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Judgment: approved by the Court for handing down | *Delivered:* **03/03/2015**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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IAN SHAW SUITER and ALFRED DAVID SUITER

Plaintiffs

v

WILLIAM FRANCIS EVES and O'HANLON BROTHERS LIMITED

Defendants

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STEPHENS J

Introduction

[1] The plaintiffs, Ian Shaw Suiter and Alfred David Suiter, are the executors of the estate of Keith Suiter, who died in a road traffic collision which occurred on 2 August 2007 on the main Cookstown to Dungannon Road. The plaintiffs bring this action against the defendants, William Francis Eves and O'Hanlon Construction Brothers Limited, alleging that the first defendant was negligent in and about the driving of a Volkswagen van and that the second defendant as the owner of the van is also liable.

[2] The plaintiffs' action is brought for the benefit of:

(a) Helen Suiter, the deceased's widow. She was born on 14 August 1957 and was therefore 49 at the date of the deceased's death. She is now 57. She is employed as the principal of a nursery school.

(b) Neil Suiter, a son of the deceased who was born on 23 May 1983. He was 24 at the date of his father's death, he is now 31. He has subsequently married and lives with his wife close to the family home. He is a stone mason.

(c) Paul Suiter, another son of the deceased who was born on 14 September 1986. He was 20 at the date of his father's death. He is now 28. He was a student at the date of his father's death and is now a dentist.

[3] The deceased was born on 30 October 1952 and was 54 when he died. He had been employed as a police officer for the vast majority of his working life. On 2 February 2004 some 3½ years prior to his death he retired from his occupation as a police officer under the Patton Agreement. He had a number of physical disabilities suffering, for instance, from arthritis. He also suffered from post-traumatic stress disorder (PTSD). After leaving the police service and despite those physical disabilities and his condition of PTSD he obtained employment for a period of some 18 months in Iraq training and monitoring the Iraqi police in Basra. The contract came to an end prematurely in February 2007 and he returned to Northern Ireland. It is the plaintiffs' case that the deceased intended to return to Iraq gaining employment in the security field and that he would have done so but for the tragic and fatal road traffic collision.

[4] The action was initially contested on all issues but on the second day of trial primary liability was admitted on behalf of the defendants. There remain issues as to contributory negligence and as to the amount of damages. Accountants have been retained on behalf of both the plaintiffs and the defendants but in relation to damages counsel have agreed that I should determine a number of issues and thereafter the out workings of my findings can be calculated by their respective accountants. If the accountants fail to agree then they will be called. I consider that this is an entirely sensible course for the parties to have adopted as absent the factual basis upon which the case should be approached it is not possible for the accountants to calculate or attempt to agree the amount of financial loss.

[5] Mr McNulty QC and Mr Reel appeared on behalf of the plaintiffs and Mr Ringland QC and Mr Cush appeared on behalf of the defendants. I am grateful to both sets of counsel for their assistance in defining the issues and for their clear and concise submissions.

The road traffic collision and contributory negligence

[6] As I have indicated primary liability has been admitted. In addressing the issue of contributory negligence I will first set out the factual background to this road traffic collision.

[7] On 2 August 2007 the deceased was riding a 1,000cc Yamaha motorcycle, registration number OKZ 5745, along the main Cookstown to Dungannon Road. This was a powerful motorcycle with quick acceleration and a high top speed. The deceased was driving on his own side of the road and his front light was illuminated. He was in third gear there being six gears on his motorcycle. As he approached the point at which the collision occurred there were for him two right-hand bends, the first being more pronounced. After these bends there was a

straight before what was in effect a staggered crossroads. On the deceased's left-hand side there was the entrance to the Annaginny Road which was the road to New Mills. Some 80 metres further on towards Dungannon and on the deceased's right hand side was the entrance to the Tullycullion Road. As the deceased approached the junction there was a road sign indicating to him that there was a turning left ahead towards New Mills. Accordingly, he was aware off, or ought to have been aware of, that feature some distance back from the point at which the collision occurred.

