Hilary Term
[2024] UKSC 11
On appeal from: [2023] EWCA Civ 19

JUDGMENT

Hassam and another (Appellants) *v* Rabot and another (Respondents)

before

Lord Reed, President
Lord Lloyd-Jones
Lord Hamblen
Lord Burrows
Lady Rose

JUDGMENT GIVEN ON
26 March 2024

Heard on 20 February 2024

Appellants
Isabel Hitching KC
(Instructed by DAC Beachcroft Claims Limited (London))

Respondents
Benjamin Williams KC
Shannon Eastwood
(Instructed by Robert James Solicitors (Woolton))

Interveners – Association of Personal Injury Lawyers and Motor Accident Solicitors Society
Robert Weir KC
Sam Way
(Instructed by Hugh James (London))

LORD BURROWS (with whom Lord Reed, Lord Lloyd-Jones, Lord Hamblen and Lady Rose agree):

1. Introduction

1. In general terms, Part 1 of the Civil Liability Act 2018 ("the 2018 Act") and the Whiplash Injury Regulations 2021 (SI 2021/642) ("the 2021 Regulations") have significantly reduced the amount of damages payable for pain, suffering and loss of amenity ("PSLA") in respect of whiplash injuries caused by negligent driving. The 2021 Regulations lay down the amount of damages that is payable for PSLA according to a tariff that varies only by reason of the duration of the whiplash injury. I shall refer to that amount of damages as the "tariff amount".

2. The highest percentage reduction, in comparison with the damages that would have been recoverable for PSLA at common law, is where the duration of the whiplash injury is for not more than 3 months. The tariff amount for a whiplash injury of that duration is £240 (or £260 if there was additional minor psychological injury) compared to common law damages (as set out in the Judicial College *Guidelines for the Assessment of General Damages in Personal Injury Cases* ("the *Guidelines*"), 16th ed (2021)) of £2,450. The lowest percentage reduction is where the duration of the whiplash injury is for 18 to 24 months. The tariff amount for a whiplash injury of that duration is £4,215 (or £4,345 if there was additional minor psychological injury) compared to a damages bracket, at common law, of £4,350 to £7,890.

3. The question raised by the two test cases before us is, what is the impact of the whiplash reform on damages for PSLA in respect of non-whiplash injuries suffered by the claimant in the same accident in which he or she suffers a whiplash injury? More specifically, what is the position on concurrent PSLA caused by both a whiplash injury and a non-whiplash injury?

4. Although the sums at stake in these two cases are small, it is clear that many thousands of cases are potentially affected by the decision on these appeals. The Official Injury Claim Service, on behalf of the Ministry of Justice, collects and analyses the data from the use of the Official Injury Claim online portal for road traffic accident small claims ("the OIC portal") that was set up as part of the same package of reforms as the reduction of damages for whiplash injuries. The Official Injury Claim Service's statistics (Official Injury Claim, "Claims Data: for the period 1 October to 31 December 2023") show that, in those three months, there were 62,557 whiplash claims (including claims for both whiplash and non-whiplash injuries) made using the OIC portal. 19,398 (30% of all the claims made using the OIC portal) were for whiplash injuries (plus minor psychological injuries) alone and 43,159 (66.7%) were for both whiplash and non-whiplash injuries.

5. I should make clear at the outset that, because the relevant legislation covers whiplash injuries and minor psychological injuries suffered by the claimant on the same occasion, I shall, for ease of exposition, include those minor psychological injuries as whiplash injuries rather than non-whiplash injuries.

2. Three possible approaches

6. The parties' submissions have focused on three possible approaches to dealing with concurrent PSLA caused by whiplash and non-whiplash injuries.

7. The first approach, advocated by the defendants (the appellants in these appeals), is that one should first take the tariff amount laid down in the 2021 Regulations. One should 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. This approach therefore envisages a build up from the tariff amount and requires the claimant to identify with some precision any different PSLA caused by the non-whiplash injury. This was the approach accepted by Sir Geoffrey Vos MR in his dissenting judgment in these two test cases in the Court of Appeal: [2023] EWCA Civ 19, [2023] KB 171, paras 50-70.

8. The second approach is advocated as their primary case by the claimants and, as their sole case, by the interveners (who are the Association of Personal Injury Lawyers and the Motor Accident Solicitors Society). According to this approach, one should 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.

