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Judgment: approved by the Court for handing down | *Delivered:* **28/4/2005**

(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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BETWEEN:

WILLIAM JOHN GREGG

Plaintiff;

and

ASHBRAE LIMITED

Defendant.

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HART J

[1] On Sunday 12 September 1999 Mr Gregg was operating his digger on a demolition job at the Long Walk, eastern electrical site, Dundalk, Co. Louth. He was working for Ashbrae Limited whose managing director was Nevin Busby. Mr Gregg and Mr Busby had worked with each other for several years. During the course of that morning Mr Busby and one of his employees, Billy McComb, were also working on the site preparing an old wall for demolition. Mr Gregg was working nearby driving his JCB. Tragically, the wall collapsed on Mr Busby as he was walking past and he died as a result of severe head injuries. Mr Gregg dismounted from his digger and ran to Mr Busby and so witnessed his injuries.

[2] Although he continued to work for some weeks, eventually Mr Gregg stopped work because of the effect that this experience had upon him and he has not resumed work since. It is not disputed by the defendant that the work on the wall was not properly planned or carried out, and that had it been these tragic events would not have occurred. The defendant does not dispute that it was guilty of negligence. However, whilst it accepts that the plaintiff developed Post Traumatic Stress Disorder (PTSD) as a result of what he experienced on that day, it denies that the plaintiff is entitled to damages,

or if he is, that he is entitled to be awarded either general or special damages for the entire period up to the present day. Before addressing the legal issues it is therefore necessary to consider the chain of events of that day and subsequently in some detail.

[3] Prior to Mr Busby's death he and the plaintiff had known each other for some years. Mr Gregg had his own plant hire business and for the greater part of two years before September 1999 had worked exclusively for Ashbrae. In the past he and Mr Busby had both worked for another employer, and Mr Gregg thought that might have been five years or more before he started to work regularly for Mr Busby. For reasons that will become apparent how close they were is material. Apart from working together on the various sites developed by Ashbrae, and sometimes visiting prospective jobs together, Mr Gregg relied upon two episodes as demonstrating that their relationship was a close one.

[4] The first was that on one occasion Mr Busby let him drive his Porsche car for a short time. The second was that Mr Busby had invited him to a bar-b-cue at his home to celebrate Mr Busby's birthday, although he agreed that there were a lot of other guests as well. During cross-examination he conceded that it was a fair summary of their relationship to say that they knew each other quite well and got on quite well.

[5] Mr Gregg's account of the events leading to the collapse was not really challenged, nor was the evidence of Mr Desmond Browne, a consulting engineer, who gave evidence on his behalf. Mr Gregg agreed to demolish two gable walls in a different part of the site. Mr Busby also asked him to help with the demolition of the wall that ultimately collapsed, but Mr Gregg was unhappy about attempting this because there was a large concrete beam towards the top of the wall, which protruded from the wall and over hung the adjoining yard. He was concerned that if the beam fell it would fall into the yard, and he did not have a rock hammer to break it up if it did fall. Mr Gregg said he would deal with the gable walls and that was how the matter was left.

[6] Mr Busby and Billy McComb, his foreman, removed cladding between the top of the wall and the adjoining steel-framed structure. They then proceeded to cut metal brackets that secured the top of the wall to the steel-framed structure. The effect of this was to render the wall unstable because the weight of the concrete beam protruding beyond the outer face of the wall tended to pull the beam outwards.

[7] When Mr Gregg had finished taking down the gable walls Mr Busby told him to bring his digger and start taking the wall down. This was the wall that ultimately collapsed. To bring his digger into position Mr Gregg had to reverse it out through one doorway, and then enter by another, before

moving to the point indicated to him by Mr Busby. He had completed the manoeuvre of reversing out through the doorway when the wall collapsed. At that moment the arm of his digger was down creating a blind spot and he could only see the corner of the wall. It was only when he got out of the cab that he realised how much of the wall had come down. He saw Billy McComb running with his hands on his head but was unable to make out what he was saying. Mr Gregg then ran towards the wall and caught sight of a blue object. At that point he thought that this must be a rag because he did not know that Mr Busby was there. He clambered over the wall and pulled some of the rubble away and discovered Mr Busby's body. He found that there was no pulse although he did feel a heartbeat. He saw that Mr Busby had been crushed by the rubble and had suffered serious head injuries. At this point Billy McComb came up in a hysterical state, closely followed by an ambulance man who took them both to the gate. Before he left the scene to go to the Louth Hospital with McComb and Noel Hull, who was employed by Mr Gregg, he saw a canvas which had been placed over Mr Busby's body move and this almost made his sick.

