



EMPLOYMENT TRIBUNALS

Claimants

Respondent

v

Mr S Mohamed

The Government of the State of Kuwait

Heard at: London Central Employment Tribunal

On: 7-8 March 2024

Before: EJ Webster
Mr P Alleyne

Appearances

For the Claimants: Mr G Adams (Counsel)
For the Respondent: Mr M Sethi KC (Counsel)

REMEDY JUDGMENT

1. The Respondent is ordered to pay the following amounts:

Pain suffering and loss of amenity	£42,000
Interest @ 8%	12,768
Past Losses	£169,033.95
Interest @ 8%	£25,694.18
Future losses	£83,094.64
TOTAL Payable	£332,590.76

WRITTEN REASONS

2. Oral reasons were given for the above Judgment at the hearing. On conclusion of the hearing, the Respondent requested written reasons.

The hearing

3. Unfortunately, due to circumstances beyond the panel's control, Ms Plummer was unable to attend the hearing. The parties had agreed, in advance and in writing that the Tribunal could proceed with one member and the judge.
4. We were provided with a bundle numbering 325 pages and witness statements for the Claimant and Mr Campbell-Drummond, solicitor for the Respondent.
5. The last page of the bundle was a document, in English, which appeared to set out something called a bonus . During his witness evidence I allowed supplementary questions from Mr Adams about this document. The Claimant stated that this document was evidence that had he remained with the Respondent, he would have been entitled to a pay rise. When cross examined on this point, Mr Sethi said that the Respondent did not recognise this document. It became apparent that the Claimant said that he had translated the original document into English and that this was the translation. The original document however had not been produced or disclosed to the Respondent.
6. The Tribunal refused to allow the Claimant to produce the original document. Oral reasons were given at the time. In summary, the document was not going to be ready until the next day when the witness evidence had already been concluded. The parties had had ample time to prepare for this hearing, the Claimant's representatives knew that producing the original document with an official translation was required as it had been required in the previous bundle, there was no explanation for why the original document had not been disclosed or included in this bundle and were it to be produced it placed the Respondent at a significant disadvantage because it was in Arabic so they could not, without their client present (which they were not) take instructions on its authenticity or its content or the validity of the translation which was now called into question given that whilst we have no doubt the Claimant is fluent in both languages, had been done by the Claimant not a qualified translator.
7. At the conclusion of submissions, Mr Sethi asked us to note that the Respondent reserved its position as to any award made by the Tribunal given an upcoming Court of Appeal referral on two other cases concerning whether the Respondent can be held liable for mental as well as physical injury under the State Immunity Act.

8. Whilst the premise for the calculations was decided by the Tribunal, the mathematical calculations were done with the agreement and involvement of the parties.

The Law

9. A tribunal is able to award compensation for personal injury consisting of psychiatric illness where this has been caused by a discriminatory act (*Sheriff v Klyne Tugs (Lowestoft) Ltd* [1999] IRLR 481). Such damages are recoverable for any harm caused by a discriminatory act and not simply harm which was reasonably foreseeable (*Essa v Laing Ltd* [2003] IRLR 346, [2003] ICR 1110, EAT).
10. When it comes to the assessment of damages in relation to a proven psychiatric injury, tribunals are 'obliged to approach the assessment of damages for psychiatric injury on the same basis as a common law court in an ordinary action for personal injuries' (*HM Prison Service v Salmon* [2001] IRLR 425).
11. We must first determine whether the loss is attributable to the unlawful discrimination, the starting point being a straightforward "but for" causation test, subject to any intervening event that wholly breaks the chain of causation. Provided we are satisfied that the loss is caused by the respondent, we must then assess the appropriate level of compensation.
12. When more than one event contributes to the injury suffered by a claimant then, save where the injury in question can be said to be 'indivisible,' the extent of the respondent's liability is limited to the contribution to the injury made by its discriminatory conduct (*Thaine v London School of Economics* [2010] ICR 1422 EAT, *Olayemi v Athena Medical Centre* [2016] ICR 1074, Case Numbers: 2208142/2017, 2205586/2018 and 2201492/2019 31 *BAE Systems (Operations) Ltd v Konczak* [2017] EWCA Civ 1188, *Blundell v Governing Body of St Andrew's Catholic Primary School* [2011] EWCA Civ 427).
13. Personal injury compensation potentially includes compensation for financial losses arising from the injury and for the injury itself.
14. When calculating compensation for financial loss it is helpful to consider the past and future losses separately. The application of this basic principle to past losses is relatively straightforward. Past losses are ascertainable with some accuracy. The only difficulty is deciding whether the loss is attributable to the unlawful discrimination.
15. The application of the basic principle to future financial losses is more difficult. We must consider what would have happened, but for the unlawful discrimination and what will happen and compare the two. Neither of these are certain. The burden of proof is on the Claimant.

