

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

Court Ref: PIC-PN2119-23

JUDGMENT OF SHERIFF A W NOBLE

in the cause

SOPHIE PEACH

Pursuer

against

AVIVA INSURANCE LIMITED

Defender

Pursuer: Russell, adv; Gildeas Ltd, Edinburgh
Defender: Hastie, adv; DWF LLP, Glasgow

Edinburgh, 21 February 2025

Findings in fact

[1] The pursuer is Sophie Peach. She resides at 12 Gannochy Edge, Perth PH2 7JN. Her date of birth is 2 May 1974. She is a self-employed foot health care practitioner.

[2] The defender is Aviva Insurance Limited, a company incorporated under the Companies Acts and having its registered office at Pitheavlis, Perth PH2 0NH. At the material time, it was the insurer of vehicle registration SP69 ZZC, which at the said time was being driven by Carol Howarth.

[3] On 21 July 2022, the pursuer was the driver of a Renault Clio registration SF64 TWG. The pursuer's vehicle was heading east on the Kingsway, Dundee. The pursuer entered the Strathmartine roundabout, intending to take the third exit on to Strathmartine Road. The defender's said insured driver, Carol Howarth, driving the said insured vehicle, Seat Arona registration SP69 ZZC, proceeded on to the roundabout before it was safe to do so and collided with the rear nearside of the pursuer's correctly proceeding vehicle. As a result the pursuer's vehicle spun round so that it was facing oncoming traffic. It hit a low wall and sustained further damage to its front offside. The defender admitted liability on 22 August 2022.

[4] The pursuer was wearing a seatbelt but was thrown around by the force of the collision. Her right arm struck the driver's door. The pursuer was able to drive her vehicle to a safe place, although it was declared a write-off, and she was able to exit the vehicle unaided.

[5] Initially, the pursuer experienced pain in her right arm, and thereafter pain developed in her neck, upper back and shoulder. She contacted her GP surgery and received advice to contact NHS 24. The pursuer did so and received advice to attend hospital, which she did, going to the accident and emergency department of Perth Royal Infirmary. A soft tissue injury was diagnosed. She received analgesic. She was given no advice in relation to physiotherapy.

[6] The pursuer's work involved her in travelling to clients to administer foot care in their homes. She required to spend time on the telephone cancelling that day's appointments. She resumed working on the day after her accident, being provided with a courtesy car.

[7] The pursuer also contacted her present agents on the day of the accident. They emailed a claim to the defender the same day in terms of the personal injury pre-action protocol. In the form they stated: "Our client is still suffering from the effects of her injury. We have instructed physio to address her immediate needs by means of rehabilitation." They had instructed SOS Physio Clinic Limited, 28 Hamilton Road, Bothwell, Glasgow G71 5N4.

[8] By arrangement and in accordance with the said instructions, the pursuer was contacted by telephone on 1 August 2022 by Anne Deriu, a physiotherapist who carried out work for an agency. She carried out an initial assessment and subsequently produced an initial assessment report. The recommendation was a personalised digital treatment, advice, education and one follow up session. The pursuer installed an app on her mobile phone which enabled her to follow a personalised digital treatment plan in the form of a series of exercises selected by Ms Deriu that the pursuer should do. The pursuer frequently accessed the app in the weeks following the consultation, less so as the relatively simple exercises became familiar to her. Her use of the app was monitored.

[9] On 14 September 2022 the pursuer had a further session with Ms Deriu and was discharged. A physiotherapy report dated that day was produced by Ms Deriu.

[10] SOS Physio submitted an invoice dated 16 September 2022 to the pursuer care of her agents, in the sum of £350, comprising £75 for the initial assessment and report, £200 for the personalised digital treatment plan and £75 for the discharge call and report. The pursuer's

agents paid the invoice on 8 April 2024, shortly prior to the first proof date in this case, which had to be adjourned for lack of time. Ms Deriu received the sum of £30 or £40 for the first assessment and report and the sum of £17 or £20 for the discharge call and report.

