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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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Between:

PATRICK MCKEEVER

Plaintiff

and

SIMON REDMOND

Defendant

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Colm Keenan QC and Fintan Quinn (instructed by Jim Rafferty & Co.) for the Plaintiff
David Ringland QC (instructed by Johnsons) for the Defendant

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HUMPHREYS J

Introduction

[1] The Plaintiff in this action seeks damages in respect of personal injuries, and other losses, sustained by him as a result of a road traffic accident which took place on 17 November 2015 on the Loughgall Road near Portadown in Co. Armagh.

[2] The Plaintiff is a 53 year old man who lives on the Loughgall Road, close to the scene of the accident. He was a pedestrian on the road when he was struck by a motor vehicle driven by the Defendant. Liability for the accident is in dispute.

[3] The court heard the action on a hybrid basis, with the factual witnesses giving their evidence in court and the expert witnesses connecting remotely. I am grateful to counsel, solicitors and all the witnesses for all their efforts in enabling the case to be heard expeditiously and fairly despite the current restrictions.

The Accident

[4] On the evening of the accident, around 6.30 pm, the Plaintiff was at home when he received a telephone call from a lorry driver friend, Colin McIlwaine, who indicated that he was due to deliver a container to a nearby property and required assistance. The Plaintiff, who had undertaken this task previously, met the lorry at the end of his driveway and got into the cab. They proceeded a distance down the road, turned the lorry and proceeded back along the Loughgall Road in the direction of Portadown. The lorry stopped outside 104 Loughgall Road with the intention of reversing into the yard which was on the opposite side of the road. The Plaintiff alighted from the cab, walked across the front of the lorry and then down its offside. He was then struck by the Defendant's Fiat Punto vehicle, which was travelling in the direction of Loughgall, and sustained serious injuries.

[5] The Plaintiff gave evidence to the court that the yard in question is difficult for a lorry to access and his role was to assist the lorry to carry out the manoeuvre. It is necessary for the lorry to park at an angle, with its front pointing towards the hedge and its rear out into the other lane in order to be able to reverse into the laneway. Once stopped, he recalled telling Mr McIlwaine to put on his dipped headlights and hazard lights but he already had them on. After he came around the front of the lorry, his only memory was someone leaning over him and later waking up in hospital. Under cross-examination, the Plaintiff accepted he was wearing dark clothing and was unable to explain why he did not see the Defendant's vehicle prior to the collision. Under questioning from the court, he stated that he had a high-visibility jacket in his house but was not wearing it on the evening of the accident.

[6] Mr McIlwaine, the lorry driver, gave evidence that he stopped his vehicle in such a position that the rear of his trailer partially obstructed the other side of the road. He also stated that he had switched on his dipped headlights, his hazard lights and the 'beacon' lights, which flash alternately on the grill of the lorry. The use of the dipped headlights would also cause the six roof lights to be illuminated although only on 'side light' power. He denied the suggestion that he was stopped with his full beam lights on. When the Plaintiff alighted from the cab, Mr McIlwaine began to clean his driver's mirror with a cloth. He saw the Plaintiff walk down the side of the lorry and then the car appeared, began to brake but struck both the Plaintiff and the side of the lorry.

[7] Mr McIlwaine was challenged as to the dangers of executing this manoeuvre during the hours of darkness on a country road. His evidence was that he had carried it out before without incident and he was not unduly concerned. He revealed that he was wearing a high-visibility jacket in the cab whilst the Plaintiff was dressed in dark clothing. He was cross-examined about a verbal statement made to the police to the effect that the driver had no chance of avoiding the collision but he could not remember stating that.

