Neutral Citation Number: [2021] EWHC 2056 (QB)

Case No: D53YJ470
Appeal No: BM00085A

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BIRMINGHAM CIVIL JUSTICE CENTRE, APPEAL CENTRE
ON APPEAL FROM THE LEICESTER COUNTY COURT
JUDGMENT OF HHJ MURDOCH

Birmingham Civil Justice Centre, Bull Street,
Birmingham, B4 6DS
Date: 23/07/2021

Before :

THE HONOURABLE MRS JUSTICE TIPPLES DBE

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Between :

RICHARD WALKDEN	**Claimant/ Appellant**
- and -	
DRAYTON MANOR PARK LTD	**Defendant/ Respondent**

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- -

Satinder Hunjan QC (instructed by **Affinity Law**) for **the Appellant**
Andrew McLaughlin (instructed by **Plexus Law**) for **the Respondent**

Hearing dates: 13th July & 14th July 2021

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Approved Judgment

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10am on Friday 23 July 2021.

The Honourable Mrs Justice Tipples:

Introduction

1. On Good Friday 2014 the appellant went on a family outing to the respondent's amusement park. Unfortunately, as a result of an accident on the cable car, his back was injured. In March 2017 the appellant commenced a personal injuries claim against the respondent. His case was that he had suffered severe physical and psychiatric injuries as a result of the accident which had a very significant impact on his day to day life and his ability to work. He claimed damages in excess of £1.5 million. The respondent admitted liability, but disputed quantum.

2. The trial on quantum was heard before His Honour Judge Murdoch in the County Court at Leicester. Following a nine day trial at the end of February and beginning of March 2020, the judge handed down judgment on 7 July 2020. The judge found that the appellant had exaggerated his injury symptoms and he assessed damages at £17,600. At a telephone hearing on 7 July 2020, the judge then heard submissions from Counsel in relation to fundamental dishonesty and consequential orders. The judge gave an *ex tempore* judgment the same day and determined that the level of exaggeration by the appellant was fundamentally dishonest. The claim was dismissed pursuant to section 57(2) of the Criminal Justice and Courts Act 2015 ("**the 2015 Act**") and the judge ordered, amongst other things, that the appellant (a) repay the respondent the interim payments of £11,000; (b) pay the respondent's costs of defending or dealing with the claim on the indemnity basis, to be subject to detailed assessment if not agreed; and (c) pay the respondent £100,000 on account of its costs by 28 July 2020.

3. The appellant appeals that decision with the permission of this court and, in granting permission, the judge said this:

> "Although it is rare to grant permission to appeal in a case such as the present (where the trial judge has made adverse findings of fact in relation to the credibility of the appellant) I am persuaded for the reasons set out in the appellant's skeleton argument that permission to appeal is justified and there is a real prospect of success in accordance with the usual test. In particular, there is arguable merit in three specific points (although I am not shutting out any of the grounds) [namely, grounds 1, 2, and 8]… I emphasise that my views above are only in relation to arguability and the appellant faces the normal substantial hurdles of an appellant challenging factual findings made following oral evidence."

4. The appellant has advanced eight grounds of appeal:

    a. **Ground 1**: The judge's analysis and findings of the lay evidence was flawed and wrong, and the judge ignored or failed to take proper account of the extensive, consistent and corroborative evidence of the significant and ongoing limitations and restrictions which the appellant had suffered from the time of the accident.

    b. **Ground 2**: The judge wrongly found that the appellant was not suffering from a chronic pain syndrome.

c. **Ground 3**: The judge wrongly rejected the evidence of Johanna Walkden (the appellant's wife) as to the appellant's injuries and the severe limitations and restrictions which had resulted.

d. **Ground 4**: The judge wrongly failed to attach any weight to the fact that the appellant had undergone very extensive physiotherapy and towards the end of the physiotherapy treatment was still seeking treatment by way of a spinal injection.

e. **Ground 5**: The judge wrongly placed excessive weight on snapshots of evidence which were of dubious reliability and probative value.

f. **Ground 6**: The judge wrongly concluded that Professor Abel strayed outside her area of expertise and that in doing so (which is not accepted) she undermined her expertise generally.

g. **Ground 7**: The judge wrongly approached the quantification of the claim and the evidence from the forensic accountants.

h. **Ground 8**: The judge wrongly found the appellant to have been fundamentally dishonest.

