pension was agreed at £4,687.40. The figure for the loss of life insurance was agreed at £5,582.80. The agreement of these figures was all subject to the Defendant's arguments as to mitigation, loss of future earnings and the like. In view of my findings in relation to those aspects of the case, which are all in the Claimant's favour, it seems to me that the Defendant is obliged to pay the agreed sums in full.

## **G. SUMMARY**

78. For the reasons set out above, I summarise my assessment of damages in this case below, following the sequence set out in the updated Schedule of Damages:
- i) General damages: £37,500.
  - ii) Past loss of earnings: £2,845.36.
  - iii) Knee replacement surgery: £8,500.
  - iv) Revision knee surgery: £8,704.80.
  - v) Loss of future earnings: £86,114.05.
  - vi) Loss of pension: £64,470.
  - vii) Loss of widow's pension: £4,687.40.
  - viii) Loss of life insurance: £5,582.80.
79. That produces a total of £218,404.41. By agreement, the Defendant is liable for 75% of that figure, which produces a final figure for damages of **£163,803.30**.

80. I will hear the parties separately on any matters relating to interest and costs.