[8] Mr Browne's evidence was that the vibration from the tracks of the digger was the cause of the wall's collapse because the wall had been weakened by the removal of the brackets, and was unstable because of its age and the counter-balancing weight of the concrete beams. I take this to mean that there were a number of factors which lead to the collapse of the wall, namely the effect of the vibration upon the wall which had been rendered unstable by its age, the weight of the beam and the removal of the brackets.

[9] Mr Gregg has not suggested that he felt that he was in danger, either at the time the wall collapsed or since. He did not say how far he was from the wall when he collapsed, but when he saw Dr Lyons on 8 March 2000 he said he was about 40 feet away. Mr Browne's estimate based on a sketch drawn by the plaintiff and a photograph taken at the scene was that the digger was 25 feet from the wall.

[10] In order to recover damages Mr Gregg has to establish that he comes within one of the categories of persons who has not suffered physical injury but claims to have suffered psychiatric injury as the result of the negligence of the defendant. The principal submission of Mr Bentley QC for the plaintiff was that he was a primary victim because he was a participant in the event. In the alternative he argued that the plaintiff was a secondary victim, either a rescuer or an involuntary participant. In order to decide whether Mr Gregg could be said to be a participant or an involuntary participant it is necessary to examine the relevant authorities in some detail. However, as it is possible to deal with the submissions that he was either a secondary victim or a rescuer fairly briefly I shall consider these first.

[11] It is common case that in order to recover as a secondary victim there are three requirements that Mr Gregg has to satisfy.

(i) That he had a close tie of love and affection with Mr Busby; and
(ii) that he was close to the accident in time and space; and
(iii) that he directly perceived the accident.

See Alcock v Chief Constable of South Yorkshire Police [1992] 1 AC 310, Page v Smith [1995] 2 All ER 736, and Frost v Chief Constable of South Yorkshire Police [1999] 2 AC 455. It was to the first of these requirements that both Mr Bentley QC and Mr Ringland QC for the defendant directed their submissions. I am satisfied that whilst Mr Gregg and Mr Busby had a good working relationship, and were on friendly terms, theirs was essentially a business relationship and did not amount to one characterised by close ties of love and affection. Mr Gregg therefore fails to meet the first of the three requirements necessary and so fails to quality as a secondary victim, and it is unnecessary to consider the remaining requirements.

[12] Mr Bentley QC argued that Mr Gregg was a rescuer, but Mr Ringland QC disputed this, submitting:

(i) that Mr Gregg did no more than a bystander would; but
(ii) in any event he was not in danger himself, no did he perceive himself to be in danger.

In Frost the majority of the House of Lords held that a rescuer was not in a special position with regard to psychiatric injury. In order to recover a rescuer had to have been exposed to the danger of physical injury or reasonably believed himself to have been so exposed. See Lord Steyn at [1999] AC 499 E/H. That the rescuer was objectively in peril at the time of the rescue is a necessary criterion is clear from the speeches of Lord Steyn at 499 A, and of Lord Hoffman, who referred to the rescuer putting himself in peril. See 508 H, 509 A/B and 510 A/B.

[13] The first question I therefore have to answer is was Mr Gregg a "rescuer", and if so, was he in danger of personal injury, or reasonably believed himself to be in such danger, when he went to where Mr Busby's body lay under the rubble of the collapsed wall? He saw the wall collapse and immediately went to the area where most of the rubble was. As he was at most 40 feet away it must have been only a matter of seconds before he reached the point where he started to remove some of the rubble covering Mr Busby's body. He then felt for a pulse and a heartbeat. I have no doubt that he should be classified as someone who acted as a rescuer. It is not necessary that the rescuer should actually rescue someone, it is sufficient if they attempt to do so even if that person proves to be beyond assistance as the unfortunate Mr Busby plainly was. However, that is not sufficient to enable

Mr Gregg to recover because I must also be satisfied that he was either in physical danger, or reasonably believed himself to be in such danger, when he went to Mr Busby's rescue. There is no evidence that at the time he was at the pile of rubble he was himself in any danger from the remainder of the wall, or that he believed himself to be, and this is fatal to the argument that he should be regarded as rescuer. His reaction was an entirely commendable and immediate response to the tragedy which had occurred, but he does not meet all of the criteria required for him to qualify as a rescuer.