[8] The Defendant gave evidence that he was familiar with this stretch of road and travelled it frequently. He was aware of the road being marked 'Slow' and of a warning sign stating 'Blind Summit' on his approach. His evidence was that he slowed from around 40 mph to 25-30 mph in response to these warnings. He stated that he was able to see the lights of the lorry prior to the summit and they seemed very bright to him. On proceeding over the summit, he observed that the lorry's lights were on full beam, both the headlights and the roof lights. He saw no hazard warning lights. Having been, in his own words, blinded by these lights he proceeded in his own lane until he was alongside the lorry and then observed the Plaintiff some two car lengths away from him. He braked and swerved to the right but was unable to avoid striking the Plaintiff and the offside of the lorry trailer. The Defendant came to a halt around the entrance to the laneway, beyond the rear of the lorry.

[9] Under cross-examination, the Defendant said that he believed the lorry was simply parked on the other side of the road. He had no reason to believe it was carrying out a manoeuvre but would have reacted had he seen any hazard warning or beacon lights. In his statement to the police, made some four months after the accident, the Defendant stated that the lorry was *"facing me, over the central white line."*

[10] The court had the benefit of evidence from two consulting engineers, Messrs Shields and McLoughlin. They had each carried out certain measurements of the scene which revealed that the Defendant would first have had sight of the lorry about from a distance of about 100 yards. The crest of the summit was about 65 yards from the entrance to the laneway and around 40 yards from the front of the lorry. The engineers' attempts to reconstruct the accident confirmed that there was sufficient space for a car to pass on its own side of the road despite the partial obstruction caused by the lorry being parked at an angle. There was some debate around the appropriate stopping distances for a given speed which will depend on the individual driver's perception and reaction time. The Highway Code states that a 'typical' stopping distance for a vehicle travelling at 30 mph is 23 metres or 25 yards.

[11] I had the benefit of seeing and hearing each of the factual witnesses and was able to consider their demeanour both in direct questioning and under cross-examination. Insofar as the assessment of credibility is concerned, I have had regard to the guidance of Gillen J in *Thornton v NIHE* [2010] NIQB 4. I make the following findings of fact:

(1) The lorry was displaying dipped headlights, roof lights, hazard and beacon lights at the time of the accident. I prefer the evidence of Mr McIlwaine in this regard. I note, for instance, that the Defendant was unaware of the side marker lights on the trailer which, on any view, were illuminated on the evening in question. Had the lorry been displaying lights on full beam, the Defendant would have become aware of its presence some considerable

distance before the 100 yard estimate which he gave with reference to the photographs of the locus.

(2) The lorry was stationary at an angle, with the trailer across into the other lane, partially blocking it. I accept the evidence of both the Plaintiff and Mr McIlwaine on this issue, and note that the Defendant in his police interview made the case that the lorry was over the white line.

(3) The Defendant adjusted his speed, to around 25 to 30 mph, in response to the warning signals on the road but did not take any action in relation to his speed on observing the lorry over the brow of the hill.

(4) The Defendant was not aware of the presence of the Plaintiff, who was wearing dark clothing and moving away from him, until he was only a short distance away by which stage it was too late to take evasive action and avoid a collision.

Liability

[12] In light of these findings of fact, the first question to be determined is whether the Defendant was guilty of negligence. The fact that the lorry was showing both hazard warning and beacon lights ought to have alerted the Defendant to the fact that it was about to execute a manoeuvre, as should the position of the vehicle on the roadway. It was not merely parked but was partially blocking the lane in which the Defendant was driving. As such, the Defendant ought to have slowed down further and, if necessary, stopped to ascertain what precisely the lorry was doing and allow it to proceed. The Defendant could have brought his vehicle to a halt well before the lorry. Instead, the Defendant's evidence was that he took no precautions whatsoever in response to the presence of the lorry once he was over the brow of the hill.

[13] In relation to hazard warning lights, the Highway Code states[1]:

> *"These may be used when your vehicle is stationary, to warn that it is temporarily obstructing traffic."*

I consider that this was exactly what Mr McIlwaine was doing on the evening in question. However, the Defendant failed to heed the warning of the obstruction. He accepted in evidence that had he been aware of the hazard lights, he would have slowed down accordingly. I find that this failure to do so was a breach of the duty of care which he owed to other road users.

