

SHERIFFDOM OF TAYSIDE CENTRAL AND FIFE AT KIRKCALDY

[2026] SC KDY 50

KKD-SF15-25

JUDGMENT OF SHERIFF ROBERT E MORE

in the cause

JA

Pursuer

against

UK INSURANCE LIMITED

Defender

Pursuer: Cameron, Solicitor, for the Pursuer
Defender: O'Reilly, Advocate, for the Defender

Kirkcaldy 16 March 2026

The Sheriff, having resumed consideration of the cause:

Finds that the Pursuer, having sustained injury and damage which was caused by the fault and negligence of the Defender's insured, and the Defender being liable to make reasonable reparation to the Pursuer therefor, Grants decree for payment by the Defender to the

Pursuer of (1) the sum of THREE THOUSAND FIVE HUNDRED POUNDS (£3,500)

STERLING, with interest thereon at the rate of 4 per cent per annum from 14 October, 2023

until the date of decree and thereafter at 8 per cent per annum until payment; and (2) the

sum of SEVENTY FIVE POUNDS AND NINETY FIVE PENCE (£75.95) STERLING;

Certifies Dr David Pearce as a person of skill who provided reports for the Pursuer;

otherwise Reserves all questions of expenses meantime and Appoints parties to a hearing

thereon on a date to be afterwards fixed.

Note

[1] In its response to the statement of claim in this summary cause, the defender admits liability to make reasonable reparation to the pursuer in respect of an incident on 14 October, 2023 whereby the defender's insured was driving a motor vehicle within a supermarket car park in Glenrothes when it struck the back of a stationary, parked vehicle in which the pursuer was sitting in the front passenger seat. The dispute relates to issues of causation of injury and quantum in respect of two of the three heads of claim. The pursuer gave evidence at proof and there was further evidence led on her behalf from Dr David Pearce. No evidence was led on behalf of the defender.

The pursuer

[2] The admission of liability by the defender was reflected in the fact that the pursuer was not cross-examined in relation to the accident at proof. She otherwise described being unaware that the collision was going to happen and that after it, she exited the vehicle and took the details of the defender's insured. She thereafter returned to the car, not being aware of having suffered any injury as a result of the collision at the time as she was not in pain.

[3] The pursuer is now 21 and works as a commis chef. She explained that she was suffering from tonsillitis at the time of the accident. She experienced that three or four times a year and was taking ibuprofen and paracetamol. She had been suffering from that for a few days by the time of the accident. She began to suffer pain attributable to the collision about midway through the following day. She had pain at the top of her neck and down her back, the pain in her back not being as bad as that in her neck. It was sore to lift her arms

and turn her head. She was working and continued to do so; she did not take time off. The injuries affected her at work - lifting things; getting to the back of fridges; and in kneading dough – this being quite a physical exercise. There was a period of 3 weeks of really bad pain and she was still affected after that although the pain was not as severe. The pain affected her at work for 4 months. Six months after the incident she was no longer feeling any ill effects.

[4] The pursuer confirmed that she sought medical treatment for the tonsillitis on the morning of the accident and she was provided with antibiotics later that day. She did not feel any pain in her neck or back at the time she sought that assistance.

[5] In cross examination the pursuer was referred to an attendance by her at accident and emergency on 17 November, 2023. This related to nausea. She did not complain then about neck and shoulder pain as it was not relevant to why she was there. She had not been to her own GP in relation to neck pain. She was working full time and she continued to do so as she could not afford to take time off work. She had been contacted about a possible claim and an arrangement had been made for her to meet with Dr Pearce on 27 November. She consulted with him online as opposed to in person. She also consulted with a physiotherapist which was organised for her. She thought she had told the physiotherapist that the pain she was experiencing was in her left side as revealed by the physiotherapy report at 5/2/1 of process. She accepted that she had told Dr Pearce during her consultation with him that the pain she was describing to him was mostly on the right side but distinguished this on the basis that she was speaking about her neck pain as opposed to her upper back.

Dr Pearce

[6] Dr David Pearce is a general practitioner. His credentials as a person of skill were not disputed. He produced the report lodged at 5/1 of process. This was based on an online consultation with the pursuer on 27 November, 2023. That consisted of asking the pursuer questions and observing how she was moving. His conclusion was that the pursuer's symptoms were consistent with what had been reported to him. The pursuer had not been grossly restricted. His opinion was that she had suffered a whiplash injury at the lower end. For such an injury occasional pain and stiffness 5 months after the collision would be normal but he would have expected the pursuer after 6 months not to be experiencing any further pain. In relation to the onset of symptoms, in a more extensive impact than the one reported to him he would expect more immediate symptoms.