9. The third approach, advocated by the claimants as their secondary case, is that one should first add together the tariff amount for the whiplash injury and the common law damages for PSLA for the non-whiplash injury. Then one should stand back to consider whether to make a deduction to reflect any overlap between the two amounts (ie where both amounts cover the same PSLA). As is explained below, such an adding together, standing back and deduction is in line with what has been the standard approach at common law to assessing damages for PSLA for multiple injuries (whether involving whiplash or not) as articulated by the Court of Appeal in *Sadler v Filipiak* [2011] EWCA Civ 1728 ("*Sadler*"). But any deduction must be made from the damages for the non-whiplash injury because the tariff amount is a statutory fixed sum; and the deduction should not reduce the overall amount of damages to be awarded below the amount that would be awarded for the non-whiplash injury alone (this has been labelled "the caveat"). This was the approach laid down by the majority of the Court of Appeal in these two test cases. Nicola Davies LJ gave the leading judgment, which was agreed with, in a concurring judgment, by Stuart-Smith LJ: [2023] KB 171, paras 1-49. It was

also the approach basically adopted, but without the caveat, by District Judge Hennessy at first instance.

3. The assessment of damages at common law for PSLA including in cases of multiple injuries

10. Before turning to the relevant legislation, it is important to understand how damages for PSLA are assessed at common law. The general aim of damages for a tort is to compensate the claimant's loss. Compensation means the award of a sum of money which, so far as money can be so, is equivalent to the claimant's loss. The loss may be pecuniary (such as a loss of earnings or medical expenses) where the equivalence to the claimant's loss can be precise; or the loss may be non-pecuniary, such as PSLA, where the sum to be awarded as compensation cannot be precisely equivalent to the loss and where consistency of awards is instead achieved through the application of the scale of values established by decisions in past cases. It is also trite law, as made clear in the classic formulation by Lord Blackburn in *Livingstone v Rawyards Coal Co* (1880) 5 App Cas 25, 39, that the aim of compensatory damages is to put the claimant into as good a position as he or she would have been in if no tort had been committed. This has often in the past been described as seeking to achieve "restitution" (and was so described in the written submissions of the claimants and interveners) but, in the modern law, restitution is a term that is primarily understood to be concerned with reversing benefits obtained by a defendant and is, therefore, best avoided as a supposed synonym for compensation.

11. In respect of PSLA in personal injury cases, it was explained by the Court of Appeal in *Heil v Rankin* [2001] QB 272 that the scale of values represents what the judges consider to be the fair, just and reasonable sums to award for PSLA. The determination of what is fair, just and reasonable takes into account the interests of claimants, defendants and society as a whole. The Court of Appeal also made clear that, although compensation for PSLA can never be precise, the aim is to provide full compensation.

12. The need for consistency through past awards in respect of PSLA has traditionally depended on the publication (in, for example, *Kemp & Kemp on the Quantum of Damages*) of judicial awards listed under the different types of personal injury with brief details of the claimant's circumstances. The bracket of damages for that injury which the previous cases have laid down (adjusted upwards for inflation) has provided the range of award for the particular case before the court. In deciding where within the range the instant case falls (or if, exceptionally, it falls outside the range) the courts have taken account of the claimant's particular circumstances: for example, the claimant may have suffered a great deal of pain over a long period of time or the claimant may have been unable to continue with a particular activity that he or she had previously enjoyed.

13. In 1992, the Judicial Studies Board (now the Judicial College) produced the *Guidelines* as an attempt to produce greater consistency of awards and to make the judicial scale of values more easily accessible. The *Guidelines* set out, in easily understood form, a distillation, from past cases, of the range of awards for various injuries. In the most recent 16th edition, published in 2021, the range runs from a few hundred pounds for minor cuts and bruises through to £403,990 for the most serious injuries.

14. A question that has concerned the courts for several decades is, how should one assess damages for PSLA in respect of multiple injuries? The most important statement on this question was made by Pitchford LJ in *Sadler*. He said at para 34:

> "It is in my judgment always necessary to stand back from the compilation of individual figures, whether assistance has been derived from comparable cases or from the JSB guideline advice, to consider whether the award for pain, suffering and loss of amenity should be greater than the sum of the parts in order properly to reflect the combined effect of all the injuries upon the injured person's recovering quality of life or, on the contrary, should be smaller than the sum of the parts in order to remove an element of double counting. In some cases, no doubt a minority, no adjustment will be necessary because the total will properly reflect the overall pain, suffering and loss of amenity endured. In others, and probably the majority, an adjustment and occasionally a significant adjustment may be necessary."