16. The question of mitigation of loss also arises. The Claimant is expected to take reasonable steps to minimise the losses suffered as a consequence of the unlawful discrimination and to give credit for any payments he receives towards his losses. The Respondent cannot be expected to pay for any loss that flows not from the unlawful discrimination, but from the Claimant's failure to act reasonably in light of that unlawful discrimination. The question of reasonableness as it relates to mitigation is to be determined by the tribunal itself taking into account all the circumstances. We also need to be mindful on the prospects that the Claimant might have been promoted, but equally might have lost his job.
17. In personal injury cases where the losses are long term, we have a choice between different approaches. The first approach is to endeavour to undertake a reasoned calculation of the earnings in the "what would have happened" and "what will happen" scenarios and deduct the latter from the former to identify the gap. The Actuarial Tables with explanatory notes for use in Personal Injury and Fatal Accident Cases (referred to as the Ogden Tables) have been developed for this purpose. The relevant edition is the Eighth Edition.
18. In order to be able to use the Ogden Tables it is necessary for us to make findings, in both scenarios, as to:
- the Claimant's likely retirement date (to determine which tables should be used)
 - his earnings including his prospects of receiving pay increases
 - whether any of the discounts found in Tables A to D should be applied – a discount for early death is built into the actuarial calculations behind the Ogden tables
19. An alternative approach to the calculation approach, where the picture is very unclear, is a Blamire award (named after the case of *Blamire v South Cumbria Health Authority* [1993] PIQR Q1). This allows for a broad brush approach to be taken. This is only really appropriate in exceptional cases. The preference will always be to undertake a reasoned calculated approach where possible.
20. The possibility of a *Smith v Manchester* award, where a lump sum is awarded that recognises loss of earning capacity/handicap on the labour market, should also be considered, but is not necessary when using the Ogden Tables to calculate residual earnings. This is also factored into the Ogden Tables.

Facts

The Claimant's health

21. We did not have all of the Claimant's medical records before us. Nevertheless we had a joint expert report by Dr Herescu, a consultant Psychiatrist, which addressed causation, prognosis and all relevant factors that we need to have regard to when considering the level of award for personal injury as set out in the JC guidelines and the issues identified in the legal assessment above.
22. The Respondent has not sought to challenge the content of the report by way of written questions to the expert nor by calling her as a witness. However they have raised issues regarding the reliability of some aspects of her assessment on the basis that they do not believe she had full access to the Claimant's GP records at the time of writing the report. She references a final medical bundle dated 13 June 2023 in her report. It is not clear what this contained nor why the Respondent did not challenge it at the time if they thought she had insufficient evidence upon which to write her report.
23. We also had a GP letter dated February 2024 which sets out the Claimant's current health conditions, some information on when they were diagnosed and what medications he is currently taking. We also had other GP notes and confirmation of dates in terms of treatment and diagnosis between 2020 and 2023. These were not a complete record.
24. The Claimant's witness statement also dealt with a number of matters regarding his health, little of which was challenged.
25. The Claimant has numerous conditions. At the time of his dismissal the claimant had prostate cancer, (diagnosed in 2008), hypertension, a bad back and the onset of osteoporosis due to the hormone treatment he was taking for the cancer and lower urinary tract symptoms.
26. His health conditions have increased as set out in the GP report dated February 2024 and he now has the additional conditions of multiple joint and bone pain, hearing loss and depression.
27. It is clear from Dr Herescu's report that her opinion was that the claimant had no previous history of mental health conditions. The Respondent seeks to cast doubt on the totality of the records before Dr Herescu and therefore the reliability of her conclusions on this point. However we have no reason to think that Dr Herescu's assessment is wrong. There is a GP's note (p322-324) stating that he was not diagnosed with depression until June 2020 which suggests that there had not been any earlier episodes of depression or if they were they had not been for some time. None of the GP notes we had referred to any mental health issues. We also had the Claimant's evidence that prior to this event, he had not suffered from any such condition. We accept that evidence.

