England and Wales Court of Appeal (Civil Division) Decisions

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B3/2000/3345

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
(Mr Justice Scott-Baker)

Royal Courts of Justice
Strand
London WC2
Tuesday, 13th February 2001

B e f o r e :

LORD JUSTICE HENRY
LORD JUSTICE WARD and
LORD JUSTICE BUXTON

Name Redacted **Claimant/Respondent**

-v-

FLINTSHIRE COUNTY COUNCIL
(Formerly Clwyd County Council)
Defendant/Appellant

Computer Aided Transcript of the Palantype Notes of
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52. The Judicial Studies Board had identified the following factors to be taken into account in valuing a claim for psychiatric damages, namely:

    (i)The injured person's ability to cope with life and work.

    (ii)The effect on the injured person's relationships with family, friends and those with whom he or she comes into contact.

    (iii)The extent to which treatment would be successful.

    (iv)Future vulnerability.

    (v)Prognosis.

    (vi)Whether medical help had been sought.

53. In their view in severe cases the injured person would have marked problems with respect to factors (i) to (iv) and the prognosis would be very poor. In cases of moderately severe psychiatric damage there would be significant problems associated with factors (i) to (iv), but the prognosis would be much more optimistic than in a severe case.

54. For my part, I am far from satisfied that the Judicial Studies Board categorisation applies to this kind of case at all. Physical, emotional and sexual abuse of children in care by those who are supposed to provide that care seems to me to fall into a wholly different category from psychiatric damage that follows other personal injuries. The injury is of a different character. The essential element of the damage is the extent to which the injury compounds and multiplies the effect of the pre-existing condition. The Judicial Studies Board guidelines do not include among the factors to take into account the duration of the suffering. In the nature of this kind of abuse, the victims are frequently unable to address the abuse until many years later. This claimant is an example of that unhappy state of affairs. She suffered from the age of 14 until 1995, five years before the judgment, or, perhaps more accurately, until 1997 or 1998, when she first disclosed the harm she had suffered to the Waterhouse Tribunal and began to receive treatment for it. It is all very well to say that the prognosis today is optimistic but guarded, but today is 20 years after she began to suffer at the hands of the local authority. I am quite certain that there is no easily definable bracket into which to place this case such as would enable the court to say that an award which fell outside that bracket must of necessity be so plainly wrong as to be set aside.

55. The second way Mr Maskrey attacks the judgment is to say that, when the judge held that he preferred the assessment of Dr Abel to that of Mrs Garland, he must have been accepting her view that the degree of responsibility was 30% or, at worst, no more than 50%. So he argues that Name Redacted's psychiatric state, before apportionment, must have justified an award in excess of £70,000. That is "out of kilter" with any other award, including the award by Potts J to Name Redacted

56. In my view the judgment cannot be read in that way. Although the judge preferred "the assessment of Dr Abel on the crucial question", he expressly rejected the exercise which Mr Maskrey invited us to carry out, namely putting the finding in percentage terms. That is exactly what the judge was not doing. It was not the only time in that passage that he rejected the percentage approach. He had done so when he set out his general approach early on in his judgment at page 17, when he said that it was unhelpful and, indeed, in his view impossible to express the defendants' degree of responsibility in percentage terms. He did so again at page 54 of his judgment, when he said that he did not think that in this case there was sufficient precision to be able to make an assessment in terms of percentages. In my judgment Mr Owen QC was right when he submitted that, having refused to make a finding in percentage terms, the judge cannot have preferred Dr Abel's assessment of the percentage. The assessment on the crucial question which the judge preferred should, therefore, in my view be understood to refer to the more general