



**St John's
Buildings**

HASSAM V RABOT: SUPREME COURT PROVIDES CERTAINTY ON
MIXED INJURY WHIPLASH CLAIMS

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Introduction

The dispute over how to assess mixed whiplash and non-whiplash injuries in RTA cases has reached its conclusion.

Hassam and another (Appellants) v Rabot and another (Respondents) [2024] UKSC 11 was heard on 20 February 2024 with judgment handed down on 26 March 2024.

The method of assessment is set out at paragraph 52 of the judgment and is as follows:

- (a) Assess the tariff amount and the non-tariff amounts separately.
- (b) Add the sums together and then, if necessary, make a deduction that must reflect the need to avoid double recovery for the same PSLA. Any deduction, if needed, must come from the non-tariff damages to respect the statute tariffs.
- (c) Any award following the deduction must not be lower than the non-tariff award would be if the only injury suffered had been a non-whiplash injury.

The background of the claim and reasoning are discussed below.

Background of the Claim

The Whiplash Reforms, brought into effect by the Civil Liability Act 2018 (the Act) and the Whiplash Injury Regulations 2021 (the Regulations), apply to personal injury claims in road traffic accidents that occur on or after 31 May 2021, where the claimant suffers a whiplash injury. They introduced new fixed tariffs for road traffic accident whiplash injuries and minor psychological injuries of up to two years.

The two claims, *Rabot v Hassam* and *Briggs v Laditan*, were initially heard by District Judge Hennessy in the county court at Birkenhead. Both Claimants were injured in road traffic accidents. Both Claimants suffered a tariff injury and a non-tariff injury.

The judge assessed these injuries by determining what each injury was, valuing them within their respective regime, adding them together before taking a step back and reducing the figure for overlap of PSLA in line with *Sadler v Filipiak* [2011] EWCA Civ 1728 (Sadler).

Mr Rabot suffered a whiplash injury as well as a non-tariff injury to both knees. Mr Briggs suffered a whiplash injury and non-tariff injuries to the left elbow, knee, and hips. DJ Hennessy assessed Mr Rabot's tariff injury in the sum of £1,390.00 and the non-tariff injury in the sum of £2,500.00. On assessing the medical evidence and the overlap in the loss of amenity, she awarded £3,100.00 in line with the *Sadler* principle.

For Mr Briggs, the tariff injury was assessed at £840.00 and the non-tariff injuries at £3,000.00. The final award was made in the sum £2,800.00.

The judgment was appealed and cross-appealed. It went directly to the Court of Appeal and was heard by Nicola Davies LJ, Stuart-Smith LJ, and Sir Geoffrey Vos the Master of the Rolls.

The Appeal

The submissions by the Claimant were:

- (a) In the first instance, the tariff and non-tariff should be added together with no overlap.
- (b) In the second instance, that the approach adopted by DJ Hennessy should stand.

The submission by the Defendant was:

- (a) The tariff award was the starting point and additional small sums should only be added when it can be established that those aspects of PSLA are solely attributable to the non-tariff injuries.

The Interveners, the Association of Personal Injury Lawyers and the Motor Accident Solicitors Society, were given permission to join the proceedings as they would be affected by the outcome. They submitted that as the tariff was a creature of statute, pursuant to s3(8) of the Act, any overlap of PSLA between the tariff and non-tariff injuries should fall within the tariff amount.

By a decision of two to one, with Davies LJ giving the leading judgment, the Court of Appeal largely agreed with DJ Hennessy. A caveat was added, to the effect that when considering any overlap between the tariff and non-tariff injuries, the total award could not be less than the award for the non-tariff injury when valued alone.

For example, if a claimant suffered a whiplash injury worth £520.00 in the tariff, and a 6-month knee injury valued at £2,600.00, the award could not be less than £2,600.00 for both injuries. As such the award in *Briggs* was increased to £3,500.00 from the £2,800.00 initially awarded as the non-tariff injury on its own had been assessed at £3,000.00.

The Master of the Rolls gave a dissenting judgment. In essence, his view was that as a matter of statutory interpretation the tariff award was the starting point and for any additional sum PSLA must be distinct and would build from the tariff amount.

This judgment was appealed and cross appealed on the same grounds.

The Supreme Court Decision

The panel of five judges endorsed the method of assessment set down by the Court of Appeal.

The unanimous judgment set out the following reasons:

- (a) The wording of the Act at s3(2) & 3(8) does not depart from the common law method of assessment. A court is able to make an award that reflects the combined effect of the person's injuries, and the tariff is confined solely to whiplash injuries [36] – [39].
- (b) The established presumption is that when a statute departs from the common law, it is presumed to be as limited as possible, and so the *Sadler* approach stood [40].

- (c) The purpose of the Act was to discourage false or exaggerated whiplash claims to reduce insurance premiums. There was nothing in the Act to reduce damages in other injuries. This was also simpler to apply than the dissenting judgment of the Master of the Rolls [41].
- (d) The approach adopted did not undermine the purpose of the legislation as those with mixed injuries still received a lower award. If there were to be evidence that claimants were getting around the legislation by claiming multiple injuries, this was a policy problem for Parliament to consider [43].

The judges disagreed with the Defendant's approach because there was nothing in the Whiplash Reforms to the effect that non-whiplash injuries were affected. Their approach would be too complex, scientific, and increase costs in practice as the way medical reports are written would need to change.

Further, and as identified by practitioners across England and Wales, the approach endorsed by the Master of the Rolls would leave the "bizarre" consequence of a whiplash and non-whiplash injury being of less value than the equivalent non-whiplash injury alone [47]. This was the initial judgment in *Briggs*. It would also leave defendants seeking to prove that a claimant suffered a whiplash injury as well as a non-whiplash injury when claimants decline to claim damages for a whiplash injury.

The Claimant's preferred approach was also rejected as it ignored the principle of there being no double recovery. As was acknowledged in *Sadler*, in probably the majority of cases, awards for multiple injuries should be adjusted so as to be less than the sum of their parts in order to remove any double counting of PSLA.

Postscript

The Supreme Court's decision brings much-welcomed certainty to the approach to be adopted when valuing mixed claims, but this is not to say that certainty is absolute. There is still no definition of what constitutes a "minor psychological injury", and nor has there been any guidance as to how bad a whiplash injury or a claimant's circumstances would have to be to qualify for an exceptionality uplift. We can expect no shortage of arguments on these grounds in the near future.

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