Case No: E13YX311

IN THE COUNTY COURT AT MANCHESTER

The Civil Justice Centre Manchester

Date: Double-click to add Judgment date

Before :

HIS HONOUR JUDGE BIRD

- -

Between :

Michelle Scully **(otherwise known as Michelle Atherton)**	**Claimant**
- and -	
(1) GAVIN ATHERTON **(2) NEIL VERE** **(3) AXA INSURANCE UK PLC** **(4) MURIAM YUNAS** **(5) EUI LIMITED**	**Defendants**

- -

- -

Mr Charles Feenyfor the **Claimant**
Mr Daniel King (instructed by **DWF Law LLP**) for the **Second Defendant**
Mr Jonathan Lally (instructed by DAC Beachcroft Claims Ltd) for the Third Defendant
Mr Paul Higgins (instructed by Horwich Farrelly) for the Fourth and Fifth Defendants

Hearing dates: 23, 24, 25, 26 April 2024
and 11, 12 September 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

HIS HONOUR JUDGE BIRD

His Honour Judge Bird:

Introduction

1. Between 2015 and 2016 the claimant (who is now known by her married name of Michelle Atherton) was involved in 3 separate car accidents. In each case she was a passenger. The first accident happened on 21 February 2015. The car was being driven by the first Defendant (Mr Atherton, the claimant's husband). The third Defendant is his insurer. The second accident happened on 2 August 2016. The fourth Defendant (at the time a work colleague of the claimant) was the driver on that occasion. The final accident happened on 9 November 2016. On that occasion the driver was Dominic Baugh (who was both a work colleague of the claimant and in a relationship with him at the time) whose insurer is the fifth Defendant.

2. This is the trial of Miss Scully's claims for damages arising out of injuries said to have been suffered in each of those accidents.

3. In summary and in respect of each accident the Claimant's case is as follows:

    a. In the first accident she suffered soft tissue injuries to the cervical, lumbar spine and shoulder. The bulk of her claim relates to psychological injuries. The former injuries are supported by a report of Mr Farhan the latter by a report of Dr Whittington.

    b. In the second accident the claimant again suffered soft tissue injuries to the spine and shoulder and psychological injuries. This time she also suffered tinnitus as a result of the accident. The tinnitus may have arisen as a result of the first accident. The same experts support the claims.

    c. In the third accident she suffered soft tissue injuries to the cervical and lumbar spine and shoulder, psychological injuries, and tinnitus. Again, the same experts support her claim.

The Defendants' approach

4. Each of the Defendants asserts that the Claimant is a generally dishonest person and that she has presented these claims in a fundamentally dishonest way. I am invited to dismiss some or all of the claims on the basis that the Claimant has failed to establish that she has suffered any loss. If on the other hand I am satisfied that the Claimant has suffered some loss, I am invited nonetheless to dismiss some or all of the claims on the basis that the Claimant has been fundamentally dishonest in relation to the claim.

Expert evidence generally

5. Soft tissue injuries and psychological injuries of the type featured in these claims are rarely susceptible to objective proof. Instead, a medical expert must rely almost exclusively on examination and the history provided by an apparently injured party. If the history is not materially accurate then the medical opinion expressed must be unreliable. The point was made by Mr Justice Martin Spencer at paragraph 49 of *Molodi v CVMS* [2018] EWHC 1288 (QB).

6. Of central importance to any history is the impact an injury has had on the injured person's life. An injury (be it physical or psychological) that has prevented or limited the pursuit of a much loved pastime (such as playing football or, in the present case, going to the gym) is more likely to be seen as serious than an injury which does not interfere with those activities.

7. Physical examination might reveal objective features such as a scar or a broken bone. In other cases, examination will allow an injured person to demonstrate the impact an injury has on them. The extent to which a person has suffered restricted movement as a result of an injury is an obvious example. In cases where demonstration is necessary, the medical professional must trust that reactions and abilities are genuine.

8. The credibility of an apparently injured person is therefore of central importance. The factors referred to by Martin Spencer J in ***Molodi*** at paragraph 44 as factors likely to be present in a genuine claim, concern credibility. Acting in a manner consistent with injury by seeking medical assistance soon after the injury was suffered, getting further medical support in the event of non-recovery, following medical advice by for example seeking treatment and giving consistent accounts of the nature of an injury, its progression and recovery are all plain hallmarks of credibility.

