Claim No: B10YM571

IN THE COUNTY COURT AT LIVERPOOL

B E T W E E N:

MR PETER STANTON

Claimant

and

MR HENRY HUNTER

Defendant

JUDGMENT

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1) On 27.6.12 the Claimant was involved in an accident when he fell through the roof of an outhouse building onto the ground below on the Defendant's farm in Tarleton, Lancashire. He lost consciousness for a period, and was taken by air ambulance to hospital in Preston; he was found to have sustained multiple left sided rib fractures, a fracture of the thoracic spine at T2, a comminuted and displaced fracture of the left wrist, subluxation of the left shoulder, and splenic damage. Brain imaging showed no abnormality.

2) Mr Stanton underwent surgical reduction and fixation of the wrist. His chest and lung function deteriorated and he was found to have a traumatic haemo-pneumothorax. He required insertion of 2 chest drains, developed pneumonia and needed a short period of nursing in intensive care. He remained in hospital for a month. Following his discharge he reported ongoing symptoms of pain, and required shoulder reconstruction surgery in July 2013.

3) The Defendant admits primary liability under the Occupiers' Liability Act 1957 for Mr Stanton's accident, but asserts contributory negligence. He disputes much of the claim for damages put forward by the Claimant and further, applies under section 57 of the Criminal Justice and Courts Act 2015 for the dismissal of the entirety of the claim on the basis of fundamental dishonesty.

4) Trial of these issues was heard by me on 27 – 29.3.17. I am grateful to both counsel for the clarity and care with which they conducted the case.

5) Before considering the issues of contributory negligence and quantum, I address the Defendant's application under section 57, because my finding on the issue of fundamental dishonesty will affect my evaluation of the evidence on the other issues.

6) Section 57 provides, so far as is material:

" (1) This section applies where, in proceedings on a claim for damages in respect of personal injury ("the primary claim")—
(a) the court finds that the claimant is entitled to damages in respect of the claim, but
(b) on an application by the defendant for the dismissal of the claim under this section, the court is satisfied on the balance of probabilities that the claimant has been fundamentally dishonest in relation to the primary claim or a related claim.
(2) The court must dismiss the primary claim, unless it is satisfied that the claimant would suffer substantial injustice if the claim were dismissed.
(3) The duty under subsection (2) includes the dismissal of any element of the primary claim in respect of which the claimant has not been dishonest.
(4) The court's order dismissing the claim must record the amount of damages that the court would have awarded to the claimant in respect of the primary claim but for the dismissal of the claim.
(5) When assessing costs in the proceedings, a court which dismisses a claim under this section must deduct the amount recorded in accordance with subsection (4) from the amount which it would otherwise order the claimant to pay in respect of costs incurred by the defendant."

7) In the event, and in the light of events occurring during the trial, Mr Vaughan for the Claimant made no submissions to me on the issue of fundamental dishonesty. I consider he was correct to do so. However, given the gravity of the allegation I do need to consider it in some detail to explain my conclusion.

8) The key issue said by the Defendant to involve fundamental dishonesty is this:
   a) In his Particulars of Claim and Schedule from May 2015 the Claimant asserts that he had not returned to his taxi-driving work since the accident, and was unlikely to work again. A claim for past and future loss of earnings in the sums of £35,651 and £83,376 respectively was put forward. Expert medical reports were served which supported that contention. Further, in September 2015 the Claimant signed a Part 18 request for information which asserted a substantial (although now not complete) past loss of earnings.
   b) The assertions in those documents were false, and Mr Stanton must have known them to be false.

9) The evidence before the court at the start of the trial on this issue was, in summary, this:
   a) Reports served on the Claimant's behalf by a number of eminent medical experts, following examinations of him in September 2013 (Mr Scott, orthopaedic) and in February – April 2014(Prof Frostick, orthopaedic, Prof Woodhead, respiratory, Prof Stanley, hand, Professor Chadwick, neurology, Dr Proctor, psychiatry, and Dr Ghadiali, neuropsychology). In every one of these reports the author records that the Claimant had not returned to work as a taxi driver since the accident, by reason of his various injuries.
   b) Surveillance evidence however demonstrated that the Claimant was working as a taxi driver on several days in February, March and July 2014. That evidence further shows, as the orthopaedic experts have agreed, no apparent limitation of movement of the left shoulder. Mr Stanton is also seen to perform bimanual tasks – rummaging in the boot with a document in one clip, and carrying a shopping trolley and shopping in 2 others.
   c) Further, records obtained by the taxi agency with whom Mr Stanton was registered, Delta, show that in fact he was taking some account work from September 2012, and worked on at least 133 occasions in the period September 2012 – 2015. The records are partial because they only show account, rather than cash work, which Mr Stanton admitted formed the lion's