[14] I have not accepted the Defendant's evidence that he was blinded by the full beam lights of the lorry but, if I had, I would nonetheless have determined that the Defendant was liable for the accident. Paragraph 115 of the Highway Code states

[1] **Para 116**

that if a driver is dazzled by the oncoming headlights of another vehicle he should slow down and, if necessary, stop. On the Defendant's own evidence he failed to take either of these courses of action.

[15] Insofar as it was asserted by the Defendant that the accident was inevitable, I reject that contention. Had the Defendant either stopped or slowed down to a crawling speed to allow the lorry to carry out its manoeuvre, then the collision with the Plaintiff would not have occurred. Mr Ringland referred to Mr McIlwaine's apparent comment to the police at the scene that the car driver was not to blame since he had no chance of avoiding the Plaintiff. I accept that the Defendant could not have avoided the collision once the car had driven alongside the lorry travelling at 25-30 mph. However, the Defendant is at fault for failing to take appropriate action having come over the crest of the hill and being faced by the lorry in the position and displaying the lights to which I have referred. I consider that a reasonable and prudent driver would either have stopped or slowed right down when confronted by the presence of the lorry. There was sufficient distance between the summit and the locus of the accident to permit the Defendant to come to a total stop. I therefore find the Defendant was negligent in his driving and management of his motor vehicle.

Contributory Negligence

[16] The next question to be determined is whether the Plaintiff was guilty of contributory negligence. Section 2 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948 states:

> *"Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons…the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage"*

As Gillen J set out in *Cowan v Lewis* [2014] NIQB 47, a Defendant must establish three things on the balance of probabilities in order to succeed in a plea of contributory negligence:

(i) That the claimant was at fault.

(ii) That the fault was causative of the relevant injury.

(iii) That it would be just and equitable for the damages to be reduced.

[17] The Plaintiff in this action was an experienced farmer who had been involved in this precise lorry manoeuvre on a number of occasions. He would have been well aware of the fact that the road in question would have been obstructed for a time,

presenting a hazard to other road users. It was also quite apparent that carrying out the manoeuvre during the hours of darkness presented particular risks to a banksman directing the vehicle. Ideally, the Plaintiff and Mr McIlwaine would have taken steps to alert other road users some distance from the scene of the manoeuvre. However, in the absence of this, the Plaintiff ought to have taken every reasonable step to make his presence apparent to other road users and to pay particular attention to other vehicles on the road. The Highway Code states[2]:

> *"When it is dark, use reflective materials…which can be seen by drivers using headlights up to three times as far away as non-reflective materials."*

[18] I find that his failure to wear a high-visibility jacket was blameworthy and, on balance, this caused or contributed to his injuries. It is also apparent that he failed to pay sufficient attention to the oncoming vehicle driven by the Defendant, despite having a view of some 40 yards back to the brow of the hill. In these circumstances, I have determined that it would be just and equitable to reduce the damages payable to the Plaintiff by one third.

Quantum

[19] In a Further Amended Statement of Claim, the Plaintiff sought damages for:

(i) Pain, suffering and loss of amenity;

(ii) The cost of care;

(iii) Loss of business profits in the past and into the future;

(iv) Additional travel costs and loss of services.

I propose to deal with each of these heads of claim separately.

General Damages

[20] The Plaintiff suffered serious and debilitating injuries as a result of the accident. He sustained a fracture of the C2 vertebra of his neck with associated dissection of the left vertebral artery. He also suffered a fracture of the left tibia and fibula, a scalp haematoma with abrasions, a fracture of the right first rib and psychological trauma.