[14] This brings me Mr Bentley's submission that Mr Gregg was a primary victim because he was a participant in the collapse of the wall. Mr Bentley referred me to passages in several cases in which consideration was given to what was required to make an individual a participant. These were Lord Oliver of Aylmerton in Alcock at 407 D/E and 408 E/G; Lord Browne-Wilkinson at 182 B and Lord Lloyd of Berwick at 197 F in Page v Smyth; Hutchinson LJ in Schofield v Chief Constable of West Yorkshire [1999] ICR at 199 F, 202 E/G, 203 F/G; Lord Steyn at 499 E/H and Lord Hoffman at 508 G/H at 509 E/F in Frost; temporary judge Gordan Reid QC in Salter v UB Frozen and Chilled Foods Limited [2004] SC 233 at 239, 241 and 243; and Cullen v London Fire and Civil Defence Authority [1999] PIQR at 319, 323 and 325.

[15] I have carefully considered all of these passages. Perhaps the most helpful analysis of what is required before a plaintiff can qualify as a participant can be found in the following passage from the judgment of Hutchinson LJ in Schofield at 203 F.

> "Involved in the 'accident' cannot mean 'involved in the act of negligence which caused the damage'. It must surely be understood to be a reference to being involved in the very event in the course of which the negligent act relied on occurs; that is what is to be contrasted with being a bystander."

[16] In the present case the negligent act relied upon by Mr Gregg is the removal of the brackets holding the walls in place by Mr Busby and Mr McComb causing the collapse of the wall. In that sense Mr Gregg, although nearby, was not involved in any way. However, Mr Bentley QC relied on Mr Browne's evidence that the vibration from the tracks of Mr Gregg's digger was the immediate cause of the collapse of the wall. In that sense Mr Gregg was clearly involved in the collapse of the wall. Taking the sequence of events as a whole I am satisfied that Mr Gregg was involved in the accident because the vibration from his digger triggered the collapse of the wall.

[17] However, there is a second limb to the test to be applied to determine whether a person is a participant. Not only must they be involved in the accident, but they

must be "well within the range of foreseeable physical injury", see Lord Lloyd in Page at 755. For the defendant Mr Ringland QC submitted that Mr Gregg was never in danger, whereas Mr Bentley QC relied upon Mr Browne's evidence that the heavy concrete beam could have gone anywhere as placing Mr Gregg within the range of foreseeable physical injury.

[18] Mr Gregg did not say in his evidence how far he was from the wall when it collapsed, but when he saw Dr Lyons on 8 March 2003 he said he was about 40 feet away. On the basis of a sketch drawn by Mr Gregg (which was not to scale), and a photograph taken at the scene, Mr Browne estimated that the digger was 25 feet from the wall when the wall collapsed although he accepted that this was guess work. In the absence of direct testimony by Mr Gregg as to how far how away he was, I consider I should proceed on the basis of the estimate of 40 feet which he gave to Dr Lyons. On his sketch Mr Gregg places his digger outside the framework of the building shown in the photograph. That being the case, it is difficult to see how Mr Gregg could be said to have been within the range of foreseeable physical injury at the moment when the wall collapsed, because the wall fell outwards away from the direction where Mr Gregg was working. In any event his digger was not inside the framework of the building so he was not at risk from the collapse of the wall, even if it were to collapse inwards, and not outwards as it did.

[19] Mr Bentley QC relied upon Mr Browne's evidence that the beam could have swivelled and fallen diagonally in any direction, and so might have fallen inside the framework or in some other direction that endangered Mr Gregg. Mr Browne referred to a risk that the beam could spill in any direction if only part of the wall was providing the bearing point for the wall. This evidence was not challenged, but I find it difficult to envisage how the beam or the wall could have posed a danger to Mr Gregg at the point where he was when the wall collapsed, although I can accept that had his digger been inside the framework and close to the wall when it collapsed he would have been in danger if the wall had have fallen inwards and not outwards.