[8] The first defendant was driving a red Volkswagen van, registration number LCZ 9042, along the Tullycullion Road. At the junction with the main road he turned left in the direction of Cookstown but with the intention of turning right into the Annaginny Road. There is a right-hand turning lane marked in the ordinary manner on the main Dungannon to Cookstown Road for those vehicles intending to turn right into the Annaginny Road. The Annaginny Road is not at right angles to the main road but rather it is at an angle of approximately 45 degrees. It is accepted that the first defendant was intending to cut the corner into the Annaginny Road in that he intended to commence his turn at a point on the main road that would have meant that as he entered the Annaginny Road he would have been on the incorrect side of it for some distance. In short the first defendant's intended path would have taken him temporarily on to the wrong side of the Annaginny Road. As the first defendant started to turn right into the Annaginny Road a collision occurred between the van and the deceased's oncoming motorcycle. That collision occurred on the deceased's side of the road. The deceased died as a consequence of the injuries that he sustained.

[9] I have set out the vehicles of both the deceased and that of the first defendant together with the direction of travel of each. I should also explain that behind the first defendant's van on the main road there was a tractor which was being driven by William James Love in the direction of Cookstown. Mr Love was not called as a witness but rather his police statement was introduced in evidence. Mr Love was some 20-25 metres from the van when the accident occurred. At no time did he see the deceased's motorcycle before the collision occurred. After the accident Mr Love telephoned for an ambulance. He also states that there was an unknown female at the scene who said that she was a nurse.

[10] I should also explain that there was another vehicle in addition to Mr Love's tractor in the area when this road traffic collision occurred. That was a vehicle being driven by a Philip Edwin Rea along the Annaginny Road. He was approaching the junction with the main road intending to drive to Dungannon. That would have meant that he would turn left onto the main road. The first defendant who was intending to cut on to the wrong side of the Annaginny Road should have been able to see Mr Rea's motor vehicle. Mr Rea was able to see the first defendant's van. He stated to the police that he saw the red van indicating to turn right into the Annaginny Road, that the van was moving forward at a slow roll and had crossed into the Dungannon bound lane. He could hear but not see the motorcycle coming

from his right-hand side. He heard high revs as the motorbike approached then the bike locked its brakes and he heard the squeal of tyres. It is at this stage, which I take to be the limited opening of the Annaginny Road, that he saw the motorcycle which he states was travelling at speed. He states that the rider of the motorcycle collided with the front of the van which had stopped by the time the motorcycle collided. Mr Rea did not give oral evidence. I will set out my findings in relation to his evidence and its impact on the evidence of the first defendant:

(a) Mr Rea's vehicle was there to be seen by the first defendant and yet the first defendant was quite adamant that he did not see any vehicle in the Annaginny Road saying that he was 100 per cent certain that there was no vehicle. I reject the first defendant's evidence. I consider that he saw Mr Rea's vehicle and that he was planning to cut the corner into the Annaginny Road despite seeing Mr Rea's vehicle.

(b) The first defendant intending to cut the corner into the Annaginny Road would have been distracted by the presence of Mr Rea's vehicle. The decision to cut the corner created the risk of impeding Mr Rea and created an imperative to overly concentrate on the Annaginny Road as opposed to on the main road on which the deceased was travelling.

(c) I do not consider that Mr Rea had a sufficient opportunity to observe the speed at which the deceased was travelling. In any event he states that the motorcycle was travelling at speed without estimating the speed.

(d) I consider that the noise of high revs raises an index of suspicion that the deceased was travelling at an excessive speed but I am not prepared to make such a finding on the balance of probabilities based on the evidence of Mr Rea. The evidence is not sufficiently precise.

(e) In addition on Mr Rea's account the high revs came after the first defendant had crossed into the Dungannon bound lane and could have been a reaction to the emergency.

(f) In any event Mr Rea is incorrect in that the van had not stopped prior to the road traffic collision and in that respect I would prefer the evidence of Dr Callender who inspected the scene and marks on the road.

[11] The case in contributory negligence is that the deceased was travelling too fast. The burden of proof is on the defendants.