28. Dr Hersecu's report is unequivocal in stating that the dismissal was the cause of the Claimant's depression. We consider that it is reasonable for us to rely on her report which indicates that it was the Claimant's dismissal that caused the injury of depression. The medical evidence is clear. He did not see his GP prior to his dismissal with any mental health issues. Therefore even during the potential stress caused by the facts or matters relied upon for the claims we did not uphold, the Claimant does not develop depression until after the dismissal. There was no evidence to suggest that if the Respondent had not dismissed him, he would nevertheless have gone on to develop depression or any other mental health matter due to the other matters which the Tribunal did not uphold as discriminatory.

29. Amongst several entries that we have had regard to, the expert report says as follows:

"4.13 No diagnosis of mental health until June 2020 when he scored Moderately Severe for Depression (PHQ-9) was 16/27 and Moderate anxiety GAD-7 was 10/21.

....

"6.1.6 Based on the mental state examination and on his medical history, he only developed depression in the context of losing his job.

6.1.7 He meets the criteria for severe depression and anxiety.

6.1.10 The grief response has persisted for an atypically long period of time following the loss (more than 6 months at a minimum) and clearly exceeds expected social, cultural or religious norms for the individual's culture and context. Grief reactions that have persisted for longer periods that are within a normative period of grieving given the person's cultural and religious context are viewed as normal bereavement responses and are not assigned a diagnosis. The disturbance causes significant impairment in personal, family, social, educational, occupational or other important areas of functioning.

6.1.11 His anxiety and depression scale have not improved despite being in an antidepressant since September 2021 (Citalopram 20mg tablets). He also received talking therapy over the phone as he expressed suicidal thoughts.

6.1.12 His PHQ-9 for depression is 22/27, indicating severe depression and his GAD-7 for anxiety is also severe at 21/21.

6.1.13 Prognosis for his depression is poor e.g. this indicates that their condition is unlikely to improve and that their quality of life will be significantly affected. Not having a job and not feeling useful and being invalidated by the workplace after 11 years of work indicates that his prognosis is poor."

30. The medical evidence from the Claimant himself is that prior to this point, despite managing various different physical diagnoses such as prostate cancer, hypertension and lower back pain, he had never had any mental health difficulties or conditions.
31. We conclude therefore, that on balance of probabilities, there is a definitive causal link between the dismissal and the Claimant's depression.
32. The Respondent asserted that given that we did not uphold several of the Claimant's claims of discrimination, we should apportion the cause of the depression between those issues which we did not uphold as discriminatory and those that we did. We do not agree that there ought to be any apportionment between other non-discriminatory causes and the dismissal. The report and the chronology of the diagnosis of depression clearly tie the causation of the depression to the dismissal; not the issues that pre dated it. Whilst we can believe that the previous issues, which we did not find to be discriminatory, may have caused the claimant transitory stress, we accept that the Claimant has shown, on balance, that but for him being dismissed, he would not have developed depression. It is therefore not appropriate to apportion causation.
33. Taking into account the Judicial College guidelines outlines the factors to be taken into account in valuing claims of this nature we make the following findings of fact which we think are relevant to assessing the bracket for damages.
34. The Claimant says that he remains unable to work. He also says that he has not been able to work since June 2020 when he was diagnosed with depression. The medical report highlights that although he may be able to return to some part time work, the grief response he has had to the dismissal has continued for a longer period than would be expected and it says that the depression has caused low mood, disturbed sleep and social withdrawal.
35. We had no evidence to suggest however that he was no longer able to practically look after himself e.g. cooking, shopping etc. nor did we have any evidence as to whether he had carried out those tasks beforehand. The Doctor's report stated that he looked kempt and there was no evidence of forgetting to eat or anything about any self neglect or an inability to care for himself. Some of the relevant extracts of the reports are as follows:

6.2.1 Due to his depression, the Claimant is no longer enjoying activities he used to love e.g. going out with his wife, talking to his family, eating out, going to shows, and being with his family.

6.2.2 His sleep is impaired and he feels angry as he lost money, he feels ashamed whom everyone in the family asked for advice and he feels he

lost that role. He is all consumed by the process and his quality of life is reduced significantly.

6.2.3 He is isolated as not in touch with anyone from work.

6.2.4 He lost his appetite and lost interest in watching the news, movies, and reading books.

6.2.5 He reported he cannot focus and concentrate as he used to do in the past.

6.2.6 He reported alienation from his family as they perceive him "irritable".

6.2.7 He reported he mainly stays indoors and he ends up focusing more on his physical pain.

36. The Claimant was not challenged on his witness statement with regard to the impact it has had on him. In his witness statement he says that the dismissal has caused social isolation and a feeling of worthlessness. He says he has socially withdrawn and part of that comes from the fact that he had social links to his colleagues which have now been severed.

37. The expert report states that the antidepressants are of a therapeutic dose at 20mg. He has had talking therapy which has also had little effect. The expert does not suggest any further treatment that would be successful that has not already been tried.

38. We did not have any evidence regarding future vulnerability presumably due to the Claimant's age and the fact that he has not recovered. However there is no suggestion that he will get worse or be more susceptible to a worsening of his condition in the future.

39. The prognosis given by the expert was generally poor. Some relevant extracts are as follows:

"6.1.13 Prognosis for his depression is poor e.g. this indicates that their condition is unlikely to improve and that their quality of life will be significantly affected. Not having a job and not feeling useful and being invalidated by the workplace after 11 years of work indicates that his prognosis is poor."

6.5 The Claimant's prognosis

6.5.1 Prognosis for his depression is poor e.g. this indicates that their condition is unlikely to improve and that their quality of life will be

significantly affected. Not having a job and not feeling useful and being invalidated by the workplace after 11 years of work indicates that his prognosis is poor.

21. However she does say that

6.8.6.2 Should environmental changes occur e.g. he finalises the process around his dismissal; he may contemplate finding some other activity/part-time work so he can return to feeling useful and socialise and remove the risk of isolation, shame, and guilt he has been experiencing.

40. The Claimant clearly has sought medical help and has availed himself of all treatments prescribed. The expert states as follows:

6.8.4.4 His depression is not responding to the treatment plan which is in line with the treatment guidelines.

Returning to Work

41. We have a document dated February 2024 which confirms that the Claimant is unwell with depression as of that date. It also sets out the other medical conditions that the Claimant has.

42. Prior to being dismissed, the Claimant already had many of the conditions listed and had only had 3 days of sick leave. We accept the Claimant's evidence that he continued to work despite the impact of his cancer and his other conditions such as hypertension, osteoporosis and a bad back. From evidence he gave to us we conclude that the Claimant was clearly motivated by and held a lot of his self-identity in his work and in working more generally. We accept his evidence that prior to the depression he liked work and would have continued to work as long as he was able.

43. We consider it more likely than not that some of the conditions, such as his bad back and osteoporosis will have deteriorated in the 4 years since his dismissal due to the passage of time and the Claimant's age. Whilst we do not intend to be pejorative in our comments, the passage of 4 years in your 70s is likely to be more significant from a health perspective than during middle age particularly when you have several chronic conditions as the Claimant does. Nevertheless we accept the Claimant's evidence that had he remained capable of doing so, he would have continued work until he was 80.

