

SHERIFFDOM OF LoTHIAN AND BORDERS AT EDINBURGH
IN THE ALL-SCOTLAND SHERIFF PERSONAL INJURY COURT

[2024] SC EDIN 53

PIC-PN2784/23

JUDGMENT OF SHERIFF K J CAMPBELL KC

in the cause

FARHEEN ACKRIM

Pursuer

against

UK INSURANCE LIMITED

Defender

Pursuer: A. Black advocate (Jones Whyte, solicitors, Glasgow)
Defender: J Thomspson advocate (Clyde & Co, solicitors, Glasgow)

Edinburgh 5 December 2024

1. On 16 August 2020 the pursuer was driving motor vehicle registration ST12 AUR from Glasgow city centre to her home on the south side of the city.
2. As at 16 August 2020, the defender was the motor insurer of the driver of vehicle registration SC12 ZHB.
3. Whilst the pursuer was stationary at a junction controlled by a Give Way sign, the defenders insured's vehicle collided with the rear of the pursuer's vehicle.
4. As a consequence of the collision the pursuer's body was jerked forward and was restrained by her seatbelt. The pursuer thereby sustained soft tissue injury to her neck.
5. Over the following 12 days, the pursuer developed worsening pain to her neck resulting from soft tissue injury in consequence of the collision. During this time, the pursuer self-administered analgesia.

6. On 28 August 2020 the pursuer contacted her GP and spoke with a receptionist there. The pursuer reported to the receptionist that she had sustained injury to her neck. Her report was triaged to Dr Naushad Ali who issued a prescription for Naproxen and Co-Codamol.
7. The pursuer continued to use analgesia thereafter including Naproxen, Paracetamol and Ibuprofen.
8. The pursuer's injuries to her neck continued to affect her by causing pain, discomfort, and restrictions to mobility until substantially resolving in November 2020.
9. Between 16 August 2020 and November 2020, the pursuer required assistance from her husband, son, and daughter with heavier domestic tasks. Those tasks included ironing, vacuuming, cleaning, carrying shopping, and cooking.

Findings in fact in and law

1. That the defender are liable to make reparation to the pursuer in consequence of their insured's breach of duty at common law.
2. The injuries suffered by the pursuer were caused by the defenders insured's breach of duty at common law.

Findings in law

1. That damages in the sum of £3144.00 is reasonable reparation for the loss injury and damage suffered by the pursuer.

NOTE**Introductory**

[1] This action arises out of a road traffic accident on 16 August 2020 in which the car the pursuer was driving was struck by a car driven by the defender's insured driver. Liability is admitted, and the question to be decided by the court is the extent and quantification of the pursuer's losses. The pursuer gave evidence, and led evidence from Dr Martina MacFarlane, and Dr Sumeet Vhora. Both medical witnesses gave evidence by webex video-conferencing. The defender did not lead any witness evidence.

[2] I heard proof on 7 October 2024. The pursuer's case concluded at 15.54 on that day. Counsel for the defender indicated the defender did not intend to lead any witnesses. Counsel for both parties indicated that submissions were likely to take more time than the court could reasonably sit on for. As the proof had been assigned a one-day diet, it was not possible to adjourn until the following day for submissions, and having consulted the court timetable and counsel's diaries, it appeared that a suitable adjourned diet would not be available for a significant number of weeks. Having canvassed the matter with counsel, I therefore appointed parties to exchange written submissions in draft by 14 October 2024, and allowed a further seven days for submissions to be finalised and lodged with the court. The court's interlocutor reserved the possibility of a further hearing on submissions, and, in the event, that has not proved necessary as the written submissions are commendably comprehensive.

Witness evidence*The pursuer*

[3] The pursuer, Farheen Ackrim, 59, was driving from Glasgow city centre to her home on the south side of the city on 16 August 2020 when another car collided with her car at a junction. She could not recall the name of the street. It was quite a strong hit and she was jerked forward. She was wearing a seatbelt. There were two children in the back seats and they screamed. The pursuer felt quite shocked and shaky immediately after the accident. She went home. In the evening, she felt stiff and unable to move about easily. Sitting down and getting up were difficult, as was bending. The pursuer felt pain from her neck, all through her spine to her lower back. She took "normal" painkillers. She felt pain the following morning and took "normal" painkillers. The pursuer has kidney problems and is unable to take strong painkillers for long periods, which is why she described the medication as "normal" painkillers, meaning paracetamol and ibuprofen. The pursuer thought her symptoms would get better in a few days. They did not. She is not good about contacting the doctor, but about a week or ten days after the accident the pharmacy advised the GP and got the GP to contact her by phone. She was prescribed anti-inflammatories, namely naproxen. She took that for a week to ten days. Her symptoms got better but came back when she stopped taking the medication.