[21] The court had the benefit of hearing from two Consultant Orthopaedic Surgeons, Mr Andrews FRCS and Mr Adair FRCS. There was a large measure of agreement between them in relation to the nature and extent of the Plaintiff's injuries as well as his prognosis. The neck injury was a potentially life threatening one but

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[2] **Rule 3**

was undisplaced and could be treated conservatively. The Plaintiff wore a doll's collar for 5 weeks before this was replaced by an aspen collar which he wore for a further period of some 3 months. He required some 36 sessions of physiotherapy. On the basis of the evidence of the medical experts, and that of the Plaintiff himself, I am quite satisfied that the Plaintiff continues to suffer an intermittent level of pain, stiffness and discomfort in his neck which was caused by the index accident. The Plaintiff presented as a resilient and determined individual who was keen to return to work on his farm and has been able to adapt his working life to take account of his ongoing symptoms. Any assertion that the short YouTube videos produced to the court should alter these findings or operate as a substitute for clinical examination and findings is rejected.

[22] The Guidelines for the Assessment of General Damages in Northern Ireland (5th Edition) ('the Green Book') sets out some guidance in relation to neck injuries. The bracket for neck fractures causing severe initial symptoms leaving significantly impaired function is £50,000 to £90,000. Whiplash or wrenching type injuries leaving significant permanent pain, stiffness or discomfort are placed in the bracket £30,000 to £60,000. On considering the evidence, I find that the appropriate award for the neck injury is £60,000.

[23] The leg fracture sustained by the Plaintiff required surgical intervention with the insertion of an intramedullary nail. The fracture has healed well but the Plaintiff has been left with some discomfort on kneeling, a recognised complication of tibial nail insertion. The Green Book suggests that a straightforward leg fracture with complete recovery, or with minor residual disability, should attract damages up to £17,000. I conclude that £15,000 is the appropriate level of award for this injury.

[24] The right first rib fracture was painful initially but has healed well with no long term trauma. The appropriate award for this injury is £7,500.

[25] The Plaintiff also sustained a head injury and some minor abrasions which I have seen. This aspect of the injuries I value at £5,000.

[26] In relation to the Plaintiff's psychological sequelae, there was a level of debate between Dr. Best and Dr. Chada as to whether the symptoms suffered satisfied the definition of post-traumatic stress disorder or whether the appropriate diagnosis was one of a depressive adjustment disorder. Ultimately, the label attached to the Plaintiff's disorder is of less importance than the extent and duration of the symptoms. These were at a high level for the initial 4-5 months whilst he recovered from the worst of his physical symptoms, and improved once he was able to return to some level of work. I am satisfied that the symptoms continued, albeit on an improving basis, until around 18 months after the accident. I have concluded that the appropriate level of damages for the Plaintiff's psychological injury is £12,500.

[27] In *Wilson v Gilroy* [2008] NICA 23, Kerr LCJ advised[3]:

> *"In cases involving a multiplicity of injuries each of which calls for individual evaluation it is well established that one should check the correctness of the aggregate sum (which is produced when one adds together the amounts for all of them) by considering the figure on a global or general basis. Essentially, this involves an intuitive assessment of the suitability of the sum produced to compensate the overall condition of the plaintiff."*

[28] I have carried out this exercise and am satisfied that the global sum of £100,000 represents a fair assessment of the general damages in this case.

The Cost of Care

[29] It is well established that a Plaintiff is entitled to recover damages in respect of care gratuitously provided by family members. Such damages are held on trust for the benefit of the carer, following *Hunt v Severs* [1994] 2 AC 350. In that case Lord Bridge defined the entitlement:

> *"the reasonable value of services rendered to him gratuitously by a relative or friend in the provision of nursing care or domestic assistance of the kind rendered necessary by the injuries the plaintiff has suffered."*

[30] From the extensive caselaw on the subject, the following principles can be divined in relation to such claims:

(i) The care or attendance in question must be 'over and above' that which would be given anyway in the course of normal family life – *Guy v Ministry of Justice* [2013] EWHC 2819 (QB);

