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**CASES REFERRED TO IN THE
TALK ON OGDEN 6**

- (a) *Garth v Grant* [2007] All ER (D) 459
- (b) *Conner v Bradman & Co. Ltd* [2007] EWHC 2789
- (c) *Morgan v UPS Limited* [2008] EWCA 375
- (d) *Hunter v MoD* [2007] NIQB 43 (Stephens J)
- (e) *Palmer v Kitley* [2008] EWHC 2819 (HHJ Richard Seymour QC)
- (f) *Leesmith v Evans* [2008] EWHC 134 (Cooke J)

2 *Garth v Grant* [2007] All ER (D) 45 (HHJ Hickinbottom). The claimant weighed between 28 and 30 stone at the date of the accident. On the evidence, it was impossible to say that G's weight had a "substantial adverse effect on her ability to carry out day-to-day activities" as required by the Ogden Tables to satisfy the criteria of being a disabled person. In any event, it appeared to have had no significant adverse impact on the kind or amount of work she wished to do and did. Accordingly, in the circumstances, G was not "disabled" in accordance with the Ogden table definition and the appropriate factor to reflect contingencies other than mortality was 0.87.

3 *Conner v Bradman & Co. Ltd* [2007] EWHC 2789 (HHJ Coulson QC). The claimant was a motor mechanic before the accident. His knee was badly injured in the accident and was going to need replacing. After replacement the knee was likely to free of be pain but would still be restricted in movement. He would no longer be able to work as a mechanic. He had been retraining to be a taxi driver. HHJ Coulson QC held that he was disabled for Ogden the purposes. The Ogden tables indicated that the agreed multiplier should be discounted by 0.49 to reflect the fact that disabled employees often did not remain in work as much as initially thought. However, it was noted that the relatively low threshold required to the definition of 'disabled' resulted in the need for adjustment depending on the extent of a claimant's disabilities. In C's case the appropriate discount was 0.655 (which was half way between the full disabled factor and the undisable factor of 0.82).

- 4 *Morgan v UPS Limited* [2008] EWCA 375 *Smith v Manchester* award arrived at somewhat irrationally but nevertheless upheld by CoA.
- 5 *Hunter v MoD* [2007] NIQB 43 (Stephens J). Everything had been agreed apart from the claimant's residual earning capacity. The multiplicand for this also appears to have been broadly agreed at £15,311 (§12) which the judge adjusted down to £15K (§17). Thus the Judge was concerned solely with the multiplier. The claimant was 36, out of work, disabled, and of education standard O. Table B gave a discount *factor* of 0.20 which the judge spoke of as a discount of 80%. The judge found that by the time of trial the claimant ought to have found a job. This would have produced a factor of 0.39 i.e. a discount of 61%. If he had been unemployed but not disabled the factor would have been 0.80 i.e. a discount of 20%. After a review of the medical evidence the judge plumped for a discount of 40%.
- 6 *Palmer v Kitley* [2008] EWHC 2819 (HHJ Richard Seymour QC) "It was obvious, in my judgment, that the calculation of the claim for future loss of earnings was extremely sensitive to the assumptions fed into it." After a very detailed analysis he applied *Blamire v South Cumbria HA* [1993] PIQR Q1 CA and awarded £30K for loss of earning capacity.
- 7 *Leesmith v Evans* [2008] EWHC 134 (Cooke J) C, aged 28 at trial, was a lighting technician who suffered a knee injury requiring an above-knee amputation, as well as injury to his dominant hand. He returned to work as a lighting technician but in a limited capacity, resulting in lower pay. Towards the end of his judgment Cooke J said:

From this figure falls to be subtracted the agreed net earnings, which it is accepted that the claimant will earn to age 65, of £10,000 per annum. Prima facie, the multiplier to be applied here is 23.4 but if the adjustment required by table B which is 0.54 is used, the resulting figure is 12.64 as the appropriate multiplier. The defendant however submits that the degree of disability must be taken into account. It is contended that the factor to be applied to the multiplier should not be the factor of 0.54 but should be something between the 0.92 factor from table A, for fully able males, and the 0.54 factor, for disabled males, because of the wide definition of "disabled" at paragraph 35 at page 60 of "Facts and Figures". The defendant points out that the figure of £10,000 net fully takes into account the degree of disability of the claimant and submits that to adopt the full factor here would be unjust. With that submission I only partly agree and do not feel able to adjust that factor by much. The factor I apply is 0.6.

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