5. This, therefore, is an appeal against the judge's findings of fact. The relevant law can be stated very shortly: an appellate court must not interfere with a trial judge's findings of fact, unless it is compelled to do so. That applies not only to findings of primary fact but also to the evaluation of those facts, and the inferences to be drawn from them. An appellate court will interfere with findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified. This has been spelt out on a number of occasions in decisions of the House of Lords and Supreme Court (see, for example, *Henderson v Foxworth Investments Ltd* [2014] UKSC 41 at paras [58] to [67], per Lord Reed; and the summary of authorities in *Fage UK Limited v Chobani UK Limited* [2014] EWCA Civ 5 at paras [114] to [117], per Lewison LJ).

6. In *Biogen Inc v Medeva* [1997] RPC 1, HL Lord Hoffmann explained the need for appellate caution in these terms (at page 45 (lines 31-43)):

> *"*The need for appellate caution in reversing the judge's evaluation of the facts is based upon much more solid ground than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance ... of which time and language do not permit exact expression but which may play an important part in the judge's overall evaluation.*"*

7. Likewise in *Re B (a child)(FC)* [2013] UKSC 33, Lord Kerr said this:

> "[108.] A conclusion by a judge at first instance on which facts have been proved, and which have not been, involves the judge sifting the evidence that has been led, assessing it and then deciding whether it has brought him or her to the necessary point of conviction of its truth and accuracy. Although an appellate court is competent to hear appeals against the findings of fact that the judge has made, of necessity, its review of those findings is constrained by the circumstance that, usually, the initial fact-finder will have

> been exposed to a wider range of impressions that influence a decision on factual matters than will be available to a court of appeal. This is not simply a question of assessing the demeanour of the witnesses who gave evidence on factual matters, although that can be important. It also involves considering the initial impact of the testimony as it unfolds – did it appear frank, candid, spontaneous and persuasive or did it seem to be contrived, lacking in conviction or implausible. These reactions and experiences cannot be confidently replicated by an analysis of a transcript of evidence. For this reason, a measure of deference to the conclusions reached by the initial fact finder is appropriate. Unless the finding is insupportable on any objective analysis it will be immune from review."

8. Before, turning to the individual grounds, it is important explain the nature of the appellant's pleaded case and the evidence before the judge at trial.

The appellant's claim and evidence at trial

9. The appellant's schedule of damages was signed by the appellant with a statement of truth and dated 8 January 2020. Under the heading general damages, the appellant set out his case in these terms:

> "[1.] The accident suffered by the claimant was an horrific accident and as the result of the same the claimant suffered injuries to his spinal region and psychiatric injury. [2.] The spinal injury probably involved an upper lumbar radiculopathy at the L2/3 levels. [3.] The claimant has suffered severe pain, limitations with his abilities and also abdominal and groin pain and sensory disturbance with bowel and bladder disturbance and alterations with his erections. [4.] The claimant suffered from PTSD and psychiatric injury. The claimant has developed a pain syndrome with chronic pain. [5.] The claimant suffered a cardiac incident unrelated to the accident which included initial coronary artery bypass surgery which was performed on 8 May 2017 and further treatment thereafter – the claimant had to deal with his cardiac condition with the background of the serious condition that he had arising from the accident. [6.] The injuries have had serious consequences for the claimant including ongoing problems which are functional, pain, and changes in his mood and behaviour which have had serious consequences for him in terms of his business and his social life and relationships. [7.] The claimant has been unable to continue his business as a result of the injuries and has no prospects of being able to undertake any meaningful work now."