Expert evidence in this case

9. I heard no oral evidence from any expert.

10. The claimant instructed and saw the following principal experts. Mr Farhan (dealing with shoulder and back issues) saw the claimant on 17 June 2015 after the first accident. Dr Whittington (dealing with psychological injury) saw her on 4 September 2016 after the second accident. All remaining appointments with experts were after the third accident: Mr Farhan on 8 March 2017, Dr Whittington on 11 September 2018 and Mr Farhan again on 31 May 2019.

11. She saw other experts including Professor Arya (who dealt with tinnitus) on or about 25 February 2020; Professor Moots (a professor of rheumatology) at some date after November 2020 and Dr Sharma (a pain consultant) on 10 November 2021. Miss Scully told Dr Sharma that she was able to go to the gym "*but she chooses not to, as she doesn't feel up to it*". None of these reports was extensively referred to.

12. The outcome of the examination by her own main experts, and the foundation of her claims, was as follows:

    a. After the first accident, Mr Farhan found on examination some generalised restriction to the cervical spine. He found no wasting of the muscle around the left shoulder and that The MRI scan to the left shoulder was normal. The only examination based evidence that was capable of supporting the claimant's account of her injury was therefore only the finding of restricted movement.

    b. Based on the claimant's account of sleeplessness, recurrent nightmares and flashbacks and the apparent recurrence of an eating disorder and depression Mr Farhan concluded that the psychological reactions to the accident "**overshadowed her physical injuries**". Mr Farhan was not qualified to comment on these matches and so referral to a psychologist was recommended.

    c. In fact, the Claimant saw Dr Whittington (a consultant psychiatrist not a psychologist) on 4 September 2016 after the second accident. She mentioned ringing in her ears for the first time. Dr Whittington diagnosed mixed anxiety and depressive disorder ("MADD"), body dysmorphic disorder ("BDD") and bulimia and attributed each to the accident. It is plain that Dr Whittington in coming to these conclusions relied on the claimants account that before the accident she had "***attended the gym 6 times per week, twice daily and regularly competed in fitness events***" but after the accident "***she was unable to exercise***". The claimant told Dr Whittington that she had

attempted to go back to "the gym" but was downhearted when she did so and left. She said that she had "***completely lost interest in the gym***".

d. The Claimant told Dr Whittington that, because she had been unable to go to the gym, she "*started to reduce her calorie intake and stopped eating clean carbohydrates and fats*". The family became concerned that she was losing weight and encouraged by them, she began to eat what she described as "bad" food and regularly made herself sick. She reported that as a result of not eating properly she had blacked out at the wheel of her car and hit a parked car (I will return to this incident which I will call "the fainting incident" later in this judgment). Plainly the Claimant's account that she was unable to go to the gym was of central importance to the apparent psychological injury and in particular the BDD and to her overall credibility.

e. The Claimant next saw Mr Farhan on 8 March 2017 after all 3 of her accidents. She told him that the neck and shoulder injuries from 2015 were still symptomatic at the second accident and had been made worse by about 90%. The third accident made everything worse by about 50%. At the examination on 8 March 2017, it was reported the claimant had a "good range of movement in her spine" and some mild impairment in her right (not left) shoulder. On this account, A full recovery was anticipated by August 2018.

f. She went back to Dr Whittington on 11 September 2018. Dr Whittington noted that:

> "***Since the RTA in 2015 she's tried to return to the gym but on all occasions is left abruptly with feeling that she is out of place and doesn't fit in well she does still suffer from shoulder pain which radiates to her neck and back she can exercise but now associates the gym with her memories of being out of control. She believes that she cannot return to the gym until she has had CBT as she is fearful that she will again adopt an unhealthy addiction to the gym like she did prior. Whilst in the gym her symptoms of depression and dysmorphia increase as she spends her time comparing herself to other gym users telling herself that if it had not been for the accident her physique would have been better than theirs. Instead, she feels embarrassed, anxious and leaves abruptly. She is no longer a member of a gym*** ...…"
>
> He concluded that the MADD symptoms (including travel anxiety) and BDD symptoms attributable to the accidents had resolved by February 2017 with bulimia symptoms having resolved by August 2017.