[4] The pursuer recalled being examined by Dr Vohra. She was still experiencing problems with her neck and spine. The pursuer was not able to do very much of her daily routine in the period between the accident and seeing Dr Vohra. She could not work in the kitchen, or do washing or cleaning or cooking. She could not stand up for lengthy periods. The pursuer's symptoms continued till Christmas time. They started to improve in the New Year. She was pain-free after New Year. The pursuer received assistance from her son,

who was 17 at the time, and her daughter, who was 21, and her husband. They did cleaning, vacuuming, making beds, tidying and washing; about an hour a day each.

[5] In cross-examination, the pursuer said she had spoken to her GP on the phone and described the over-the-counter painkillers she was using. She thought that was on 28 August and the GP prescribed naproxen. She was not able to say if she had taken naproxen before. She had taken strong painkillers when she was giving birth; she did not remember taking strong painkillers since. On reading the GP entry for 28 August 2020, the pursuer could not say if she had had naproxen left over from a knee problem earlier. She had been told to take that for a knee problem when she was travelling. That was around Easter time. Dr Vohra's examination was not in person, because no-one was examined in person due to the pandemic. Dr Vohra must have asked her what treatment she received. Dr Vohra had noted the pursuer phoned the GP two days after the accident; the pursuer considered he must have misheard her. She could not remember if she went to the pharmacist or the GP. She could not remember what she had said. It could be she spoke to a nurse. It could be that it was not in the records. The pursuer did not remember the defender offering her physiotherapy after the accident, though she did remember being phoned a lot by the defender's office. The pursuer was asked twice if she would have taken physiotherapy if offered. Her first answer was that no-one was being seen in person at the time. Her second answer was that she did not remember when she was contacted. A letter from 3d Rehabilitation, dated 24 August 2020, reporting to the defender was put to the pursuer. The letter reports that physiotherapy did not proceed because "the client [ie the pursuer] does not believe that Physiotherapy will be of benefit". The pursuer said that was how she was feeling, and that she could not remember.

Dr Martina MacFarlane

[6] Dr MacFarlane has been qualified as a general practitioner for 20 years. She has been a partner at Williamwood Medical Practice in Glasgow for 12 years. While patients have a named GP, they can book an appointment with any GP, and urgent issues will be dealt with by the first available doctor. The pursuer's medical records in 6/1 contain notes of GP consultations and also record interaction with reception staff and other staff in the practice. The entry for 28 August 2020 under "user Pu1" was by administrative staff, and was in the following terms:

"has tried paracetamol, co-codamol 15/500 also some naproxen left and this seemed to help"

Paracetamol, co-codamol and naproxen are all painkillers. "15/500" refers to the strength of the medication. Dr MacFarlane assumed the pursuer had contacted the practice seeking assistance with pain relief. The information must have been provided by the pursuer in her initial contact with the practice, and it had been recorded to assist the on-call GP decide what was appropriate. The next entry for 28 August 2020 was by Dr Ali, one of the GPs:

"n/s [not seen] involved in RTA – neck pain –requesting analgesia – Rx [prescription]"

The prescription was for (i) co-codamol 15/500, 50 tablets, to be taken 2 at a time, 4 times a day as required; (ii) naproxen 500mg 28 tablets, to be taken twice a day.

[7] The following entry was for 2 October 2020, and was a reception staff entry.

"pt [patient] had fever, weak fr 1wk. covid test neg. asking fr advice taking paracetamol.ibuprofen. Asking for advice."

[8] As a result, Dr MacFarlane spoke to the pursuer on the phone, and the next entry was her note:

"Problem – feverish, fatigue ??UTI [urinary tract infection]

History – Telephone consultation during COVID-19 itchy eyes and runny nose, sneezing last week, antihistamine has helped but persistent feels feverish. Feels alternatively hot/cold (doesn't have thermometer), weak. Not achey, wants to lie

down. Appetite OK, eating normally. No urinary symptoms but feels similar to prev UTIs she has had in past. No back pain/vomiting.

Result – Agree MSSU and empirical Rx for ?UTI, worsening/review advice given.”