15. Pitchford LJ's statement has attained prominence. This appears to be not only because of its rational clarity but also because it was cited at the start of the *Guidelines* in the 11th edition in 2012 under the heading "Note on Multiple Injuries" and has been repeated in the same form in all subsequent editions. Prior to then, the *Guidelines* had offered no clear approach to assessing PSLA in multiple injury cases.

16. Etherton LJ in *Sadler* made similar remarks to those of Pitchford LJ. Citing an earlier judgment of the Court of Appeal, he said the following at paras 1-2 of his judgment:

> "1. … The correct methodology was that set out by the Court of Appeal in *Brown v Woodall* [[1995] PIQR Q36]. In that case Sir John May, with whom the other members of the court agreed, said:

> ‘As far as the first ground of appeal is concerned, I respectfully agree that the learned judge’s approach adding up the various figures for the awards that she thought appropriate for the various different injuries could well lead one to an award, which, compared with other awards, is in the aggregate larger than is reasonable.
>
> In this type of case, in which there are a number of separate injuries, all adding up to one composite effect upon the plaintiff, it is necessary for a learned judge, no doubt having considered the various injuries and fixed a particular figure as reasonable compensation for each, to stand back and have a look at what would be the global aggregate figure and ask if it is reasonable compensation for the totality of the injury to the plaintiff or whether it would in aggregate be larger than was reasonable?’
>
> 2. In other words the judge should have, firstly, considered the various injuries and fixed a particular figure as reasonable for each and then, secondly, stood back and had a look at what would be the global aggregate figure and ask whether it was reasonable compensation for the totality of the injury.”

17. For other judgments taking a similar approach to multiple injuries, see, eg, *Santos v Eaton Square Garage Ltd* [2007] EWCA Civ 225, paras 22-23; *Noble v Owens* [2008] EWHC 359 (QB), paras 46-49 (overturned on a separate evidential issue at [2010] EWCA Civ 224, [2010] 1 WLR 2491); and see, generally, *Kemp and Kemp on the Quantum of Damages*, para 3-024.

18. It was not in dispute between the parties that what was said by Pitchford LJ in *Sadler* is now the standard approach at common law for dealing with damages for PSLA in respect of multiple injuries.

4. The legislation

19. I shall now describe or set out the most relevant provisions of the primary and secondary legislation with which we are concerned in these cases.

20. Part 1 of the 2018 Act is concerned with damages for whiplash injuries. Section 1 explains what is meant by a “whiplash injury” for the purposes of the 2018 Act. It is confined to whiplash injuries caused by negligent driving on a road or other public place

in England or Wales. Under section 1(4), the person injured must be the driver or a passenger in a motor vehicle but the driver or passenger on a motor cycle is excluded.

21. Section 3 is the most important provision for our purposes. In so far as relevant it reads:

> "**3 Damages for whiplash injuries**
>
> (1) This section applies in relation to the determination by a court of damages for pain, suffering and loss of amenity in a case where—
>
> (a) a person ('the claimant') suffers a whiplash injury because of driver negligence, and
>
> (b) the duration of the whiplash injury or any of the whiplash injuries suffered on that occasion—
>
> (i) does not exceed, or is not likely to exceed, two years, or
>
> (ii) would not have exceeded, or would not be likely to exceed, two years but for the claimant's failure to take reasonable steps to mitigate its effect.
>
> (2) The amount of damages for pain, suffering and loss of amenity payable in respect of the whiplash injury or injuries, taken together, is to be an amount specified in regulations made by the Lord Chancellor.
>
> (3) If the claimant suffers one or more minor psychological injuries on the same occasion as the whiplash injury or injuries, the amount of damages for pain, suffering and loss of amenity payable in respect of the minor psychological injury or the minor psychological injuries, taken together, is to be an amount specified in regulations made by the Lord Chancellor.
>
> …

(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).

…"

22. Section 5, headed "Uplift in exceptional circumstances", empowers the Lord Chancellor by regulations to allow a percentage uplift (with the maximum to be specified) of the tariff amount where the whiplash injuries are "exceptionally severe" or where the person's exceptional circumstances increase the PSLA.