13. I also read an expert report together with responses to some Part 35 questions, from Mr Narayan who examined the Claimant on 10 December 2022. Reaching his conclusions Mr Narayan saw the reports of Mr Farhan and Dr Whittington. The Claimant told him that she stopped going to the gym for four months after the February 2015 accident but then restarted and but went on to cancel her gym membership in October 2015. She said that she joined another gym in November 2015 but only did treadmill exercises joining another gym in January 2016 but only to support another person. She "*quit doing exercises in a gym in July 2017 and has not returned to this*".

Key periods

14. It is important to consider the Claimant's activity after the first accident on 21 February 2015. The account given to Dr Whittington in September 2016 was unequivocally that she had been unable to return to "the gym". The periods around August 2016 and November 2016 when the second and third accidents happened are also important periods.

15. Dr Whittington's view that the Claimant's BDD had resolved by February 2017 was based on the history given. Part of the Claimant's narrative was that even beyond that date she had not been able to return to the gym.

Documentary evidence

16. Before dealing with the oral and written witness evidence I will deal with some limited documentary evidence which relates to Miss Scully's gym attendance and general ability to exercise.

17. Miss Scully herself has compiled a table which purports amongst other things to analyse available records of her attendance at Pure Gym. She advanced a number of reasons as to why the record was not accurate. In considering this evidence I bear in mind (and find) that she had access to more than 1 gym so that Pure Gym records are not necessarily a full record of gym attendance. Further relevant documentary evidence comes from Facebook posts and correspondence.

18. On 23 October 2015 medical records (a letter dated 19th April 2016 from Mr Jamil consultant orthopaedic surgeon to Dr Clark the claimants GP) note that she sustained a right knee crush injury and MCL strain after, as Mr Jamil described it, she had "*overdone it at the gym*".

19. On her own schedule (and assuming that the records show times when the Claimant used her PIN to enter the gym) the claimant attended pure gym 9 times in 2015 the first visit being on 27 November 2015. In January and February 2016, she attended the gym in total on 11 occasions. In March April and May she did not visit Pure Gym, but between June and September 2016 she attended 20 times, 4 of those were in September and 10 in August. Between the date of the first accident and September 2016 she had visited Pure Gym about 40 times.

20. The records show that her PIN number was used to enter Pure Gym 4 times in September 2016 (between 14 September and 22 September 2016) when I accept, she was away in Tenerife.

21. Facebook posts show the claimant attending a 10K run with Carter law, her then employer in May 2016.

22. Between October and December 2016, she attended pure gym 47 times. I accept that her PIN was used on 2 visits when she was away in Portugal. She Attended the gym on the 10 November 2016 spending more than 2 hours there, on the 12 November 2016 for about an hour, on the 13 November 2016 for about 3 hours and on 14 November for about half an hour. She visited on further 11 occasions before the end of November 2016 and 27 times in December 2016 and January 2017.

The oral and written evidence

23. I heard evidence from a number of witnesses. The key witnesses were Miss Scully and Mr Baugh. I also heard from Mr Williamson and Mr Wood. They added little of any value. I also read a witness statement from Miss Yunas, she was not called to give evidence.

24. Mr Baugh's evidence was that he and the claimant had trained together regularly at PureGym and that she was able to work hard when training. Mr Baugh was a personal trainer and was introducing the claimant to weight based training as opposed to cardiac exercise. He recalled she was able to lift heavy weights before and after the August 2016 accident.

25. Miss Scully told me that Mr Baugh had used her PIN to enter Pure Gym or allowed others to do so. She said he had defrauded her during their relationship. She told me he had, without her consent, provided her bank details to a car finance company so that each month a payment of £158.53 left her account without her consent. She told me that when she found out she reclaimed the money from her bank. The evidence is that thereafter she and Mr Baugh continued in a relationship on friendly terms. Miss Scully told me in effect that she had no choice about that because Mr Baugh threatened to reveal to another man with whom she was in a relationship a compromising video and her and Mr Baugh. In this way Miss Scully invited me to find that Mr Baugh was a thoroughly untrustworthy man and therefore to disbelieve his evidence.