10. The appellant gave evidence at trial, as did his wife, Johanna Walkden, and two of his sons, Bailey Walkden and Toby Walkden. The appellant also called evidence from three friends, Paul Collins, Alan Robinson and Dr Hellmuth Weich, and two work colleagues in relation to his business (which was called Eartheat Ltd ("**Eartheat**")), Sandy Soltysik and Moira Paige. The appellant called evidence from six experts, Dr Steven Allder (neurologist), Mr Darren Forward (orthopaedic surgeon), Dr John Williams (pain expert), Professor Kathryn Abel (psychiatrist), Dr Vivian Challenor (cardiologist) and Mr Stephen Harris (accountant). These witnesses were all cross-examined.

11. The respondent called evidence from two employees, Richard Shepherd and Alex Harvey, together with expert evidence from six experts, namely Mr Robert McFarlane (neurosurgeon), Mr John Webb (orthopaedic surgeon), Dr David McDowell (pain expert),

Dr Michael Bond (psychiatrist), Professor Kevin Channer (cardiologist) and Mr Matthew Geale (accountant). These witness were all cross-examined.

12. In addition to the witness evidence, the judge also had before him an extensive trial bundle (made up of 3,000 pages of documents) and surveillance evidence obtained by the respondent. The appellant had been filmed over seven dates, and the video recordings were on DVD. In addition to that, the judge had skeleton arguments from Counsel for each party, and submissions in the usual way.

The judgment

13. The judgment runs to 40 pages and the judge identified, and dealt with, the various issues in turn. The headings the judge used are italicised below.

14. *The accident circumstances*. The judge found that, because of operator error, the gondola car in which the appellant, his wife and son were seated was dispatched too fast and that caused the gondola to swing. He accepted that the appellant's evidence as to the mechanics of the accident were accurate "namely that within the gondola he was subject to violent swinging whilst he was standing in what I would describe as an awkward position trying to protect his wife and son". There is no challenge to this finding of fact.

15. *Was the [appellant] injured*. The judge found that due to the violent rocking of the car the appellant suffered an injury to his wrist and lower back. He held that the contemporaneous records clearly established that fact. There is no challenge to this finding of fact.

16. *Does the [appellant] having any ongoing pain? If so how bad is that ongoing pain? Is that ongoing pain caused by the accident? Does the [appellant] have a psychological condition? If so is that caused by the accident?* The judge considered the lay witness evidence followed by the expert evidence in relation to these issues, which formed the main part of his judgment (lines 293-1624).

17. He dealt first with the credibility of the lay witnesses, and made the following findings:

    a. *Johanna Walkden* – the judge found that "she has been prepared to give misleading evidence in court proceedings" (lines 380-381). This was a reference to some proceedings referred to as the Funding Circle litigation. This finding is challenged in ground 3.

    b. *Bailey Walkden* and *Toby Walkden* – the judge had no reason to doubt the credibility of the appellant's sons, but he gained "little assistance from their otherwise helpful evidence" (line 422). This was because "they were the [appellant's] children who were clearly there to support their father and their evidence painted no more than a general picture of someone who had been active and was less active now, but it was unclear whether the reduction in activity was simply post this accident or post the [appellant's] subsequent heart attack" (lines 417-420).

    c. *Paul Collins*, *Alan Robinson* and *Dr Hellmut Weich* – the judge said he had no reason to doubt the bona fides of these witnesses, but their evidence was of limited assistance. This was because "it was unclear that any of the witnesses were able to

say that the [appellant's] restrictions occurred post-accident or occurred post heart attack" (lines 467-468). This finding is challenged in ground 1.

d. *The [appellant]* – the judge set out the appellant's own evidence. He then referred to the following documentation, namely physiotherapy notes (which form the subject-matter of ground 4), the medical reports of Dr Kanwar (who examined the appellant 16 days after the accident), Mr Allen (who examined the appellant approximately six months after the accident) and the GP records. That documentation gave rise to a number of different topics of cross-examination of the appellant, which the judge then identified, summarised the evidence and stated his conclusion in relation to each issue. There were eleven separate topics which the judge identified as follows (lines 666-1206):

    i. *Does the lack of attendance upon the GP show that the physical injury was a minor injury?* The judge found that it was not surprising that the appellant did not attend upon his GP until May 2014, and that was not indicative of someone who was at that time only suffering from very minor symptoms. This was because, by that time, the appellant had had more than nine treatments at the physiotherapist (lines 677-681). The judge rejected the appellant's evidence that he had been given morphine tablets by a colleague's wife (lines 683-688).