44. We had no evidence to suggest that but for his depression that he would not have been able to continue working until the date of the remedy hearing as his current medical health remained similar to that which he had before the

dismissal save for his depression and he had had very few days of sickness absence prior to his dismissal.

45. We have taken into account the deterioration of his other conditions and his age but we accept that he would have been at work but for the depression.
46. The Respondent asserts that they would have dismissed him at some point in accordance with their retirement policy which states that retirement occurs at 65 as standard but with permission people can continue working until past 70. We found in the liability hearing that the Respondent had not sought to apply that policy to the Claimant as at the time of his dismissal he was 72. We were not provided of any evidence from the Respondent that suggested that they had now started to apply the policy nor how that would have been implemented. Mr Sethi states that it applies but he could not say at what point he believes the Claimant would have been dismissed nor did he provide a likely dismissal date. More importantly we had no witness evidence from anyone at the Respondent which says how they would have come to realise the Claimant's age nor what they would have lawfully done about it to bring the Claimant's employment to an end. We also had no evidence as to how they treat other employees of a similar age.
47. We conclude, taking into account the Claimant's evidence that he wanted to continue work and the lack of any Respondent evidence that suggests that they would have taken steps to terminate his employment, that but for the depression it is more likely than not that the Claimant would have continued working until he was 80.
48. As already referenced, the Claimant's most recent GP report dated February 2024 confirms that his depression and anxiety continues and is confirmed that the Claimant would, in effect, not be able to work between the period of November 2023 to today's date. We conclude that it has not been possible for the Claimant to apply for jobs from November 2023 until the date of this report which is February 2024.
49. The joint expert report states that the Claimant may be able to apply for roles for part time work once the process of seeking legal redress is complete. The Respondent produced significant evidence of the availability of part time administrative roles that he could have applied for during the past few months.
50. The Claimant was taken through several of the roles in the bundle and stated that none of them were suitable as he did not have the necessary experience or skills to carry them out. The Respondent's solicitor's evidence was that he had taken the Claimant's previous roles into account when considering what jobs to include and that these were all relatively basic administrative roles.

51. We note that they fall within various different sectors. We are sure, for example, that a charity fundraising role is likely to have required some previous experience of fundraising and/or charity work. We also consider that it is very likely that the Claimant's age would be a significant barrier firstly to an employer offering him a role and secondly to the reasonableness of requiring him to learn significant amounts of new information regarding entirely new industries. We note that there were no jobs specifically within the medical sector which was clearly the Claimant's area of knowledge and expertise. We also note that all of the roles appear to be 'entry level' work which is not in any way commensurate with the Claimant's previous position nor his age. None of the research done comments on the Claimant's age or the impact this might have on his ability to secure such entry level positions.

52. The Claimant on the other hand had clearly restricted his idea of what he might do in the future to possibly being a medical interpreter. He provided us with no information as to whether he had properly explored this possibility nor of the skills and qualifications that might be required to carry out such a role. He said however that he would not be able to find such work because he now had a reputation in his circles of being a 'bad man'. He did not indicate any willingness to look beyond his small circle of knowledge and connections.

Conclusions

53. It was the Respondent's decision to dismiss the Claimant that caused his depression. We accept that the Claimant has, on the balance of probabilities, provided us with evidence that but for the dismissal he would not have developed depression.

Pain suffering and loss of amenity

54. The JC Guidelines state as follows for the different brackets.

"Moderately
Severe

£19,070 to £54,830

In these cases there will be significant problems associated with factors (i) to (iv) above but the prognosis will be much more optimistic than in (a) above. While there are awards which support both extremes of this bracket, the majority are somewhere near the middle of the bracket. Cases involving psychiatric injury following a negligent stillbirth or the traumatic birth of a child will often fall within this bracket. Cases of work-related stress resulting in a permanent or long-standing disability preventing a return to comparable employment would appear to come within this category.