26. Miss Scully told me that the medical records referring to her "overdoing it" at the gym were factually incorrect. She told me that on Friday the 23rd of October 2015 she Had just started work at Carter law. Her car park space was right next to the director's car parking spot. She Continued:

> *"To ensure that nobody else parked in your allocated space each space had a fold down metal post which could be unlocked and put down with the use of a key…. I drove to [the car park] angled my vehicle near to my parking space, opened my driver's door, got out and went to use my key so that I could fold down the post. I however forgot to put my handbrake on …and so my car started to roll forwards moving in the direction of my director's car which was in the adjacent spot, this vehicle was a new Aston Martin DB9. I was left with the decision of doing nothing and let my vehicle collide into the rear of my director's car or take action to stop it. In that swift moment I decided to take action to prevent the vehicles colliding. I used my right leg as a barrier to stop my car from hitting the rear of my director's car. As a result, my right knee was crushed between my vehicle and the DB9"*

Miss Scully

27. The Claimant is familiar with the litigation process. She has worked for a number of solicitors. She left school in 2006. Her LinkedIn profile shows that she worked as an "*insurance fraud team leader*" at Keoghs solicitors between August 2009 and July 2013. She then became a client account manager and complex fraud and credit hire technician at Hill Dickinson LLP. In October 2015 she took up the post of "*head of litigation*" at Carter Law. In October 2018 she began to work at Bond Turner solicitors as a litigation executive. Mr Baugh and Ms Yunas worked with her at Carter Law. She was senior to each of them.

28. Describing her on its website at the time, Bond Turner noted that the claimant had "*over 15 years' experience in handling litigated personal injury cases for both defendant and claimant practises*." Her areas of specialism were said to include credit hire, liability, indemnity, fraud, and road traffic accident insurance. The website goes on to note that the claimant was "*currently studying CILEX level 6 professional diploma in law and practise. Michelle's inner desire to further herself and continually progress her qualifications will tangibly enhance the support and success that she will bring to her clients.*".

29. In her LinkedIn profile (which she has plainly maintained at least until these claims were commenced) she holds herself as having gained 5A levels. Geography, biology, chemistry, and general studies all at grade A and religious studies at grade B. The Claimant did not go to university and has no other formal qualifications. Her A level grades are therefore of some importance.

The Claimant's evidence

30. Miss Scully gave evidence over the course of 4 days. Whilst she had regular breaks and her evidence was not continuous, I take account of the fact of the stresses and strains that would have placed on her. She began her evidence by explaining that her current mental health situation was "very bad". She told me she had had suicidal thoughts and was having treatment for PTSD, that she found it difficult to concentrate and was anxious.

31. The Claimant was, nonetheless, at all times, self-assured and confident when giving evidence. I formed the view that she enjoyed what she saw as the challenge of cross-examination. She showed no signs of any inability to concentrate and, to the contrary, displayed an encyclopaedic knowledge of the somewhat chaotic trial bundles and an impressive ability to recall the detail of disclosed documents.

32. In cross examination she accepted that she did not pass 5 A levels but had only 1. She told me that she was unaware that her LinkedIn profile (taken from her CV) was misleading until shortly before the trial. She also accepted that she had at no time been in a position to take the CILEX level 6 examination and had passed no CILEX examinations at all. She told me that she was "studying" Cilex level 6 in the sense that she had borrowed the textbooks and was looking at them.

33. Miss Scully's attempted justification for holding herself to be far more qualified than she in fact is, was wholly unimpressive. Even her resignation letter written to Bond Turner was disingenuous. The day after it was written she was due to attend a disciplinary meeting in respect of what I have found to be her deliberately misleading CV. She was well aware that she would (almost certainly) be summarily dismissed and pre-empted that obvious outcome in a further dishonest way.

34. I formed the very clear view, having heard the totality of Miss Scully's evidence, that she was a wholly unreliable witness who gave evidence without any regard for the truth guided only by what she perceived to be her own interests. She made things up when asked difficult questions and on occasion gave patently false answers. I return to the Claimant's evidence below.