[12] The first defendant's evidence is that the deceased's motorbike was "absolutely flying". I consider that the first defendant has great difficulty in giving an accurate account of how this road traffic collision occurred. The most tragic consequences were for the deceased and the members of his family but also my assessment of the demeanour of the first defendant is that he has been deeply

disturbed by what occurred. I reject considerable portions of the first defendant's evidence, he stated that he did not see the tractor being driven by Mr Love when he joined the main road, the tractor was there to be seen. He said he did not see the vehicle being driven by Mr Rea, again it was there to be seen. The first defendant should not have been cutting the corner into the Annaginny Road, he was doing so. I consider that the first defendant was concentrating on traffic in the Annaginny Road and that he did not see the deceased's motorcycle until just before the accident. It must then have presented a considerable surprise to him and he has interpreted this as excessive speed. I am confirmed in my conclusions by the evidence of Dr Callender by the position of the marks on the road. I accept the evidence of Dr Callender, I reject the first defendant's evidence that the deceased was travelling at an excessive speed.

[13] The first defendant also recounted in evidence that immediately after the accident he got out of his van and went over to where the deceased was lying on the road kneeling down beside him. At that stage he states that a woman came up beside him, tapped him on the shoulder and introduced herself to him as a nurse. That during the exchanges that followed she told him that the motorcyclist had overtaken her at 'a very high speed' and that she did not know how he was going to get around the corner. I am satisfied that a nurse was present at the scene given that Mr Love refers to her presence in his police statement. What she said at the scene is hearsay evidence and is admissible in evidence. However the nurse has never been identified and there has been no opportunity to assess her evidence in the witness box. The only person to whom she is alleged to have made these remarks was to the first defendant. There is no account by Mr Love or by Mr Rea of her having informed either of them that the deceased had overtaken her at a very high speed or that he was travelling at an excessive speed. I consider that the first defendant to whom these remarks are alleged to have been made is an unreliable witness in other material respects, for instance in that he failed to state that he saw Mr Rea's vehicle. The assessment of the reliability of hearsay evidence is not only an assessment of the reliability of the individual who is alleged to have made the remarks but is also an assessment of the reliability of the individual to whom the remarks were made and who recounts what was said. I consider that there was ample scope for the first defendant to have grasped on a straw of comfort and turned it into something far more significant. I also take into account Mr Rea's assessment of the first defendant which was that after the accident the first defendant appeared to be in shock. I am not persuaded that this hearsay evidence establishes that the deceased was driving at an excessive speed for this particular road.

[14] In coming to my conclusions as to the issue of contributory negligence I also rely on the evidence of Dr Callender PhD, Mechanical Engineer, and a senior scientific officer at Forensic Science Northern Ireland. He attended the scene within two hours of the road traffic collision occurring. There was then a most meticulous analysis of the scene. I accept his evidence that the available view of the deceased for the first defendant was 96-110 metres and that the deceased's motorcycle would have been in a position to be seen by the first defendant before the first defendant

commenced a move onto the Dungannon bound lane. I also accept his evidence that if the deceased was travelling at a speed of at the most 23 miles per hour then given the timings involved the deceased would have been unable to bring his motorcycle to a halt. Dr Callender could not provide reliable evidence as to the speed of the motorcycle from the damage to the first defendant's van or from the damage to the motorcycle. He also could not provide reliable evidence as to the speed of the motorcycle from the distance that the motorcycle ended up from the point of impact or from the fact that the van continued to move forward despite being struck by the motorcycle. In effect he could produce no reliable evidence as to excessive speed on the part of the deceased. The burden of proof is on the defendant. Evidence from Dr Callender as to excessive speed on the part of the deceased is not available to the first defendant.

[15] However, I go further in that the impression of the evidence which Dr Callender gave and subject to the qualifications that I have given, was that he was of the view that nothing about the scene caused him to consider that the deceased's speed was excessive.

[16] So in conclusion this is a case in which the first defendant cut a corner in order to enter a side road, he did so at a time when there was a vehicle approaching him on that side road and at a time when he could have but failed to see the deceased's motorcycle. He pulled across into the path of the deceased and a collision was inevitable and it occurred entirely on the deceased side of the road. The first defendant has failed to establish that the deceased was travelling at an excessive speed. I find that the defendants are liable and I do not consider that any contributory negligence has been established.

[17] I enter judgment for the plaintiffs without any reduction for contributory negligence.

