

# PSLA and some recent cases

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# Pain, suffering and loss of amenity in sight cases

- ▶ £2,000 - £250,000
  - ▶ A case of constant blurred vision and sensitivity to light in both eyes requiring constant wearing of dark glasses < £37k.
- ▶ Serious injuries often accompanied by psychiatric injury and/or significant cosmetic impact.
- ▶ Factors listed in the Guidelines:
  - ▶ Sympathetic ophthalmia / Other risk of deterioration in remaining eye
  - ▶ Blurred or double vision
  - ▶ Sensitivity to light
- ▶ Few Court awards.

# Minor and transient eye injuries

## ▶ **CLARKE v DHL SUPPLY CHAINS LTD (2019)**

- ▶ Abrasion to the cornea.
- ▶ Reduced vision in left eye → reduced mobility. Improvement after 2 weeks. Continued discomfort and sensitivity to light. Blurred vision. At 5 months, irritation and sensitivity resolved. C still felt uncomfortable driving due to reduced VA on the left and some residual blurred vision.
- ▶ General Damages: £4,600 (£4,760 RPI).

## ▶ **CAINE v ALLIANZ INSURANCE PLC (2017)**

- ▶ Headache and permanent floater in right eye.
- ▶ No pain & C not prevented from normal activities. Floater would become less troublesome as C became accustomed to its presence.
- ▶ The judge noted that there "was no distinct impact or pain on injury but the development of the floater in the eye where there is some intermittent obstruction but no clinical loss of vision ... this is a permanent and unchanging condition in terms of the presence or existence of the shadow. It won't diminish but C's appreciation will change, she will tune it out and it will become less of an interference".
- ▶ Chapter 5(A)(h): Minor eye injuries.
- ▶ General damages: £8,500 (£9,300 RPI).

# Aggravating factors

- ▶ Disproportionate impact of sight loss
  - ▶ Age
  - ▶ Occupation
  - ▶ Pre-existing visual impairment
- ▶ Requirement for future surgery
- ▶ Sudden onset
- ▶ Epiphora / injury to tear ducts or eyelids
- ▶ Cosmetic impact
- ▶ Associated psychiatric injury
- ▶ Associated headaches / nausea

# Disproportionate impact of sight loss

- ▶ Age
  - ▶ Impact on development / education (e.g., reduced information gathering, impairment of communication & concentration skills).
  - ▶ Impact on mobility.
- ▶ Occupation
  - ▶ **S v SOUTHEND UNIVERSITY HOSPITAL NHS FOUNDATION TRUST (2019)**
    - ▶ Delayed glaucoma treatment.
    - ▶ Marked glaucoma damage to the optic disc of the right eye & significant visual field loss. Required a trabeculectomy and mitomycin.
    - ▶ Poor vision in the right eye, seemed to be looking through a thin fog. Left eye normal & stable.
    - ▶ C was working as a taxi driver and so there was a risk that in the future his licence would not be renewed due to the visual loss.
    - ▶ General Damages: £24,000.
- ▶ Pre-existing visual impairment
  - ▶ **EDWARDS v DR SPILL (2020)**

# Pre-existing visual impairment

## ▶ **EDWARDS v DR SPILL (2020)**

- ▶ Pre-existing history of dry eye, impaired vision in L eye and relatively normal vision in R eye.
- ▶ Alleged negligence was in delayed investigation & treatment of infected cornea with a large corneal ulcer, a 3.2mm abscess and a 3.5mm hypopyon.
- ▶ C contended that her eyes were very vulnerable, and that the threshold for treatment or investigation of her eyes was considerably lower than in the average patient.
- ▶ C argued that had she retained sight in R eye, she would have retained an overall level of vision allowing her to work & function in everyday life.
- ▶ D denied breach of duty and causation.
- ▶ C suffered a complete and irreversible loss of vision in the R eye, with no perception of light in the eye, leaving her visually profoundly disabled.
- ▶ C required professional support and rehabilitation & was disabled within the meaning of the Equality Act 2010.
- ▶ General damages: £150,000



# Requirement for future surgery

## ▶ **CM v KINGS COLLEGE HOSPITAL NHS FOUNDATION TRUST (2019)**

- ▶ C had been receiving regular monitoring and treatment (Eylea injections) for macular degeneration.
- ▶ C developed infection leading to loss of vision in the right eye with no perception of light. Loss of vision in the right eye was permanent. C would require future removal of the eye & insertion of a prosthetic.
- ▶ With correct treatment & monitoring, C would have become legally blind, with a visual acuity of 20/200, by July 2018.
- ▶ C was instead left with visual acuity of 20/200 in the left eye and total blindness in the right eye. With visual acuity of 20/200 in both eyes, he would have maintained a degree of binocular vision and depth perception.
- ▶ General damages: £40,000.

# Sudden onset / psychiatric injury

- ▶ **PA v ROYAL FREE LONDON NHS FOUNDATION TRUST (2019)**
  - ▶ C had a history of alcohol-related health problems and was prescribed Carbamazepine to assist with detoxification.
  - ▶ Within a month, C developed severe aches, pains, shivering, itching and mouth ulcers, leading to the diagnosis of TENs (Toxic Epidermal Necrolysis - a more severe reaction to Stevens-Johnson syndrome).
  - ▶ He was considered clinically blind; he had only light perception in the right eye and could only see hand movements in his left eye.
  - ▶ Also diagnosed with a chronic adjustment disorder of moderate severity.
  - ▶ General damages: £250,000



# Epiphora / injury to tear ducts or eyelids

- ▶ **JH v ROYAL FREE LONDON NHS FOUNDATION TRUST (2020)**
  - ▶ Right facial palsy as a result of a negligent reconstruction of C's ear.
  - ▶ Permanent paralysis of facial muscles meant C was unable to close his eye. He also suffered from soreness, blurring of vision, aversion to bright lights and overflow tearing. His eyes watered and eyelids felt constantly heavy.
  - ▶ Problems of the eyelid not closing → C suffered from eyelashes being retained behind his eyelid, as they were not cleared on blinking.
  - ▶ Discomfort and soreness → difficulty with sleeping → chronic fatigue & difficulties in concentration.
  - ▶ Headaches occurring on average two to three times a month.
  - ▶ Aesthetic effect of right facial palsy caused a facial miscue, making it appear as though C was winking intermittently.
  - ▶ General damages: £45,000.

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King's Bench Walk

Thank you!