share of his income. They nevertheless clearly demonstrated a pattern of work starting from 3 months after the accident (admittedly however, with some breaks, including a short period around his shoulder operation the following year).

10) By the time of trial Mr Stanton had resiled from the claim in the original schedule of loss, conceding that he was doing some work and hoped to continue to do so. The 3rd and final schedule of loss served by him in October 2016 acknowledged that after a number of unsuccessful attempts to re-establish a regular pattern of driving, he ultimately managed to do so, albeit on a part-time basis only. Giving credit for the earnings he had received, and his ongoing residual earning capacity, his claim was put at £23,681 and £10,690 for past and future losses respectively.

11) In several statements served by him over the course of 2016 he explained that he had indeed started to try to get back into taxi driving after the accident, but was so limited by pain and fatigue that he was not able to put in sufficient hours to generate a profit; taking into account his fixed overheads he frequently made a loss. As to why the medical experts recorded that he had not returned to work, he explained that he had tried to tell them that he wanted to and was trying to work, but also that he did not actually think he was properly "working", because he was not making a profit. He relied upon his limited literacy, difficulty with documentation, and post-accident psychological state, in support of his explanation.

12) In those statements, and in a Reply to the Defence which had been amended to assert fundamental dishonesty, Mr Stanton also discussed the circumstances in which the claim was made:

    a) That he had, at his then solicitors' request[1], tried to find records in relation to his pre-accident earnings, "*but I have never been very good at paperwork*"

[1] E Rex Makin & Co

but had produced tax returns which a friend had helped him with (para 58, statement 10.3.16);

b) That he saw the schedule of loss in May 2015 under some time pressure, and with limited understanding of what was involved. However, he "*truly believed"* that he had fully explained that he understood the notion of a "return to work" as a return to doing more than breaking even at work [Reply, 16.8.16, para 9];

c) That he was in a state of considerable psychological distress at the time: para 60 statement 10.3.16)

13) Mr Stanton gave evidence before me. He was clearly in a state of great distress throughout the process, and indeed throughout the trial, choosing to remain in court for its duration. It was also clear, and I accept, that he has some reading difficulties and difficulties addressing documentation. I make this further observation of his demeanour in court: whilst I am of course not medically qualified and only saw him under trying circumstances, it was markedly apparent that Mr Stanton made very little use of his left hand, laboriously manoeuvring, and turning pages in the 2 trial bundle files, largely solely with his right hand.

14) In the witness box Mr Stanton repeated the explanation set out above, namely his belief that "*working*" meant in effect, work which made him a profit. He also spoke of his poor memory and difficulties with literacy. He repeated that he believed he had tried to convey to all those who asked him that he was trying to work and did want to get back to working more.

15) I find this explanation difficult to accept; I consider it implausible. I consider that the notion of "working" is sufficiently straightforward that Mr Stanton would have realised that he was working when out in his taxi, whether or not he made any money from it. Further, I find that that was precisely what he did convey in the Reply to the Part 18 Request which he signed on 24.9.15, where he did make the distinction between working and making a profit in the 1st 2 sentences of para 1:

Over the period from June 2012 to August 2015 the Claimant will say that he attempted on possibly half a dozen occasions to return to work as a taxi driver but was only able to manage a few hours each time due to pain. He did not cover his costs"

16) However, when pressed in the witness box, and accused of dishonesty, Mr Stanton began to develop a different line of defence. It began with him telling me that he had no say in the content of the schedule, was not told everything and did not read a lot of it because he thought he was being looked after; he then said that he did not think he saw the Particulars of Claim or Schedule – if he had done so he would have remembered, and would have discussed them with his wife. Ultimately, when pressed further, he said that his solicitor, who he named, had told him to say that he was not working, and had done so "*a good few times"*. He said that he had parted company with this firm in late 2015 after a disagreement, but could not recall who had ended the retainer. He was aware that they then sued him for their fees but could remember very little about it.