Amount of Damages

[18] As I have indicated the parties wish me to give findings in relation to a number of issues with the intention that thereafter the amount of damages can be calculated. In essence the questions identified by the parties relate to whether, if the deceased had lived he would have been employed, and whether, if the deceased had lived he would have provided services. The context in which those questions are posed are that it is the plaintiffs' case that the deceased would have been employed between September 2007 and 30 June 2012 in the security field in Iraq. The cut-off date of June 2012 is selected because by then Mrs Suiter would have been 55 and the deceased would have been approximately 60. Mrs Suiter would then have retired and they both would have enjoyed travelling together. So after June 2012 the plaintiffs accept that the deceased would not have been in full-time employment but rather it is alleged that given his personality and his working record that he would have undertaken part-time or occasional periods of employment for some further period of time.

[19] The defendants contend that there is insufficient evidence to establish that the deceased would have secured employment in Iraq. The defendants also contend that the deceased's health would have prevented him from working and would also have meant that he could not provide any services.

[20] The questions which the parties have identified are as follows:

(i) Would the deceased have obtained employment in Iraq?

(ii) If yes, for what period would he have worked in Iraq?

(iii) If the court considers that the deceased would not have taken up employment in Iraq would he have taken up alternative employment in Northern Ireland before turning 60 in October 2012?

(iv) If the answer to question (iii) is yes, for what period would the deceased have been employed and would such employment, if any, have been part-time or full-time?

(v) What does the court consider the deceased's employment pattern would have been between October 2012 aged 60 and October 2017 aged 65, if any?

(vi) Has the plaintiff established a claim for services and, if so, at what rate and for how long?

[21] There is a demand for ex-police officers from Northern Ireland to work as security personnel in areas such as Iraq. The types of jobs available are many and varied. The most physically demanding job would be in the field as a security guard for an individual. Such work would demand a high level of physical fitness given the obvious physical demands placed on a security guard during an attack or threatened attack on the principal and the need for instant reaction. It is clear that the deceased was no longer physically fit for such a demanding role. The plaintiffs' case is that the deceased could and would have obtained employment in Iraq which was essentially administrative being office based at Baghdad Airport and co-ordinating the personnel who were on the ground.

[22] The deceased had been employed by the Armour Group in Iraq for approximately 18 months until February 2007. His job at that time was in Basra training and mentoring the Iraqi police force. There was no clear evidence as to what actually was involved in that job on a day to day basis but it is clear that it came to an end because the overall contract was lost rather than on the basis that the deceased was unable to undertake the work which was assigned to him. I consider that a training role would have been somewhat more physically demanding than an office based position co-ordinating the deployment and movement of personnel.

[23] The deceased had served in the police for some 23 years in Northern Ireland. During his service he was attacked on several occasions, he was blown up in Coagh RUC Station on 8 September 1988. He was also subjected to another bomb attack on 4 March 1989 while he was on patrol in Cookstown. He witnessed the shooting of a friend and colleague in Cookstown. He lived with the danger of a lethal attack on his own life. He endured attendances at road traffic collisions in which others had lost their lives. All these incidents left him with a major and continuing problem of post-traumatic distress order which manifested with nightmares, anxiety and depression. He could not sleep properly and took to excess drinking of alcohol, there was stress placed on his marriage by these behaviours.

[24] It is the defendant's case that with the condition of PTSD the deceased could not or should not or would not have been able to long endure working in a country such as Iraq under the shadow of the gun and the bomb. In fact the deceased had done the very thing which the defendant suggests he could not do or could not endure doing for long. He had in fact worked in Iraq for a period of approximately 18 months under the shadow of the gun and the bomb. I accept the evidence of Mrs Suiter that this work had improved the attitude of the deceased. He had come back from Iraq with a sense of fulfilment and a sense of achievement. I also accept the evidence of Neil Suiter, the deceased's son, which is also that the deceased's mood had improved by virtue of the work that he had done in Iraq. I accept that the plaintiffs have established on the balance of probabilities that the deceased would have been able to undertake administrative or training or mentoring work in Iraq despite suffering PTSD. I consider that the deceased would not have been able to do what I term front line work as a personal security guard, guarding a principal, not only the basis of his physical limitations but also on the basis of his PTSD. However, that is not the type of work which it is suggested that the deceased would have obtained in Iraq.