23. Through the 2021 Regulations, which came into force on 31 May 2021, the Lord Chancellor exercised the power conferred on him by the 2018 Act to fix the amounts payable in respect of a whiplash injury and a whiplash injury with minor psychological injury. The amounts are contained in Regulation 2:

"**2. Damages for whiplash injuries**

(1) Subject to regulation 3—

(a) the total amount of damages for pain, suffering and loss of amenity payable in relation to one or more whiplash injuries, taken together ('the tariff amount' …), is the figure specified in the second column of the following table; and

(b) the total amount of damages for pain, suffering and loss of amenity payable in relation to both one or more whiplash injuries and one or more minor psychological injuries suffered on the same occasion as the whiplash injury or injuries, taken together ('the tariff amount'…), is the figure specified in the third column of the following table—

Duration of injury	*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

”

24. Through Regulation 3, the Lord Chancellor exercised the power to fix the percentage uplift where the exceptionality requirement, set out in section 5 of the 2018 Act, is satisfied. Under that Regulation, the maximum uplift cannot exceed the tariff amount by more than 20%.

5. The facts of these two cases and the decisions at first instance

25. In *Rabot v Hassam* (J10YJ826) the claimant was a passenger in a car that was negligently hit from behind while stationary. That accident occurred on 16 July 2021. The claimant suffered whiplash injuries to his neck and back (ie soft tissue injuries to the cervical spine and lumbo-sacral area). He also suffered non-whiplash injuries to his knees (ie soft tissue injuries to both knees). On 22 July 2021 Mr Rabot commenced a claim by means of a small claims notification form on the OIC portal.

26. The parties were unable to agree the quantum of damages. Where this occurs, the Civil Procedure Rules PD 27B (headed "Claims under the Pre-Action Protocol for Personal Injury Claims below the Small Claims Limit in Road Traffic Accidents – Court Procedure") sets out the procedure to be followed. The relevant evidence will be contained in a "Court Pack". A medical report prepared on behalf of the claimant was included in the Court Pack. It identified the nature and duration of the injuries as being: injury to the cervical spine, resolution 8 to 10 months; injuries to the lumbo-sacral area, resolution 8 to 10 months; injuries to both knees, resolution 4 to 5 months; travel anxiety, resolution within 3 months. The claimant also experienced difficulty in a number of activities (eg carrying heavy items, exercising, and driving for long periods).

27. At the quantum only hearing before District Judge Hennessy, the tariff amount for the whiplash injuries was assessed at £1,390 and the common law damages for PSLA for the knee injuries at £2,500. Adding those together produced an overall figure of £3,890. Essentially applying the third approach set out in para 9 above, the District Judge, following *Sadler*, stepped back, in order to reach a final figure, by making an appropriate deduction. At para 41, she identified the "clear overlap" between the PSLA from the injuries, as indicated by the medical evidence, and added that "[t]here is nothing highlighted in terms of particular loss of amenity that can be attributed to the knee injuries alone." The overall award was therefore assessed to be £3,100 (ie the *Sadler* deduction was £790).

28. In *Briggs v Laditan* (J10YJ855) the claimant was the driver of a car that was hit from behind while he was slowing down at a roundabout. The accident occurred on 8 June 2021. He suffered whiplash injuries (ie soft tissue injuries) to his neck, upper and lower back; and non-whiplash injuries (ie soft tissue injuries) to his left elbow, chest, left knee and hips. His claim proceeded through the OIC portal. The medical report was to the effect that the injuries to the hips, chest and elbow resolved after, respectively, 1, 2 and 3 months. The prognosis for the other injuries was that there would be resolution of the injuries to the neck, and upper and lower back, within 9 months of the accident; and there would be resolution of the injury to the knee within 6 months of the accident. The claimant, who was a taxi driver, lost 4 days of work.

29. At the quantum only hearing, District Judge Hennessy identified her approach as being the same as the one she had applied in *Rabot v Hassam*. Additionally, she made clear that the *Sadler* deduction had to be from the common law damages given that the tariff amount is fixed by statute. The judge noted, at para 64, that, it appeared from the medical report, that the majority of the pain and suffering and the limited loss of amenity flowed from the whiplash injury. She added: "There is nothing highlighted in terms of particular loss of amenity that can be attributed to the knee/chest/elbow/hips injuries alone." She assessed the tariff amount for the whiplash injuries as £840, and the common law damages for PSLA for the non-whiplash injuries as £3,000. Adding those two amounts together and then stepping back, she reduced the latter figure by £1,040 (ie

that was the *Sadler* deduction) in recognition of the "clear overlap on the basis of the medical evidence". She therefore made an overall award of damages of £2,800.