17) The very serious allegation against his solicitor was not included in any of Mr Stanton's statements, and was wholly unsupported by the evidence of his daughter, Ms Hayley Stanton. She works for an insurance company in the personal injury field, and had helped her father considerably as a Mackenzie Friend when he became a litigant in person until the instruction of his current solicitors, drafting statements and the Reply to the Amended Defence for him. She agreed with Mr Watt Pringle QC for the Defendant that she understood the significance of false statements, and also agreed that if her father had been advised to give misleading evidence she would have said so in his statements. She said that he had never told her that this had happened.

18) Ms Stanton confirmed that the former solicitors had sued her father for their fees of £53,000 and that judgment had been entered against him in that sum. I understand that a charge has now been registered by them against his property.

19) Mr Stanton was also not helped by the evidence given by Dr Ghadiali, expert neuropsychologist (instructed for the Claimant). He told me how important the return to work issue is when examining a Claimant following a head injury, and told me of the considerable efforts he makes to ensure that he has fully probed the issue. Having checked his manuscript notes he was confident that Mr Stanton had given no indication of anything other than that he had not returned to work.

20) Matters became worse for Mr Stanton. Mr Watt Pringle QC applied for disclosure of documents held by Mr Stanton or his current solicitors which might shed light on how the pleadings were created, the conduct of the litigation and the ending of the retainer. Mr Vaughan conceded that Mr Stanton had waived privilege in his oral evidence, and that these documents were legitimately sought. Following production, a selection were put before me which made unedifying reading. Clearly it would have been surprising if they had revealed dishonesty on the part of Mr Stanton's solicitors, but it is conceivable that they would have been sufficiently neutral for his assertion to remain possible. What they showed however was a record of conspicuous propriety on the part of both solicitor and counsel instructed in the case, dishonesty only emanating from Mr Stanton.

21) Mr Vaughan did not invite me to hear again from Mr Stanton, and accepted that I could take these documents at face value, as expressing the truth of their contents. I need not go through them in this judgment in detail, but do note the following:

a) Mr Stanton was sent the draft Particulars and Schedule by post on 14.4.15 and attended a meeting to discuss them in person with his solicitor the following month. Counsel's note accompanying the documents reminded Mr Stanton of the effect of s57 of the CJA 2015 and advised him to check the documents very carefully, and change where appropriate.

b) At that meeting, on his instructions, the claim put forward in the Schedule was increased somewhat (unrelated to loss of earnings).

c) On receipt of the Defence, solicitor and counsel were concerned that it indicated an intention to assert dishonesty, and a conference was held (in July 2015, rather than January; I think para 1 of counsel's note is mistaken here). Here:

   i) Mr Stanton was reminded of section 57 and of the danger of a dishonest claim, particularly as he owned his home without mortgage. Mr Stanton "*insisted that the claim is honest in all respects"* after repeated urging.

   ii) He said had only attempted work on 3-4 occasions over the last 18-24 months.

   iii) In the context of a discussion about the possibility of surveillance, he also, contrary to his later witness statement of March 2016, said that he was aware of having been followed, and had a photograph of the car he thought was following him.

   iv) He admitted that his pre-accident tax returns were dishonest for the years before April 2012 in failing to declare all of his earnings; his earnings were truly declared in the April 2012 return in order to help his son get a mortgage.

d) The draft Reply to the Part 18 request of September 2015 was sent to Mr Stanton on 23.9.15 with a note that it was prepared on the basis of his instructions at a meeting with his solicitor on 22.9.15, adding that he should check it carefully, and warning him of the gravity of a false statement.

e) In October 2015 Mr Stanton was asked by his solicitors to sign a form of authority for release of his taxi records with Delta. This prompted him to telephone them with a wish to abandon the entire loss of earnings claim (see paras 29-30 of letter 19.11.15).

f) A conference with counsel was urgently arranged to discuss this (13.11.15) where:

   i) Mr Stanton "*said that he has been working as a taxi driver much more frequently than he has previously admitted"*

   ii) Counsel insisted that the court could not be misled and advised Mr Stanton to make a full acknowledgment of the situation, correcting his schedule of loss and explaining why. The seriousness of the problem was

emphasised, with adverse consequences likely in any event. However, counsel explained that both he and the solicitor would have to withdraw if he did not take their advice.