[7] The addendum report which Dr Pearce had provided (5/4 of process) was compiled with the benefit of the pursuer's medical records which he did not have at the time of the principal report – that is not uncommon. The records confirmed that the pursuer had the medical consultation which she had described on the date of the collision. No neck stiffness or record of the accident was recorded at that time and she had been given a diagnosis of infective tonsillitis. It was fair to say that a person taking ibuprofen and paracetamol might not feel the symptoms of a soft tissue injury. There is a huge degree of variation in when whiplash symptoms manifest: 20% suffer immediate pain; 53.5% suffer it between 8 and 24 hours later and a small number 1-2 days later. It would have been helpful to know about the pursuer's tonsillitis at the time of the completion of his initial report; it made no difference to his prognoses however.

[8] In a brief cross-examination Dr Pearce confirmed that the prognoses which he had given did not reflect what actually happened. If the pursuer had recovered sooner that would not surprise him.

Submissions

[9] The agent for the pursuer submitted that the pursuer had given her evidence in a clear and focused manner. The pain which she had first experienced was consistent with the timescales identified for this kind of injury. She was clearly a resilient individual who had remained at work and she should not be criticised for having done so. She had been restricted at her job in a physically demanding position for a considerable period. Dr Pearce was a similarly credible and reliable witness who had maintained his neutrality and given evidence in accordance with his duty to the court.

[10] In relation to quantum, the agent for the pursuer referred to the Judicial College Guidelines at chapter 7 which placed quantum between £2,990 and £5,310. *Gray v ASA Autohouse GmbH & Co* 2009 SCLR 65 involved an award of solatium of £1,650 in 2008 which was the equivalent of £3,215 now. *Pugh v Scott* 2002 GWD 6-108 related to a 32 year old pursuer who sustained a whiplash injury and was awarded £2,500 – the equivalent of £5,916 today. Sheriff Principal Bowen in *Symington v Milne* 2007 GWD 14-280 had awarded damages for solatium at £2,250 for a 6-month whiplash injury - £4,558 today. He invited me to set the award of damages for solatium at £3,500, with £225 for services and £75.95 for physiotherapy charges.

[11] In response, counsel for the defender submitted that the averments in the statement of claim were unfounded in fact, and the pursuer not having suffered loss or damage, absolvitor should be granted. The pursuer had been inconsistent and unreliable in the

accounts of the injuries which she claimed to have suffered as a result of the accident. She had had five notable interactions following the accident and the accounts given by her had been inconsistent. On 14 October, 2023 she had complained of throat and jaw pain and made no mention of having suffered injury on account of the accident. On 17 November, she made no mention of either the accident or any injury arising from it. On 27 November she had complained of neck and upper back pain, with the pain being more to the left hand side. She told the GP the same day that the pain was on the right hand side. In evidence, she could not explain this contradiction. She had also been inconsistent in relation to the duration of her symptoms. She had initially said in evidence that these had lasted for 2 and a half or 3 weeks. She had not taken time off work.

[12] In relation to the claim for services, counsel submitted that in terms of section 8 of the Administration of Justice Act 1982 the services required to be rendered by a relative of the injured party and as there had been no evidence that the pursuer had been assisted by a relative, that head of claim must fail. As regards any award of solatium, no criticism was made of Dr Pearce's evidence. His prognosis that the pursuer's difficulties would resolve by six months after the accident did not accord with the pursuer's account in court. Six weeks after the incident when she consulted with Dr Pearce and the physiotherapist she complained of intermittent stiffness. The doctor would not have been surprised if the pursuer had fully recovered earlier than his prognosis. The court should assess any injuries sustained by the pursuer as having been minor in nature and ones from which she had recovered within weeks. They fell accordingly into chapter 14 of the Judicial College Guidelines which provided for awards in such cases between £840 and £1,680. An award of £850 ought to be made in the event of any award along with the physiotherapy charges.

