

# SUPREME COURT OF QUEENSLAND

CITATION: *Bullock v Wraith* [2026] QCA 176

PARTIES: **SAMANTHA JANE BULLOCK**  
(applicant)  
v  
**ASHLEY JAMES WRAIGHT**  
(first respondent/not a party to the appeal)  
**AAI LIMITED TRADING AS SUNCORP INSURANCE**  
ABN 48 055 297 807  
(second respondent)

FILE NO/S: Appeal No 3153 of 2025  
DC No 623 of 2023

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal

ORIGINATING COURT: District Court at Brisbane – [2025] QDC 85 (Balić DCJ)

DELIVERED ON: 18 September 2026

DELIVERED AT: Brisbane

HEARING DATE: 7 November 2025

JUDGES: Mullins P, Bond JA, Boddice JA

ORDER: **The application for leave to appeal is dismissed, with costs.**

CATCHWORDS: DAMAGES – ASSESSMENT OF DAMAGES IN TORT – PERSONAL INJURY – INCOME LOSS AND LOSS OF EARNING CAPACITY – GENERALLY – where the applicant claimed damages for personal injury as a result of a car accident – where liability was admitted but the nature and extent of the injuries and the quantum of damages was disputed – where the primary judge was not persuaded of the reliability and credibility of the applicant on matters relevant to the assessment of quantum – where in consequence the primary judge was not persuaded of opinion evidence which depended on the applicant’s evidence being accepted – where evidence of video surveillance of the applicant was material to that assessment – whether the applicant had demonstrated a case for appellate intervention in the findings of the primary judge

APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – WHEN APPEAL LIES – FROM DISTRICT COURT – BY LEAVE OF COURT – where the applicant sought leave to appeal to the Court of Appeal pursuant to s 118(3) of the *District Court of Queensland Act 1967* – whether the applicant clearly articulated a substantial

basis for contending that the judgment of the primary judge was affected by error

*Civil Liability Act 2003* (Qld)

*Civil Liability Regulation 2014* (Qld), s 3, s 7, Sch 3, Sch 4,

*District Court of Queensland Act 1967* (Qld), s 118(3)

*Allwood v Wilson* [2011] QSC 180, cited

*Browne v Dunn* (1893) 6 R 67, followed

*Cassidy v McDonald* [2007] QCA 332, cited

*Hays Specialist Recruitment (Australia) Pty Ltd v Carey-*

*Schofield; Civeo Pty Ltd v Carey-Schofield* [2025] QCA 161, cited

*House v The King* (1936) 55 CLR 499; [1936] HCA 40,

followed

*Wang v Hur* [2024] QCA 126, cited

COUNSEL: J M Sorbello, with C C Campbell, for the applicant  
R C Morton, with M J Smith, for the respondents

SOLICITORS: Shine Lawyers for the applicant  
Barry Nilsson Lawyers for the respondents

- [1] **MULLINS P:** I agree with Bond JA.
- [2] **BOND JA:** The applicant commenced a proceeding in the District Court by which she sought to recover damages for personal injuries which she had suffered in a motor vehicle accident.
- [3] Liability for the accident was admitted. The issues for determination at trial concerned the nature and extent of the injuries which the applicant had suffered and the quantum of damages to be awarded to her consequent upon those injuries.
- [4] The applicant had sought damages for negligence in an amount exceeding \$510,000, together with interest and costs. However, the primary judge formed an adverse view of the applicant's credit and reliability on matters critical to the quantum of her claim, and in the reasons for judgment assessed damages in the amount of only \$36,208.27.
- [5] After hearing the parties on interest and costs, her Honour's final orders were (relevantly) –
- (a) judgment for the applicant in the sum of \$34,858.27;
  - (b) the applicant is not entitled to costs of the proceeding pursuant to s 55F(2)(c) of the *Motor Accident Insurance Act 1994*;
  - (c) the applicant pay the second respondent's costs of the proceeding from 14 March 2023 on the standard basis to be agreed, or failing agreement, to be assessed on the District Court Scale.
- [6] The applicant applies for leave to appeal the orders made by the primary judge. For reasons which follow her application should be refused, with costs.

### **The reasons of the primary judge**

- [7] I turn first to summarise the relevant aspects of the reasoning of the primary judge.

### The accident

- [8] The primary judge first recorded the undisputed circumstances of the accident and its immediate sequelae.
- [9] The accident occurred on 9 December 2021 when the applicant's car was struck by a car driven by the first respondent and insured by the second respondent. The accident led to damage to the rear of the applicant's car and to the deployment of its airbags. The applicant was able to exit the car without assistance.
- [10] The ambulance report revealed that the applicant presented to paramedics with midline neck pain, right shoulder pain, right-side chest pain radiating to the back, a laceration to the left eyebrow, a mild headache and superficial grazes to arms and legs. Paramedics administered pain relief and transported the applicant to hospital.
- [11] Hospital records revealed a preorbital haematoma; some degenerative changes to her cervical spine; no shoulder dislocation; normal range of motion in the neck; no tenderness in the neck or head area, but tenderness over the right chest wall and the right mid-thoracic paraspinal region. The applicant was discharged from hospital the next day.

### The issues at trial

- [12] The primary judge recorded that –
  - (a) the applicant had alleged that she suffered cervical spine injury, right shoulder injury, thoracic spine injury, chest wall injury, a haematoma, and psychiatric injury;
  - (b) the second respondent had admitted the cervical spine injury but contended that the applicant had fully recovered and had also admitted the haematoma;
  - (c) the second respondent denied the alleged right shoulder injury, the thoracic spine injury and any psychiatric injury;
  - (d) the second respondent had claimed the applicant had no relevant impairment or disability and, in the alternative, submitted that if she had suffered some injuries she had exaggerated her level of disability to medical experts; that she retained an ongoing capacity for employment and that she had no need for any future care.
- [13] Her Honour found that the issues she had to determine were –
  - (a) whether the applicant suffered a right shoulder injury, thoracic spine injury and psychiatric injury due to the first respondent's breach of duty;
  - (b) whether the applicant had recovered from those injuries; and
  - (c) whether the applicant's unrelated injuries, as pleaded in para 3(c) of the second respondent's amended defence influenced the assessment of her damages.
- [14] Her Honour expressly found (correctly in my view) that "the resolution of these issues largely depended upon the credit of the [applicant]".

