



Neutral Citation Number: [2019] EWHC 2959 (QB)

Case No: QA-2019-000037

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ON APPEAL FROM THE CENTRAL LONDON CIVIL JUSTICE CENTRE
ORDER OF HHJ ROBERTS DATED 16 JANUARY 2019
COUNTY COURT CASE NUMBER: B91YM785

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 5 November 2019

Before :

THE HONOURABLE MR JUSTICE MURRAY

Between :

ZEHOUR CHELFAT

Appellant/
Claimant

- and -

CHAUDHRY'S RESTAURANT LIMITED

Respondent/
Defendant

The Appellant appeared in person.

The Respondent did not attend and was not represented.

Hearing date: 31 October 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
THE HONOURABLE MR JUSTICE MURRAY

Mr Justice Murray :

1. This is the “rolled-up” hearing of (i) the application of the appellant, Ms Zehour Chelfat, for permission to appeal against an order made by HHJ Roberts on 16 January 2019 (“the Order”) and (ii) if permission is granted, the substantive appeal.
2. The Order followed a hearing on 16 January 2019 before HHJ Roberts to assess the appellant’s damages, following judgment in her favour in relation to her personal injury claim against the respondent, Chaudhry’s Restaurant Limited. Ms Chelfat appeals against the judge’s assessment of damages and his calculation of the award of costs he made in her favour at the hearing.

Permission to appeal

3. At the beginning of the hearing before me, I granted Ms Chelfat permission to appeal, having concluded that her grounds of appeal were arguable. That conclusion was based on my review of the appeal bundle, including the transcript of the judgment given by the judge on 16 January 2019 (“the Judgment”). I note that there were no submissions from the respondent arguing to the contrary. I then proceeded to hear the appellant’s substantive submissions in support of her appeal.

The parties

4. Ms Zehour Chelfat was a customer of the respondent’s restaurant on 2 September 2012.
5. The respondent is an English company (Company no. 06957166) that, at the time of Ms Chelfat’s visit, operated a restaurant known as “Chaudhry’s Restaurant” at 198-202 Fore Street, London N18 2JD.

Background

6. The following summary of the factual background is based on Ms Chelfat’s evidence, no evidence having been submitted by the respondent. Ms Chelfat attended the respondent’s restaurant on 2 September 2012 shortly after 6:00 pm. On that day the restaurant was serving a buffet of mixed variety including Indian food, Chinese food and barbecue, as well as a variety of drinks. She paid for a meal from the buffet and a drink and then, in accordance with her normal practice, she washed her hands thoroughly in the lavatory at the restaurant before proceeding to have her meal.
7. During her visit to the restaurant, Ms Chelfat observed kitchen staff at the restaurant taking prepared Indian curries out of a cupboard, instead of a refrigerator, and then placing them into the oven for a few seconds, before pouring them straight into the chafing dishes for the buffet. The staff were wearing “casual and unhygienic” clothes. She saw a member of the restaurant staff mixing fresh fruit with contaminated or rotten fruit to make juice. She also saw a member of staff spitting in the sink and surrounding area where the fruit and the juice processor were located.

8. Ms Chelfat took two or three spoons of one of the curries from the buffet as well as some other food. She described the curry as afflicting her throat like a “fireball”. She was also given an orange juice but found that it tasted “funny” and did not finish it.
9. Within a few hours of eating and drinking at the respondent’s restaurant, Ms Chelfat suffered severe abdominal pain and reflux of stomach acid. Her sleep was disrupted that night and every night for the next three months by her abdominal pain. She also suffered alternating diarrhoea and constipation over the next 12 months, along with occasional nausea with loss of energy for up to 18 months after her visit to the restaurant.
10. Ms Chelfat also had some pre-existing mental health problems, principally depression and anxiety, which were exacerbated for a period of many months by the food poisoning she suffered as a result of her visit to the respondent’s restaurant. Her exacerbated psychological symptoms included recurring panic attacks, which increased in frequency and severity in the months following her visit to the respondent’s restaurant.
11. On the third day after her visit to the restaurant, Ms Chelfat went to see her General Practitioner, who asked her to provide a stool sample. Upon analysis, her stool was found to contain the bacterium *Helicobacter Pylori*. Her GP started her on a course of antibiotics and also prescribed antacids. Her symptoms, as noted above, persisted for many months.
12. In December 2012 Ms Chelfat was examined by a consultant gastroenterologist, Dr Andrew Millar, who diagnosed post-infective dyspeptic syndrome. He also suspected that the onset of hiatus hernia might be causing some of her symptoms, but this was ruled out by an endoscopy, which was performed on Ms Chelfat as a day patient, but under general anaesthetic.
13. Ms Chelfat states that she filed and served her claim against the respondent on 31 August 2015. Although the copy of the claim form in the appeal bundle is not sealed, there is no evidence to suggest that it was filed and served on any other day, so I take 31 August 2015 as the date of filing and service of her claim. Her Particulars of Claim are dated 31 August 2015, and she provided a witness statement dated 31 August 2015 in support of her claim.
14. The respondent filed its Defence on 25 November 2015, para 3 (Defence) of which reads in its entirety as follows:

“This is no truth in this claim. Chaudhry’s Restaurant Limited have also sold the business on 20.7.2015 and the Company is now being wound up.”
15. It appears that an application has been made to strike the respondent off the Register of Companies, but Ms Chelfat has lodged an objection to the striking off, so that for the moment the respondent remains a registered company.
16. At some point, presumably in or about July 2018, Ms Chelfat commissioned Dr Mark Burgin to produce an expert medical report. Dr Burgin was in active clinical practice from 1995 to 2011 and worked as a Disability Analyst from 2011 to 2014, seeing

claimants and preparing reports on level of disability. His experience included assessing patients presenting with gastrointestinal and psychological injuries, however he did not claim to be an expert specifically in gastrointestinal medicine. He noted in his report that he worked as a medical-legal expert and had produced medical-legal reports regularly since 2000.

17. Dr Burgin examined Ms Chelfat on 20 July 2018, and he produced his medical report on 10 September 2018. He noted that Ms Chelfat had seen the consultant gastroenterologist, Dr Millar, on 5 December 2012, and he summarised Dr Millar's conclusions, based on Ms Chelfat's medical records, in his report.

Procedural history

18. This claim has a complicated procedural history. The principal elements are as follows:
 - i) After filing its Defence on 25 February 2015, the respondent appears to have taken no further steps and to have made no appearance any hearing in relation to these proceedings. The respondent apparently failed to comply with the requirement to complete and file a Directions Questionnaire and take related procedural steps by 4 January 2016, as a result of which, according to the appellant, its Defence was struck out on 9 February 2016. (There is no copy of that order striking out the respondent's Defence in the appeal bundle, but the fact that the respondent's Defence was struck out appears to be borne out by the subsequent procedural history, and so I proceed on that basis. Ms Chelfat says that she was first informed in August 2016 by the County Court that the respondent's Defence had been struck out. She gave that evidence in her witness statement dated 21 September 2016, which accompanied her application of that date (a) to lift a stay on the claim that had been imposed (for reasons that are not clear to me), (b) to seek an order that judgment be entered in her favour against the respondent and (c) to have the respondent's insurance company, Gallagher Bassett International Ltd, joined as a defendant to the proceedings.)
 - ii) On 25 January 2017 DJ Nisa sitting in the County Court at Brentford entered judgment in the appellant's favour, with the only remaining issue being the quantum of damages. Ms Chelfat was ordered to file and serve her medical evidence by 4:00 pm on 19 April 2017.
 - iii) By order made on 11 August 2017 (dated 17 August 2017) DJ Nicholson sitting in the County Court at Brentford struck out the claim, presumably (although it is not clear from the appeal bundle) on the basis that the appellant had not filed her medical evidence by the deadline in DJ Nisa's order of 25 January 2017.
 - iv) On 9 October 2017 Ms Chelfat's application to set aside the order of DJ Nicholson was transferred to the County Court at Central London.
 - v) At a hearing on 20 October 2017, DDJ Shelton dismissed Ms Chelfat's application to set aside DJ Nicholson's order on the basis that the application had no merit, that the claim "had no reasonable prospect of success" (despite

judgment having already been granted in her favour by DJ Nisa) and that Ms Chelfat had not yet produced her medical evidence. DDJ Shelton's order was dated 30 November 2017 (not 20 November 2017, as stated in the Judgment), despite having been made by DDJ Shelton on 20 October 2017.