(ii) The question to be asked, in assessing damages is what is reasonable for this Plaintiff to pay those who have cared for him as a reward for what has been done – *Housecroft v Burnett* [1986] 1 All ER 332;

(iii) Benefits paid to a carer by way of carer's allowance should be deducted from the cost of past care to ensure no double recovery – *Massey v Tameside NHS Trust* [2007] EWHC 317 (QB);

(iv) A percentage discount should be applied to the commercial rate in respect of non-commercial care – *Fairhurst v St Helens Health Authority* [1995] PIQR Q1;

[3] **Para 30**

(v) The cost of hospital visits arising out of normal family affection are not recoverable – there must be some service provided which is not provided by the hospital: *Evans v Pontypridd Roofing* [2001] EWCA Civ 1657.

[31] Experts acting in this field are subject to the same duties as any expert who is instructed to give evidence in court proceedings. The primary duty of the expert is to the court and she must adhere to the rules set out in *The Ikarian Reefer* [1993] 2 Lloyds Rep 68.

[32] When instructed to prepare a report for a cost of care claim, an expert will have two principal sources of information. Firstly, she must carefully scrutinise the medical evidence to identify the potential care needs of the Plaintiff. Secondly, a detailed interview will be required with the Plaintiff and the members of his family who may be prepared to provide the requisite care. The report itself must set out the factual basis for the opinion and analysis provided by the expert. It is essential that this analysis is guided by the legal principles set out at paragraph [30] above. If the expert has any doubt as to the proper approach to any of the legal issues which arise, she should seek guidance from those who instruct her. The report ought to provide assistance to the court in arriving at a fair and reasonable assessment of the appropriate level of damages payable to the Plaintiff in any given case. As a corollary of this, it ought to assist the parties in their negotiations in an effort to settle a case without the need for a court hearing. As such, the expert plays an important role in ensuring that the courts can comply with the overriding objective by dealing with cases in a just, fair and expeditious manner.

[33] I would echo the general point made by Turner J in *Harman v East Kent Hospitals NHS Trust* [2015] EWHC 1662 (QB)[4]:

> *"Against the background of longer and longer reports there is, however, little sign, in some cases at any rate, that the care and attention spent on analysis and opinion, as opposed to history and narrative, is being given commensurate attention and priority."*

[34] In the instant case, the Plaintiff relied upon a report dated 5 November 2019 from Dr. Esther Reid of Sandra Sherlock Associates. In her opinion, the Plaintiff's reasonable care needs were reflected as follows:

(i)	17 November to 28 November 2015 (inpatient)	4 hours/day
(ii)	29 November 2015 to 19 March 2016	8 hours/day 4 hours/night
(iii)	20 March 2016 to 31 March 2017	3 hours/day

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(iv)	1 April 2017 to 5 November 2019	2 hours/day
(v)	Future care to age 60	1 hour/day
(vi)	Future care age 60 to 70	1.5 hours/day
(vii)	Future care age 70 +	2 hours/day

[35] The care requirements were costed by Ms Niblock of ASM accountants and the claim advanced in relation to past care amounted to £33,842 and for future care in the sum of between £250,000 and £450,000 depending on the appropriate discount rate.

[36] Dr. Reid gave evidence and was the subject of searching, and entirely fair, cross-examination by Mr Ringland QC. Regrettably, it was apparent that the expert had not approached the preparation of her report with the analytical rigour which was necessary, nor had she adhered to her duties to the court.

[37] The key to identifying the reasonable level of damages payable in a care claim is the actual needs of the Plaintiff. His evidence to the court was that he required a high level of care for a period of around 3 months. This picture began to improve and after a period of 6 months he was back driving and working to a limited extent on the farm. By that time he only needed help in getting a jumper on or off or in applying a heat rub to his neck. Unfortunately, in her report, Dr. Reid fails to provide any breakdown of the assessed hours in terms of the type of care being provided. For example, in the period March 2016 to March 2017, 3 hours per day is allowed which is based upon the Plaintiff's *"dependence for transportation"* and *"variations in daily activities."* The reality is that during this period the Plaintiff was able to drive himself the short distance to Craigavon Area Hospital for physiotherapy and did not require any care in the home environment.