### The applicant's credibility

- [15] Having identified that the principal issue for her determination was her assessment of the applicant's credibility, the primary judge noted that the trial had involved the late

introduction by the second respondent of video surveillance footage of the applicant which the second respondent had submitted portrayed the applicant as a witness who should not be believed.

- [16] I interpolate three observations concerning the video surveillance footage. First, the question of its use had been the subject of pre-trial orders relieving the respondents from their duty to disclose it to the applicant before trial, with the result that was introduced by counsel for the respondents during the applicant's cross-examination. Second, the primary judge found persuasive both the video footage and her own assessment of the applicant's reaction to the footage when she was cross-examined on it. Third, it will appear that Dr Pincus - who was the medical expert called by the respondents - reviewed the video surveillance footage and other information found on social media concerning the applicant and expressed the opinion that the applicant was a person with no measurable impairment and who presented as a person who had no disability.
- [17] In this part of the primary judge's reasons, her Honour referred to relevant principle which emphasised the need to test testimony against objective facts, documentary records and probabilities and which noted that the assessment of damages for personal injury depended to a very large extent on a plaintiff's honest self-reporting. Her Honour then expressed her conclusion that although she had generally found the applicant to be a witness of truth and would not accept the respondents' submission that her evidence should be rejected in its entirety, there were components of her evidence which her Honour would not accept, and certain aspects of the surveillance footage were inconsistent with her account.
- [18] The primary judge accepted that the applicant had genuinely experienced pain after the accident and had continued to report symptoms to medical practitioners for several months. However, her Honour concluded that the applicant had exaggerated the longevity and extent of her on-going symptoms. Her Honour found that there had been a discernible attempt by the applicant to connect many aspects of life to pain. There had been an "... overamplification of the duration of her injury, particularly as they relate to her future earning capacity". The applicant's recollection had been "subsequently altered by unconscious bias or by wishful thinking or by overmuch discussion of it with others".<sup>1</sup>
- [19] Her Honour referred to the applicant's evidence that shoulder pain influenced her decision not to have another child. Her Honour considered that assertion inconsistent with medical records demonstrating that, in August 2022, the applicant had informed practitioners that she intended to attempt another pregnancy but had made no mention of pain suffered from her accident. Her Honour expressed this as a notable example of the applicant's attempt to connect aspects of her life to pain.

The primary judge's findings as to the impact of the accident on the applicant's personal and business circumstances

- [20] The primary judge made findings as to the pre-accident involvement by the applicant in running her chicken farm business. Her Honour accepted that the farm involved physically demanding work. The applicant was responsible for feeding, watering, egg collection, cleaning, lifting feed bags, carrying waterers and handling chicks.

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<sup>1</sup> Her Honour footnoted that she was quoting from *Onassis v Vergottis* [1968] 2 Lloyd's Rep 403 at 431.

Buckets of feed weighed approximately 20 kilograms, and many aspects of the work required repetitive lifting and carrying.

- [21] The applicant had given evidence that the accident had caused her to suffer pain in doing administrative work and had rendered her unable to perform physical labour and other manual tasks at the chicken farm business. In turn that had caused her economic loss because she had to hire a labourer, Mr Jacobs, to assist with doing the heavy duty stuff at the farm. He and later a Ms Veal were involved in doing things the applicant could not do. Mr Jacobs and Ms Veal gave evidence of the work they did and how they charged for it.
- [22] The applicant called a forensic accountant, Mr Lee, to give evidence which sought to calculate both past and future economic loss. His calculation acted on the assumption that 15 to 20 hours of hired labour per week was appropriate to calculate both past and future economic loss.
- [23] The primary judge accepted that after the accident the applicant was genuinely incapable of performing some of the heavier tasks at the farm for a period and that employing assistance was a reasonable response. Her Honour accepted that labourers such as Mr Jacobs were engaged for work that the applicant could not comfortably perform.
- [24] However, the primary judge was not persuaded that the applicant remained disabled as alleged. The evidence about the amount of assistance required was regarded as imprecise. The farm business was expanding rapidly during the same period, complicating assessment of whether labour costs arose because of injury or because of commercial growth. The invoices, diaries and records were not sufficiently precise to permit confident findings based solely on recorded hours. Her Honour therefore exercised caution in determining how much of the labour expense was actually attributable to injury.

The applicant's evidence as to domestic assistance and cleaning

- [25] The applicant claimed that she required cleaning assistance because ordinary domestic tasks such as mopping and scrubbing aggravated her shoulder pain. Her husband supported that evidence. The applicant gave evidence that the accident had meant that she had to engage commercial cleaning assistance.
- [26] The respondents challenged whether the accident caused any ongoing need to engage such assistance. They suggested to the applicant in cross-examination that she had engaged such assistance before the accident. She denied doing so, but when confronted with documentary evidence which conflicted with that denial, she accepted she must have been mistaken.
- [27] The primary judge accepted that cleaning tasks had become more difficult. Nevertheless, the primary judge rejected the claim for ongoing commercial cleaning assistance because she was not persuaded that the evidence permitted a reliable distinction between the applicant's pre-existing arrangements and any accident-related cleaning needs. Her Honour's conclusion in that regard was she had not been persuaded of the requisite causal connection between on the one hand the injuries and their impact on the applicant and, on the other hand, the incurrence of on-going commercial cleaning assistance.

The applicant's evidence as to her employment at Spicers

- [28] The applicant had worked casually at Spicers Retreat before the accident. She claimed that she returned on restricted duties following the accident and ultimately ceased working because of her injuries. This was said to have contributed to her economic loss. Her Honour accepted that the applicant returned to that work after the accident and accepted that the applicant described her duties as limited. Nevertheless, the primary judge found that the objective records revealed that the applicant worked a significant number of hours during the relevant period. Her Honour considered that the extent of the hours worked was difficult to reconcile with the applicant's portrayal of severe and continuing disability.
- [29] The primary judge concluded that there was insufficient evidence that the applicant had suffered any long-term diminution in earning capacity arising from the Spicers employment. In her Honour's view, the applicant ceased working there largely because of family circumstances and increasing involvement in the chicken farm business rather than because of ongoing physical incapacity. Consequently, no award was made for past or future economic loss in relation to the applicant's Spicers role.

