**[DOMINIC v MARTIN (2011)](http://www.lawtel.com/MyLawtel/Documents/AM0201807)**

**Total Damages:** £1,650 (£1,726.63 RPI) **PSLA:** £1,650 (£1,726.63 RPI)
**Trial/settlement date:** 21/7/2011 **Type of Award:** Court Award
**Judge:** HHJ Stewart **Court:** Manchester County Court
**Age at trial:** 70 **Age at injury:** 69
 **Sex:** Male

 **The claimant, a 69-year-old man, received £1,650 for the whiplash injuries he sustained in a road traffic accident in April 2010. Damages were assessed on the basis that his symptoms would persist for 10-and-a-half months, as that was the mid-point in the prognostic period for recovery of between 9 and 12 months.**

Claimant: Male: 69 years old at date of accident; 70 years old at date of award.

Road Traffic: On April 30, 2010, the claimant (C) was sitting in the front passenger seat of a vehicle when it was hit in the rear by a car driven by the defendant (D).

C sustained injury and brought an action against D alleging that he was negligent in failing to stop in time.

Liability admitted.

**Injuries:** C sustained whiplash injuries to his neck and shoulders.

**Effects:** During the 24 hours after the accident, C developed severe pain in his neck and left shoulder which continued for two weeks and then became intermittent. For one week after the accident C also suffered from moderate shock. C took pain-relief medication for just over two weeks. On examination approximately three months after the accident, he continued to suffer from a reduced range of movement and it was found that he was suffering from crepitus in his shoulder.

Before the accident C was suffering from neck and shoulder symptoms caused by another accident. He also had pre-existing general joint degeneration. However, after the index accident in April 2010, C gave his pain levels as having been at 3 out of 10 before that second accident and having risen to 9 out of 10 after that accident and then 5 out of 10 when he was later examined.

Prognosis: An expert report stated that C was expected to make a full recovery between 9 and 12 months.

Court Award: £1,650 total damages

Background to damages: An expert attributed half the injuries described in the "prognostic timescale" as being attributable to the index accident and half being attributable to the previous accident and the pre-existing condition.

The matter was assessed in a stage three paper hearing under the Ministry of Justice's Portal. Damages were initially assessed at £950. The judge found that as there was no evidence to suggest that recovery took longer than nine months and as C had the burden of proof, he would award on the basis of the symptoms persisting for nine months at £1,900. He then halved that award to £950 on the basis that the index event caused half the symptoms.

On appeal the judge stated that the correct approach for such stage three paper hearings where a range was given, was to take a mid-point, as was traditionally awarded in future loss cases. He therefore awarded damages on the basis of recovery taking 10-and-a-half months. He found that the appropriate award for all the symptoms, including the pre-existing symptoms, would have been £2,500. The judge held that the correct approach was to compensate for the difference the index accident had caused, that a mathematical approach was wrong in principle and that in any event the pain scores had tripled immediately after the accident and had reduced to double by the date of examination and so it was wrong to halve the whole. He concluded that as the expert had said that half the injuries described in the "prognostic timescale" were caused by the index accident, apportionment could only relate to the future and the correct award was £1,650.

Breakdown of General Damages: Pain, suffering and loss of amenity: £1,650.

Mr Pema instructed by Irwin Mitchell LLP for the claimant. Sarah Robson instructed by Berrymans Lace Mawer LLP for the defendant.

**LTLPI 1/9/2011**

This Quantum Report was provided courtesy of [Sarah Robson](http://www.sarahrobsonbarrister.co.uk/) of [Alpha Court Chambers](http://www.alphacourtchambers.co.uk/), counsel for the defendant.

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