- vi) By order made on 15 November 2017 (dated 22 November 2017), HHJ Saggerson in the County Court at Central London, on a review of the papers, refused Ms Chelfat's application to appeal against the order of DDJ Shelton.
- vii) On 30 August 2018, upon Ms Chelfat's renewed application for permission to appeal against the order of DDJ Shelton, HHJ Dight CBE, sitting in the County Court at Central London, granted Ms Chelfat permission to appeal against the order of DDJ Shelton.
- viii) That appeal was heard by HHJ Roberts, sitting in the County Court at Central London, on 12 November 2018. By HHJ Roberts's order dated 13 November 2018, DDJ Shelton's order was set aside and the appellant's judgment against the respondent was reinstated. He also ordered that the matter be listed for an assessment of damages hearing reserved to himself on the first available date after 19 November 2018, with Ms Chelfat's appeal bundle to stand as the assessment of damages bundle and costs of that appeal to be paid by the respondent to the appellant.
- ix) On 29 November 2018 HHJ Roberts allowed Ms Chelfat's application dated 14 November 2018 to amend her Particulars of Injury at para 7 to replace "Helicobacter Pylori" with "Gastroenteritis".
- x) The hearing to assess Ms Chelfat's damages took place before HHJ Roberts in the County Court at Central London on 16 January 2019, resulting in the Order against which Ms Chelfat is appealing.
- xi) On 6 March 2019 Sir Alistair MacDuff, sitting as a Judge of the High Court, ordered that Ms Chelfat's application for permission to appeal be listed for a hearing, with the substantive appeal to follow immediately if permission is granted.
- xii) On 20 May 2019 May J granted Ms Chelfat an extension of time to file her appeal bundle and ordered that a transcript of the Judgment (but not the full hearing) be obtained at public expense, for inclusion in the appeal bundle.

Relevant legal framework

- 19. As this is an appeal, these proceedings are limited to a review of the Order, as provided for in CPR 52.21. There are no circumstances that justify a re-hearing of the assessment of damages. There is a separate question as to the appropriate course that the court should take should the appeal be successful, in whole or in part. I will revert to that question in due course.
- 20. The appeal will be successful, and the Order set aside or varied or referred back to the County Court for re-determination, only if I conclude that the judge's decision as to the assessment of the damages was wrong: CPR 52.21(3)(a).

21. No question of there having been a serious procedural or other irregularity in the proceedings in the lower court is properly raised and particularised in the Grounds of Appeal. Ms Chelfat notes at para 14 of her Grounds of Appeal that she feels that the judge was “busy that day and he was unwilling to listen and give his attention to details to give a coherent reasoning in the end and I feel let down that this happened”. I note her complaint, but do not consider it to be a separate ground of appeal.
22. As this is an appeal from an assessment of damages by a judge, I have had regard to paras 53-024 to 53-044 of *McGregor on Damages* (20th edition). I bear in mind that the judge had the benefit of hearing oral evidence from Ms Chelfat, whereas I did not. His decision in making the Order was based on his assessment of the factual evidence, and on a review of his decision I should only set aside that decision where I am convinced by the “plainest of considerations” that the trial judge formed a wrong opinion: *McGregor on Damages* at para 53-025 and the authorities cited there.
23. Regarding the grounds on which an appellate court will interfere in an assessment of damages made by a trial judge, *McGregor on Damages* at para 53-206 refers to the following passage in *Flint v Lovell* [1935] 1 KB 354 (CA) (Greer LJ) at 360:

“... I think it right to say that this Court will be disinclined to reverse the finding of a trial judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a lesser sum. In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled.”
24. Greer LJ in the passage just quoted was speaking of the approach that should be taken by the Court of Appeal, but the principles clearly apply in relation to this court’s appellate jurisdiction. As summarised in *McGregor on Damages* at para 53-027 there are two distinct grounds on which I could interfere with the judge’s assessment of damages, namely, (i) if he has acted on a wrong principle of law or (ii) he has made “an entirely erroneous estimate” of the damages.
25. At para 52-027, *McGregor on Damages* indicates that the phrase “entirely erroneous estimate” is potentially misleading, as case law subsequent to *Flint v Lovell* has shown that the disparity needed before appellate interference is justified is arguably less, as discussed in more detail at paras 52-034 to 53-044. At para 53-035 it is noted that in *Elliott v Corporation of Preston* [1971] 2 Lloyd’s Rep 328 (CA) at 330 Salmon LJ referred to the phrase as “hallowed” but having “a rather archaic ring” and made clear that he had always regarded the phrase “wholly erroneous estimate”, in relation to an appeal against an assessment of damages, as meaning that:

“... the Court has to be satisfied that [the lower court’s assessment of damages] is very wrong. If you are satisfied that it is wrong, and seriously wrong, then not only is this Court entitled to interfere, but it is its duty to interfere.”