The applicant's evidence as to her driving and social activities

- [30] Her Honour also referred to evidence concerning the applicant's driving capacity.
- [31] I interpolate, in order that this portion of the primary judge's reasons might be better understood, that in order to justify her claim for psychiatric injury, the applicant had called a psychiatrist, Dr Foxcroft, and through him tendered a report which, based on the applicant's self-reporting, diagnosed the applicant as having "developed a clinically significant Adjustment Disorder with anxious and irritable moods and a driving phobia". Dr Foxcroft had seen the applicant on 30 May 2023 and his report recorded that the applicant had told him:
- (a) She said that she had developed significant anxiety when driving.
  - (b) She can drive to the local area, drives her daughter to Ipswich to school at West Moreton Anglican College; however, she said that she is very nervous on the highways and is extremely nervous when driving at speed.
  - (c) She will not go on the M1 highway to visit friends on the Gold Coast. She said she gets her husband, Matt, to drive.
  - (d) She said she is extremely anxious when driving and will not drive to new areas without a support person.
  - (e) She is also less interested in seeing friends. She said that having to drive to see friends means that she generally avoids doing so, and she has lost contact with some friends.
  - (f) She has decreased interest in travelling or engaging in outside recreational pursuits. She used to go swimming or go walking when she had her children at sporting functions but is not really bothered to do so now. She said that she just tends to stay at home and manage the chickens and not do much else.
  - (g) She used to have the option of doing some temporary work, when her husband was not away, to supplement the farm income, but she is highly avoidant of driving into Brisbane to do any work now. She said that she just prefers to stay on the farm and do local activities such as take her children to school.

- [32] The primary judge recorded that before her the applicant had testified that, since the accident, she experienced anxiety when travelling in vehicles, particularly as a passenger. The applicant had stated that she now drives more cautiously than before, avoids overtaking where possible, often follows behind trucks, and prefers not to use highways. Her husband supported this account, giving evidence that after the accident she appeared noticeably anxious in cars, was frequently “jumpy”, and often asked him to slow down. He said he had not observed this behaviour before the collision.
- [33] The primary judge recorded aspects of the evidence where the applicant’s credibility on these issues was then tested against other evidence.
- [34] The applicant gave evidence that her trips to the Gold Coast aggravated pain in her right shoulder, requiring her to remove a hand from the steering wheel in order to massage the area. She denied having told the psychiatrist, Dr Foxcroft, that she could only drive in her local area. She accepted that she still travelled to the Gold Coast, although less frequently than before, mainly for the purpose of delivering chickens. She stated that she drove slowly, avoided changing lanes, used both hands on the steering wheel, and could undertake journeys of approximately two hours despite experiencing pain.
- [35] In relation to social media posts, she acknowledged that she participated in deliveries and accepted that photographs depicted her loading small boxes. She explained that her husband or others assisted with lifting and transport. When shown posts about her participation in markets and in making deliveries to Cleveland, Larapinta and Palm Beach, she maintained that she was not responsible for loading the vehicle and other people including her husband would help.
- [36] The applicant denied telling Dr Foxcroft that she did not socialise, asserting that she had merely reported a reduction in trips to the Gold Coast. She was shown further social media material which revealed her participation in a variety of leisure and social activities, including overnight stays and visits to Brisbane. A photograph showed her holding fish with her right arm and she suggested that the photograph depicted her as suffering some pain. She accepted that another photograph showed her holding objects at an elevated position.
- [37] The primary judge referred to Linkt toll records which were in evidence before her, but which had not been explored by the parties before her. She expressed the view that the records may assume little significance in the overall case. However, on her Honour’s analysis the records showed regular travel in and around Brisbane from December 2021 onwards and continuing throughout 2023 and 2024 and including within periods when other evidence suggested that the applicant’s husband was known to be working elsewhere. Her Honour thought it was likely that the records revealed that it was the applicant who was incurring the Linkt toll costs, which, together with various social media posts, suggested that the applicant was travelling to a number of locations including deliveries to “the Gold Coast in September 2023, Redlands in October 2023, Cleveland in November 2023, Gold Coast in November 2023, Toowoomba in December 2023, Bribie Island in January 2024, Brisbane in January 2024, Larapinta and Palm Beach in March 2024”.

#### The medical evidence

- [38] The crucial dispute concerned the conflicting opinions of two orthopaedic surgeons: Dr Paul Pincus and Dr Mark Shaw.

- [39] Dr Shaw, called by the applicant, considered that the applicant continued to suffer significant shoulder and cervical spine symptoms. Dr Shaw opined that the pain in the neck, shoulder and back pain would likely continue into the foreseeable future but was unlikely to deteriorate. As a result, the applicant would require assistance for the heavier physical tasks at her chicken farm as well as the house cleaning. Dr Shaw also considered that there would be an ongoing cost for analgesia and that the plaintiff would require around \$2,000 for physiotherapy. Dr Shaw's view was that permanent impairment was present. He allocated a 5 per cent whole person impairment to the cervical spine and a 3 per cent whole person impairment to the right shoulder, therefore calculating a whole person impairment of 8 per cent. Neither party showed the video footage to Dr Shaw.
- [40] Dr Pincus, called by the respondents, had prepared a report after seeing the applicant on 23 November 2022. The primary judge recorded that he had found that there was decreased lateral flexion to the left of the cervical spine but otherwise the applicant's movement was normal. He found full range of movement in her right shoulder and thought that she was diffusely tender around the shoulder. He did not consider that she required further treatment. He accepted that at the time of that examination, she had some pain. He opined that the applicant was at the maximum level of improvement. As such, he did not think that she qualified for a whole person impairment and allocated it a 0 per cent rating.
- [41] After Dr Pincus had been given access to the video evidence he signed a file note in which he had expressed the view that the evidence confirmed that the applicant had no ongoing impairment or disability. He found the applicant was able-bodied and had no restrictive movement with any of her shoulder, neck, or spine. Her Honour found that in cross-examination Dr Pincus stood by his file note and reiterated that the video indicated neither impairment nor disability.
- [42] I interpolate two observations. First, in the cross-examination counsel had taken Dr Pincus to the AMA guidelines definitions of "impairment"<sup>2</sup> and "disability"<sup>3</sup>, so it was evident that in his evidence the doctor was using the terms in their technical senses. Second, the file note signed by Dr Pincus and referred to by her Honour was a file note dated 30 October 2024 prepared by a solicitor of a telephone attendance with Dr Pincus and others once Dr Pincus had reviewed the surveillance material. When Dr Pincus adopted the file note by signing it, the note effectively became his second report. It was in these terms:
- "Dr Pincus advised that the surveillance material proves, categorically, that the plaintiff has no ongoing impairment nor disability as a consequence of any accident-related injuries. In fact, it demonstrates that she is an able-bodied person. For example she is able to climb up and over a wall on 2 occasions, in the same day, without restriction.
- Dr Pincus opined that no one with a neck problem would hold the phone between their chin and their shoulder (which the plaintiff did on both the left and right side).