    ii. *Did the [appellant] go to a pub/restaurant called the Soaring Eagle on 22 April 2014 (four days after the accident). If so what inferences should be drawn?* The judge found that the appellant did not go to the Soaring Eagle but, even if he was in pain, that would not have prevented him from attending a family meal in or around the Easter period (lines 694-704). The judge took nothing from this issue (line 704).

    iii. *The holiday to South Africa and white water rafting*. The judge regarded the evidence about the circumstances relating to whether the appellant had had a spinal injection in South Africa (lines 710-781) as "stirring some doubt about the credibility of the [appellant's] evidence" (line 783).

    iv. *White water rafting*. The appellant accepted that he had been on a white water rafting trip in December 2014 on holiday in South Africa, but gave evidence (for the first time in cross-examination) that he had not done the entire trip and only joined in after the rapids, and that he was only paddling in flat water. The judge rejected that evidence, and found that the appellant took part in the entire trip (lines 825-827) and, even if he was wrong about that, the judge found that paddling in flat water "would have been a hard, physical activity" (lines 833-836).

    v. *The heart attack*. The judge summarised here the evidence in relation to the appellant's heart attack and cardiac issues (lines 844-906).

    vi. *GP records*. The judge summarised here the appellant's GP records between 4 August 2017 and 3 October 2019 (lines 913-951).

vii. *Other documentation*. The judge summarised here the sickness benefit claim form the appellant had submitted to the Cirencester Friendly Society after his heart attack (lines 955-985). The judge noted that the appellant told the Cirencester Friendly Society that he undertook a lot of manual work in 2018, and he could not do that work because of his heart attack and sternal pain and the judge observed that "back pain only gets a passing mention" (lines 970-971). The judge found that "the [appellant's] presentation to the Cirencester is in marked contrast to his case before this court that he is not working because of the index accident. One of those accounts must be wrong."

viii. *Other inconsistencies: Alpha Innotek Incident*. The judge found that the appellant had seriously exaggerated his evidence in relation to Eartheat's business dealings with Alpha Innotek (lines 1008-1011).

ix. *Other inconsistencies: medical history*. The judge rejected the appellant's explanation as to why Dr Kanwar's medical report did not reveal a history of back pain or psychological symptoms. The judge found that the doctor's records were accurate, which provided "an example of lack of credibility in parts of [the appellant's] evidence" (lines 1032-1033).

x. *Other inconsistencies: the lack of Eartheat documentation*. Eartheat went into administration in 2017 and the business was sold on 30 May 2017 (lines 1053-1054). The issue here was what had happened to certain company documentation, and the judge found that "the [appellant] was evasive as to why important financial documentation, which would have assisted his own expert, the [respondent's] expert and this court in understanding the true position of his business was not provided" (lines 1110-1112).

xi. *What have the medical experts asked as against the [appellant's] interpretation of what he has been asked*? The appellant was cross-examined "intensely" on the issue of what he had told numerous medical experts about his ability to move his spine and his past medical history. The judge recorded that "a common response from the [appellant] was in terms that the answers depended upon the way he had interpreted the question", and the judge then set out a few examples. The judge rejected the appellant's evidence and said "I do not accept that he misinterpreted simple questions and, in my judgment, this intelligent man looks to find explanations to address the problems highlighted by the [respondent] in cross-examination" (lines 1182-1184; and also at 1191-1199).

xii. Overall, in relation to these various sub-issues, the judge found that the appellant had given misleading evidence in relation to the white water rafting, misleading information on the claim for income protection to the Cirencester Friendly Society, there had been a lack of candour surrounding the Eartheat documentation, there had been a failure to preserve documents, and there were other inconsistencies in his evidence. The judge found that "drawing the threads together" the appellant was not a credible witness when it came to the self-presentation of his injury and pain (lines 1201-1206). It is the judge's assessment of the evidence in relation to most of

these topics, and the weight he attached to it in making his findings of fact that forms the basis of ground 5.