30. At para 65, the District Judge made the following observation:

> "[Counsel for the claimant] pointed out that the small value of the tariff awards is the cause of much of [the] difficulty. In my view, what he means is that the tariff figures do not naturally sit within the landscape of the *JC Guidelines* and, to that extent, at first blush one is comparing apples with pears. However, that, in my view, is not a reason to depart from established principles without a clear reason, rule or regulation to do so. What it does mean is that the calibration of pain, suffering and loss of amenity to be taken into account as compensated for by the whiplash tariff award is different to the calibration involved in the non-tariff award. That is new and somewhat unfamiliar territory but, on careful analysis, my view is that established principles can be applied to it and that is how I have attempted to reach the valuation."

6. The judgments of the majority in the Court of Appeal

31. The defendants appealed against the decisions of District Judge Hennessy arguing that the first approach set out in para 7 above should have been applied and not the third approach. The claimants cross-appealed arguing, primarily, that the second approach set out in para 8 above should have been applied or, as a secondary submission in *Briggs*, that the *Sadler* deduction made was too great.

32. The essential reasoning of Nicola Davies LJ, with whom Stuart-Smith LJ agreed, can be summarised in the following eight points:

(i) The mischief at which the legislation was directed is claims for whiplash injuries resulting from motor vehicle accidents. There is nothing in the words of the legislation or the Explanatory Notes accompanying the 2018 Act ("the Explanatory Notes") or the Explanatory Memorandum to the 2021 Regulations ("the Explanatory Memorandum") to suggest that the mischief extended to common law damages for non-whiplash injuries.

(ii) The tariff amount, pursuant to section 3(2) of the 2018 Act and the 2021 Regulations, is significantly lower than damages assessed at common law.

(iii) The objective of the whiplash reform programme was to reduce damages for whiplash injuries. This was to discourage false or exaggerated whiplash claims and to reduce the costs associated with such claims. Therefore, in addition to the reduction in whiplash damages, there was introduced, at the same time and as part of the same reform package, a bespoke process (the OIC portal) providing a mechanism for the swift and straightforward resolution of small motor accident claims.

(iv) Parliament can be presumed not to have altered the common law further than was necessary in order to remedy the mischief which was the focus of the 2018 Act.

(v) Section 3(8) of the 2018 Act indicates that, where a person has suffered both whiplash and non-whiplash injuries, the court should reflect the combined effect of the person's injuries by adding to the tariff amount a common law assessment of damages for PSLA caused by the non-whiplash injury and then, following *Sadler,* should step back and assess "whether the total award represents double counting or overcompensation" (para 35).

(vi) The third approach set out at para 9 above was therefore the correct approach. Nicola Davies LJ spelt it out in para 38:

> "It follows that the approach of the court 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 the *Sadler* adjustment, recognising that the sum included in the tariff award for the whiplash component is unknown but is smaller than it would be if damages for the whiplash component had been assessed applying common law principles.
>
> 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."

(vii) The first approach in para 7 above, as argued for by the defendants, was incorrect. It would extend the scope of the 2018 Act to non-whiplash injuries contrary to the purpose of the Act. Moreover, it was untenable because it could lead to a position where a claimant with both types of injury would not pursue a claim for whiplash injury because that would have the effect of reducing the award below what the person would otherwise be entitled to for the non-whiplash injury alone.

(viii) Nicola Davies LJ therefore concluded that the defendants' appeals should be dismissed; and, because the second approach in para 8 above was also being rejected, the claimant's cross-appeal in *Rabot* and the claimant's cross-appeal on his primary case in *Briggs* should also be dismissed. But the claimant's cross-appeal on his secondary case in *Briggs* should be allowed because too great a *Sadler* deduction had been made by the District Judge in that case. In particular, the deduction contradicted the caveat because it took the overall sum below £3,000, which was the amount of damages that would have been awarded at common law for the non-whiplash injuries alone. A reduction of £340 from the damages for the non-whiplash injuries was appropriate, giving a total award of £3,500.