[11] The physiotherapy treatment which the pursuer received was appropriate. It benefitted her recovery. The cost of the treatment was reasonable.

[12] The pursuer's neck, back and shoulder pain resolved completely within about ten weeks after the accident. The pain in her right arm had resolved after a few days.

[13] In addition to her neck, shoulder and back pain, the pursuer became severely anxious about being in a car, whether as driver or passenger. Unfortunately she required to drive in connection with her work. She suffered from palpitations. She found it very hard to overtake vehicles. She became very frightened about cars pulling out of side streets, and when approaching roundabouts. One of her children lived in Glasgow and the pursuer was so terrified about driving on a motorway that she was unable to drive to see him, something that she ordinarily did every two or three weeks. When being driven by her husband, she was fearful if she thought he was driving too fast and when they were approaching junctions and she would hold on to the passenger door, making her husband feel uncomfortable.

[14] The pursuer's hands became very sweaty when she was holding the steering wheel of her vehicle, and she was terrified that they were going to slide off. On or about 2 September 2022 she purchased on Amazon a steering wheel cover for the sum of £16.98.

[15] Through a referral by her agents to Equilibria Health, the pursuer was interviewed online on 7 January 2023 by Lindsay Kirkwood, a chartered counselling psychologist, who carried out work on a non-exclusive basis for Equilibria between August 2022 and October 2024. Ms Kirkwood produced a report dated 8 January 2023. She diagnosed that the

pursuer was suffering from a generalised anxiety disorder, DSM-V code F41.1, and advised that she should undergo 12 to 15 sessions of cognitive behaviour therapy ("CBT").

[16] The pursuer subsequently underwent several online sessions of CBT with Ms Sandrine Gardner, a qualified CBT practitioner, who worked for Equilibria for a short period of time around this point. Ms Gardner carried out an initial assessment of the pursuer, and produced an initial assessment report, on 25 January 2023. Thereafter she conducted about seven CBT sessions with the pursuer, until on or about March 2023, when the pursuer stopped them. Ms Gardner produced a discharge report dated 8 March 2023, recording the extent to which the CBT sessions had ameliorated the pursuer's symptoms, although they had not fully resolved. Ms Gardner was paid £13 or £14 for each CBT session.

[17] Equilibria issued an invoice dated 8 March 2023 addressed to the pursuer's agents in the amount of £1,170, comprising £130 for the initial assessment and report, £910 for seven CBT sessions i.e. £130 per session and £130 for the discharge report. This invoice was paid by the pursuer's agents at a point not established in evidence.

[18] The diagnosis of generalised anxiety disorder made by Ms Kirkwood was accurate. The treatment proposed was appropriate and reasonable. The pursuer found the CBT sessions extremely helpful. They significantly ameliorated her symptoms. The pursuer had previously had CBT in 1997 in relation to her fear of flying, which had likewise brought about an improvement but not resolution of her then symptoms. Had her agents not referred her to Equilibria in respect of her anxieties about driving, she herself would have sought out CBT treatment through the NHS.

Findings in Fact and Law

[19] The pursuer having suffered loss injury and damage as a result of the negligence of the defender's insured is entitled to reparation therefor.

[20] A reasonable award in respect of solatium, inclusive of interest, is £5,500.

[21] The pursuer is entitled to recover the physiotherapy cost of £350, the CBT cost of £1,170 and the £16.98 cost of her steering wheel cover.

[22] The pursuer is not entitled to recover a sum in respect of inconvenience.

Note

[23] This is an action for damages following a road traffic accident on 21 July 2022. The car which the pursuer was driving was proceeding correctly round a roundabout when it was struck by a car driven by the defender's insured. Liability was admitted. The proof was restricted to issues of quantum, in particular determining the appropriate figure for solatium and whether the pursuer was entitled to recover certain outlays, in particular in respect of physiotherapy, CBT and a steering wheel cover.

