

Damages for death and personal injuries annotated problem question

Emma is a 45-year-old London-based consultant paediatrician. Because of her increasingly high profile and the fact that she is held in high respect by her peers, she has in recent years also fronted a number of popular television series that delve into various aspects of children's medicine. In the last year alone, she was paid over £50,000 for this. She also does a lot of work, including fundraising, for various children's charities: last year she was sponsored to cycle the Great Wall of China and raised over £15,000. She enjoys time with her two teenage children (she is divorced from their father) and in particular loves weekends away with them sailing or waterskiing, although also enjoys sharing more simple activities with them, such as taking their dog for long walks in the park. She is an avid cook and attends a cookery class every Thursday evening, followed by a meal out with her friends.

Emma is seriously injured in a multiple car accident, for which she was in no way to blame. She is rendered paraplegic, confined to a wheelchair and suffers constant pain. She has to give up her job, but continues to try and do some of the voluntary work for the charities she is involved with. She, along with her two children, has to move out of her three-storey house in north London and into a specially adapted ground-floor flat. Her boyfriend, Clive, who has a career in advertising, agrees to move in with her and be her carer; he gives up his job. She loses interest in sex and is unable to carry on with the majority of her leisure pursuits.

It is established that a combination of two other drivers' negligence caused the accident in which Emma was injured.

Advise Emma.

How does liability split between them? See e.g. *Fitzgerald v Lane* [1988].

Would E be able to claim damages for the cost of care provided by him? See *Hunt v Severs* [1994].

Physical injuries may be more easy to quantify than non-pecuniary losses. What can she claim for here? If she gets a lump sum, what would the multiplier be for her continued need for medical treatment?

Is this anything that is claimable by E? Or not a loss that she has suffered? Does it merely add to her non-pecuniary losses? Could she continue to fundraise in other ways?

Does this save her money or is it a loss? If she had to pay to alter the flat in any way to make it suitable for her to live in, these costs may be claimable as special damages.

These are additional earnings. A claim may be based on these, but unlike her other job, this may be less permanent—how long could someone like E expect to have a high profile on TV?

The object of a question like this is to get you to work out (roughly) how much compensation E will be able to claim. Negligence is not disputed so you need not talk about duty, breach, causation etc. Obviously, the amount of damages you end up with might not be the same as a court would award—the idea is for you to identify and discuss the various principles that apply to the different parts of the claim, not to get an exact figure. On the physical injuries, you may find **Figure 21.1** helpful. Consider also whether this is the kind of situation where the court might exercise its power to insist that the parties create a Periodical Payment Order to cover the future losses. If so, how would this work?

These are all physical activities that E may not now be able to enjoy. While she can still spend time with her children, the non-pecuniary losses here will have to be compensated.

Can she still do this? If not, it adds to her non-pecuniary loss.

This also goes to her non-pecuniary losses.

We are not told what her precise salary is, so the multiplicand figure here (as we know that she has to give up her job) will largely be guesswork. However, it is fairly safe to say that a consultant paediatrician working in London will be on quite a high salary! You could investigate roughly how much this might be and start your calculations from there. Remember that the multiplicand will also take into account future prospects of promotion etc (as well as the inevitable 'vicissitudes' of life). What would the multiplier be on her lost earnings?