[9] Dr MacFarlane could not recall the detail of the consultation, but she would have asked a series of questions for the pursuer to describe how she was feeling. The pursuer had not described a classic UTI to reception staff and she wanted to find out more to exclude spread to the pursuer’s kidney, which is why she specifically noted the absence of back pain or vomiting. Dr MacFarlane had not asked about a road traffic accident; that had not been the subject of the pursuer’s call to reception.

[10] In cross-examination, Dr MacFarlane confirmed that the co-codamol and naproxen prescribed by Dr Ali on 29 August would have been exhausted by 2 October 2020 had the pursuer been taking those medications at the rate prescribed. The note by reception staff that the pursuer was taking paracetamol and ibuprofen would have been information provided by the pursuer.

Dr Sumeet Vohra

[11] Dr Vohra is a GP and occupational health physician. He qualified in 1990, and has been undertaking medico-legal work since about 1998. He adopted his report 5/1 dated 12 November 2020. He had seen the pursuer remotely due to the covid-19 pandemic. While he preferred face to face consultations, the pursuer’s case was not overly complicated and the remote consultation was satisfactory. The only source of information was the history from the pursuer. Medical records were not available, and he had been asked to proceed without them. This was not uncommon at the time as solicitors were struggling to obtain records because of the pandemic pressures on GPs. Dr Vohra took a history, and his visual

examination of the pursuer concentrated on range of movement. The description of pain and stiffness in the pursuer's neck was his summary of what the pursuer told him. The reference at B.4.1 to symptoms being particularly significant for two weeks indicated this was the period when the symptoms were at their worst, not that they had resolved. At the time of examination, symptoms were mild and variable – meaning the pursuer was not in a great deal of pain, and that her symptoms were not constant. The pursuer also described stiffness in her lower back (B.4.2). These were listed separately because sometimes both were seen in road traffic accidents, and sometimes one or the other. The pursuer had described receiving help from family members: ironing, vacuuming, cleaning, carrying heavy shopping for a period of 8 week; that was reasonable.

[12] In cross-examination, Dr Vohra indicated he had been asked to produce a supplementary report around two months prior to the proof. He had not examined the pursuer for the supplementary report. He had been sent copies of medical records, and was asked to comment on the records and advise if they changed his opinion. Asked if he had said they did not alter his opinion, Dr Vohra said he expressed himself slightly differently. At that point I was addressed outwith the presence of the witness. When cross-examination resumed, Dr Vohra indicated his supplementary report did not deal with the question of a prescription for painkillers. Dr Vohra understood that the pursuer had been taking paracetamol and naproxen as required during the two weeks after the accident.

Submissions

[13] As I have indicated above, counsel provided written submissions. I mean no disrespect by not repeating them at length; that is not necessary because these are 21 and 22 of process. I have taken account of the written submissions in the discussion which follows.

Analysis and decision

Assessment of witnesses

[14] Even allowing for the fact that the accident was just over four years ago and thus recollection may have dulled with time, I did not find the pursuer to be a reliable witness, and, on some matters, her evidence was incredible. Her response to many questions in cross-examination was that she could not recall. Her explanation for Dr Vohra having noted that she phoned the GP two days after the accident because he misheard her was unsatisfactory, given her earlier evidence that she had contacted the GP 12 days after. As the pursuer was examined by Dr Vohra in November 2020, it seems unlikely that any confusion at that time could be down to the effect of the passage of time on her memory. The pursuer's further answer about the involvement of a nurse was unsupported in the record. Further I found her answers to questions about the offer of physiotherapy by the defender's outsourced rehabilitation service to be evasive. In the face of the GP records for 28 August 2020 and 2 October 2020, I am unable to accept the pursuer's evidence that she suffered back pain. I therefore accept the pursuer's evidence only to the extent it is consistent with contemporaneous independent evidence.

[15] I consider Dr MacFarlane was credible and reliable in her evidence. She was clear about what she could and could not recall directly, and was clear in her explanation of the form and content of the records from the GP practice of which she is a member, as well as the procedures within the practice for making appointments and creating records.