The Judgment and the Order

26. Ms Chelfat appeared in person at the hearing on 16 January 2019. The respondent did not appear. The judge referred in the Judgment to having Ms Chelfat's "witness statement of 31 August 2017", but that appears to be an error in the transcript and that it should instead be a reference to her witness statement of 31 August 2015. The judge also referred to the medical report of Dr Burgin and to Ms Chelfat's schedule of loss and notes that the costs of the medical report form part of the costs of the claim rather than financial loss recoverable as damages. (The judge appears, however, to have included at least part of the cost of the medical report in his assessment of her past financial loss, as otherwise that would only amount to £100. The cost of the medical report (including postage) was £247. Her claim for past financial loss was £347. The judge awarded her £300 under that heading.)
27. In the Judgment, the judge reviewed the evidence of Ms Chelfat and the medical report of Dr Burgin. He noted that Dr Burgin summarised and commented on Dr Millar's evidence (referred to as "Dr Miller" in the transcript). Dr Burgin noted in his report that he had not been able to see some of Ms Chelfat's medical records since she first came to the UK in 1990, as her medical records between 1990 and 1999 appeared to have been lost.
28. One issue discussed in Dr Burgin's medical report is whether Ms Chelfat had suffered from an infection with the *Helicobacter Pylori* bacterium prior to the food poisoning on 2 September 2016. Dr Burgin concluded that it was likely that she had, whereas Dr Millar was of the view, noted at [14] of the Judgment, that Ms Chelfat had not so suffered. The judge preferred Dr Millar's view. This accorded with Ms Chelfat's evidence that she had never been previously diagnosed as suffering from a *Helicobacter Pylori* infection, nor had she ever been previously aware of such an infection.
29. The judge referred to the *Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases* (14th edition, 2017) ("the *Guidelines*"), which sets out guidelines for assessment of general damages for pain, suffering and loss of amenity (PSLA) for a variety of forms of personal injury. The *Guidelines* set out a range of damages for different categories of injury, both with and without the 10 per cent uplift required by *Simmons v Castle (Practice Note)* [2013] 1 WLR 1239 (CA). In this case the 10 per cent uplift applies, as there is no conditional fee agreement in this case and therefore section 44(6) of the Legal Aid, Punishment and Sentencing of Offenders Act 2012 does not apply.
30. The judge concluded at [15] of the Judgment that Ms Chelfat's case fell within para (b)(iii) of Chapter 6 (Injuries to Internal Organs), section G (Digestive system) ("Chapter 6G") of the *Guidelines*, which sets out guideline general damages of £3,460 to £8,360 (with the 10 per cent uplift). Para (b)(iii) covers injuries of the following description:

"Food poisoning causing significant discomfort, stomach cramps, alteration of bowel function and fatigue. Hospital admission for some days with symptoms lasting for a few weeks but complete recovery within a year or two."

31. The judge concluded that the appropriate figure within the range for the above category was £6,500. He noted that Ms Chelfat was entitled to interest on her general damages at 2 per cent from the date of service of the claim form on the defendant to date, which by his calculation therefore amounted to £450. He assessed Ms Chelfat's past financial losses, as I have already noted, at £300, with interest on that amount at £21. No complaint is made regarding his calculation of the interest amounts.
32. Reflecting the foregoing, para 1 of the Order provided that there be judgment for the appellant for the sum of £7,271.
33. In the Judgment the judge did not address the question of costs, but in the Order he ordered that the respondent pay the appellant's costs, which he summarily assessed in the sum of £2,750. Ms Chelfat had submitted a schedule of costs indicating a total amount of costs £4,142, although I note that there appears to be an error in her addition, as the sum of the individual amounts specified in her schedule is £4,193.

Grounds of appeal

34. The appellant's Grounds of Appeal are, in essence, as follows:
 - i) in relation to the judge's assessment of general damages, the judge failed to take into account the full facts of the appellant's case in assessing her general damages and therefore his assessment of the general damages was a wholly erroneous estimate; and
 - ii) in relation to the judge's summary assessment of her costs, there was no basis, and he gave no reasons, for awarding her less than her full costs, having regard to the rules that apply to the assessment of costs in favour of a litigant in person.