[24] Lest the matter be taken further, I should say that prior to evidence being led, I heard an opposed motion on behalf of the pursuer to allow an additional inventory of productions. On record, the pursuer claimed for the cost of physiotherapy, CBT and a steering wheel cover, and the defender had calls for vouching of payment. The inventory of productions contained what bore to be documentation evidencing payment. Albeit coming late in the day, I allowed the inventory to be lodged, although I indicated that that did not obviate the need for the productions to be spoken to. In the case of the steering wheel cover, the pursuer herself had bought it, but the other payments were dealt with by her agents. Counsel for the pursuer intimated that she might seek to add a witness, but in the event a second joint minute was produced on the following day agreeing payment in terms of the productions. That relating to the steering wheel cover vouched payment of £16.98, and indicated that it would be shipped on 2 September 2022. That relating to the physiotherapy costs indicated that payment had been made on 8 April 2024, shortly prior to the first proof

diet in this case, which required to be adjourned for lack of court time. That relating to the CBT bore no date, although I understood counsel for the pursuer to indicate that it had been made around the same time as payment was made in respect of the pursuer's physiotherapy.

[25] The pursuer called the following witnesses to give evidence:

1. The pursuer.
2. Dr Ben Coyle, a general practitioner who had prepared a report in respect of the pursuer dated 6 December 2023.
3. Anne Deriu.
4. Lindsay Kirkwood.
5. Sandrine Gardner.

[26] No witnesses were led by the defender. (Apart from the defender's insured, Carol Howarth, and Dr Ravdip Bumrah, a GP who had prepared an initial report on the pursuer at the behest of her agents, the only witnesses listed by the defender were Dr Coyle, Ms Deriu, Ms Kirkwood and Ms Gardner.)

Evidence and submissions

[27] In the circumstances of this case, it is unnecessary to set out the evidence at length. As indicated earlier, only aspects of quantum were in dispute. Moreover, in the course of his submissions, counsel for the defender accepted that he could not reasonably impugn the pursuer's credibility. That accorded with my own impression of the pursuer. In my view she was a wholly credible and substantially reliable witness. Possible differences, such as, for example, the pursuer telling Dr Coyle that she was anxious in a car for approximately six months after the accident i.e. a period ending in January 2023, contrasting with evidence from the pursuer and Ms Gardner to the effect that the pursuer experienced significant

anxiety at least until the time of the CBT sessions merely reflected the fact that from time to time the pursuer did give approximations.

[28] The other witnesses were also in my view credible and substantially reliable, a view not significantly challenged by counsel for the defender. He did raise one issue with Ms Kirkwood, in particular the classification of the pursuer's driving difficulties as amounting to a generalised anxiety disorder, a diagnosis made a little in advance of the six month time period required for symptoms to persist for the purposes of such a diagnosis. However, Ms Kirkwood was a well-qualified and experienced psychologist and as indicated I was satisfied that she was a credible and reliable witness. The pursuer's condition did clearly exceed a six month period by some way, and I am satisfied that Ms Kirkwood's diagnosis, even if made a little prematurely, was correct.

[29] In relation to quantum, counsel for the pursuer referred to the Judicial College Guidelines, chapters 4, 7A and 14, and to the cases of *Mrs Sunah Ali v Covea Insurance PLC* PIC-PN824-23, a Note issued by Sheriff Keir on 10 October 2024, and *Callum Fraser v Evelyn Munro* and *Brynhildur Hallgrimsdottir v Evelyn Munro*, respectively PIC-PN2280-23 and PIC-PN2279-23, the two pursuers being driver and passenger in a vehicle involved in a collision, Sheriff Nicol issuing a joint judgment on 18 July 2024. In counsel's submission, the pursuer should be awarded solatium of £6,250, £2,750 representing her physical injuries and £3,500 representing the psychological consequences, all three claimed outlays in respect of physiotherapy, CBT and the steering wheel cover and the sum of £150 for inconvenience, amounting in total to £7,936.98.

