

1) SAMUEL O'BRIEN (2) DANIEL O'BRIEN v WHARTON (2004)

Oxford County Court (Harris QC) 2/8/2004

The claimants, a 15-year-old and 8-year-old boy, received £42,400 and £119,811 respectively for the death of their mother in a road traffic accident in August 1997. The claimants suffered from chronic post-traumatic stress disorder and other associated psychological injuries, which included aggressive and anti-social behaviour and lack of motivation.

First claimant (C1): Male: 8 years old at date of accident; 15 years old at date of award. Second claimant (C2): Male: 1 year old at date of accident; 8 years old at date of award.

Road Traffic Accident: On 3 August 1997, both claimants were rear seat passengers in a car being driven by their mother (M). M stopped the car on a slip road to fasten the seat belt of C2 which he had unfastened. Whilst M was standing next to the car she was knocked over by the defendant's vehicle and killed. Both claimants witnessed the event. C1 reportedly got out of the car and tried to reach M on the ground.

The claimants brought an action against the defendant alleging that he was negligent in his driving, which caused the accident. The claimants submitted that had the defendant been driving with more due care and attention then he would not have knocked over M and subsequently she would not have died.

Liability admitted.

Injuries: The claimants suffered from chronic post-traumatic stress disorder following the death of M.

Effects: Both claimants remembered the accident with C1 having a vivid recollection of it. Both were significantly affected by the accident becoming aggressive, anti-social and lacking in motivation. Both claimants were diagnosed with chronic post-traumatic stress disorder (PTSD).

C1 was withdrawn and lacked confidence. He was described as being sloppy at school and was under performing. His school reports were of a complaining nature and his exams recorded poor grades; significantly short of his potential. C2 continued to be very insecure. He performed badly at school both socially and academically. In August 2003 he moved to a private school and after a difficult start his progress was encouraging. The joint report of the educational psychologists considered and advised that a private school was likely to be the best option for him in the medium to long term.

Court Award: £162,211 total damages.

C1: £42,400 total damages.

C2: £119,811 total damages.

Breakdown of General Damages: Pain, suffering and loss of amenity: C1: £20,000; C2: £20,000.

Breakdown of Special Damages: Loss of Employment Prospects (C1): £17,500; Future Treatment for PTSD (C1): £2,400; Future Transport (C1): £2,500; Loss of Earning Capacity (C2): £7,000; School Fees (C2): £79,881; Miscellaneous Expenses (C2): £1,220; Future Treatment for PTSD (C2): £3,600; Future Transport for Private Schooling (C2): £8,110.

Background to damages: Had the accident not occurred C2 would not have been privately educated. The cost of private education was therefore entirely consequent upon the accident. C2 would remain at private school until the age of 18 and the educational consultants agreed that on the balance of probabilities there could be a reduction in his working capacity, but C2's claims for loss of future employment prospects was less valuable than C1. Had the accident not occurred both claimants would have been likely to have gone to university and onto lucrative careers. The claimant's parents, in particular their mother, were highly motivated and ambitious people.

Body Part: BRAIN - WHOLE BODY

Condition: LOSS OF CONFIDENCE - UNDER PERFORMANCE - AGGRESSIVE BEHAVIOUR - ANTI-SOCIAL BEHAVIOUR - LOSS OF MOTIVATION - PTSD - POST TRAUMATIC STRESS DISORDER - INSECURITY

Roderick Noble instructed by Henmans (Oxford) for the claimant.

Magnus Dignam instructed by Liddell & Co and Morgan Cole, solicitors for the defendant.

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