[20] I am not persuaded that Mr Gregg was within the area of danger, and hence not within the range of foreseeable physical injury, at the moment when the wall collapsed. He was approximately 40 feet away and outside the framework of the building, and, although he would have entered the danger zone if he had brought his digger inside the building and nearer the wall, he was not in danger when the wall fell. It was also noteworthy that Mr Gregg himself has never said that he believed that he was in danger, and that is, in my opinion, a significant indication that he was not. That being the case, he fails to satisfy the criterion necessary to quality as a primary victim because he was not within the area of danger.

[21] What of the argument that he was an involuntary participant in Lord Oliver's words in Alcock? In Alcock at 407 E Lord Oliver divided plaintiffs into two broad categories.

> "That is to say, those cases in which the injured plaintiff was involved, either mediately or immediately, as a participant, and those in which the plaintiff was no more than the passive and unwilling witness of injury caused to others."

In this context "mediately" means that the actions of the plaintiff formed a connecting link or a transitional stage where the plaintiff was acting as an intermediately. Having referred to Dulieu v White [1901] 2 KB 669; Bell v Grigg Northern Railway Company of Ireland (1890) 26 L.R. Ir. 428; Schneider v Eisovitch [1960] 2 QB 4300; Wagner v International Railway Company (1921) 232 NY 176 and Chadwick v British Railways Board (1967) 1 WLR 912, he continued at 408 D:

> "These are all cases where the plaintiff has, to a greater or lesser degree, been personally involved in the incident out of which the action arises, either through the direct threat of bodily injury to himself or in coming to the aid of others injured or threatened. In to the same category, I believe, fall those cases such as Dooley v Cammell Laird and Company Limited [1951] 1 Lloyds Rep. 271, Galt v British Railways Board [1983] 133 NLJ 870, and Wigg v British Railways Board, The Times, 4 February 1986, where the negligent act of the defendant has put the plaintiff in the position of being, or thinking that he is about to be or has been, the involuntary cause of another's death or injury and the illness complained of stems from the shock to the plaintiff of the consciousness of this supposed fact. The fact that the defendant's negligent conduct has foreseeably put the plaintiff in the position of being an unwilling participant in the event establishes of itself a sufficiently proximate relationship between them and the principal question is whether, in the circumstances, injury of that type to that plaintiff was or was not reasonably foreseeable."

[22] There may be a distinction between the two categories of involuntary participant identified by Lord Oliver. A person who is mediately involved as an intermediately may not have felt any responsibility for the death or injury of the person concerned, whereas the category identified at 408 D consists of individuals whose actions led them to think that they were in some fashion the involuntary cause of that other person's injury or death. That was the position in Dooley v Cammell Laird and Company Limited where the plaintiff's case was set out at p.272 in the following paragraph:

> "The plaintiff's case was that on Jan. 3 1948, certain materials (including timber and drums of paint and bags of bolts and the like) were being lowered into No. 2 hold of the *Ceramic* in a sling attached to the fall of a crane. The crane was being driven by the plaintiff in the course of his employment and he well knew that fellow workmen of his were working below. During such lowering, the sling carried away and the materials fell out of sight of the plaintiff and dislodged certain scaffolding, and with the scaffolding crashed into the hole below. As a result, the plaintiff was suddenly put into a state of apprehension and acute anxiety, and thereby suffered severe nervous shock."

Donovan J accepted that the plaintiff was entitled to recover in those circumstances. In Galt the plaintiff was a train driver who thought his train had struck two railway men on the track and suffered severe nervous shock as a result. In Wigg the plaintiff was the driver of the train and one of the passengers was attempting to board when the driver was signalled that it was safe to move off. The passenger fell between the platform and the moving train and received injuries from which he died. The plaintiff searched for him, found him, and, not realising that the passenger was dead, spoke to him and remained for some 10 minutes at the edge of the platform until he was required to move the train.