33. Stuart-Smith LJ agreed with the judgment of Nicola Davies LJ. But in his concurring judgment he went on to explain in more detail why he could not accept the correctness of the first approach in para 7 above, which had found favour with Sir Geoffrey Vos MR in his dissenting judgment. Stuart-Smith LJ stressed that the words of the 2018 Act did not extend to effecting a change in the assessment of damages for non-whiplash injuries. This was supported by all the contextual materials demonstrating that the policy motivating the legislation was confined solely to the perceived mischief of excessive whiplash claims. As Nicola Davies LJ had observed (see para 32(vii) above), the consequences that would follow if the first approach were to be adopted showed that this approach was untenable. A claimant was free to claim for non-whiplash injuries without also claiming for whiplash injuries so that, by doing so, there was no question of a claimant circumventing the Act. Rather it was axiomatic that a person can choose whether to bring proceedings and what cause of action to pursue.

7. The Master of the Rolls' dissenting judgment

34. Sir Geoffrey Vos MR in his dissenting judgment favoured the first approach set out in para 7 above. In his view, the amount to be awarded for PSLA, concurrently caused by a whiplash and non-whiplash injury, was the tariff amount; and, at paras 54 and 55 of his judgment, he interpreted the District Judge as having determined that, in these two cases, there was no different loss of amenity attributable to the non-whiplash injuries. He considered that the wording of section 3 of the 2018 Act led "inexorably to

the conclusion that the first [approach] is the correct one as a matter of statutory construction" (para 58). More specifically, his central reasoning was as follows:

(i) Section 3(1) of the 2018 Act applies "in a case where … a person suffers a whiplash injury". At least at first sight, therefore, the tariff amount would apply in a case where there is a whiplash injury and a non-whiplash injury even if the claimant suffering a whiplash injury did not claim for that whiplash injury.

(ii) Section 3(2) lays down that the amount of damages for PSLA in respect of the whiplash injury "is to be" (and the Master of the Rolls stressed those three words) the tariff amount. The claimant cannot therefore claim more compensation for concurrent (ie the same) PSLA caused by a non-whiplash injury. To that extent, the legislation has affected common law damages for non-whiplash injuries.

(iii) The approach favoured by the District Judge (ie essentially the third approach set out in para 9 above) was unprincipled. The principled solution is to assess the tariff amount for the whiplash injuries, then to work out which PSLA caused by the other non-whiplash injuries has not been caused by the whiplash as well, and then to assess the proper common law damages for that additional PSLA.

(iv) Returning to the point made in (i) above:

> "the claimant cannot get round the tariff by failing to claim for the whiplash and claiming only for the other injuries ... That may produce difficulties where attempts are made to circumvent the effects of the statute, but every solution has some consequences that may prove practically problematic." (para 67)

(v) The approach favoured by the majority (ie the third approach set out in para 9 above) was not "adequately scientific" (para 69). The *Sadler* exercise was applicable where all the injuries were to receive full compensation but here Parliament has directed that PSLA for whiplash injuries are not to be awarded on the basis of full compensation.

35. The Master of Rolls would therefore have remitted the cases back to the District Judge for her to assess damages on the basis of his judgment.

8. The positive reasons why the approach favoured by the majority of the Court of Appeal (the third approach in para 9 above) is correct

36. The question raised in these appeals is one of statutory interpretation. It is now well-established that the modern approach to statutory interpretation requires the courts to ascertain the meaning of the words used in the light of their context and the purpose of the provisions: see, eg, *News Corp UK & Ireland Ltd v Revenue and Customs Comrs* [2023] UKSC 7, [2024] AC 89, para 27.

37. The wording of section 3(2) of the 2018 Act makes clear that the tariff amount is confined to damages for PSLA "in respect of the whiplash injury or injuries". That wording plainly does not extend the tariff amount to PSLA in respect of non-whiplash injuries.

38. The only express reference in the 2018 Act to damages for non-whiplash injuries is in section 3(8). It is helpful to set out that subsection again but with some crucial words emphasised:

> "*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)*."

39. The opening words, and the reference to an amount "that reflects the combined effect", indicate that the statute is, in general, not departing from the standard common law approach to assessing damages for multiple injuries. It may even be thought significant that the words "reflects the combined effect" match the precise words used by Pitchford LJ in *Sadler*. But the closing bracketed words show that the common law approach must not be applied in such a way as to be inconsistent with imposing the tariff amount laid down in the 2021 Regulations. It can therefore be seen that the third approach follows naturally from section 3(8). The common law *Sadler* approach to multiple injuries is basically to be applied subject to the qualification that the *Sadler* discount must respect the Legislature's decision to award the lower sums specified for PSLA in respect of the whiplash injuries.