iii) It appeared that Mr Stanton accepted the advice.

g) However, for reasons which are not explained in the documents, E Rex Makin in fact chose to terminate the retainer by letter of 19.11.15 on the basis of "*conduct which would justify a finding of fundamental dishonesty in terms of a significant part of the claim".*

h) E Rex Makin then sued for their fees, their CFA with Mr Stanton having been voided by his conduct. Mr Stanton did not contest the claim but consented to judgment being entered (letter 21.6.16).

i) An email from the solicitors to Ms Stanton reiterates that the Particulars and Schedule had been read and explained to the Claimant at a meeting on 14.5.15 (email 3.12.15).

22) Even without this material, I was satisfied that Mr Stanton's conduct was dishonest. This material puts the matter beyond doubt, as Mr Vaughan effectively conceded. I should emphasise here that I wholly accept that Mr Vaughan had not seen any of these documents until they were ordered to be produced by me during the trial. They show that, literacy or learning difficulties notwithstanding, Mr Stanton did know that he was providing false instructions in relation to earning loss – coming clean about this when asked to disclose the Delta records.

23) Is this dishonesty fundamental in relation to the claim sufficient to trigger my duty to dismiss under section 57? Both counsel referred me to County Court decisions relating to the use of the term in the QOCS jurisdiction, which I accept is similar, and I have read them. However, again as Mr Vaughan effectively conceded, the repeated falsehoods put forward by Mr Stanton about his work can only be described as fundamental. Dr Ghadiali observed that the return to work issue was central to his examination and conclusion. I accept and agree with that. In my judgment the Claimant has been fundamentally dishonest in relation to the claim.

24) Accordingly, I must dismiss the claim in its entirety, unless satisfied that the Claimant would suffer "*substantial injustice*" were I to do so. Mr Vaughan accepted that the miserable consequences which are likely to accrue for Mr Stanton following this judgment cannot here be equated with "*substantial injustice*", or the purpose of the legislation would be frustrated. No basis for a finding of substantial injustice was put to me, and I find there to be none.

25) Accordingly, I dismiss Mr Stanton's claim.

26) Under s57(4) I must however record the amount of damages I would have awarded him but for the dismissal. Thus I need to consider both contributory negligence and quantum.

27) The difficulty with both of these exercises is that I have found significant dishonesty already against Mr Stanton, and I must bear this in mind when assessing his case here. I accept that neither neuropsychologist took the view that the lies about working invalidated their assessment of Mr Stanton's neuropsychological injury but I conclude that I must be much more circumspect, for these reasons:

a) One of the reasons why Dr Ghadiali felt he could rely on Mr Stanton's claim of psychological harm was that he had reported it to others. The difficulty obviously here is that he had also lied to others. Why should I accept selective honesty?

b) Professor Baker for the Defendant did not feel that Mr Stanton was generally deliberately lying, but that as a man of limited articulacy, he would exaggerate as a means of conveying his distress. That may be so, and were it not for the Rex Makin documents, might have been persuasive. Those documents however, unseen by these experts, demonstrate a Claimant conscious and capable of manipulating his declarations to the Inland Revenue, and wholly aware of the significance of his lies in this claim,

evidenced by his wish to abandon the earnings claim when asked to disclose the Delta records.

28) I do then find that I must look very carefully at the accuracy of Mr Stanton's assertions when addressing the remaining issues in the case.

Contributory negligence

29) The Defendant admitted liability under the OLA 1957 on the basis that the roof through which Mr Stanton fell was fragile. Contribution was alleged on the basis that as an experienced tradesman, he failed to take proper care of his own safety.

30) The accident occurred when Mr Stanton went up onto a 12-14" walkway between 2 outhouse buildings to clear an elder bush for Mr Hunter, a friend. He said was aware that the roof to his right was made of asbestos and therefore fragile, but assumed that its edge would be underpinned securely. He said that having thrown the sawn-off bush down to the ground, he turned and a sudden gust of wind blew him off balance; he put his foot out gently to regain his balance against the edge of the roof, but went straight through.