[23] Lord Oliver observed "…the illness complained of stems from the shock of the consciousness of this supposed fact", that is that the plaintiff had been the involuntary cause of the deceased's death. In Dooley the plaintiff immediately felt that he may have been the cause of the death or injury, and perhaps also in Wigg. The reference to the facts of Galt in Wigg do not cast any light on this. Nevertheless, it would seem reasonable to infer from Lord Oliver's comments that in order to recover on the basis that the plaintiff believed that he was the cause of another's death or injury, that belief should be formed either at the time of, or in the immediate aftermath of, the plaintiff becoming aware of the death or injury.

[24] In principle that would seem to be correct because it is the conjunction of the death or injury and the participation by the plaintiff in that death or injury that renders the defendant liable. If the plaintiff does not realise at the material time that he was, or may have been, the cause of that death or injury, then it would open up the possibility of claimants succeeding who may not have realised for many months after the events that they may have been to blame. This would be to extend the category of those entitled to recover beyond what the law presently allows and would not be justifiable in my opinion.

[25] In the present case Mr Gregg does not appear to have felt any responsibility for what happened at any time, and it was not until quite some time later that he became aware that others were blaming him for what had happened. When he became of this is unclear. His doctor recorded on 4 January 2002 "court case looming", and his psychiatric symptoms appear to have worsened at that time. Mr Gregg said that Billy McComb rang him in November 1999 and asked why he had not attended the inquest. It would seem to have been between then and January 2000 that Mrs Busby refused to see him when he called at her home about some outstanding invoices, and that there was correspondence between his solicitor and Mr Busby's representatives about insurance details. Therefore at the earliest some two months elapsed between Mr Busby's death and any realisation on the part of Mr Gregg that he was being, or might be, blamed for Mr Busby's death. I do not consider that in those circumstances Mr Gregg can be said to have been an involuntary participant in the sense described by Lord Oliver because the period of time between Mr Busby's death and Mr Gregg believing that he was in some fashion the alleged cause of Mr Busby's death was much too long.

[26] Can Mr Gregg recover on the basis that he was "mediately involved", ie that there was a connecting link between his actions and driving the digger and Mr Busby's death due to the vibration from his digger precipitating the collapse of the wall? In these circumstances he would normally be classified as a secondary victim, in which case his case would fail because he cannot satisfy the control mechanisms applied to secondary victims for the reasons set out earlier. However, as Hobhouse LJ pointed out in Young v Charles Church (Southern) Limited [1997] 39 BMLR 146:

> "In referring to mediate and immediate involvement as a participant, Lord Oliver potentially includes some of those who might be regarded as 'secondary victims'. (Indeed, this implication arises from the use of the word 'mediately')."

In none of the decided cases to which I have been referred has the concept of "mediate involvement" been analysed or applied. In Young and in Salter the plaintiff was held or assumed to be a primary victim because he was a participant in the accident. In Young the plaintiff had just handed a scaffolding pole to a colleague and was some six to 10 feet away to fetch another pole when the deceased raised the pole he had been given and came in contact with an over-head power line and was electrocuted. In Salter the plaintiff was driving the forklift on which the deceased was standing when he struck his head against a cross-member of the roof in the cold store.

[27] In the present case Mr Gregg's role was that he drove the digger in the area and thus precipitated the collapse of the wall. In these circumstances can he be said to be acting as an intermediary providing a connecting link between Mr Busby's death and the collapse of the wall? It is ultimately a question of fact and degree, and in the present case there is the unchallenged evidence of Mr Browne that the vibration

from the tracks of the digger precipitated the collapse of the wall. I am satisfied that as Mr Gregg was driving the digger at all material times his actions formed a connecting link with the collapse of the wall and Mr Busby's death and thus Mr Gregg was involved "mediately". However, is he entitled to recover even though he did not realise that he was involved at the time, and did not apparently realise it was being alleged that he was involved until some two months more or later? He witnessed the event and was involved in it, and, provided that his psychiatric illness resulted from what he saw, and this was reasonably foreseeable, I can see no reason why he should not be entitled to recover damages. Although he may have been a mere passive and unwilling witness at the time, it is now apparent that he unwittingly played a material part in the events leading to the collapse of the wall, and that involvement is in itself a significant control factor. I therefore hold that he is entitled to recover damages from the defendant.