Mr Baugh

35. I heard evidence from Mr Dominic Baugh. He told me that in August September and October 2016 he and the claimant regularly attended the gym together where she took part in strenuous exercise activities. He recalled that the third car accident on 9 November 2016 was a low impact collision in which he suffered no injury. His evidence is that he asked the claimant if she "was okay" she said she was fine and mentioned no injuries either at the time or in the following days. His evidence was that she carried on training following the accident and would go to a different gym (not Pure Gym) once or twice a week in her lunch break.

36. In a second statement Mr Baugh explains that he and the claimant became romantically involved at some point before the November accident and provided evidence in the form of Facebook posts the claimant had taken part in a 10K run with Carter Law in May 2016, had completed the Yorkshire three peaks walk in or around July 2018 and climbed Ben Nevis in July 2017.

37. It was put to Mr Baugh that he had used the Claimant's bank details without her knowledge to pay for his car and had then threatened to reveal an intimate video of the 2 of them to her long term partner. It was suggested that he had an axe to grind and was not telling the truth. He flatly denied that was the case. I accept his evidence and reject all of these attacks on Mr Baugh's credibility.

38. I found Mr Baugh to be an honest and reliable witness. I prefer his evidence over the that of the Claimant in every material respect. In particular I accept his evidence that Miss Scully

offered to fund his car purchase and that he had at no time threatened to reveal any videos.

Findings

39. Having heard the oral evidence and having considered the documentary evidence I make the following primary findings of fact.

    a. The Claimant deliberately lied about her academic achievements on her CV and Linked-In profile. She knew the details she had provided were false. She had 1 A-level but claimed to have 5 with stellar grades.

    b. She deliberately lied about her professional status, claiming on the Bond Turner website (at least for a while before the entry was removed) to be "studying CILEX level 6". In fact, whilst it was plain to her that any reasonable reading of those words would lead to the conclusion that she had progressed through CILEX examinations and would sit the level 6 exam, she had simply acquired the level 6 textbooks and was reading them.

    c. She deliberately lied about the financing of Dominic Baugh's car. I find she agreed to do so.

    d. She made up a story that Dominic Baugh had effectively blackmailed her by threatening to share an intimate video of the 2 of them with the Claimant's long term boyfriend. I find there was no such threat. The Claimant and Mr Baugh continued in a pleasant and close relationship after the apparent discovery of the motor car fraud swapping pleasant and carefree messages. That was not because the claimant was afraid that the video would be disclosed, it was because there was no fraud and no threat.

    e. She deliberately misled Dr Whittington when describing to him the psychological impact of one or more of the accidents. She clearly told him that the accident(s) had stopped her going to exercise in a gym. That was untrue. Her attempts to persuade me that she told Dr Whittington that she could not return to "The Gym" (that is a particular gym operated by "The Gym Group PLC") but did not say that she could not return to any gym, were patently untrue. Her evidence that attendance at gyms other than "The Gym" did not matter, was plainly disingenuous.

    f. She deliberately failed to give Dr Whittington the full story of her recovery from any injury sustained in the accidents by failing to mention the fact that she had completed an ascent of Ben Nevis and the Yorkshire 3 Peaks (the latter being described as a "relentless slog" on a hot day over 12 hours) as a result of which she sustained an injury to her great toe.

    g. She deliberately told lies about a knee injury. Her claim that the injury had been suffered when she had put herself (her knee) between her car and another car to prevent damage was incredible. Her version of events defied common sense and although it could have been easily verified if true, no supporting evidence was called.

    h. I find that the knee injury (referred to in a letter from her consultant dated 19 April 2016) was most likely suffered when training for a 10k run which she attended on 22 May 2016. The claimant's evidence that she was unable to complete the 10k (which she accepts she turned up for ready to run) because of injuries sustained other than in training was not true.

i. The version of events she gave to Mr Narayan (including the fact that between January 2016 and July 2017 she only went to the gym to support a friend) was deliberately untrue. During this period, she was at the gym with Dominic Baugh lifting heavy weights.

j. The records she produced in respect of Pure Gym attendance (save for those occasions she is able to prove she was out of the country) show when she attended. I reject her evidence that Dominic Baugh used her PIN number without her consent.

k. The claimant is a generally dishonest person.