[25] In addition to PTSD the deceased had a number of significant physical disabilities. On his return from Iraq in February 2007 and in March 2007 the deceased's GP sent a letter to Capita Health Solutions setting out the nature of the physical conditions from which the deceased suffered. The GP's letter is dated 22 March 2007 and it was written in reply to a letter dated 12 March 2007 from Capita. The letter from Capita is no longer available. It apparently asked 6 questions. The questions have not been set out in the reply from the GP but their general nature can be discerned from the reply. I had been informed that the enquiry from Capita and the reply from the GP related to the deceased's police pension. The exchange led to a letter dated 22 May 2007 from the Northern Ireland Policing Board stating that the deceased's disablement award had been increased from 70% to 77%. I am unaware of the criteria being applied by the Policing Board in arriving at the percentage of disablement. The context of the GP's letter is that the greater the disability then the greater the award. However, I make it clear that it was not being suggested that the deceased's GP had overstated the physical limitations from which the deceased suffered.

[26] Those limitations are accepted. The integrity of the deceased is not undermined. There is no suggestion that he had overplayed his disabilities to achieve a higher pension. Rather it is the plaintiffs' case that even with those limitations the deceased would have been fit for office based security work in Iraq and would have remained fit for such work until June 2012. The deceased had osteoarthritis of multiple joints, his neck and back were especially affected, he had problems with his shoulders and knees and he had considerable pain in his back and neck and knees. He had difficulty stooping and bending. He had trouble in the morning getting out of bed as he was very stiff. The slightest extra activity such as lifting something heavy could trigger severe pain in his back. He probably required a right knee joint replacement in the next few years. The deceased was unable to stand or sit in one position for any length of time or he would experience pins and needles in his buttocks and stabbing pains down his legs. He had also described difficulty with dressing and undressing and difficulty with bathing and shaving.

[27] Dr Jenkinson, Accredited Specialist in occupational medicine, has advised that the following restrictions would have been applicable:

(i) The deceased would avoid lifting weights greater than two kilograms. Two kilograms is the weight of a full kettle.

(ii) Avoid frequent bending and stooping.

(iii) Avoid climbing. Climbing stairs can increase the knee and back pain.

(iv) Avoid prolonged kneeling.

(v) Avoid prolonged walking or standing.

(vi) Avoid forceful pushing or pulling.

[28] In addition to the chronic conditions from which the deceased was suffering he also had a relatively acute condition in relation to his left knee. On 19 June 2007 his GP had referred the deceased to the Mid-Ulster Hospital for physiotherapy stating that the deceased had left knee pain for some time intermittently. The GP also stated that the deceased appeared to have medial cartilage and medial ligament tears. If physiotherapy was not of benefit then it was envisaged that the GP would refer the deceased back for knee surgery. In fact that would not have been the first surgery on the deceased's left knee in that he had surgery on that knee some years ago. The deceased and Mrs Suiter went on holiday in July 2007 returning some 3 days before the road traffic collision on 2 August 2007. There is no evidence that the deceased had been called by the Mid-Ulster Hospital for physiotherapy. Mrs Suiter's evidence was that the deceased would have wished to have physiotherapy on his knee prior to leaving for Iraq though he had not discussed his plans to return with her. She considered that the deceased was more open with their sons given her concerns as to his security in Iraq.

[29] Neil Suiter was of the view that the deceased would either have arranged private physiotherapy and/or that he would have left for Iraq in September 2007 irrespective as to whether he had then undergone physiotherapy on his left knee. Thomas Brown, who has worked in Iraq, gave evidence that there were very high quality medical services available in Iraq. My assessment of the character and drive of the deceased is that he was a person who would not have waited in Northern Ireland for physiotherapy before leaving for Iraq given the fulfilling effect that the work would have had for him and also given the financial rewards. I consider that if there was a job available in Iraq in September 2007 he would have taken up that job irrespective as to whether the condition of his left knee had stabilised.

[30] The question still remains however as to whether the deceased would have been fit given his multiple physical conditions for a job in Iraq in September 2007. I turn to consider the nature of the job that the deceased would have been undertaking.