40. That the third approach is the correct interpretation of the statutory language is supported by the well-established presumption that, in so far as a statute is departing from the common law – which the 2018 Act clearly is – that departure should be presumed to be as limited as possible. In Lord Reid's words in *Black-Clawson*

International Ltd v Papierwerke Waldhof-Aschaffenburg AG [1975] AC 591, 614, Parliament "can be presumed not to have altered the common law further than was necessary".

41. The third approach is further supported by considering the purpose of the legislation. The preamble to the 2018 Act reads that it is "to make provision about whiplash claims…". As is made plain, not only by the wording of the Act that I have considered but also by the Explanatory Notes at paras 3 -7 and the Explanatory Memorandum at paras 7.1-7.6, the perceived mischief was whiplash claims. More specifically, the explanatory material clarifies that the purpose was to discourage false or exaggerated whiplash claims and to reduce the costs associated with whiplash claims and hence to help reduce motor accident insurance premiums. As part of the same package of reforms, there was introduced, as a further means of reducing the costs of small road accident claims, a bespoke portal process (the OIC portal) aimed at providing a mechanism for the quick and easy resolution of such claims. By contrast, there is nothing at all to indicate that the purpose of the 2018 Act was to extend the lowering of PSLA damages beyond whiplash claims. Moreover, to apply the familiar basic common law *Sadler* approach, with its somewhat impressionistic adjustment, is likely to be much easier to apply than would be the more precise, scientific and unfamiliar approach favoured by the Master of the Rolls. Indeed, Isabel Hitching KC for the defendants accepted that, applying the Master of the Rolls' approach, as she was advocating, would require medical reports to be modified so as to be more precise about the PSLA. But, if so, that would appear to add extra time, complexity and costs to the system when the objective is the exact opposite.

42. I also reject the submission of the defendants that to adopt the third approach would undermine the purpose of the legislation. Clearly claimants who have suffered only whiplash injuries will receive a significantly lower sum in damages for PSLA than at common law (see para 2 above); and, as shown by these cases, that remains true even where damages are also claimed for non-whiplash injuries. Even if there were to be evidence suggesting that claimants might be able to thwart part of the purpose of the whiplash reform by claiming for multiple injuries, that would be a policy problem for Parliament to address and would not be something that the courts could, or should seek, to deal with by distorting the legislation.

9. The reasons why the first and second approaches (in paras 7-8 above) should be rejected

43. It is implicit in what has so far been said that I reject the first and second approaches (in paras 7-8 above). But it is important to clarify the reasons why those approaches should be rejected not least because I am disagreeing with the dissenting analysis of the Master of the Rolls (as supported by the submissions of Ms Hitching).

(1) Rejecting the first approach

44. This approach, favoured by the Master of the Rolls, should be rejected for four main reasons.

45. First, there is nothing in the words of the legislation or the Explanatory Notes or Memorandum to indicate that the scope of the reform extended to damages for non-whiplash injuries. The Master of the Rolls' emphasis on the words "is to be" in section 3(2) of the 2018 Act is unwarranted and underplays the importance of the words "in respect of" the whiplash injury or injuries.

46. Secondly, while the Master of the Rolls indicated that his approach was "principled" and "scientific" (paras 66 and 69), it would be complex to apply because it relies on an exactitude in working out what constitutes concurrent PSLA when in practice such concurrence inevitably has to be looked at in a rough and ready way. The standing back and discounting approach in *Sadler* is avowedly impressionistic. As with all non-pecuniary loss, PSLA cannot be precisely measured and, at least normally, it is unrealistic to imagine that PSLA from a whiplash injury will exactly match the PSLA from a non-whiplash injury. Indeed, it is arguable that the Master of the Rolls' interpretation (paras 54 and 55: see para 34 above) of what the District Judge said erroneously identified a precision that was not intended. Even leaving to one side the pain and suffering, the District Judge was talking about "particular" loss of amenity (see paras 27 and 29 above) but did not expressly say that the loss of amenity was exactly the same as between the whiplash injuries and the non-whiplash injuries. Moreover, as has been indicated at para 41 above, the insistence on precision – not least if the claimant were to have the burden of identifying specific PSLA that was not already covered by the tariff amount for the whiplash injury – would require a new level of detail about PSLA in medical reports that has not conventionally been required. Even if it were possible for there to be such medical exactitude, this would add to the expense of medical reports and is inimical to the OIC portal system which precludes oral medical evidence and cross-examination. Far from reducing costs, this would be likely to increase costs. It is perhaps also significant, as revealing the complexity of his approach, that the Master of the Rolls did not seek to explain, with figures, the amount of damages that he would have awarded in these two cases but would rather have remitted the assessment back to the District Judge.

