

Hassam v Rabot

The Supreme Court Decision

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What is *Hassam v Rabot* actually about?

OFFICIAL
INJURY
CLAIM

Make a personal injury claim

If you've had a minor injury as a driver or passenger in a road traffic accident and it wasn't your fault, you may be able to claim compensation using the Official Injury Claim service for free and without legal help.

Make a claim

- Seeks to answer a key question: How should courts assess PSLA for “mixed” injuries in whiplash claims?
- Mixed claim: where part of the injury is a “whiplash” injury covered by the whiplash reforms and part is outside the whiplash reforms and is assessed using the Judicial College Guidelines

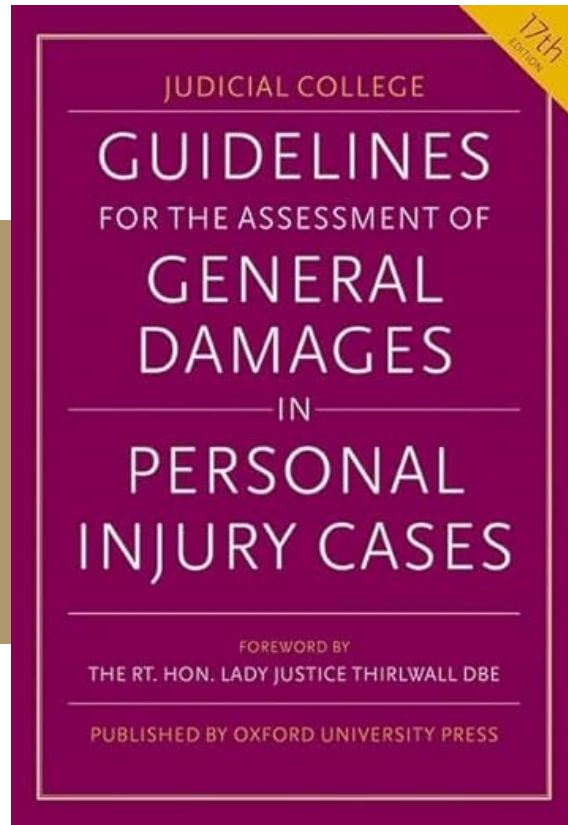
Facts

- Two classic low-value “portal” claims
 - Hassam v Rabot
 - C was passenger in a rear-end shunt
 - C suffered **whiplash injuries** to his neck and back
 - Also suffered **non-whiplash injuries** to both knees
 - Briggs v Laditan
 - C was driver in a rear-end shunt
 - C suffered **whiplash injuries** to his neck, upper and lower back
 - Also suffered **non-whiplash injuries** to left elbow, chest, left knee and hips



Image credit: Getty Images/iStockphoto)

What is PSLA actually for?



- “Restitutionary” i.e. to put C back in the position as if the tort had never been committed
- Although compensation for PSLA can never be precise, the aim is to provide full compensation (*Heil v Rankin*)
- Where there are multiple injuries, need to stand back and assess whether there is overlap to avoid double counting (*Sadler v Filipiak*)

Statutory Regime

- Two key pieces of legislation
 - Civil Liability Act 2018
 - The Whiplash Injury Regulations 2021

<i>Duration of injury</i>	Amount – Regulation 2(1)(a)	Amount – Regulation 2(1)(b)
Not more than 3 months	£240	£260
More than 3 months, but not more than 6 months	£495	£520
More than 6 months, but not more than 9 months	£840	£895
More than 9 months, but not more than 12 months	£1,320	£1,390
More than 12 months, but not more than 15 months	£2,040	£2,125
More than 15 months, but not more than 18 months	£3,005	£3,100
More than 18 months, but not more than 24 months	£4,215	£4,345.

How should courts assess PSLA for mixed injuries?

- Three possible options were suggested
 1. D's case: **first** take the tariff amount laid down in the 2021 Regulations. **Then** add the amount of common law damages for PSLA for the non-whiplash injury but **only** if the claimant establishes that the non-whiplash injury has caused non-concurrent (ie different) PSLA.
 2. C's primary case: add together the tariff amount for the whiplash injury and the amount of common law damages for PSLA for the non-whiplash injury **without** any consideration of whether there should be a deduction to avoid double recovery for the same loss
 3. C's secondary case: **first** add together the tariff amount for the whiplash injury **and** the common law damages for PSLA for the non-whiplash injury. **Then** stand back to consider whether to make a deduction to reflect any overlap between the two amounts

Supreme Court

- The Supreme Court preferred Claimant's secondary case (option 3):
 - CLA 2018 directed at mischief in claims for whiplash injuries resulting from motor vehicle accidents. Nothing in the Act or explanatory memoranda which suggests that mischief extended to common law damages for non-whiplash injuries
 - Objective is to reduce damages for whiplash injuries to discourage false or exaggerated whiplash claims and reduce costs associated with such claims
 - Parliament should be presumed to not have altered the common law further than was necessary to remedy the mischief which was the focus of the 2018 Act
 - Section 3(8) indicates that the statute is not departing from the standard common law approach to assessing damages for multiple injuries:

Section 3(8)

- Section 3 – Damages for Whiplash Injuries
 - “(8) Nothing in this section prevents a court, in a case where a person suffers an injury or injuries in addition to an injury or injuries to which regulations under this section apply, awarding an amount of damages for pain, suffering and loss of amenity that reflects the combined effect of the person’s injuries (subject to the limits imposed by regulations under this section).”
- Supreme Court:
 - “Reflects the Combined Effect” – *Sadler*
 - Bracketed words show *Sadler* approach subject to whiplash tariff regime

