

**DAMIEN TINSLEY (BY HIS RECEIVER & LITIGATION FRIEND MARTIN CONROY) V JAIDIP SARKAR (2005)**

[2005] EWHC 192

**QBD (Leveson J) 18/2/2005**

PERSONAL INJURY - DAMAGES - MENTAL HEALTH - SOCIAL WELFARE

AFTER CARE : CARE EXPENSES : MEASURE OF DAMAGES : MENTAL DISORDER : PERSONALITY DISORDERS : PRIMARY CARE TRUSTS : RESPONSIBILITY TO FUND AFTERCARE : RESOURCES AVAILABLE : AWARD FOR CLAIMANT'S REASONABLE AFTERCARE NEEDS : WINDFALLS FOR TORTFEASORS : HEALTH AUTHORITIES : s.117 MENTAL HEALTH ACT 1983 : s.47 NATIONAL HEALTH SERVICE AND COMMUNITY CARE ACT 1990

**Although an award of personal injury damages for the future costs of aftercare should not be made if the costs were not going to be incurred by the claimant because of the statutory provision of community care services, the statutory bodies responsible for such care were often short of funds and could not provide what the claimant wanted or for his reasonable needs. In those circumstances, the court was prepared to make an award for his reasonable needs and saw no reason for the defendant tortfeasor to have an undeserved windfall.**

The claimant (T) sought quantification of personal injury damages after a road traffic accident involving the defendant (S). T had a history of childhood abuse, alcohol dependence, drug misuse and psychological problems and, after the accident at the age of 28, underwent surgery for acute subdural haematoma. Subsequently, he exhibited symptoms of frontal lobe dysfunction and organic personality disorder. It was common ground that he would need a high level of care, probably indefinitely. By a compromise, S agreed to pay him 90 per cent of the damages otherwise payable on a full liability basis, most of which related to future care costs, the amount of which was in dispute. S submitted that T's local social and health services were obliged by the Mental Health Act 1983 s.117 to provide for T's future care, and so no award should be made in respect of costs that would not be incurred by T.

HELD: Although T's primary care trust had a duty under s.117 of the 1983 Act to provide aftercare to T free of charge, with no power of recoupment, it involved regular assessment of community care service needs for the purposes of the [National Health Service and Community Care Act 1990 s.47](#). Further, the duty was not open-ended and available resources were relevant, [R v Camden and Islington Health Authority ex p K \(2001\) EWCA Civ 240, \(2002\) QB 198](#) applied. The court was concerned with whether the trust could take account of the extent to which T had provision for aftercare such that he need not resort to public funds, in other words whether the court had to identify the source of public funds and relieve S of the duty otherwise imposed to provide for his victim's reasonable needs, as constrained by the principles in [Hodgson v Trapp \(1988\) 3 WLR 1281](#) cited. On the evidence, there was a grey area: T's trust took into account the financial position of individuals needing aftercare, but did not conduct a means test. To say that an individual's needs did not "call for" the support of the trust was not to exercise a means test; rather it was to consider, in a more global sense, the resources available, the other calls on those resources and the extent to which that individual required trust support. Within the framework of s.117 T had no right of choice and no provision for top-up of funds. It was unclear what the trust would decide to offer T, but its resources did not extend to a regime that T would accept, or to one the court found reasonable to meet his needs. Therefore, an award should be made to cover T's reasonable needs. This result also reflected the court's view that, given the trust's obligations were likely to increase without a commensurate increase in already-stretched resources, S should not receive an undeserved windfall.

Judgment accordingly.

Counsel:

For the claimant: Winston Hunter QC, Marc Willems

For the defendant: Christopher Purchas QC, Simon P Browne

Solicitors:

For the claimant: Betesh Fox & Co (Manchester)

For the defendant: Kennedys

**LTL 18/4/2005**

Judgment: Approved - 40 pages

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