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<sup>2</sup> Counsel suggested and the doctor accepted that "impairment" was defined as "a loss of use or derangement of any body part, organ system or organ function".

<sup>3</sup> Counsel suggested and the doctor accepted that "disability" was defined as "an alteration of an individual's capacity to meet personal, social or occupational demands or statutory requirements because of an impairment".

The surveillance material demonstrates an unrestricted range of motion in the plaintiff's right shoulder. For example, at one point the (*sic*) she slams a car door by throwing her right arm behind her. The plaintiff is clearly, not attempting to protect her shoulder in any way.

In relation to the thoracic spine, the plaintiff did not report any significant impairment or disability during her assessment, her complaints related primarily to her shoulder and neck. Nevertheless, the surveillance does not suggest that she has any ongoing difficulties related to her thoracic spine.

Although the accident may have been serious, the plaintiff has fully recovered from any injuries.”

- [43] The primary judge accepted the evidence of Dr Pincus in preference to that of Dr Shaw. Her Honour gave several reasons for so doing.
- [44] First, her Honour regarded Dr Pincus as a particularly persuasive witness who made appropriate concessions and carefully explained the biomechanics of movement. Secondly, her Honour considered that Dr Shaw's opinion depended heavily on the applicant's self-reporting, and her Honour found the factual basis on which his opinions depended had been effectively undermined by the video footage and by her factual findings about the credibility and reliability of the applicant's evidence. Thirdly, she found that the surveillance footage strongly supported Dr Pincus's view that the applicant was moving freely and without protective mechanisms that would ordinarily be expected in a person suffering significant shoulder impairment.
- [45] Her Honour accepted Dr Pincus's opinion that the applicant's movements demonstrated normal shoulder function. The video showed activities such as climbing a fence, lifting herself, carrying objects and moving unrestrictedly. Her Honour concluded that those activities were fundamentally inconsistent with much of the applicant's evidence concerning the severity of her limitations.
- [46] The primary judge said that, while she was careful not to place too much weight on demeanour observations, she had noted that when the applicant was shown the footage in cross-examination, her entire face had changed. The applicant looked shocked and extremely uncomfortable. Her Honour considered but rejected as unpersuasive the explanations which the applicant had given after being confronted with the video footage.
- [47] After reviewing the entirety of the evidence, the primary judge concluded that the applicant had recovered from her physical injuries by the time she was examined by Dr Pincus in November 2022.
- [48] For completeness, I observe that her Honour did consider the evidence adduced by the applicant from an occupational therapist, Mr Keightley. He had assessed the applicant on 27 April 2023. Her Honour recorded relevant aspects of the evidence which Mr Keightley gave of the nature of the applicant's reporting to him. Amongst other things that included the applicant telling Mr Keightley that lifting, bending, twisting and squatting were all too difficult for her to tolerate. Mr Keightley made recommendations for future rehabilitation treatment of the applicant and of her future needs based on the truth of the applicant's self-reporting. Mr Keightley was shown the video footage, but his opinions remained unchanged. Ultimately the primary judge found, as she had with Dr Shaw, that the foundation of his assessments had

been undermined by the fact that she had not found the applicant's reporting of her injuries to be reliable. The primary judge specifically expressed the view that she was surprised that Mr Keightley's views did not change after viewing the video footage.

#### Evidence concerning the applicant's psychiatric injury

- [49] The reasons of the primary judge revealed that the evidence of the psychiatrist, Dr Foxcroft, was relevant for two reasons.
- [50] First, his report was a record of what the applicant had told him about her anxiety and limitations in relation to driving. Her Honour found that the reporting the applicant made to Dr Foxcroft compared unfavourably with the picture created by the other evidence before the court and operated to undermine her Honour's view of the veracity of the applicant. In particular, the primary judge found that the applicant had conveyed to Dr Foxcroft a picture of her ability to drive beyond her local area which was wrong; social media posts in evidence persuaded the primary judge that the applicant's ability to travel was largely unimpeded and also contradicted the applicant's reporting to Dr Foxcroft concerning post-accident limitations on her social life. Second, but despite that, the primary judge was minded to accept that the applicant had a psychiatric injury which was of an ongoing nature. Although the primary judge did not make specific findings of the extent of that injury and its seriousness, it is plain from the level of the damages awarded that her Honour was not persuaded that it was severe.

#### Findings on the questions at issue in the trial

- [51] In terms of the issues her Honour had earlier identified, her Honour found that the applicant had suffered the shoulder injury, thoracic injury and psychiatric injury. However, she found that the physical injuries had resolved by November 2022 and that only the psychiatric injury remained ongoing. Her Honour recorded that she was not satisfied that the applicant's unrelated injuries influenced the assessment of damages.
- [52] In assessing general damages, her Honour noted that the parties were in dispute about which injury should be treated as the main injury. The applicant contended that the main injury was the cervical spine injury, but the respondents contended the main injury was the shoulder injury. It will be recalled that although the respondents had admitted the fact of the cervical spine injury they contended that the applicant had fully recovered from that injury.
- [53] Her Honour treated the shoulder injury as the dominant injury for ISV<sup>4</sup> purposes rather than the cervical spine injury. She explained her reasoning for so doing included the fact that the applicant had mentioned the cervical spine injury in her evidence only incidentally, that Dr Shaw's identification of that injury as the most dominant was based on the applicant's self-reported symptoms. Her Honour observed:

“It is difficult for me to conclude, based on the plaintiff's evidence, that the dominant injury is the cervical spine injury - notwithstanding the higher ISV applicable to that injury. My conclusion is one based

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<sup>4</sup> See [97] of these reasons.

on the evidence, and my somewhat rejection of Dr. Shaw's evidence based on the self-reports of the plaintiff."