[28] I now turn to consider the issue of damages in this case and I will consider the medical evidence first. The case for the plaintiff is that he suffered Post Traumatic Stress Disorder (PTSD) and that this certainly lasted until May 2003, although it is contended that he still suffers some residual symptoms. The significance of May 2003 is that at that time Mr Gregg, who had problems with his back prior to September 1999, developed acute left-sided sciatica. He suffered from considerable pain thereafter and an MRI scan of 29 August 2003 revealed degenerative lumbar disease with a left-sided L5/S1 disc prolapse. In his report of 23 September 2004 Dr Hamill, the plaintiff's general practitioner, stated: "Although his acute pain has subsided he is left with numbness and weakness in his left foot and the later symptoms persist to the present day", and Dr Hamill described this as "chronic back pain." In his closing submissions Mr Bentley QC accepted that May 2003 may represent the cut off point for special damages. However, the defendants did not accept that the plaintiff's loss could all be attributed to his PTSD even up to this date and it is therefore necessary to look at his medical history in some detail.

[29] Mr Busby was killed on 12 September 1999, and by 27 September Mr Gregg had been seen by his GP. He complained of feeling upset and suffering from poor sleep and inability to settle and a mild tranquilliser was prescribed. On 15 October he was prescribed Prozac, which is an anti-depressant, and further prescriptions for Prozac were given at monthly intervals in November and December. He again saw his GP on 4 January 2000 and at this stage the nature of his complaint was such that he was referred to the Community Psychiatric Nurse suffering from anxiety and depression. Mr Gregg was cross-examined by Mr Ringland QC about his working record between 12 September and the end of that year, but I am satisfied that Mr Gregg was doing his best to carry on working, but the intensification of his symptoms towards the end of 1999 meant that from the beginning of 2000 he was unable to work due to the PTSD from which he was then suffering. These symptoms continued over the first six months of 2000. The GP notes contain references to disturbed sleep although some improvement was noted on occasions, for example on 10 April 2000. In May 2000 he went on a family holiday and was later to tell Dr Daly that he "felt great". I am satisfied that he was improving at that stage. However, on 5 June 2000 he saw his GP because some 10 days before he was struck on the head by a plank and his GP recorded that Mr Gregg was "set back by it." He later told Dr Daly: "That knocked me back badly because it brought back memories of that man, Nevin, because when I uncovered him, his face was cut open. It shattered my confidence a

bit." In July 2000 it was recorded that he was upset by the coroner's report and in September 2000 was upset by a friend's suicide. On both occasions he was recorded as suffering from anxiety and depression.

[30] Throughout the remainder of 2000 anxiety and depression are recorded in his GP notes and by the beginning of January 2001 his condition appears to have worsened. He was seen for the first time by Dr Hamill on 12 January 2001 and in his evidence Dr Hamill said that he saw him as an emergency because he "felt he might do something silly." As a result he arranged for Mr Gregg to be seen at the Lagan Valley Hospital as an emergency. Later that year he started to do some work with machines as a therapeutic exercise with the consent of the DHSS. Unfortunately at the end of August 2001 it was recorded that he had been in a road traffic accident and again this set him back further, although Dr Hamill wrote in September 2002 that by September/October 2001 Mr Gregg "had once again settled very well." In his report of 29 August 2001 Dr Lyons remarked that Mr Gregg was "marginally better."

[31] By 13 December 2001 Mr Gregg is recorded as saying to his GP that he felt: "Not too bad" and on 31 January 2002 he is recorded as being: "Not too bad but sore back." In May 2002 he accepted that he had a good holiday and he saw Dr Hamill again on 9 September 2002. In his letter to the plaintiff's solicitors of 10 September 2002 Dr Hamill concluded his letter with the following paragraph:

"Unfortunately once again through the summer he has had stresses and strains in relation to the impending court case in relation to the accident. His son has had a major orthopaedic operation and there have also been difficulties in obtaining secondary schooling for his son. The latter is now sorted out but unfortunately the court case is now looming large and until this is over I think Mr Gregg's progress may be poor. He also is currently feeling unwell from back pain of uncertain origin and this is causing him not to sleep well and as long as his sleeping remains poor, I think his recovery is going to be protracted."

