

Case Comment

Brown (Widow and Executrix) v Hamid

personal injury - measure of damages¹
(QBD, Jeremy Baker J, December 19 2013, [2013] EWHC 4067 (QB))

Nathan Tavares

Subject: Damages. **Other related subjects:** Negligence. Personal injury

Keywords: Acceleration; Bereavement; Clinical negligence; Funeral expenses; Measure of damages; Pre-existing condition; Respiratory diseases

Legislation: Fatal Accidents Act 1976 (c.30) s.1A, s.3(5)

Case: Brown (Widow and Executrix) v Hamid [2013] EWHC 4067 (QB) (QBD)

***J.P.I.L. C156** The claimant, Christine Brown, the widow and executrix of her late husband Ronald Brown, pursued a claim for damages on behalf of the estate and brought an action on her own behalf arising from the clinical negligence of the defendant. Ronald Brown had died in August 2012 at the age of 76 from the effects of pulmonary hypertension. In 2007 he had commenced an action for damages against Hamid, who admitted that his failure to diagnose pulmonary embolism and to prescribe the appropriate treatment amounted to clinical negligence.

Mrs Brown claimed that, although Ronald might have died from pulmonary hypertension in any event, its onset had been accelerated and the rate of progression of the symptoms had been exacerbated. According to the medical evidence adduced by the claimant, a lack of Warfarin treatment in 2007 had led to the onset of severe pulmonary hypertension causing considerable symptoms of pain and discomfort over the years leading to his death.

At that time, aged 71, it was claimed that Ronald's life expectancy would have been a further 13 years had he received appropriate treatment, with no significant reduction despite his pre-existing condition. That evidence was based in part on Ronald Brown's previous history of responding well to Warfarin treatment.

Hamid's case was that, in 2007, Ronald Brown was already suffering from pulmonary hypertension and that the disease would still have progressed, albeit at a slower rate, had he received treatment at that time. According to the defendant, death would have been delayed only by a period of 3–12 months with treatment.

The judge held that, on the medical evidence, Ronald was suffering from pulmonary hypertension***J.P.I.L. C157** on in 2004. The characteristics of that condition was that once it had been established, it caused progressive damage to the remaining healthy blood vessels and led to a rapid decline. Given the stage at which Ronald's disease had reached in 2007, although the provision of Warfarin might have prevented the development of further emboli, the pre-existing damage was such that it would not have had the same level of benefit on his overall condition as it had had in previous years.

The judge concluded that on the evidence, the non-provision of Warfarin in 2007 had accelerated the onset of the more severe symptoms associated with Ronald's pre-existing condition by a period of about 12 months. Although damages for loss of expectation of life were not recoverable, in assessing damages for pain and suffering the court was entitled to take into account any suffering likely to have been caused to Ronald by his awareness that his expectation of life had been reduced. He had suffered significant distress and anxiety as a result of the impact of the delayed diagnosis on his health. The appropriate award of general damages was held to be £8,500.

An award of £11,800 was also made for bereavement under [s.1A\(3\) of the Fatal Accidents Act 1976](#) plus an award of £2,000 for loss earnings based on a period of five years and four months with a further sum of £25,000 for loss of DIY skills. The first of the consultation fees incurred with the defendant was recoverable because Ronald Brown had received no benefit from it.

Although damages for funeral expenses were usually recoverable under [s.3\(5\)](#), it was not considered appropriate to make such an award in this case because of the acceleration of symptoms associated with a pre-existing condition by a relatively short period of time. In addition no award was made in respect of care, medical fees, accommodation or travel as

there was no evidence that these had been increased as a result of the defendant's negligence.

While accepting that the principle of loss of special consortium had been recognised in a husband and wife relationship, the judge was conscious that there was a distinct overlap with the award of damages for bereavement. Moreover, he concluded that the case law demonstrated substantially longer periods of time over which such a loss had taken place. In the circumstances, he concluded that it was not appropriate to found a separate head of damages on that basis in this case.²

Comment

The interesting aspect of the judgment relates to how the judge dealt with the relatively short period of acceleration (12 months) when assessing the damages. The award of £8,500 for PSLA seems entirely reasonable. The anxiety experienced by Mr Brown in knowing that the delayed diagnosis had reduced his life expectancy was a significant feature, and the judge took it into account as he was entitled to do pursuant to [s.1\(1\)\(b\) of the Administration of Justice Act 1982](#).³ Reference was made by the Judge to sections of the Judicial College Guidelines⁴ dealing with asbestos and asthma.

The relatively short acceleration caused the Judge to refuse an award for funeral expenses which he noted would have been incurred in any event within a short period. Whether claimed under the [Law Reform \(Miscellaneous Provisions\) Act 1934](#) or the [Fatal Accidents Act 1976](#), the court "may" award damages for funeral expenses. Hence there is a discretion afforded to the court. Precisely how that discretion should be exercised is not entirely clear, and it seems arbitrary to say that an award should not be made where death is accelerated by one year but would be made where the acceleration period is longer. Such a decision may seem somewhat inconsistent with the statutory bereavement award which is made in full regardless of when the deceased would have died, so long as the negligence caused the death.

The claim for the loss of love and affection (special consortium) which [M*J.P.I.L. C158](#) r Brown would otherwise have provided to the claimant was also rejected due to the relatively short acceleration period. The Judge reasoned that there was a distinct overlap with the bereavement award and with the award he made for DIY services, though he accepted that special consortium could be awarded in appropriate husband and wife cases. Hence the quid pro quo for receiving the full bereavement award despite the short acceleration was the denial of the special consortium.

This case was commenced during Mr Brown's lifetime, and hence was converted to a fatal accident claim after his death. When representing potential claimants with a short life expectancy there is always an issue as to whether it is best to issue before or after death. Whichever is decided upon it is obviously vital to obtain a comprehensive witness statement from the injured party as soon as possible. The decision regarding when to issue will ultimately boil down to one of quantum including that fact that quite often the remainder of the injured party's life can be significantly enhanced with an early interim payment. That may only be obtainable with the commencement of proceedings.

In mesothelioma claims there are established procedures for expedited hearings. It is incumbent upon practitioners and the courts to try and ensure the same expedition when dealing with other living claimants with short life expectancies.

Practice points

The decision on when to issue in cases such as this will usually depend on the answer to two questions:

- Will the living claimant who is able to recover damages for the "lost years", be able to recover more than his estate and dependants after his death?
- Is interim funding urgently required?

Nathan Tavares

J.P.I. Law 2014, 3, C156-C158

1.

[Christine Brown \(Widow and Executrix of the Estate of Ronald Brown Deceased\) v Shahid Hamid.](#)

2.

Devoy v William Doxford & Sons Ltd [2009] EWHC 1598 (QB) considered.

3.

"if the injured person's expectation of life has been reduced by the injuries, the court, in assessing damages in respect of pain and suffering caused by the injuries, shall take account of any suffering caused or likely to be caused to him by awareness that his expectation of life has been so reduced."

4.

Judicial College, Guidelines for the Assessment of General Damages in Personal Injury Cases, 12th edn (Oxford: Oxford University Press, 2013).