31) He told me it was a fine day. I have not had any meteorological evidence put before me. I note that he was a well-built man at the time of the accident. Is it likely that a gust of wind caught him as he describes? I do find this difficult to accept. I also note that in his Reply to the Amended Defence of 13.1.17 he avers that the upstand of the wall to one side of him afforded him apparent shelter "*and handhold*." (para 17), an assertion also found in his witness statement of 19.4.16 (para 16).

32) In other words, Mr Stanton was asserting there that he thought the walkway was safe, and had something to hold onto in the shape of the adjoining wall. There was also no pressure of time, and it was quite possible for him to refuse to do

the work if he thought it was dangerous he was an experienced worker in the construction

33) On the other hand, even though I cannot be satisfied that Mr Stanton's account of a gust of wind is established, there must be some reason why he ended up going through the roof, and a loss of balance, however caused, seems wholly plausible. Given the narrowness of the walkway I find it was wholly foreseeable that someone up there might lose their balance and fall to the right, where the fragility of the roof was likely to result in serious injury. Mr Stanton's former solicitors gloomily predicted a significant finding of contributory negligence. It may be that they had additional and unhelpful instruction from Mr Stanton. All I have had is Mr Stanton's evidence together with that of Mr Hunter. Mr Hunter could unfortunately help little. He had done the same job himself some time before. However, from the ground he could not see precisely how Mr Stanton came to fall, and has admitted that the condition of the roof did breach his common duty of care under the OLA 1957.

34) In summary then the evidence before me was confined effectively to the fact of a fall from a narrow walkway adjacent to an unfenced and unsafe roof. In these circumstances I do not find that the Defendant has established contributory negligence against Mr Stanton.

<u>Quantum of damages</u>

General damages

35) What injury did Mr Stanton suffer? Clearly the immediate consequences were grave and would have been debilitating: a lengthy stay in hospital, ongoing symptoms from wrist, chest and shoulder, the latter necessitating surgery the following year. That much is clear.

36) It is more difficult to assess the longer term sequelae. Mr Vaughan in closing submissions argued that these comprised ongoing problems of cognitive processing, hand problems with a risk of deterioration, ongoing problems with

lung function secondary to trauma, and persisting psychological problems. I consider that a sensible list, omitting as it does several of the complaints advanced by Mr Stanton but on which he has given conflicting accounts or where the evidence suggests an improvement some time earlier (for example, with his shoulder injury, where the clinical records suggest he was discharged from physiotherapy in early 2014).

37) I cannot however wholly accept Mr Vaughan's submissions in relation to the ongoing consequences, which I consider in turn:

38) Psychiatric injury:

a) Dr Procter, expert psychiatrist initially instructed for the Claimant, considered that Mr Stanton developed an Adjustment Disorder by reason of the accident, with symptoms of anxiety and depression. Dr Ghadiali and Prof Baker did not disagree, and I find it wholly likely that Mr Stanton would have developed a psychiatric response to this serious accident and its consequences.

b) Dr Proctor's retirement led to the instruction of a 2nd psychiatrist, Prof Gilbody, who examined Mr Stanton 2 years later. He found evidence of post-traumatic stress disorder based upon Mr Stanton's account. I am not persuaded by this diagnosis – the earlier account given to Dr Procter explicitly describes a developing depression and anxiety developing in the months following the accident rather than symptoms of PTSD in the immediate aftermath. The neuropsychologists agreed that late onset PTSD was unlikely, had not found evidence of it themselves, and I do not find it established.

c) I also do not find that Mr Stanton suffered, or suffers from, significant levels of psychiatric injury. He completed a Hospital Anxiety and Depression Questionnaire for Prof Baker for the Defendant, yielding a high score suggestive of severe depression. Prof Baker considered that this was not reliable because it was inconsistent with the reality that Mr Stanton was by this time working regularly. He persuasively explained that this level of result was more consistent with profound lethargy and inactivity; Mr Stanton

presented in fact in a very different way. Prof Ghadiali agreed that his complaints of psychological distress were exaggerated.

d) As I have noted above, neither neuropsychologist considered Mr Stanton to have been deliberately lying, but they had not had the benefit of the Rex Makin file. This does cast a different light on the exaggeration that both experts noted and the poor effort test recorded by Prof Baker. I conclude that I can place little reliance on Mr Stanton's account of his psychological problems. I note that he was extremely distressed during the trial, but not only is this inconsistent with his work pattern, but may well have another cause, namely the implications for him of the trial. He has alluded in the documents to the stress of the litigation. I find the stress he currently experiences in this case to have been of his own making.

e) Accordingly, I find that Mr Stanton did develop an adjustment disorder secondary to the accident and his injuries but cannot find that it extended much beyond early 2014 (when he was discharged from physiotherapy and when the surveillance footage shows him to be working, apparently without physical restriction).