[38] Similarly, in relation to future care, Dr. Reid notes the Plaintiff's ongoing issues in relation to activities where he is required to look over his shoulder or kneel. The reader is not told, however, how that relates to a care requirement for the rest of his natural life.

[39] The reality in this case, as ought to have been recognised by both Dr. Reid and the Plaintiff's advisers, is that he was provided with a level of care by his wife for a period of 6 months after the accident. There was never any basis to advance a claim for the cost of care beyond that date.

[40] The assessment by Dr. Reid of the level of care provided during this 6 month period is also unsupported by the evidence. For instance, the claim that he required 4 hours' care per night seems to be based on the fact that the Plaintiff's wife's sleep was disrupted by reason of her concerns about him. I do not doubt that this was

true but it is not supportive of a claim for care for an individual who was asleep during those hours.

[41] The Plaintiff's movements were significantly restricted when he was wearing the dolls collar and the aspen collar. He required a high level of personal care during that period. Having considered the medical evidence and heard the witnesses, I have concluded that a reasonable allowance, averaged across that period, is 4 hours' care per day. I calculate this as being 728 hours' care. There was no dispute in relation to the hourly rate proposed by Ms Niblock of £8.56 and I propose to make a 25% deduction from that figure to represent the fact the care was provided by the Plaintiff's wife. Accordingly, the proper award for the cost of care in this case is £4,674.

Loss of Business Profits

[42] The Plaintiff has operated the family apple farm for over 25 years. Prior to the subject accident, this extended to some 137 acres of which 29 acres were owned by the Plaintiff and 108 acres rented from others.

[43] In June 2014 the Plaintiff incorporated a limited company, Long Meadow Cider Limited, as an additional arm of the business in which his son Peter was to be principally involved.

[44] In the months following the accident the Plaintiff was prevented from carrying out any work on the farm. He made a decision in December 2015 to cease renting several of the orchards as he felt unable to manage the total acreage of the farm. As a result, the area of land under his control reduced to around 80 acres.

[45] The Plaintiff gave evidence that the apples picked during harvest season were dealt with in one of two ways. Some apples were sold to Bulmers for cider production and others, the better quality, sweeter, apples, were placed into storage and later sold to processors at a higher price. Due to his injuries, the Plaintiff was unable to segregate the apples in late 2015 and, as a result, a decision was made to sell all the apples to Bulmers.

[46] The Plaintiff's evidence, which I entirely accept, is that he was unable to return to full duties on the farm for a period of around 12 months. This resulted in spraying not being undertaken for part of the 2016 season which had a deleterious effect on that season's crop.

[47] The claim advanced for financial loss therefore relates to the adverse impact of these three factors – the loss of acreage, the sale of apples to Bulmers and the lack of spraying – on the Plaintiff's business.

[48] In the case of persons who are self-employed, a court must look at the turnover of the business prior to the subject accident and make an assessment as to

how this has been impacted by the inability of the Plaintiff to work as a result of his injuries. The approach is set out in *Bellingham v Dhillon* [1973] QB 304:

> *"Where a Plaintiff's claim for damages was based on loss of profits of his business the damages were to be calculated in the same way whether the claim was in contract or tort, i.e. by taking the profits which the business would have earned but for the wrong the Plaintiff had suffered at the hands of the Defendant and subtracting from that figure the profits which had in fact been earned after the wrong had been suffered."*

[49] In this case, I note that, for tax purposes, the Plaintiff was in a partnership with his mother on a 90%/10% basis. In line with *Ward v Newalls Insulation* [1998] 1 WLR 1722, I have concluded that the Plaintiff is entitled to recover in full for any business losses.