Rejection of 1st Approach

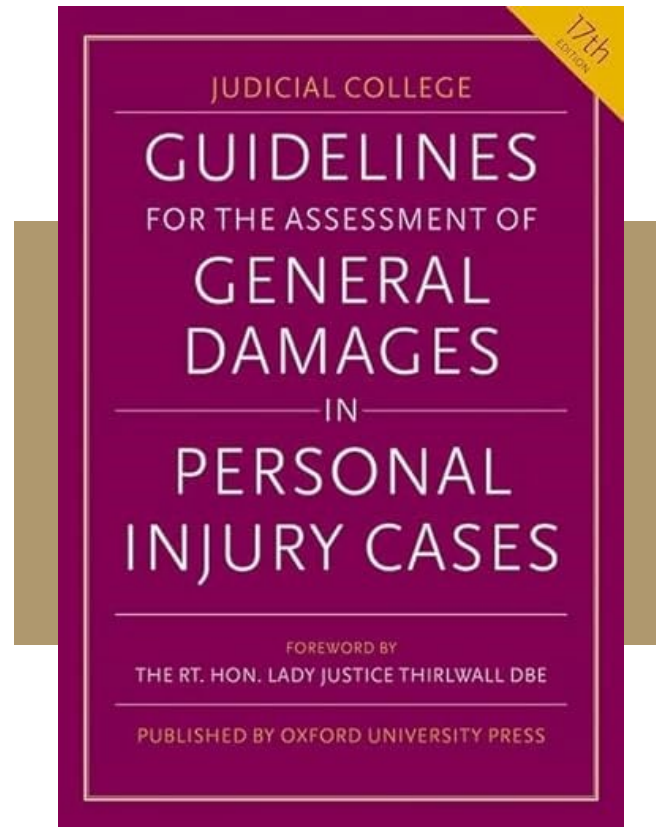
- Not required by ordinary and natural meaning of the words
- Too complex to apply, PSLA cannot be precisely measured
- C could end up with a lower amount of damages for PSLA in respect of whiplash and non-whiplash injuries than would have been awarded for the non-whiplash injury alone
- Would produce an absurd result: C would be incentivised to ignore the whiplash injury
- Contrary to presumption that departures from the common law should be construed narrowly

Rejection of 2nd Approach

- Ignores the problem of double recovery for the same loss
- Contradicts the common law assessment of damages by not providing for any *Sadler* deduction
- It would undermine the whiplash reform to reason that, because the tariff is undercompensating, it is appropriate to ignore the need to avoid double recovery where there is concurrent (i.e.) overlapping PSLA

(1) Step-by-step Approach

- (i) Assess the tariff amount by applying the table in the 2021 Regulations.
- (ii) Assess the common law damages for PSLA for the non-whiplash injuries.
- (iii) Add those two amounts together.



(2) Step-by-step Approach

- (iv) Step back and consider whether one should make an adjustment applying *Sadler*. The adjustment (which in this context will almost always be a deduction rather than an addition) must reflect, albeit in a rough and ready way, the need to avoid double recovery for the same PSLA. The court must respect the fact that the legislation has laid down a tariff amount for the whiplash injuries that is not aiming for full compensation: in that respect, the *Sadler* adjustment is a slightly different exercise than if one were dealing entirely with the common law assessment of damages for multiple injuries.
- (v) If it is decided that a deduction is needed that must be made from the common law damages.
- (vi) Final award cannot be lower than what would have been awarded as common law damages for PSLA for the non-whiplash injuries alone

Hassam v Rabot

- Neck and back (8-10 months)
 - Knees (4-5 months)
 - Travel Anxiety

 - (i) £1,390 (tariff)
 - (ii) £2, 500 (non-tariff)
 - (iii) £3,890 (tariff + non-tariff)
 - (iv) - £790 (less overlap)
 - (v) £3,100
 - (vi) £3,100 > £2,500 (✓)
- Whiplash tariff Injury:
 - Regulation 2(1)(b) –
 - £1,390
 - Knee injury – (Ch 7, (K) Knee injuries, (b) - Moderate
 - Modest injuries that resolve within a short space of time will attract lower awards. A soft tissue strain type injury that does not significantly impact on daily activities, and gradually resolves within 6-7 months, might be expected to attract an award in the region of £2,750

Briggs v Laditan

- Tariff – neck and back (up to 9 months)
 - Non-tariff
 - Knee (6 months)
 - Hips (1 month)
 - Chest (2 months)
 - Left elbow (3 months)
 - (i) £840 (tariff)
 - (ii) £3,000 (non-tariff)
 - (iii) £3,840 (tariff + non-tariff)
 - (iv) - £340 (less overlap)
 - (v) £ 3,500
 - (vi) £ 3,500 > £3,000 (✓)
- Whiplash tariff Injury:
 - Regulation 2(1)(a) – £840
 - Knee injury – (Ch 7, (K) Knee injuries, (b) - Moderate
 - Modest injuries that resolve within a short space of time will attract lower awards. A soft tissue strain type injury that does not significantly impact on daily activities, and gradually resolves within 6-7 months, might be expected to attract an award in the region of £2,750
 - Minor Injuries – (Ch 14, (c))
 - Injuries with complete recovery in 3 months
 - £1,680 - £2,990

Questions?



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