39) Neuropsychological injury:

a) Dr Ghadiali found impairments in Mr Stanton's memory and cognitive processing powers. Prof Baker accepted the validity of those findings but a year later found that the memory impairments had improved. He thought it unlikely that a mild brain injury such as that found by Prof Chadwick[2], would result in asymmetrical organic improvement, and thought constitutional factors, with anxiety, lay behind the processing difficulties.

b) Dr Ghadiali agreed that anxiety may be implicated, and both experts thought that treatment would be likely to effect improvement.

c) Dr Ghadiali maintained his view that there were indeed also persisting organic symptoms from brain injury. However, he agreed they were subtle and would not inhibit Mr Stanton in the workplace or with domestic activity.

[2] Neurologist, instructed for the Claimant

d) I found both experts to be helpful, and indeed to be fairly generous to Mr Stanton. I found both their arguments as to the existence of ongoing organic injury to be equally plausible. Applying the burden of proof then, I must find that Mr Stanton has failed to establish such an injury – and indeed the evidence of a capacity for deliberate dishonesty in the Rex Makin file strengthens my conclusion here because part at least of Dr Ghadiali's reasoning must depend upon the Claimant's self-report.

40) Chest injury:

a) The chest experts (Prof Woodhead and Dr Hind) accept Mr Stanton's account of ongoing left chest discomfort and worsening breathlessness, which they attribute to the accident and to a modest element of psychological reaction ("*an element of hyperventilation / disproportionate breathing")*.

b) They do not consider that this respiratory disability should prevent him from continuing to work as a taxi driver.

c) I accept this injury is established.

41) Wrist injury:

a) Prof Stanley and Mr Redfern accepted that Mr Stanton had suffered a serious wrist fracture which did have a 20% risk of deterioration, and overall, a 5% chance that it would require surgical correction.

b) Prof Stanley in 2014 accepted Mr Stanton's account of significant functional limitation.

c) Mr Redfern, in 2015, found evidence of inconsistency on testing for grip strength, and in the precise symptoms complained of. He did not believe there to be significant compromise to hand function such as to require family assistance or interfere with domestic activity.

d) Mr Redfern's opinion is consistent with what I saw on the surveillance videos, and I find that Mr Stanton is not compromised in his wrist function to any significant extent, and that his prospect of future deterioration is modest.

42) Other orthopaedic injuries: Mr Vaughan accepted that there had been a good recovery from these.

43) Neither Mr Watt Pringle QC nor Mr Vaughan addressed me in detail as to the appropriate level of general damages, simply asserting that the appropriate award was:
    a) Probably somewhere between £25,000 and £45,000 (Mr Watt Pringle QC), and
    b) On his best case £55,000 and on his worst, £35,000 (Mr Vaughan).

44) It will be clear that I do not accept the assertions which underlie Mr Vaughan's "best case", and conclude that his submission of £35,000 is appropriate to reflect the immediate gravity and debility of the accident (with further surgery a year later), and the resolving symptoms thereafter with little ongoing attributable effect that can be identified.

Loss of earnings, past and future

45) It will be apparent that I can place little reliance upon anything Mr Stanton says about his earnings, pre or post-accident, or into the future. The 2 last are tainted by his dishonesty in these proceedings, the former by his declaration as to his tax returns (see para 12.a above).

46) Certainly he would have been unable to work for a period after his accident and operation, and likely to have built up earnings thereafter only slowly (although he does appear to have been working with Delta shortly after both). I find that I can only approach the quantification of these losses with the broadest of brushes, namely this:
    a) Post-accident – inability to work for a month whilst in hospital, and 2 months thereafter;
    b) Then reduced earnings until recovery from shoulder operation – March 2014 (but omitting the period July – September 2013 in its entirety post the 2nd operation).

c) From that point on (which coincides with the surveillance evidence), and into the future, I am unable to accept any ongoing loss of earnings. I simply cannot accept Mr Stanton's evidence.