[16] I consider that while Dr Vohra was doing his best to assist the court, there are limitations on how much of his evidence I can accept. There are a number of reasons for that. First, I suspect he was taken aback by a line of questioning which developed during

cross examination about a supplementary report which he had apparently provided to the pursuer's agents but which was not before the court. That report was provided after Dr Vohra had been provided with GP records not previously available to him, and apparently contained comments by him informed by those records. When the existence of that report emerged in cross-examination, I heard submissions outwith the presence of the witness. It became apparent that counsel for the pursuer was not previously aware of the second report. Having heard counsel, I granted a short adjournment for the report to be exhibited to both counsel. The report was not put before the court as a late production. Three points of significance emerged from this chapter: (i) Dr Vohra said his supplementary report did not comment on the GP entries about the pursuer using painkillers; (ii) Dr Vohra said he had expressed his opinion slightly differently in the second report; (iii) Dr Vohra was not re-examined, and the 'slightly different' opinion was not followed up.

[17] The second point relates to Dr Vohra's approach to prognosis. The defender made two criticisms: that Dr Vohra failed to establish or comment on the pursuer's baseline fitness and flexibility pre-accident (and thus anchoring how much functionality she might regain); and further that while he gave a 6 month period for full resolution, he failed to indicate a rate at which symptoms might abate. While there is some force in both points, I consider that the first is more important than the second; however, neither is determinative of the weight to be given to his evidence. Thirdly, at the time of preparing his first report, because he did not have access to the GP records, Dr Vohra was dependent on the pursuer's history of events, including her history of engagement with medical professionals. That account is not entirely borne out by the contemporaneous records, and is at variance with her oral evidence. While this was touched on in oral evidence, it was not explored at length.

[18] In consequence of these several matters, I cannot be certain about the extent to which the opinion articulated in his report before the court has been modified by having sight of the GP records. I know that it has been modified, and it was not clear to me the extent to which his oral evidence reflected that, tied as it was to his report 5/1.

Assessment of damages

[19] I accept the evidence that the pursuer suffered a soft-tissue injury in the area of her neck as a result of the accident.

[20] As I have indicated, I found the pursuer's evidence that there was also back pain unconvincing, given the contemporaneous GP records. Dr Vohra's evidence anent back pain was, of course, reliant on the pursuer's oral history at the time of his examination. It is also noteworthy that the pursuer's long-standing renal problems may also give rise to back pain. Further, the GP note for 2 October 2020 specifically states "no back pain", while the record for 28 August 2020 only refers to neck pain. I conclude that the pursuer did not suffer back pain as a result of the accident.

[21] The pursuer reported continuing symptoms at the time of examination by Dr Vohra, and that these continued until after Christmas. There was no clear indication of the level of discomfort and limitation of function. Given my conclusions about the truthfulness of the pursuer's evidence about back pain at the time of examination by Dr Vohra, and the questionable reliability of her account of contact with the GP, I am cautious in accepting that the pursuer's symptoms were as long lasting as she stated. I am prepared to accept there may have been some neck discomfort at the point of examination by Dr Vohra on 12 November 2020; that I take from Dr Vohra's evidence that symptoms were mild and variable. I consider on the balance of probabilities that it was no more than residual. In

other words, the pursuer was almost completely recovered by the time she was seen by Dr Vohra almost three months after the accident.

[22] I consider that the appropriate range is to be found in Chapter 7(A)(c)(iii) of the Judicial College Guidelines – the lowest bracket for neck injuries, with recovery in 3 months. That bracket indicates awards up to £2990. Severity of injury, intensity of pain, impact on daily life, and the nature of any treatment are listed as relevant considerations in assessing the level of award. I will award £2000 under the heading of solatium. Interest is all to the past and amounts to £693.32, say £694, to date.

[23] I note that the claims for “inconvenience” and out of pocket expenses are not insisted in. That is as well. I deprecate the practice of listing “inconvenience” as a separate head of claim. In my opinion, solatium includes that. Separately, there was no evidence of out of pocket expenses.

[24] In relation to services, while I accept the pursuer received assistance from her husband, son, and daughter, I do not accept that was at a linear level as her evidence tended to suggest. That seems illogical in the context of progressive recovery. I propose simply to take a broad view and award £450 inclusive of interest to date.

[25] In summary, therefore, I will make the following award of damages:

Solatium	£2000	
Interest to date (all to the past)		£694
Services (inclusive of interest to date)		£450
Total	£3144	

Conclusion

[26] I will therefore grant decree in favour of the pursuer in the sum of £3144.

[27] The pursuer invites me to deal with expenses now, while the defender invites me to fix a hearing on expenses. While I am minded to grant the expenses of the action to the pursuer, I can see that there are a number of matters relating to certification and the like on which it will be necessary to hear parties, and hearing will therefore be arranged. If parties are able to reach agreement on all expenses matters, it will not be necessary for the hearing to proceed.