- [54] Based on all the evidence her Honour concluded that the dominant injury was the shoulder injury and concluded that the ISV that was applicable to the dominant injury was that of 0 per cent to 5 per cent as per item 98 of the *Civil Liability Regulation*. Having regard to comments made by McMeekin J in *Allwood v Wilson* [2011] QSC 180 at [20] to [24], the primary judge considered that an ISV of 4 properly reflected the injury but that after allowing for the other injuries which formed part of the award it should be given an uplift to obtain an ISV of 6, resulting in general damages of \$10,050.<sup>5</sup>
- [55] The court awarded:
- (a) General damages: \$10,050.
  - (b) Special damages: \$1,558.64.
  - (c) Past economic loss relating to farm labour assistance: \$15,000.
  - (d) Future treatment expenses, principally psychiatric counselling and medication: \$8,249.63.
- [56] No award was made for:
- (a) Loss of past income after 23 November 2022;
  - (b) Past or future commercial cleaning assistance;
  - (c) Loss of future earning capacity or other future economic loss;
  - (d) Ongoing farm labour costs.

**The bases on which the applicant contended leave to appeal was justified**

- [57] The applicant founded her case for the grant of leave on the suggestion that the primary judge erred in the following respects.
- [58] First, the primary judge erred in law by failing to have regard to the rule in *Browne v Dunn* in respect of:
- (a) the evidence of Dr Shaw;
  - (b) the failure of the respondent to cross-examine the applicant as to the resolution of her injuries and/or her evidence as to physical capacity; and
  - (c) the primary judge's own fact-finding exercise in respect of toll charges contained in the applicant's financial records.
- [59] Second, the primary judge erred in law by rejecting the evidence of Mr Lee, forensic accountant, on the basis that there was "scant material and a very uncertain appreciation of the business".
- [60] Third, the primary judge erred in law by rejecting the evidence of Mr Keightley, occupational therapist, on the basis of her own suspicions and concluding that the applicant did not require ongoing cleaning assistance.

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<sup>5</sup> Her Honour had initially assessed general damages at \$11,400 but by subsequent order amended the amount to \$10,050.

- [61] Fourth, the primary judge erred in law by failing to assess general damages in accordance with Schedule 3, s 4(5) of the *Civil Liability Regulation 2014*.
- [62] Fifth, the primary judge made the following findings of fact that were wrong by “incontrovertible facts or uncontested testimony” or they were “glaringly improbable” or “contrary to compelling inferences”:
- (a) Dr Pincus observed “a recovered injury” when he met with the applicant in November 2022;
  - (b) the applicant’s injuries had resolved by the time of her attendance on Dr Pincus in November 2022;
  - (c) there was an absence of physical injury which required an explanation for the presence of pain;
  - (d) the applicant amplified the extent of her ongoing symptoms and that the applicant’s recollection was altered by unconscious bias, wishful thinking or by overmuch discussion of it with others.
- [63] Before turning to consider each of those points it is necessary to make some preliminary observations as to the law affecting the assessment of such grounds.

#### **Preliminary observations**

- [64] Because the judgment of the primary judge had been given for an amount less than the Magistrates Courts jurisdictional limit, pursuant to s 118(3) of the *District Court of Queensland Act 1967* the applicant required the leave of this Court to appeal.
- [65] The approach which should be taken to such an application was explained by this Court in *Cassidy v McDonald*<sup>6</sup> where Keane JA (with whom Jerrard JA and Douglas J agreed) observed:

“The evident purpose of the legislative restriction upon appeal to this Court in cases where the amounts involved are as modest as is the case here is to put a brake on the unreasonable pursuit of litigation where the game is plainly not worth the candle. In such cases proper respect for the intention of the legislature that civil litigation should not become an end in itself means that **leave to appeal should be granted only where the applicant can articulate clearly a substantial basis for contending that the judgment below is affected by error.**”

- [66] Two other points affect the requisite assessment of whether the applicant can demonstrate an appropriate case for leave to be granted. They both derive from the fact that if leave were given, the resultant appeal would be an appeal by way of rehearing.
- [67] **First**, where, as here, the proposed appeal would require the applicant to persuade the court to interfere with fact-finding which was explicitly and significantly affected by the adverse view that the trial judge took of the applicant’s credit and reliability in relevant respects, the applicant would need to overcome specific appellant restraint. In *Wang v Hur*<sup>7</sup> this Court summarised the position as follows:

<sup>6</sup> *Cassidy v McDonald* [2007] QCA 332 (emphasis added).

<sup>7</sup> *Wang v Hur* [2024] QCA 126 at [23] – [24] per Morrison JA, Bond JA and Davis J (footnotes omitted).

“The principles governing the circumstances in which an appellate court should be prepared to interfere with the fact finding made by a primary judge are settled. The leading High Court authorities are *Warren v Coombes*; *Allesch v Maunz*; *Fox v Percy*; *Robinson Helicopter Company Incorporated v McDermott*; and *Lee v Lee*.

The relevant passages from those authorities were recently examined at length in this Court in *Sutton v Hunter*. To summarise further, but retaining the language used by the High Court authorities referred to in the previous paragraph:

- (a) On an appeal by way of rehearing, it is for the appellant to satisfy the appellate court that the order that is the subject of appeal is the result of some legal, factual or discretionary error.
- (b) On such an appeal, the appellate court is bound to conduct a ‘real review’ of the evidence given at first instance and of the judge’s reasons for judgment to determine whether it should be so satisfied.
- (c) If the appellate court concludes that the judge has erred in fact, it is required to make its own findings of fact and to formulate its own reasoning based on those findings.
- (d) When determining whether a judge has erred in fact, in general an appellate court is in as good a position as the trial judge to decide on the proper inference to be drawn from facts which are undisputed or which, having been disputed, are established by the findings of the trial judge.
- (e) However, in determining whether the judge has erred in fact, an appellate court is required to exercise restraint when invited to interfere with a primary judge’s findings of fact, at least where those findings are likely to have been affected by impressions about the credibility and reliability of witnesses formed by the trial judge as a result of seeing and hearing them give their evidence. Such appellate restraint applies not merely to findings of primary facts but also applies to findings of secondary facts which are based on a combination of these impressions and other inferences from primary facts.
- (f) In such cases, a finding of fact is not to be set aside because an appellate court thinks that the probabilities of the case are against – even strongly against – that finding of fact. The finding must stand unless it can be shown that the trial judge ‘has failed to use or has palpably misused [his or her] advantage’ or has acted on evidence which was ‘inconsistent with facts incontrovertibly established by the evidence’, or which was ‘glaringly improbable’, or which was ‘contrary to compelling inferences.’”