18. The judge then dealt with the e*xpert evidence* in the following order (lines 1210-1624):

    a. *Is there an organic basis for the appellant's pain?* The judge considered the evidence of Dr Allder and Mr Macfarlane. He preferred the evidence of Mr Macfarlane and found, on the balance of probabilities, that the appellant did not suffer an L2 and L3 radiculopathy.

    b. *The orthopaedic evidence*: The judge summarised the evidence of Mr Forward and Mr Webb under this heading.

    c. *The pain management experts*: The judge summarised the evidence of Dr Williams and Dr McDowell under this heading.

    d. *Psychiatric evidence*: The judge summarised the evidence of a Mr Fussey (who the appellant had seen in 2014), Professor Abel and Dr Bond.

    e. *Is Professor Abel correct that the stress caused by the index accident materially contributed to the appellant's heart attack?* Here the judge considered the evidence of Professor Abel, Dr Challenor, Professor Channer and Mr Bond. He found that Professor Abel had strayed outside the scope of her expertise, whereas Mr Bond had stayed within his. The judge found that such stress as the appellant has suffered in the index accident did not cause his subsequent heart attack (lines 1560-1561). The judge's assessment of Professor Abel's evidence is challenged by ground 6.

    f. *The DVD*. The judge set out what the various experts said about the contents of the surveillance DVD taken of the appellant over a number of days. The experts who had commented on the DVD were Mr Forward, Dr Williams, Professor Abel, Dr Allder, Mr Webb, Dr McDowell, Dr Bond and Mr Macfarlane.

19. *Drawing the threads together*. These threads were the threads on the central issue at trial, namely whether the appellant had any ongoing pain and, if so, how bad that pain was, and whether it was caused by the accident. The judge summarised each parties' submissions and, in relation to the lay and expert evidence, he expressed his conclusions in these terms (lines 1650-1692):

    "I have already found that the [appellant] undertook the white water rafting trip; the [appellant's] income protection claim was prefaced on the basis that his chest injury prevented him from working, that the [appellant] has not been honest in his evidence concerning the lack of Eartheat documents; the [appellant] is an intelligent man who groped to find explanations for the inconsistencies in his evidence and that led me to a conclusion that the [appellant] was not credible when it came to the self-presentation of his injury.

    Mr Webb administered the Oswestry disability index questionnaire, his evidence was that a patient with the score presented by the [appellant] would exhibit severe disability. That questionnaire, was of course completed by the [appellant], the results fit with the

presentation he gives at the medical examinations where he demonstrates an inability to bend his spine.

I accept the proposition that the surveillance DVD is just a snapshot of the [appellant's] activity. However, that snapshot showed in my judgment the following: [*the judge then set out his conclusions on the DVD*].

In my judgment those movements are not consistent with someone who has presented to multiple medicolegal experts as someone who could not bend their back at all.

Reinforcing my conclusion, it is in my judgment, entirely incongruous to the presentation of an inability to bend and a constant pain level of 8 out of 10, the ability of the [appellant] to undertake a white water rafting expedition.

I accept the evidence from his friends and acquaintances who gave genuine evidence that from their perception he has not undertaken cycling, beekeeping and the like. However, their perceptions are based upon how the [appellant] has presented to them. It is his presentation that is the issue.

In my judgment he has exaggerated his injury to the experts in this case.

He has also underplayed the consequences of his heart attack. He has either lied to the court and the heart attack had a major impact upon his ability to work or has lied to the Cirencester because it has not. The contemporaneous notes from his GP show he was signed off because of his heart condition not his back, that fits with the claim to the Cirencester. I would find that he was not working because of his heart attack and the subsequent sternal pain rather than the subject accident.