(c) Moderate

£5,860 to
£19,070

*While there may have been the sort of problems associated with factors (i) to (iv) above there will have been marked improvement by trial and the prognosis will be good.
Cases of work-related stress may fall within this category if symptoms are not prolonged.”*

55. Having considered the evidence against the JC guidelines we consider that the evidence we have regarding this evaluation demonstrates that the Claimant's depression falls within the moderately severe bracket as opposed to just the moderate bracket proposed by the Respondent. The Claimant asserts that he should be at the every top of the bracket. Whilst many of the areas outlined below do push him towards the top end of the bracket we did not consider that we have sufficient evidence to show that his condition is so bad that he should be right at the top of the bracket.. For those reasons we stop short of assigning the top of the bracket and think that it is appropriate to award £42,000.

56. We reach this conclusion because

- (i) The Claimant's ability to cope with life, education and work has been severely affected particularly with regard to work. We had less evidence regarding the impact it has had on his day to day life and we note that he has not provided us with anything that suggests that he is not able to manage with day to day aspects of living such as cooking, shopping, eating or exercise.
- (ii) The Claimant's relationship with friends and family does appear to have been moderately severely affected. He says that he is described as snappy and has alienated some of his family members. He also states that he has withdrawn socially and fails to find joy in any aspects of his life such as theatre trips. The fact that his social life was bound up with his ability to work and that he is unlikely to be able to work again, means that this impact is likely to continue to be moderately severe.
- (iii) He has had all treatment recommended for someone with depression and the dosage of anti-depressants is described as therapeutic. Despite this his depression persists and no further treatment has been prescribed or recommended by the expert or his GP.
- (iv) We did not have significant amounts of information about his future vulnerability but we presume that this is because he has not recovered and has a poor prognosis for recovery and therefore how susceptible he might be to a relapse is somewhat moot.
- (v) His prognosis is poor. The only suggestion of improvement in the report is that once this Tribunal process is finished he may be able to move on and find some part time work and start to build his confidence and self-worth back a bit. However it is couched in possible terms not absolute.

- (vi) Whether medical help has been sought is clear from the information above.

57. Taking all of this into account we therefore find that the Claimant's health has been impacted in the moderately severe bracket and towards the upper end of it given the poor prognosis, the fact that he has tried all treatment yet is unlikely to significantly improve and the level of impact it has had on his private and working life.

Special Damages

Losses to Date

58. The Claimant asserts that his losses ought to be assessed on the basis that he would have received a pay rise in accordance with the translation of the document at page 325. We do not consider that the Claimant has shown, on balance of probabilities, that he would have received a pay rise since his dismissal and/or that it would be at the level he suggests. The document we have seen does not indicate how or why that award would be made nor when it commenced nor that it has been enacted by the Respondent in successive years. The Claimant and those representing him have had a significant amount of time to obtain evidence in respect of any such pay rise and have chosen not to produce it for this hearing.

59. The Respondent asserts that because the expert report states that once the Tribunal hearing has concluded, the Claimant might be in a position to apply for part time work, he has been unreasonable in his failure to submit any applications for work.

60. We make the following observations regarding this argument:

- (i) The Tribunal proceedings did not conclude in November. They will hopefully conclude today.
- (ii) The Claimant has remained unwell since the liability Judgment was issued as evidenced by the GP report dated 27 Feb 2024 (p 322-324)

We therefore conclude that in the period between the liability judgment being sent to the parties and this hearing, the Claimant has not behaved unreasonably by not looking for work as he remained unwell throughout that period and is still unwell.

61. Turning then to the assessment of his future losses. We find on balance, that the Claimant is not going to be able to secure alternative employment between now and his 80th birthday. We reach this conclusion for a variety of reasons some of which are repeats of findings above.