[68] **Second**, insofar as an appellant on an appeal by rehearing sought to impugn that part of an award of damages for personal injuries by a trial judge which turned on estimation and evaluation, the appellant would need to satisfy the *House v The King*

appellate standard of review, which carries with it further requirements for appellate restraint. In *Hays Specialist Recruitment (Australia) Pty Ltd v Carey-Schofield; Civeo Pty Ltd v Carey-Schofield* this Court summarised the position as follows:<sup>8</sup>

“The claimant must prove his or her loss – this includes the quantification in money that should be adopted in the amount awarded. However, damages for financial loss likely to result from personal injury can only be an estimate – often a very rough estimate – of the present value of a claimant’s prospective loss. The assessment of damages for personal injuries in an action for negligence is not an exact science. Ultimately the process must be one of judgment rather than calculation. Some aspects of the exercise can only be intuitive. In any event the process of assessment must be governed by considerations of practical common sense in the context of the facts of the particular case.

The nature of such an assessment has implications for appellate review. The High Court has explained that the line separating discretionary decisions (in which appellate review is confined to the *House v The King* standard) and other decisions (in which the ‘correctness standard’ applies) turns on whether the legal criterion to be applied ‘demands a unique outcome, in which case the correctness standard applies, or tolerates a range of outcomes, in which case the *House v The King* standard applies’. The legal criterion governing the assessment currently under consideration tolerates a range of outcomes and is subject to the *House v the King* standard.

This has long been recognised. Thus, it is well established that:

1. An assessment of damages in an action for negligence has many of the characteristics of a discretionary judgment.
2. In general, an appeal from a trial judge’s assessment of damages for non-economic loss for a personal injury is to be determined in the same manner as an appeal from the exercise of discretion of a trial judge - an error must be identified within the terms of *House v The King*.
3. There is a similar need for appellate restraint in review of the past and future hypotheticals of an assessment of damages for lost earning capacity - at least where the decision reflects a degree of judicial prophesy or speculation. Appellate courts observe restraint in recognition of the necessary imprecision and evaluation involved in determining the likelihood that a past hypothetical event would have occurred or a future hypothetical event will occur.
4. In order to justify review on the ground that an award is excessive, the compensation must be so excessive as to be beyond the limits of what a sound discretionary judgment could reasonably adopt.

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<sup>8</sup> *Hays Specialist Recruitment (Australia) Pty Ltd v Carey-Schofield; Civeo Pty Ltd v Carey-Schofield* [2025] QCA 161 at [212] – [217] per Bond JA, Brown JA and Vaughan AJA (citations and footnotes omitted).

The requirement for appellate restraint recognises that the task undertaken by the primary judge is an exercise in judgment rather than calculation.

An appellate court cannot interfere with an award of damages merely because it would have awarded more or less had it tried the case at first instance. Nor is an appellate court to approach its evaluation of an assessment of damages by determining the amount it would award left to itself as the basis of the decision as to whether the award is so disproportionate as to go beyond the range of a sound exercise of judgment in the awarding of damages.

Instead it must be demonstrated that the trial judge's exercise of judgment has miscarried because, for example, the trial judge acted on a wrong principle of law or has misapprehended the facts or the award is so inordinately low or so inordinately high that it is apparent that the trial judge has made a 'wholly erroneous' estimate of the damage suffered."

- [69] Against that background, I turn to consider each of the contentions advanced by the applicant in support of her application, addressing first the suggestion that there was some form of material unfairness in the conduct of the trial; second the alleged factual errors and, finally, the remaining alleged errors of law.

**The first alleged error of law: failing to have regard to the rule in *Browne v Dunn***

- [70] The applicant contended first that unfairness was occasioned by the fact that the respondents did not put the video evidence to Dr Shaw and cross-examine him on it. Indeed, the applicant by her counsel went so far as to submit that this Court should make a finding that the evidence of Dr Pincus, which relied upon viewing the video evidence, should be disregarded.
- [71] The applicant carried the onus of proof on the case. It was for the applicant to prove the truth of the factual matters on which the opinion evidence of Dr Shaw was founded. Here that meant it was for the applicant to prove the truth of the applicant's self-reporting to Dr Shaw. It was for the applicant to put the video evidence to Dr Shaw in evidence in chief – as she in fact did with Mr Keightley (the occupational therapist) and Dr Foxcroft (the psychiatrist).
- [72] By not doing so, the applicant ran the risk that the primary judge might find – as her Honour in fact did – that the applicant's credit and reliability had been materially undermined by the video evidence (and the applicant's response to it) which in turn meant some of the bases on which Dr Shaw had expressed his opinions had been undermined. The applicant's failure to ask Dr Shaw about the video evidence was unexplained at trial. Before this Court the applicant's counsel suggested that there may have been logistic difficulties concerning the location from which Dr Shaw was giving his evidence, but that the explanation may also have been counsel's forensic judgment at trial that the applicant's evidence had not been relevantly challenged. Whatever was the reason, the point is that it was for the applicant to make the forensic judgment. In particular it was for the applicant to determine whether to seek an adjournment to enable Dr Shaw to address the video evidence. No adjournment was sought. The applicant is bound by the forensic decisions made at trial.

- [73] It was not for the respondents to remedy the applicant's failure to take this course. They were entitled to seek to undermine the value of Dr Shaw's opinions by cross-examining the applicant, by tendering the video evidence and by inviting the trial judge to conclude that based on the views which the primary judge should form about the applicant's credit and reliability, the opinions of Dr Shaw became of no or little moment. In light of the fact that the applicant had not sought to have Dr Shaw opine on the significance of what had been revealed in the video evidence, the respondents were under no obligation to put the video evidence to Dr Shaw and to invite him to agree that his opinions should be qualified or withdrawn.<sup>9</sup>
- [74] There is no merit whatsoever in this complaint, let alone merit which might warrant a grant of leave to appeal.
- [75] The applicant next claimed there was unfairness because of "the failure of the respondent to cross-examine the appellant as to the resolution of her injuries and/or her evidence as to physical capacity".
- [76] There is no merit in this contention either.
- [77] First, and as the respondents submitted, the applicant's evidence as to the nature and extent of her alleged injuries, and resultant alleged disabilities, were directly challenged on the face of the defence which –
- (a) asserted positively that the cervical spine injury "was minor and transitory in nature and from which the plaintiff has fully recovered";
  - (b) asserted positively that the post-accident chest pain "dissipated quickly and the plaintiff has been left with no impairment as a result"; and
  - (c) denied the allegation that the applicant had suffered the right shoulder injury; a thoracic spine injury; and or the psychiatric injury had given as one of the explanations for that belief that "the allegations are untrue and contrary to fact".
- [78] Second, the whole point of the video evidence was that it was submitted as being relevant to those issues on the pleadings and, accordingly, to the credit of the applicant. The video evidence was played and salient aspects of what was depicted were pointed out to the applicant by the cross-examiner, the tenor of which was the apparent absence of any restrictions in the applicant's physical movements. After the video evidence was played to the applicant the cross-examiner asked whether she would accept that she had neither disability nor impairment arising from the accident. She answered the former question in the negative and her counsel objected to her answering the latter question and an answer was not pursued.
- [79] The applicant could not possibly have been in any doubt before the trial that the truth of her case concerning physical capacity and non-resolution of injuries was in issue. And even if the applicant (unaccountably) had been in such doubt before the trial, after the cross-examination on the video evidence no-one at the trial could reasonably have been in any doubt as to those matters. No doubt the cross-examiner's perception as to the impact of the video evidence and the reaction of the applicant to the evidence informed the extent of his questioning. Given the judgment ultimately obtained, his