My view, that the true picture is that he has not returned to work because of issues following his heart attack, is reinforced by the most recent documentation sent to the Cirencester Friendly Society dated May 2019 which again contains a declaration as to truth and clearly states that [he] is unable to reach up or behind or bend to pick things up as a result of the cardiac issues, his back gets no mention. And most importantly he declares that he is incapacitated from his work as a result [of] his heart attack and chest surgery.

Bearing in mind those findings I am far more convinced by the evidence of the [respondent's] experts who have more accurately analysed the [appellant's] presentation over time and in the DVD.

I find that the [appellant] is not suffering from a chronic pain syndrome. Such a diagnosis depends upon the credibility of the [appellant] and I found him not to be credible.

In respect of a psychological injury, both experts accept that ICD 10 criteria A required an incident that involved death or threatened death or serious injury or threatened serious injury. The [appellant] does not give evidence that he felt his life was threatened or that he may suffer serious physical injury. I accept that he says the incident was frightening and afterwards felt shocked but that is not the same thing. With respect to Professor Abel she has interpreted the events to fit them into that criteria rather than analysing what the

> [appellant] reported himself. [In] my judgment that means that Dr Bond's evidence is the more credible."

20. The judge's finding that the appellant does not suffer from a chronic pain syndrome is challenged by ground 2, and the judge's assessment of Professor Abel's evidence is challenged by ground 6.

21. *Findings*. The judge then found that (lines 1734-1745):

> "As a result of the accident the [appellant] suffered an injury to this lower back. The pain was moderate for the first three months. The pain has continued thereafter at a mild level. In addition he suffered mixed anxiety and depressive disorder of a mild nature. This has continued. Neither of these conditions prevented the [appellant] from working or carrying out his beekeeping. The [appellant] has exaggerated his claim by misrepresenting his disabilities to the medical experts".

22. The judge said that, based on those findings, he only needed to deal briefly with the lay and expert evidence that dealt with the appellant's loss of profit/lost income claim. He then turned to consider the evidence of *Moira Page, Sandy Soltysik, Mr Harris* and *Mr Geale* (lines 1747-1862).

23. In relation to the expert accountancy evidence, the judge concluded (lines 1857-1862):

> "I prefer the evidence of Mr Geale, I accept that Mr Harris has followed his instructions and produced figures for lost profit but as he himself accepted without the important documentation that has not been disclosed, difficulties have been experienced in providing a clear trading history of the company post-accident. Mr Geale more explicitly recognises that and I agree. The [appellant], even if I were wrong on my analysis of the medical position has failed to prove a loss of profit".

24. That finding in relation to the expert accountancy evidence is challenged by ground 7.

25. *Quantum*. The judge awarded £15,000 for pain, suffering and loss of amenity, and did so by reference to the Judicial College Guidelines. He awarded £2,600 in respect of care from the appellant's wife, the cost of physiotherapy appointments, cost of painkillers and cost of travel to the physiotherapist. The total damages awarded was £17,600 (lines 1869-1888).

26. On 8 June 2020 the judge circulated, in draft, his judgment to the parties on a confidential basis. In the draft judgment at lines 1903 to 1905 the judge said this "Pursuant to section 57(3) and 57(5) of the Criminal Justice Act 2015 the claim for in excess of £1.5 million is dismissed and the [appellant] do pay the costs less £17,600, to be assessed if not agreed." Mr Hunjan QC, counsel for the appellant, asked for that sentence to be removed from the draft judgment, on the basis that he had not had the chance to make submissions in relation to the issue of fundamental dishonesty. The judge acceded to that request and it was in those circumstances that the judge handed down his judgment on 7 July 2020 and then heard further submissions from counsel by telephone as to whether the claim should be dismissed pursuant to section 57 of the 2015 Act. The judge was referred to the relevant case law and expressed his conclusion in these terms:

> "[9.] The long and the short of this case is that Mr Walkden presented a claim of over £1.5 million. In my judgment, he has recovered the total sum of £17,600. The main

element of his claim was a loss of income/loss of profit claim based upon his inability to work. His inability to work was based upon his claim to have been physically and psychiatrically impacted by this accident. I found that he had exaggerated his injury symptoms and that was fundamental to my finding that he has failed to establish a loss of earnings claim. In my judgment, that level of exaggeration is dishonest. He was trying to put forward a claim of over £1 million based upon a false premise that he was as badly injured as he said he was. One of the key drivers in my decision-making was the Oswestry test which he had completed which indicated a high level of disability. I compared that to the reality of the surveillance evidence and drew the conclusion that the two simply were not in line with each other. The reality is that Mr Walkden has chosen to exaggerate the level of his injury to justify a very large loss of earnings claim, and it has not found favour with me.

[10.] In my judgment, that alone is dishonest. It goes to a major part of the claim. It is fundamentally dishonest and in my judgment, the [respondent has] established that the [appellant] was fundamentally dishonest. I go further, because another key issue in the case was the impact of his heart attack. Mr Walkden in my judgment has misled the court as to the impact of the heart attack upon his ability to work, and I made that clear in my judgment. I made it clear that he either lied to the court or lied to the Cirencester, and without using the words, 'he lied' I went on to find that he was not working because of his heart attack, the reality must be that because he had told this court that he was not working as a result of his back rather than his heart attack, the answer to the question of 'which he had lied to' was this court. That is fundamentally dishonest. Again, it was designed to support his claim for loss of earnings.

[11.] I was also critical of his evidence about his white water rafting trip because that in my judgment again was a clear finding that he was not as disabled as he was presenting to numerous doctors. That again was designed in my judgment to support his loss of earnings claim, and I found it simply not to be made out.

[12.] The long and the short of it, taking account of the various judgments which would, as I say, correctly say that you have got to deal with each particular case on its facts and on its merits, in my judgment, Mr Walkden has been fundamentally dishonest in the presentation of the level of his injury in support of his loss of earnings claim, so he has been fundamentally dishonest."

27. The judge then held that, having been fundamentally dishonest, the appellant would not suffer substantial injustice if the claim was dismissed and he dismissed the claim on the basis of fundamentally dishonesty. It is this second judgment on 7 July 2020 that gives rise to ground 8.

Grounds of appeal

28. I turn now to the individual grounds of appeal.

29. The appellant, by grounds 1 to 6 and 8, is seeking to challenge the findings and conclusions reached by the judge in relation to the following issues, which were at the heart of this case: "*Does the [appellant] having any ongoing pain? If so how bad is that ongoing pain? Is that ongoing pain caused by the accident? Does the [appellant] have a psychological*

condition? If so is that caused by the accident?". In determining those issues the judge considered a range of lay, expert, documentary and video evidence, together with a number of sub-issues, such as the white water rafting trip and documents which had been submitted to the Cirencester Friendly Society. This was, to use the words of Lewison LJ in *Fage UK*, "the whole of the sea of evidence" presented to him (para 114(iv)). The issue for this court is whether there is any basis on which the appellate court is compelled to interfere with the judge's findings of fact on the central issues in the case.

30. Mr McLaughlin, counsel for the respondent, submits there is no such basis and maintains that grounds 1, 3, 4, 5 and 6 are all complaints about the weight the judge attached to witness or documentary evidence. Determination of the weight to be attached to any evidence is entirely a matter for the trial judge, and any appeal against a judge's decision on weight in the circumstances of this case is hopeless. As to the other grounds, Mr McLaughlin submitted that grounds 2 and 8 were challenges to the judge's assessment of the appellant's credibility, and ground 7 was parasitic on the other grounds.

Ground 1: The judge's findings of fact in relation to the lay evidence were wrong

31. This ground, together with ground 2, were the appellant's main grounds of appeal.

The appellant's submissions

32. Mr Hunjan submitted that, it was a key part of the appellant's case at trial, that his life had dramatically changed after the accident and, as a result of the injuries, he was no longer able to work as he did previously, and he was not taking part in any of his wide-ranging activities, such as bee-keeping, cycling, camping and shooting, to any meaningful extent. There was and could be no explanation for the change other than that it was a result of the injuries he suffered in the accident.