47) As to earnings levels, Mr Watt Pringle QC was content for me to assume a pre-accident earning capacity based upon the 3 pre-accident years (despite Mr Stanton's reported confession in that regard), namely of £7,571.03pa net. Accordingly, I would award:

a) 6 months full loss of earnings (after accident and after operation) = £3,785.51

b) Loss occasioned by capacity only to work part-time – I take a 50% level:

i) October 12 – June 13: £2,839.14

ii) October 13 – March 14: £1,892.76

c) Total: £8,517.41

48) On the basis of a defined, and time-limited, loss of earnings, I find no handicap on the labour market and make no additional award for this.

Care

49) Mr Stanton will have needed personal care as a result of the accident, and following his shoulder operation, and indeed this is modestly claimed in the schedule. However, I find it difficult to accept even this when the Delta records show him to be working (September 2012). Consistent with my approach to loss of earnings, I award personal care as pleaded for a period of 3 months post-accident (excluding the 1st month when he was a in hospital), a further 3 months at the time of the shoulder operation, and on a reduced basis otherwise until March 2014.

50) The parties did not develop orally their contentions as to the appropriate hourly rate. Given that I am confining the care award to post accident/operation care, on balance I would award the aggregate rate.

51) For the future, all I have is expert agreement as to a 20% risk of arthritis, and a 5% risk of needing surgery. I have no evidence on the functional limitations such developments will bring should they eventuate, or for how long. I cannot make an award for future care on this basis.

52) Calculation:

a) 6 months at 2 hours per day at £8.98/hour: £3,239
b) 15 months at 1 hour per day at £8.98/hour: £4,041
c) Total: £7,280
d) Less 25%: £5,460

DIY

53) Mr Stanton was an energetic home improver before the accident, I accept. Clearly in the immediate aftermath his capacity would have been non-existent, but there is no evidence of replacement in this period. Mr Stanton did say that a couple of friends helped him from time to time but did not identify when. Also, I note that he told Rex Makin in July 2015 that he had been up a ladder a couple of times to fit security cameras to his house. He may have been "shaking like a leaf" doing it as he is reported to have said, but he nevertheless did this work, without calling upon friends. The medical evidence does not support any ongoing incapacity here and I make no award, past or future.

Miscellaneous

54) The Schedule claims the sum of £500 in respect of miscellaneous costs. This is wholly unparticularised and I heard no evidence about it during the trial or submissions. I cannot make any award here.

Treatment

55) Both Dr Ghadiali and Prof Baker were of the view that Mr Stanton would benefit from psychological therapy relating to the accident, although I repeat that this was without sight of the Rex Makin file. He has had 14 sessions of CBT already –

with effect - and it was not made clear whether the experts intended that he would need another full course (Dr Ghadiali suggests a full course to comprise 18-24 sessions). For all these reasons I cannot make a full award and would award the cost of 6 further sessions: £1,200

56) There is no basis upon which I can make an award for future physiotherapy; I do not have evidence of the cost of future surgery, and could only award 5% of the cost in any event.

57) Interest:

a) The Particulars of Claim assert the usual entitlement to interest, and although it is not developed in the original schedule, it is mentioned fleetingly in the final schedule.

b) The counterschedule did not touch on interest and neither party raised it in closing submissions.

c) However, subject to submissions they may wish to make upon receipt of this draft judgment, I consider that my obligation under s57(4) of the Act does extend to the interest award I would have made had I not dismissed the claim.

d) General damages: 2% pa since service of proceedings: 2.6.15 – 31.3.17, 1.83 years, 3.66%: £1,281

e) Special damages: from 27.6.12 – 31.3.17, ½ the Special Account Rate: 1.19%; total special damages of £13,977.41, interest: £166.33

f) Total: £1,447.33

58) Summary:

a)	General damages	£35,000
b)	Loss of earnings	£8,517.41
c)	Care	£5,460
d)	Future treatment	£1,200
e)	Interest	£1,447.33
f)	Total:	£51,624.74

59) The sum I would then have awarded would be **£51,625** had I not had to dismiss the claim in its entirety.

60) I invite submissions from the parties as to the consequential order to be made in the case.

RECORDER S A HATFIELD QC
31st March 2017