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<sup>9</sup> See *Scalise v Bezzina* [2003] NSWCA 362 at [98] per Mason P (with whom Santow JA and Brownie AJA agreed) and *James Hardie Industries NV v Australian Securities & Investments Commission* [2009] NSWCA 18 at [24] – [26] per Giles JA, McColl JA and Macfarlan JA.

assessment was evidently correct. In any event there was no unfairness in advancing to the primary judge the submissions which the primary judge ultimately accepted.

- [80] The final *Browne v Dunn* point was a complaint about the primary judge taking into account the documentary evidence concerning the incurrence of Linkt toll charges given the fact that no one had asked the applicant anything about those charges or their implications. Although the complaint was probably better cast as a failure to accord procedural fairness to the applicant rather than as a *Browne v Dunn* point, the real problem is that there was nothing in the complaint as her Honour's reference to that evidence was explicitly regarded by her Honour as *de minimis*. The question whether the applicant suffered the psychiatric injury which she alleged was in issue. She was cross-examined on the extent of her driving and socialising and on the contrast between her evidence in those matters in court and the extravagance of what she told Dr Foxcroft. The judge used the Linkt toll charges evidence with the social media evidence and the cross-examination thereon, to conclude that the applicant had in fact been travelling to a number of locations. But it is clear from the tenor of the judge's reasons that the Linkt toll entries assumed little significance in her Honour's mind. When her Honour made the relevant finding that in her view the applicant was able to travel unimpeded, her Honour made reference only to the social media posts, not to the Linkt toll records. There is no evidence that the primary judge behaved in a way which was unfair to the applicant in relation to the use of the evidence. And even if I was wrong to reach that conclusion, the point was not a point of any substance.
- [81] The applicant has not established a case worthy of the grant of leave.

### **The alleged factual errors**

- [82] The applicant contended that the primary judge made the following erroneous findings of fact that were wrong by "incontrovertible facts or uncontested testimony" or they were "glaringly improbable" or "contrary to compelling inferences":
- (a) Dr Pincus observed "a recovered injury" when he met with the applicant in November 2022;
  - (b) the applicant's injuries had resolved by the time of her attendance on Dr Pincus in November 2022;
  - (c) there was an absence of physical injury which required an explanation for the presence of pain;
  - (d) the applicant amplified the extent of her ongoing symptoms and that the appellant's recollection was altered by unconscious bias, wishful thinking or by overmuch discussion of it with others.
- [83] It is evident from the way in which the applicant has framed the alleged error that the applicant is conscious of the burden lying on her to persuade this Court to intervene in relation to fact-finding which plainly turned on the primary judge's assessment of the credit and reliability of the principal witness of fact in the case.
- [84] However, despite the assertions advanced by the applicant, there was nothing "glaringly improbable" or "contrary to compelling inferences" in the primary judge's fact finding, nor were the findings demonstrated to be wrong by "incontrovertible facts or uncontested testimony".

- [85] First, as to [82](a) and [82](b) above, there was ample evidence to justify Dr Pincus' expression of opinion in the signed file note. He was cross-examined on that expression of opinion but was not moved from it. The primary judge accepted his opinion. There was no basis in the evidence for a suggestion that the degree of recovery from injury of the applicant might have been any different between the time of the video evidence and the earlier time when Dr Pincus saw the applicant. Nor was any such suggestion put to him. It was open to the primary judge to draw the inference which her Honour drew.
- [86] Second, as to [82](d) above, the primary judge's expression of opinion in that regard was her impression based on having heard the applicant give evidence and having seen the applicant cross-examined concerning social media posts and the video footage. Her Honour assessed that material having carefully instructed herself as to relevant applicable legal principle. It was for the applicant to persuade the primary judge to accept her evidence and the applicant failed in that task. Her Honour's observation presently impugned by the applicant was merely an orthodox way in which her Honour sought to reconcile her conclusion that the applicant was not deliberately untruthful with her conclusions concerning her lack of credit and reliability on matters material to the quantum of her case.
- [87] Third, as to [82](c) above, the argument relates to an observation made by the primary judge after she had explained why she reached the view that the applicant had recovered from her accident injuries by November 2022 in the context of the second respondent not disputing the minor claim for future pain medication. The relevant passage was as follows:

“As such, my overall conclusion is that her physical injury had recovered even by the time she saw Dr. Pincus.

Pain of course is inherently a subjective matter. The plaintiff's reliance on pain is a factor that goes to the issue of the injury. Neither of the doctors were asked about the origin of pain and whether that can exist despite the absence of the physical injury. I am therefore puzzled by the second defendant's acceptance of future pain medication given the lack of ongoing physical injury. However, because there is an acceptance of an award as future cost for pain killers by the second defendant, I am prepared to act on that.

That is not suggestive of a conclusion by me that [the applicant] will continue to experience that pain due to any physical remnants. I have found otherwise.”

- [88] The primary judge did not make the finding for which the applicant contends.
- [89] The applicant has not established a case concerning factual error worthy of the grant of leave.