[30] Counsel for the defender likewise referred to the Judicial College Guidelines, and in addition he made incidental reference to the case of *Rorrison v West Lothian College*, reported at 2000 SCLR 245, and also referred to the case of *Stevenson-Kelly v Ley* 2009 WL 10714389 in

which the District Judge at Tunbridge Wells County Court awarded £1,900 [current value about £3,500] for pain, suffering and loss of amenity in respect of physical whiplash injuries and travel anxiety and shock. In relation to the outlays, counsel accepted that the pursuer should recover the cost of the steering wheel cover, but in respect of the physiotherapy and CBT costs he submitted that the pursuer should recover either nothing or a restricted amount, on two separate bases, the grossly excessive as opposed to reasonable amounts claimed, and the lack of clarity in respect of the pursuer's liability to pay these sums, the pursuer having no expectation that she would be called upon to pay them. He submitted that no award, or at worst £50, should be awarded in respect of inconvenience.

Decision

Solatium

[31] In respect of solatium, the level of award is substantially determined by my previously expressed acceptance of the accuracy of Ms Kirkwood's diagnosis of generalised anxiety disorder. It appears to me to be appropriate to award separate sums in respect of the pursuer's physical injuries and the psychological effects which she experienced. I would award her the sum of £2,500 in respect of the former and £3,000 in respect of the latter, each inclusive of interest to the date of decree, making a total of £5,500.

Outlays

[32] There was no dispute that the pursuer was entitled to recover the £16.98 that she spent on her steering wheel cover.

[33] In relation to the cost of the physiotherapy, the pursuer accepted that when she attended the hospital on the day of her accident, she was not told to obtain physiotherapy (nor told that it was unnecessary). The instruction of SOS Physio resulted from the pursuer's contact with her present agents on the day of the accident. The pursuer could not

initially recall speaking to the agents that day, nor the detail of the conversation. There was no suggestion that the person with whom the pursuer dealt was medically qualified.

However, I do not think it unreasonable for physiotherapy to be proposed in the case of an accident victim who has sustained head, neck and shoulder soft tissue injuries and is complaining of pain. The pursuer truthfully testified that the physiotherapy helped her recovery. As regards the mode of instruction, some solicitors might have suggested that the pursuer herself seek out and instruct a physiotherapist and retain vouching of payment, but others would undertake arranging the services, as happened here. The latter course does not mean that the pursuer had no potential liability for the physiotherapy bill, and is not entitled to recover the sum sought. In terms of the way in which the physiotherapy was delivered, some persons may prefer to see a physiotherapist in person, who would be able to detect every wince and see exactly where and how much movement was restricted, but what happened here was of benefit to the pursuer. The fact that Ms Deriu was paid less than the sum claimed for the work she did does not mean that the cost is unreasonable. The amount is relatively small. In the absence of evidence demonstrating that the cost of this physiotherapy is significantly beyond what would be charged elsewhere, I find that the pursuer is entitled to recover the cost of her physiotherapy.

[34] Much the same considerations apply in the case of the CBT which the pursuer received. Plainly, Ms Gardner received much less for conducting the CBT sessions than Equilibria charged for them, but that particular aspect cannot be looked at in isolation. There was no wider evidence about Equilibria's business, and there was no evidence suggesting that Equilibria's charges were out of line with what would be charged elsewhere. In the circumstances, I find that the pursuer is entitled to recover the cost of the CBT she received.

[35] I am not satisfied that a separate award for inconvenience, even a very modest one, should be made. The matter is covered in the award for solatium.

Summary of Decision

[36] I will grant decree for payment of the sum of £7,036.98 in favour of the pursuer, with interest at the rate of eight per cent from the date of decree. I will also assign a hearing on expenses (including sanction and certification) on a date to be afterwards fixed. The parties can advise the sheriff clerk if they are able to agree them.