**20 January 2023**

**Yoann Samuel Rabot v. Charlotte Victoria Hassam**

**Matthew David Briggs v. Boluwatife Laditan**

**and**

**The Association of Personal Injury Lawyers and The Motor Accident Solicitors Society (Interveners)**

**SUMMARY OF THE JUDGMENTS OF THE COURT OF APPEAL**

**Important note for press and public: this summary forms no part of the court’s decision. It is provided so as to assist the press and the public to understand what the court decided.**

1. The appeals raised an important question about the construction of section 3 of the Civil Liability Act 2018 (“the 2018 Act”) the question being: how is the court to assess damages for pain, suffering and loss of amenity (“PSLA”) where the claimant suffers a whiplash injury which comes within the scope of the 2018 Act and attracts a tariff award stipulated by the Whiplash Injury Regulations 2021 (“the Regulations”), but also suffers additional injury which falls outside the scope of the 2018 Act and does not attract a tariff award? Nicola Davies LJ, in a judgment with which Stuart-Smith LJ agreed, determined that there is nothing in the wording of the 2018 Act which suggests an intention to alter the common law process of assessment for, or the value of, non-tariff injuries.
2. The majority of the court held that the legislation was directed to and confined to whiplash injuries. The mischief at which it is directed is to fraudulent claims for whiplash injuries resulting from a motor vehicle accident. The compromise effected by the legislation derogates from the principle of a 100% compensation pursuant to common law in respect of the whiplash injury or injuries. No provision in the 2018 Act, either expressly or by necessary implication, provides that non-tariff injuries should be assessed by reference to anything other than common law principles.
3. The majority of the court determined that the approach to an assessment of damages in respect of a tariff and non-tariff award where concurrently caused PSLA is present is that the court should: (i) assess the tariff award by reference to the Regulations; (ii) assess the award for non-tariff injuries on common law principles and (iii) “step back” in order to carry out any necessary adjustment so as to avoid any possible overcompensation. There is one caveat, namely that the final award cannot be less than would be awarded for the non-tariff injuries if they had been the only injuries suffered by the claimant.
4. Sir Geoffrey Vos, Master of the Rolls, dissented on the main basis that section 3(2) of the 2018 Act provided that: “[t]he amount of damages for pain, suffering and loss of amenity payable in respect of the whiplash injury … **is to be**” (emphasis added) the tariff amount in the Regulations. In cases, such as these, where the judge below had made the specific finding on the evidence that the additional injuries did not cause any loss of amenity that was not caused also by the whiplash injuries, the statute therefore provided that the amount of damages for the loss of amenity caused by the whiplash was the tariff amount. Once that has been paid, the claimant could not claim additional compensation for the same loss of amenity caused also by another injury on a different common law basis. The statute had dictated the compensation that was to be paid for that very loss. Seeking more would have violated section 3(2).