**The second alleged error of law: rejecting the evidence of Mr Lee**

- [90] Mr Lee was a forensic accountant whose calculations turned on matters of assumption concerning the impact of the accident on the applicant and specifically on how the accident and the injuries she suffered impacted her earning capacity as a waitress (the evidence concerning Spicers being a proxy for that issue) and the extent to which the injuries impacted on her need to pay money to obtain replacement labour for the chicken farm.

- [91] The primary judge was evidently not persuaded by the evidence which was adduced to prove those underlying facts. Once the primary judge made the findings which she did on those matters, the evidence of Mr Lee was relevantly undermined. Her Honour was, accordingly, entitled to treat the calculations in his evidence as of little moment.
- [92] There was no error of law involved in the manner by which the primary judge treated the evidence of Mr Lee.

**The third alleged error of law: rejecting the evidence of Mr Keightley**

- [93] The way in which the primary judge treated the evidence of Mr Keightley has been explained at [48] above. Her Honour did not reject the evidence of Mr Keightley but rather found that the facts requisite to make his opinion evidence relevant and persuasive had not been proved up to her satisfaction. Once her Honour found that the applicant was not a reliable self-reporter, his opinion evidence as to her needs became unpersuasive.
- [94] Before this Court the applicant suggested that as a matter of law, the fact that an applicant has incurred commercial assistance expenses prior to a tortious incident does not preclude an award for commercial assistance consequent on a compensable injury. An award for care is made where a need is created by the compensable injuries.
- [95] But the primary judge did not treat the fact that the applicant had incurred commercial assistance prior to the accident as precluding an award for those expenses. To the contrary the primary judge focussed on the question whether her Honour could be persuaded that the need for commercial assistance after the accident was something which had been caused by the compensable injuries. That was a proper enquiry.
- [96] There was no error of law involved in the manner by which the primary judge treated the evidence of Mr Keightley.

**The fourth alleged error of law: failing to assess general damages according to law**

- [97] The *Civil Liability Act 2003* and the *Civil Liability Regulation 2014* (**Regulation**) operate to circumscribe awards of general damages by requiring that an injured person's total general damages must be based on an injury scale value (**ISV**) on a scale of 0 (in which an injury is not severe enough to justify any award of general damages) to 100 (in which the injury is of the gravest conceivable kind).
- [98] Section 7 of the Regulation sets out the rules for assessing the ISV. Thus:
- (a) The court's assessment of ISV must be done under the rules set out in s 7 and schedules 3 to 6 of the Regulation: s 7(1).
  - (b) Schedule 4 provides the range of ISVs for particular types of injury that the court is to consider when assessing the ISV: s 7(2). If an injury type is not mentioned in schedule 4, the court may have regard to the ranges prescribed for other injuries: s 7(3).
  - (c) Schedule 3 provides matters to which a court may or must have regard in applying schedule 4.
- [99] Under schedule 3:

- (a) Section 1 states that the objectives of schedule 4 include promoting consistency between assessments of general damages awarded by courts for similar injuries; and promoting similar assessments of general damages awarded by courts for different types of injury that have a similar level of adverse impact on an injured person.
- (b) Pursuant to s 2, when assessing the ISV for an injury mentioned in schedule 4, the court **must consider** the range of ISVs stated in schedule 4 for the injury. The range of ISVs for the injury reflects the level of adverse impact of the injury on the injured person.
- (c) When assessing the ISV for multiple injuries the court **must consider** the range of ISVs for the “dominant injury of the multiple injuries”: s 3(1). To reflect the level of adverse impact of multiple injuries the court may assess the ISV as higher in the range applicable to the dominant injury than the ISV which the court would assess for the dominant injury only: s 3(2).
- (d) The term “dominant injury” is defined in schedule 8 of the Regulation in this way:

**“dominant injury**, of multiple injuries, means—

- (a) if the highest range for 2 or more of the injuries of the multiple injuries is the same—the injury of those injuries selected as the dominant injury by a court assessing an ISV; or
- (b) otherwise—the injury of the multiple injuries having the highest range.

*Note—*

The selection of a particular injury as a dominant injury from 2 or more injuries having the same highest range will not affect the outcome of the court’s assessment of an ISV for the multiple injuries.”

- [100] As has been explained, although the primary judge accepted that there were multiple injuries, the judge concluded that the dominant injury was the shoulder injury. The applicant’s point is that in reaching that conclusion her Honour did not seem to be applying the definition. The applicant then, based on her Honour’s remark concerning the higher ISV in the quote from the reasons at [53] above assumes that had the proper definition been applied, her Honour would have then chosen item 88 “moderate cervical spine injury – soft tissue injury” (ISV range of 5 to 10) and that could have made “a difference of a few thousand dollars”.
- [101] There is some merit in the argument that the primary judge may not have applied the definition of “dominant injury”, but there is no merit in the notion that possible error would warrant a grant of leave to appeal.
- [102] First, the applicant’s argument seems premised on the assumption that the cervical spine injury would necessarily be evaluated by reference to item 88 (Moderate cervical spine injury). That assumption is not well founded. The primary judge made no such finding and the comment in the quote from the reasons at [53] above should not be so interpreted.

- [103] Second, having regard to her Honour’s findings about the nature of the impact of the injuries on the applicant, item 88 seems inapposite because its application required a conclusion that “The injury will cause moderate permanent impairment, for which there is objective evidence, of the cervical spine”.
- [104] Third, based on those findings, item 89 seems more apposite, namely “Minor cervical spine injury” as to which “Injuries within this item include a whiplash injury with no ongoing symptoms, other than symptoms that are merely a nuisance, remaining more than 18 months after the injury is caused. There will be no objective signs of neurological impairment”. The ISV range for that item is 0 to 4 which is less than the range applicable to item 98 “Minor shoulder injury” (for which the range is 0 to 5). Based on the definition of “dominant injury” that would mean that the judge would have been right to apply item 98.
- [105] Fourth, when applying item 98 the primary judge assessed the ISV within the range of 0 to 5 was 4, which she then uplifted to 6 based on her assessment of the multiple injuries. If the starting point should have been an ISV range of 5 to 10, no persuasive argument was presented as to why the legal error would have been material to the outcome or, if this Court was persuaded that the discretion to set the ISV had miscarried, why this Court would necessarily get to a substantially different ultimate result.
- [106] None of these matters persuades me that the legal error, if there was one, should be regarded as sufficiently substantial to warrant a grant of leave to appeal.

### **Conclusion**

- [107] The application for leave to appeal must be dismissed, with costs.
- [108] **BODDICE JA:** I agree with Bond JA.