The appellant's submissions

35. Ms Chelfat submitted, in her skeleton argument prepared for this hearing and in her oral submissions, that the general damages awarded by the judge were "manifestly inadequate and disproportionately low" in light of the severity of the injuries she suffered as a result of the food poisoning she suffered at the respondent's restaurant.
36. Ms Chelfat submitted that the judge should have assessed her general damages by reference to para (b)(ii), rather than para (b)(iii), of Chapter 6G. Para (b)(ii) sets out guideline general damages of £8,360 to £16,830 (with the 10 per cent uplift). It covers injuries of the following description:

"Serious but short-lived food poisoning, diarrhoea and vomiting diminishing over two to four weeks with some remaining discomfort and disturbance of bowel function and impact on sex life and enjoyment of food over a few years. Any such symptoms having these consequences and lasting for longer, even indefinitely, are likely to merit an award between the top of this bracket and the bottom of bracket (i) above."

37. Ms Chelfat also submitted that the judge had failed to have regard to a list of cases that she had handed to him at the hearing on 16 January 2019, and that he failed to mention any of those cases, or any other cases, in his judgment. She noted that he applied the *Guidelines*, but she submitted that that was not sufficient. His assessment “should have been complemented by case law”.
38. Having regard to those cases, Ms Chelfat argued that the judge could have concluded that she was entitled to damages above the upper bracket indicated for para (b)(ii) of Chapter 6G.
39. Finally, Ms Chelfat submitted that the judge failed, without justification, to award her the full costs she had incurred in conducting the claim as set out in her schedule of costs. She submitted that those costs were reasonable and proportionate, and that he erroneously applied the cap in CPR 46.5(2) as if the amount she had claimed were the amount which would have been allowed if she had been represented by a legal representative. Even on the conservative assumption that a trainee solicitor could have prepared the case, the cap under CPR 46.5(2) would have been considerably higher than the amount that she did claim. She had calculated her time for preparation of documents, for preparing for trial and for attendance at trial at £19 per hour, which is the appropriate rate for a litigant in person as set out in CPR PD 46, para 3.4.

Analysis and conclusions

40. Although the respondent filed a Defence consisting of a general denial, it has taken no further part in these proceedings. It has provided no evidence or other challenge to Ms Chelfat’s evidence as to the nature and extent of her injuries, which she set out in her witness statement dated 31 August 2015. Ms Chelfat also gave oral evidence at the hearing on 16 January 2019, and she provided the report of Dr Burgin, to which I have already referred. That report included a summary of the conclusions of the consultant gastroenterologist, Dr Millar.
41. I bear in mind the advantage that the judge had as the trial judge in assessing the evidence and reaching factual conclusions. This is, of course, reflected in the “wholly erroneous estimate” standard for justifying interference with a trial judge’s assessment of damages for personal injury.
42. I note in this case that only Ms Chelfat gave oral evidence. Otherwise the evidence is her witness statement of 31 August 2015 and the medical report of Dr Burgin, both of which I have before me and which I am as capable of reading and assessing as the trial judge. Ms Chelfat’s evidence, as recorded in the judgment, is consistent with her written evidence and with Dr Millar’s evidence as summarised by Dr Burgin and preferred by the judge on the question of prior infection by *Helicobacter Pylori*.
43. I note that the judge did not state in his Judgment that he disbelieved any of Ms Chelfat’s evidence nor did he give any reasons for discounting her evidence, such that it was appropriate to assess her general damages by reference to para (b)(iii) of the Chapter 6G of the *Guidelines*. Her evidence, in my view, supports the conclusion that para (b)(ii) is the appropriate category. In the absence of any reason for choosing instead para (b)(iii), the judge’s conclusion on that point is, in my view, a “wholly erroneous estimate” in the time-honoured phrase, although, in this case, it would be

more aptly described as “outside the appropriate bracket” in the alternative formulation proposed by Lord Lloyd of Berwick in *Wells v Wells*.

44. There is no merit, in my view, in Ms Chelfat’s submission that the judge failed to have regard to relevant cases or that he was obliged to mention or to discuss any specific cases in his judgment. In this case, it was sufficient that he had regard to the *Guidelines*, although I have found that he allocated Ms Chelfat’s case to the wrong bracket.
45. I note that the *Guidelines* are the latest edition of a set of guidelines that are revised every couple of years, where the levels are set having regard to awards for general damages in relevant cases, as a way of ensuring a degree of comparability in general damages awards for personal injury made by courts across England and Wales. As to any change in the value of the pound sterling due to inflation or other macroeconomic factors, that aspect is taken into account when the levels of damages are determined for each new edition. As noted at para 20-017 of *McGregor on Damages*, in *Cookson v Knowles* [1977] QB 913 (CA) at 921C, Lord Denning MR said that:

“... the courts invariably assess the lump sum [namely for the non-pecuniary loss to an injured claimant] on the ‘scale’ for figures current at the date of the trial”
46. Although *Cookson v Knowles* pre-dated the *Guidelines*, *McGregor on Damages* states that this position is maintained today. The “scale” for determining non-pecuniary loss in personal injury cases is set out in the *Guidelines*. It is not necessary, therefore, in general to adjust the figures set out in the *Guidelines* when determining the appropriate level of general damages for a case of personal injury falling within a particular bracket to account for the effect of inflation or similar factors. I also note that there is nothing in this case that in my view justifies taking this above the top of the bracket for para (b)(ii) of Chapter 6G of the *Guidelines*.
47. In light of my conclusion above, this appeal succeeds in relation to Ms Chelfat’s ground of appeal relating to the assessment of her general damages.
48. As to the costs award, which Ms Chelfat also challenges, I note that she claimed a total of £4,142 in costs incurred, although the individual items amount to £4,193, rather than £4,142. The judge awarded £2,750. Two-thirds of Ms Chelfat’s claimed amount of costs (£4,142) is £2,761.31. The judge awarded her £2,750. It may be a coincidence, but it seems to me, on a balance of probabilities, that the judge erroneously applied the two-thirds cap by reference to Ms Chelfat’s claimed amount rather than by reference to a hypothetical legal representative’s costs for the same work, as is required by CPR 46.5(2). Accordingly, Ms Chelfat also succeeds on her ground of appeal relating to the costs award.
49. Bearing in mind the range of my powers under CPR 52.20, I consider that the appropriate and most efficient course is not to remit the matter to the County Court for re-determination of the damages but to assess the damages myself based on the evidence of Ms Chelfat, the evidence of Dr Millar and having regard to the judge’s own factual findings in the Judgment.

50. I have concluded that the judge was wrong, on the evidence, to categorise Ms Chelfat's injuries as falling within para (b)(iii) of Chapter 6G. Although it appears that Ms Chelfat had more or less fully recovered within two years, and para (b)(iii) refers to symptoms enduring "over a few years", in my judgment the severity and duration over many months of relatively severe symptoms as recorded in the appellant's unchallenged evidence puts this case clearly in para (b)(ii) of Chapter 6G, but within the lower end of the range indicated for that category given that she had more or less fully recovered within two years.
51. Taking into account the initial severity of the food poisoning and the aggravation it caused to her pre-existing mental health problems with depression and anxiety (including panic attacks), I assess Ms Chelfat's general damages as £10,000. I calculate the interest on her general damages from the date of service of the claim form on the defendant to date as £850. Following the judge's indication that the medical report should be included in her costs of the claim rather than as part of her claim for past financial losses, I assess her past financial losses as £100, and the interest on that amount as £8.50. The foregoing amounts total to £10,958.50. I will give the appellant judgment in favour for that amount.
52. In relation to Ms Chelfat's costs, I have considered the individual items in Ms Chelfat's schedule of costs. It has not been prepared using Form N260, however I am satisfied that the categories of work for which she has claimed correspond to categories of work that would have been permissible if the work had been done by a legal representative on her behalf. She has included time "for trial attendance and giving evidence", but I ignore in that regard the words "and giving evidence".
53. I bear in mind that this matter has had a somewhat involved procedural history and began over four years ago. It appears that some of the difficulties along the way have been of Ms Chelfat's making, but allowing some latitude for her being a litigant in person and noting that she has ultimately prevailed both as to liability and, on this appeal, as to damages, I can see no reason why her costs should be heavily discounted. Given the history of this matter, even on a conservative assumption as to the rate at which a legal representative would have charged for the time involved and assuming that the legal representative would have prepared each stage of the case more efficiently, nonetheless it seems to me unlikely that the costs that Ms Chelfat has claimed would exceed the cap imposed by CPR 45.6(2).
54. I acknowledge that the costs incurred by Ms Chelfat are a significant proportion of the damages awarded, but having regard to all the circumstances, I am satisfied that it is appropriate and proportionate to award Ms Chelfat her costs, including the cost of the medical report, totalling £4,440.
55. Ms Chelfat is also entitled to her costs of the appeal. She did not have a note of those costs with her at the hearing. I will summarily assess those once I have received a note of her costs and any related written submissions, provided that a note of her costs are submitted within two weeks' of service of my order reflecting this judgment.

Conclusion

56. The appeal is allowed, and the Order is varied, as indicated above in this judgment.