[31] Thomas Brown formerly served in the police in Northern Ireland. He left the force in 2002, he had a fracture of his spine whilst on duty and he also suffers from PTSD. He gave evidence. I consider that he presented as a well organised and efficient individual. I consider that his evidence was entirely honest and based on considerable experience. He has worked in security field in many different countries and has built up a considerable amount of knowledge with many contacts. He owns a hotel in the Czech Republic and also continues working in different countries in the security area. Mr Brown emphasised the importance of trust in the area of security work. The individuals with whom one is working in this challenging area have to be trusted both to form the correct assessments and to react in an appropriate manner. Mr Brown had been approached by Glenn Tohill of OAM Middle East Ltd, a company that corresponds from a PO Box in Dubai, United Arab Emirates. Mr Tohill wished to engage Mr Brown as an operations manager in respect of OAM Middle East Ltd's Iraq operations. Mr Brown declined but suggested that Mr Tohill contact the deceased. Mr Brown did not have precise particulars of what was involved in the job as an operations manager but based on his experience I accept that it was essentially an administrative role based in an office involving co-ordinating the personnel on the ground.

[32] The contractual requirements for any work in Iraq with OAM Middle East Ltd are set out in their draft contract. I accept the evidence of Mr Brown that contracts such as this are ordinarily signed when the employee arrives in the country of operation. I also consider that the contract has been drafted to cover the most demanding of jobs and I accept the evidence of Mr Brown that in reality the terms are not applied so that persons with disabilities can and do work under those or similar contracts.

[33] The deceased had a considerable imperative to work in Iraq, he obtained fulfilment from that work. I have no doubt that he had insight into the damage that

inactivity and a sense of lack of worth and esteem was doing to him and to his close family members. That driving force would have led to his return to Iraq in September 2007. I consider given his drive and character that he would have been able to perform an administrative role in Iraq. I also note the financial rewards which would also have been a motivating factor. So I consider that if the job was available he would have taken it and he would have been able to perform it in 2007. There is no signed contract, the deceased had no up to date vaccines, no flights had been booked, no date had been set. However, I accept the evidence that a job had been offered to him and was available to him and that he could commence employment in September 2007. In short I conclude that but for the road traffic collision the deceased would have taken up employment with OAM Middle East Ltd in or about the second or third week in September 2007 as an operations manager.

[34] Unfortunately, the physical conditions from which the deceased was suffering were progressive. I consider that he would have had difficulty in maintaining that employment until June 2012 I consider that full lucrative employment in Iraq would have lasted some 2½ years until the start of April 2010. Between April 2010 and the date of Mrs Suiter's retirement at the end of June 2012 the deceased most probably would have attempted some form of employment. I consider that this would have been intermittent employment but over an annual period would have amounted to the equivalent of part-time work one day a week. I consider that he would have maintained that over that period until he was able to develop other interests.

[35] I do not consider that he would have been in employment after June 2012. He would have been occupied but not employed or remunerated.

[36] I turn to consider the question of services at the date of the deceased's death. The services he provided were doing the cooking, which he enjoyed and which he undertook with care. He undertook all work in relation to household finances – paying the bills and dealing with the correspondence. Those are valuable services. The service of cooking could not be provided while he was in Iraq but given the internet age looking after the family finances could be. The deceased would not have been physically able to perform services by gardening or decorating. I consider that the appropriate figure for the services that the deceased performed at the date of his death is one of £900 being a figure discounted from a more conventional figure for services. On his return from Iraq I consider that he would have continued to provide those services or a variation on them until the age of 70.

[37] So in answer to the questions posed I would answer as follows:

(i) Would the deceased have obtained employment in Iraq?

The answer is yes.

(ii) If so, for what period would he have worked in Iraq?

The answer is until 1 April 2010.

(iii) If the court considers that the deceased would not have taken up employment in Iraq would he have taken up alternative employment in Northern Ireland before turning 60 in October 2012?

Does not arise.

(iv) If the answer to question (iii) is yes, for what period would the deceased have been employed and would such employment, if any, have been part-time or full-time?

Does not arise.

(v) What does the court consider the deceased's employment pattern would have been between October 2012 aged 60 and October 2017 aged 65?

Does not arise in that I find that he would have undertaken the equivalent of part-time work one day per week from April 2010 until 1 July 2012. He would not have been employed in October 2012.

(vi) Has the plaintiff established a claim for services, and if so, at what rate and for how long?

I consider the answer to be yes at £900 per annum for any period that he was not in Iraq. At the reduced rate of £300 per annum when he was in Iraq. The claim for services would continue until the deceased was 70 years of age.

Conclusion

[38] I enter judgment for the plaintiffs against the defendants without any reduction for contributory negligence. I will adjourn the assessment of damages.