[32] I have already referred to the onset of the acute sciatica in May 2003 and it is necessary to say something about Mr Gregg's history of back pain. Mr Gregg accepted that he had some back pain prior to the events of September 1999 but said that he was able to carry on working. In his GP notes and records prescriptions for Diclofenac are noted in April and July 1998, and on 1 June 1999 there is a further prescription for Diclofenac.

[33] It is noteworthy that there are further references to back pain on 9 February 2000, 4 May 2000, 1 August 2000 and 25 October 2000 and another prescription for Diclofenac on 12 November 2001. Again on 31 January 2002 there is a reference to a sore back. Therefore the reference to back pain affecting his sleeping made by Dr Hamill in his letter of 10 September 2002 must be viewed in the context of significant and continuing back problems throughout 2000 and again in 2002.

[34] It was common case that at least the majority of sufferers from PTSD can be expected to recover in some 12 to 18 months. I am satisfied that Mr Gregg fell into the minority category and his recovery was more prolonged than usual. This was in part because of set backs which he suffered from time to time due to extraneous episodes such as the suicide of his friend. However, I am not persuaded that from

September 2002 onwards, three years after the tragic events involving Mr Busby, that the after effects of Mr Busby's death were the principal cause why he was unable to return to work. On the contrary, I am satisfied that his back problems had recurred and although they had not reached the intensity which they achieved in May 2003, it is clear from what Dr Hamill wrote in the passage already quoted that at the beginning of September 2002 his recovery was going to be protracted because of his poor sleep which was caused by his back pain. That is not to say that the symptoms of PTSD may not have played their part thereafter, nevertheless I am satisfied that from September 2002 onwards the principal reason why he was unable to return to work was because of the increasing pain which he was having in his back, pain which was not related in any way to the events of Mr Busby's death and from which he had suffered from time to time prior to Mr Busby's death. I therefore propose to assess the general damages on the basis that the Post Traumatic Stress Disorder had largely subsided by three years after the death of Mr Busby, although he has been troubled to a diminishing extent by some residual symptoms up to the present day. I award him £35,000 for general damages. This will carry interest at 2% from 24 April 2001, being the date of the writ, until today, 28 April 2005.

[35] It follows that I accept Mr Gregg was unable to work due to the psychiatric consequences of these events from 1 January 2000, which was the date that Mr Bentley QC conceded was when the loss of earnings should commence, until the beginning of September 2002, two years and eight months later. Mr Coburn, the accountant retained on behalf of Mr Gregg, produced rudimentary accounts showing that in the year leading up to April 1999 Mr Gregg's net profit before tax was £20,912. For the period 6 April to 18 October 1999, some 28 weeks, the net profit was £10,651 which would represent approximately £19,780 for a full year, again before allowance is made for tax. Mr Coburn was vigorously cross-examined about the adequacy of the documentary information provided to support these figures, but I accept Mr Coburn's conclusion, not least because no alternative figures were put before the court or put to Mr Coburn to suggest that these figures were materially inaccurate. Given that Mr Gregg was working for the defendant company full-time for some years prior to Mr Busby's death, had there been a different pattern to his payments no doubt that would have emerged. I therefore propose to assess Mr Gregg's loss of earnings on the basis of his earnings over the 28 weeks up to 18 October 1999. At an annual rate of £19,780 per annum, two years and eight months loss of earnings to the beginning of September 2002 gives a gross figure before deduction of tax and national insurance of £52,746. I did not receive any evidence from the parties as to the level of tax and national insurance and I will therefore award £52,746 less whatever figure is agreed between the parties by way of tax and national insurance. If this cannot be agreed within 14 days from the date of judgment the matter will be re-listed for further evidence on this aspect of the case. The net figure will carry interest at 6% from 1 January 2000 until today, 28 April 2005.

[36] Mr Bentley also argued that there should be what he characterised as a modest award of between £10000 and £12000 for damages for future loss of earnings under the principle of Smyth v Manchester. However I do not propose to make any award under the Smyth and Manchester heading because I am satisfied that the sole reason for the plaintiff's inability to work since September 2002 is the acute back problems from which he had been suffering and not because of any residual consequences from the PTSD.