Other evidence

40. Miss Yunas did not give evidence at trial and so was not cross examined. I have not taken into account her evidence when reaching a conclusion about the claimant's credibility.

41. Her evidence touched on the fainting incident I have described above. She said that the claimant had only ever mentioned one previous car accident when she had struck a parked car. Miss Yunas' evidence was the claimant had told her that she had "*made up a story*" that she had blacked out in order to avoid responsibility for that collision. Given my findings in respect of the claimant's credibility I also accept this evidence.

42. I have also seen evidence that might be seen as consistent with the injuries the claimant claimed to have suffered. Such evidence included attendance at physiotherapy appointments in November and December 2016. I accept the claimant visited the physiotherapist on 10, 17 and 24 November 2016 and on 6 and 13 December 2016. The Claimant was regularly visiting Pure Gym on and around these dates. There were also various records of attendances of doctors and some photographic evidence. The photographs show that show bruising to the claimant's left thigh on the day after the August 2016 accident and purport to show "stomach burn" in 2015. These photographs are only linked to the relevant accidents by the claimant's evidence. Given my findings in respect of the claimant's credibility I do not accept that these photographs show any injury linked to any car accident. Neither do I accept that the reports given to medical practitioners were true accounts.

Expert evidence

43. Mr Feeny, who appeared on behalf of the claimant, submitted that it fell to the Defendants to Defendants to "*undermine the factual substratum of the [the Clamant's] uncontroverted expert evidence*". He submitted that the points ought to have been raised in questions to the experts. He relied on that fact that Mr Narayan had accepted that the Claimant had been injured.

44. The Supreme Court case of *TUI v Griffiths.* [2023] UKSC 48 is concerned with uncontroverted expert evidence generally, that is (see paragraph 9) expert evidence that "*was not in conflict with any other evidence led at the trial and was not subjected to challenge by cross-examination*."

45. The Supreme Court held (in summary) that generally, if a conclusion expressed in an expert report was to be challenged, the expert should be given an opportunity to deal with the challenge. The rule would not apply in certain circumstances (see paragraphs 61 to 68 citing 7

situations in which the rule would not apply) including where the report is founded on a false basis (see paragraph 66).

46. In my judgment I am entitled to reject the expert evidence in this case because it is built on a false factual basis (the history given by Miss Scully was untrue).

My findings in respect of injuries suffered

47. I reject the Claimant's account of the injuries in its entirety. Her entire case as to injury is based on her credibility.

Fundamental dishonesty

48. Mr Feeny submitted that the claimant's approach (if dishonest) did not "*substantially effect the presentation of the case*". I am unable to accept that submission. The Claimant's dishonest account of her injuries and so the impact the accidents had on her, in particular her gym membership is fundamental to her presentation of the claims.

49. In an agreed composite case summary, the claimant has asserted that her claims for pain, suffering and loss of amenity in respect of her injuries amount to £65,000. It seems to me that that figure means that the majority of her claim is based on psychological injury, in other words on her apparent inability to go to the gym.

50. I am satisfied that each claim is fundamentally dishonest. They cannot be separated.

51. I have found the claimant suffered no injury in any of the accidents. It follows that section 57 of the Criminal Justice and Courts Act 2015 can have no application.

Final determination

52. I dismiss all parts of each claim.

53. I have not heard arguments on costs. By way of preliminary view, and subject always to any submissions that may be advanced, I am minded to require that the claimant pay the costs of the Defendants on each claim. Because I have found each claim to be fundamentally dishonest it seems to me that by virtue of CPR 44.16 such order can be enforced and QOCS has no application. I would be minded to order that such costs be the subject of detailed assessment in default of agreement and to make an order for a payment on account of those costs as required by CPR 44.2(8).

54. I am minded to order that a copy of this judgment be sent to the Law Society, to CILEX and to each of the firms for whom the Claimant is shown to have worked in her LinkedIn profile.

55. If the parties can agree an order this judgment will be handed down without the need for attendance.