[50] The sales to the year end 30 April 2016 were £197,742, a reduction of £54,846 over the average of the previous three years. As Ms Beatty of Harbinson Mulholland, instructed on behalf of the Defendant, points out, no documentation has been furnished which shows the precise numbers of apples sold to Bulmers as against the percentage in previous years. It may be therefore that some part of the reduction in turnover is due to the particular yield that year or the market conditions generally. Making some adjustment for this I am prepared to allow a loss of turnover of £50,000 for the year in question. On the evidence, I accept that the grading of the apples would have been carried out by the Plaintiff himself and therefore there was no saving in labour costs. Making an appropriate deduction for tax and national insurance, I assess the net profit loss for this financial year at £35,000.

[51] The sales to the year end 30 April 2017 were £121,759 and the business made a loss for this financial year. This represented a considerable fall from the average figure for 2013-2015 of £252,588. The expenses for this year were also reduced in light of the scaled back nature of the business. Ms Niblock of ASM has carried out an analysis of the loss of profit for this year which amounts to £41,636. In my opinion this is based on an overestimated figure for expected turnover which I assess as being £250,000. In light of this reduction, the proper figure for loss of profit for the year ended April 2017 is £38,000.

[52] Ms Beatty presented an alternative argument based on the additional cost the Plaintiff's business would have incurred by hiring replacement labour to carry out the tasks which the Plaintiff was unable to perform. This may well be a proper approach in a given case but I accept the Plaintiff's evidence that there was no labour available in the market place to carry out the tasks in hand, particularly spraying of the crops, which is largely done by the farmers themselves.

[53] The Plaintiff's evidence was that he is capable of carrying out all the tasks around the farm, albeit that he would suffer some pain and discomfort. The Plaintiff's son has played an increasing role in the business and I have concluded that there is no valid claim beyond May 2017 in respect of the loss of acreage. Should the business have wished to rent additional orchards there was nothing preventing it from doing so from that time onwards. There is therefore no basis for any loss of profits beyond the 2016 growing season.

[54] There was simply no evidence before the court of any adverse impact on the business of Long Meadow Cider Limited and I make no award of damages in that regard.

[55] Accordingly, the award for financial loss will be £73,000.

[56] As will be evident, I have made no award in this case in respect of future loss and therefore the question of the appropriate rate of return under section 1 of the Damages Act 1996 does not arise for consideration.

Additional Travel Cost and Loss of Services

[57] I note that the accountants agree that sum claimed in respect of additional travel expenses of £500 is reasonable and I propose to allow this amount. On the basis of the evidence, I accept that there is a valid claim for loss of services for the period of up to 12 months post-accident, and I award a figure of £1500 in this regard.

Conclusion

[58] Mr Ringland QC invited me to consider the Supreme Court decision in *Summers v Fairclough Homes* [2012] UKSC 26. In that case it was held that the court has jurisdiction to strike out an action as an abuse of process even where it had been determined that the Plaintiff was entitled, in principle, to an award of damages. In that action, there had been an express finding that the claimant had fraudulently exaggerated his injuries but the claim was not struck out. The Supreme Court determined that whilst the power existed, it should only be exercised in *'very exceptional circumstances.'*

[59] This case does not begin to meet that test. The Plaintiff in this action did not exaggerate his symptoms, let alone do so fraudulently. Such exaggeration as there was in this case came about as a result of the care report and not the actions of the Plaintiff himself.

[60] The total amount of damages in this case is therefore £179,674 and when the reduction for contributory negligence is applied, there will be judgment for the Plaintiff in the sum of £119,783.

[61] I would propose to award interest on this sum at the rate of 2.5% from the date of issue of the Writ of Summons to the date of this judgment but if the parties

do not agree, I will hear submissions on the appropriate rate and duration of the interest award.

[62] I will invite the parties to make submissions on costs.