62. Firstly, we consider that it is unlikely that his health is going to improve significantly and certainly not immediately from the point of the Tribunal process being completed. The medical evidence suggests otherwise. Whilst it may improve in time to an extent as per the expert report, it is not clear how long such an improvement will take nor that his health will improve sufficiently for the Claimant to, in effect, reinvent himself and commence an entirely new career. That is the evidence suggested by the Respondent of jobs that they think he ought to be able to apply for either since November or going forward.
63. We accept that there are going to be relatively few jobs within the Claimant's knowledge or expertise that he could start anew in circumstances where his mental health is fragile.
64. We believe that this assessment is particularly pertinent given his age. It is within the Tribunal's general knowledge that finding work as an older person is more challenging as many employers are reluctant to employ older people and particularly people over the normal pension age. Therefore even if the Claimant feels well enough to start applying for roles, the number of roles which are appropriate or accessible for him to obtain will be relatively small and we think it is unlikely that he will be readily offered a role given his age.
65. Nevertheless, we do accept the Claimant's evidence that had he been allowed to remain in his role with the Respondent, he would have continued to work there until he was 80. His identity is strongly bound up with work. He has worked his entire life, giving evidence that he had worked since the age of 9 and that in his head he would have worked until he died. The Claimant knew his job well. He was, it seems, having been there for 11 years, considered good at his job and we have no evidence from the Respondent that there were any performance issues. Remaining in job that you know well, where you have the support of colleagues and that is unlikely to provide significant challenges or difficulties is far easier than attempting to re-train or even start a job with a new employer within your existing skill set. Given that the Claimant had only had 3 sickness days in recent history, we have nothing to suggest that his health would have significantly deteriorated such that his employment would have ended before 80 and we accept his evidence that he would have wanted to work until 80.
66. In those circumstances therefore we conclude that the Claimant is not likely to be able to reasonably find alternative work between now and his 80th birthday but that he ought to be compensated until his 80th birthday as but for his discriminatory dismissal, he would have continued working until then.
67. With regard to the methodology of calculating the future loss, having read the Ogden Table guidance, we accept that the Respondent's methodology is correct. The Respondent uses Table 36 and interpolates the period correctly. We conclude that Table 36 is the correct table to use for the following reasons:

68. At page 20 of the Ogden Tables the following guidance is given

- (i) (m) Fixed periods 41. In cases where pecuniary loss is to be valued for a fixed period, the multipliers in Table 36 may be used. These make no allowance for mortality or any other contingency but assume that regular frequent payments (e.g. weekly or monthly) will continue throughout the period. These figures should in principle be adjusted if the periodicity of payment is less frequent, especially if the payments in question are annually in advance or in arrears.

69. We have considered whether there need to be any adjustments in terms of life expectancy but given the shortness of the period, we do not consider that this is appropriate. We also agree that none of the tables A to D need to be applied to the calculation.

70. We do not accept that the Claimant has established why we should use either the Blamire approach nor the Smith v Manchester approach and Mr Adams made no submissions on this point.

71. It was agreed between the parties that Grossing up was not necessary due to the provisions of s406(1)(b) Income Tax (Earnings and Pensions Act) 2003 which states that the sums for special damages should be calculated on a net basis and that there is no account to be made for tax on an award of damages for personal injury.

Calculations

72. Pain suffering and loss of amenity

Pain suffering and loss of amenity	=	£42000
Interest on the above at 8%	=	£12,768

73. Special Damages

Agreed figures

Annual net salary = £44,916.02

Monthly net salary = £3,743

Weekly net salary = £863.77

Total special damages to date (using figures and calculations in Claimant's most up to date schedule of loss where a salary increase was not included)	=	£169,033.95
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Interest calculation of 8%	=	£25,694.18
Future losses (£44,916.02 x 1.85 as set out in the Respondent's counter schedule of loss)	=	£83,094.64
74. <u>Total payable</u>		
Grand total	=	£332,590.76

Employment Judge Webster

Date: 18 March 2024

(Written reasons)

JUDGMENT and SUMMARY SENT to the PARTIES ON

2 April 2024

.....

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FOR THE TRIBUNAL OFFICE