Assessment of credibility and reliability

[13] The pursuer was a very good witness. She gave evidence straightforwardly. In no way did she seek to exaggerate the nature of the collision which gives rise to liability in this case. Her position in relation to when the pain which she described began to manifest itself was given organically. In this she was supported by the evidence of Dr Pearce to the effect that it was not uncommon for pain to manifest in the 24 hours after the incident which gives rise to it. It follows that I do not consider there to be merit in the criticism that she did not mention any pain at the time of seeking medical assistance for the pain from the tonsillitis which she was suffering from at the time. I also do not consider there to be inconsistency between the positions which she gave to the physiotherapist and Dr Pearce on 27 November. For me to consider that this undermined her credibility would necessitate me concluding that she was giving two different, contradictory accounts of the same pain; however, I do not believe that she was doing that. It is clear to me that she was merely describing different manifestations to different persons: Dr Pearce's report (5/1 of process) refers to pain which was "most sore on the right side of the neck" whereas the physiotherapy report (5/2/1 of process) records the pursuer as feeling "intermittent pain around her upper back. She experiences more pain towards her left side mainly when doing the bending movement" (emphases added). The fact that she continued to work is not to be held against her; I accepted her evidence that she had to do so for financial reasons. She essentially had no choice but to continue working.

[14] Being satisfied on the balance of probabilities that the accident did cause the pursuer injury therefore, I turn to consider for how long this caused her difficulty. I accepted her evidence in this respect. It was to the effect that whilst it caused her severe pain for a number of weeks, the ill effects continued thereafter although – naturally – continued to

subside after that initial period. It is correct of course that what is detailed in his report is merely a prognosis, and is not evidence of what in fact happened; but the evidence of Dr Pearce as to likely duration accords with the factual evidence given by the complainer and therefore is capable of supporting her position in evidence. Whilst I was invited by counsel for the defender to conclude that the injuries – on the initial account of the pursuer in court – subsided 3 or 4 weeks after the accident, her presentation to Dr Pearce on 27 November, 2023 – approximately 6 weeks later - was consistent with the symptoms which she then reported and which were ongoing. I am satisfied that the pursuer suffered a whiplash injury, the severe symptoms of which subsided within a period of not more than a few weeks, persisted as at 27 November, were still evident after 4 months, and had subsided completely after 6 months. Such a conclusion is supported by the prognosis of Dr Pearce.

Decision

[15] This means that I reject the submission by counsel for the defender that the assessment of solatium would require me to have regard to chapter 14 of the Judicial College Guidelines; regard ought properly to be had to chapter 7 in accordance with the submission made on behalf of the pursuer - the relevant range of awards being £2,990 to £5,310. I respectfully agree with the observation made by Sheriff Johnston in *Frame v Churchill Insurance* (unreported – Dundee Sheriff Court, 19 November, 2009) that the assessment of what would represent reasonable compensation ought not to be a strictly mathematical exercise and that regard must be had to the particular circumstances of the pursuer and her recovery. At the time of the accident the pursuer was 18 years of age. She was working full time in a job which had physically demanding aspects - the nature of the symptoms she continued to suffer made this more difficult. I accepted her evidence that she effectively had

no option but to continue working and she cannot be criticised for that. The impact which her symptoms had on her ability to do that work – kneading dough for instance – makes complete sense in light of the nature of the injury which she had sustained.

[16] In view of the relevant factors to which I have referred, as well as the duration of the symptoms suffered by the pursuer as a result of the accident, I assess solatium at £3,500. To the extent that guidance can be derived from the cases to which I was referred, that assessment is broadly in line with the awards in those cases.

[17] The submission made by counsel for the defender in respect of the services claim is well-founded. Section 8(1) of the Administration of Justice Act 1982 provides:

“Where necessary services have been rendered to the injured person by a relative in consequence of the injuries in question, then, unless the relative has expressly agreed in the knowledge that an action for damages has been raised or is in contemplation that no payment should be made in respect of those services, the responsible person shall be liable to pay to the injured person by way of damages such sum as represents reasonable remuneration for those services and repayment of reasonable expenses incurred in connection therewith.” (Emphasis added)

There was a hint in the examination in chief of the pursuer to having required assistance outwith the context of her employment during the period of 4 months when she continued to suffer as a result of the accident; it did not go beyond this however and indeed there was no evidence that any services were rendered by a relative of hers. The head of claim for services must therefore fail.

[18] It was not disputed that in the event of an award of solatium that the charges for physiotherapy received by the pursuer and which have been vouched in process should also be awarded and that will be done.

[19] At the conclusion of the proof I elected to reserve judgment to consider certain aspects of the evidence and submissions. That being so, there was little meaningful discussion regarding expenses. I will therefore assign a hearing on expenses on a date to be

afterwards fixed and appoint parties to notify the Sheriff Clerk of their availability for such a hearing within seven days hereof. Of course, in the event that agreement in this regard can be reached, the need for a hearing can be obviated. I otherwise certify Dr Pearce as a person of skill having provided reports for the pursuer.