47. Thirdly, if this first approach were applied, it would produce the bizarre consequence that the claimant might end up with a lower amount of damages for PSLA in respect of both whiplash and non-whiplash injuries than would have been awarded for the non-whiplash injury alone. Similarly, in some cases the claimant would be incentivised to ignore the whiplash injury and to bring a claim just for the non-whiplash injury thereby avoiding the tariff amount. The Master of the Rolls recognised this difficulty but, with respect, could offer no solution to it (see para 34(iv) above). Clearly

one could not prevent claimants seeking damages just for their non-whiplash injuries. Indeed, one might end up with the scenario of the defendant seeking to prove that the claimant suffered a whiplash injury in an accident ("You have suffered a whiplash injury") while the claimant seeks to deny that that is so ("I suffered no whiplash injury"). An interpretation of legislation that produces absurd consequences should be rejected unless no other interpretation is possible: see, generally, *Bennion, Bailey and Norbury on Statutory Interpretation*, 8th ed (2020), ch 13. The interpretation adopted in the third approach avoids such consequences.

48. Finally, the first approach would represent a more significant departure from the common law than the third approach. It is therefore contrary to the presumption that legislation affects the common law as minimally as necessary (see para 40 above). It also means that one is needlessly putting to one side the *Sadler* approach, with which judges are familiar and are well used to applying, albeit that it needs modification in this new context because the tariff amount is not aiming to provide full compensation. As the District Judge put it at para 65 of her judgment (see para 30 above), the calibration of PSLA to be taken into account as compensated for by the whiplash tariff amount is different to the calibration involved in the non-whiplash injury award.

(2) Rejecting the second approach

49. The central objection to the second approach is that, contrary to the aim of compensatory damages, it ignores altogether the problem of double recovery for the same loss. That is, it contradicts the common law assessment of damages by not providing for any *Sadler* deduction. The supposed justification for this, as submitted by the claimants on their primary case and by the interveners, is that the tariff amount is avowedly not full compensation and instead is a smaller sum that is explained, in the Explanatory Notes at para 7 and in the Explanatory Memorandum at para 7.1, as being "proportionate" compensation. It was submitted, therefore, that there is an "apples and pears" problem of incommensurability. I disagree. Certainly the tariff amount does not purport to be full compensation. However, it is partial compensation and is therefore not incommensurate with common law damages. The correct analogy is with "large and small apples" not with "apples and pears".

50. To submit, as Robert Weir KC (for the interveners) did, that there can never be a problem of double recovery in this context is untenable. Indeed, the decisions made by the lower courts in these two cases, illustrate that it is perfectly possible to make rational, albeit rough and ready rather than precise, deductions; and such deductions not only can, but must, be made to avoid overlapping awards for the same PSLA and therefore to avoid double recovery. Furthermore, it is incorrect and would undermine the whiplash reform to reason that, because the tariff sum is undercompensating, it is appropriate to ignore the need to avoid double recovery where there is concurrent (ie overlapping) PSLA. So for the awards to be £3,890 in *Rabot* and £3,840 in *Briggs*,

without any deductions, would be to ignore the overlapping PSLA and would undermine the reform. In short, it would be incorrect to ignore the objection of double recovery by awarding the tariff amount plus full common law damages for the same PSLA.

10. The correct approach step-by-step

51. Having explained why the third approach is the correct approach, including explaining why the other two approaches are flawed, it may be helpful to those applying this judgment to spell out precisely what that correct approach requires. In this respect, I am confirming and filling out what Nicola Davies LJ said at para 38 of her judgment (see para 32(vi) above).

52. Where the claimant is seeking damages for PSLA in respect of whiplash injuries (covered by the 2018 Act) and non-whiplash injuries a court should:

(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.

(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) However, and this is what Nicola Davies LJ described as the "caveat", the final award cannot be lower than would have been awarded as common law damages for PSLA for the non-whiplash injuries had the claim been only for those injuries.

53. Finally, I should add for completeness that, although not in issue in these appeals, where the exceptionality requirement applies (see paras 22 and 24 above), the tariff amount being assessed at the first step (see para 52(i)) may be increased by up to 20%.

11. Conclusion

54. The appeals of the defendants (advocating the first approach) are therefore dismissed as are the cross-appeals of the claimants (advocating the second approach).