33. The appellant called "highly credible" witnesses who provided extensive, real life and detailed evidence of the changes in the appellant since the accident. The appellant called evidence from Paul Collins (a recently retired chartered accountant working for *The Daily Mail*), Alan Robinson (a farm owner), Dr Hellmuth Weich (a university lecturer), Sandy Soltysik (a management accountant) and Moira Paige (a business consultant). All of these witnesses fully supported the significant changes in the appellant's position as he had described them. Despite this evidence and expressly not doubting the "bona fides" of the witnesses, the judge found: "However, their evidence was of limited assistance. It was unclear that <u>any</u> of the witnesses were able to say that the [appellant's] restrictions occurred post-accident <u>or</u> occurred post-heart attack" (underlining added). In addition, there was the evidence of the appellant, his wife and two sons.

34. The judge was manifestly wrong; in fact, <u>all</u> (let alone "any") of these witnesses gave evidence that the appellant's significant problems arose following the accident. In addition, in dealing with this part of the case, the judge did not even mention Ms Paige or Ms Soltysik, whose evidence could only have been related to the period prior to the cardiac event because it was only before the cardiac event that they worked with the appellant. The judge only dealt with their evidence later in the judgment and made no comment at all of the timing of the appellant's significant difficulties as followed from their evidence and that it was completely at one with all of the other witnesses. These were serious and

important errors and, in making them, the judge has tainted the entirety of the approach which he has taken to the determination of the other issues in this case.

35. Mr Hunjan further submitted that, having accepted the bona fides of these witnesses (who clearly knew the appellant well and had had very extensive contact with him both before and after the accident, and gave clear and wide-ranging evidence of the significant difficulties which the appellant was having after the accident), the only proper finding that could have been made was that the appellant had suffered from severe consequences as a result of the accident. The evidence of the lay witnesses should have informed the medical evidence; not only did the judge not follow that approach to any extent, he effectively ignored or discounted their evidence altogether on an entirely flawed basis.

36. Then, in his skeleton argument, Mr Hunjan provided a summary of certain parts of the evidence of Paul Collins, Alan Robinson, Dr Hellmuth Weich, Moira Page, Sandy Soltysik, Bailey Walkden and Toby Walkden, and he also referred to the evidence of the appellant and his wife. Then, in the course of his oral submissions, Mr Hunjan took me to the parts of the transcripts of the oral evidence in cross-examination and re-examination, he wished to rely on.

37. Mr Hunjan's conclusions on the lay witness evidence were expressed in his skeleton argument in these terms, and this position was maintained in his oral submissions:

> "[42.]The judge therefore demonstrably erred in law and fact in his finding that it was unclear that <u>any</u> of the witnesses were able to say that the [appellant's] restrictions occurred post-accident or occurred post-heart attack; any judge exercising elementary care in considering and engaging with the evidence would not have made such serious errors and would have found that all of the witnesses supported the fact that the [appellant] following the accident had suffered very significant restrictions and difficulties which on the evidence could only have been as a result of the accident and were continuing; they were affecting his work and had grossly limited his life.
>
> [43.] If the judge was in the slightest doubt of this important evidence, then he did not seek to clarify it at all with any of the witnesses. In fact, he did not ask a single question of any of the lay witnesses. Indeed, throughout the trial, the judge only asked one witness (an expert) for clarification and that was by way of a limited question. Although judges are to be discouraged from entering the arena of a trial that is far from the present position."

The respondent's submissions

38. Mr Mclaughlin submitted that the Judge considered the evidence of the appellant's witnesses, which he summarised in his judgment, and he was not required to set it out in more detail than he did or give more elaborate reasons for the weight he attached to it. In the case of some of them (e.g. Moira Page and Sandy Soltysik) he rejected what they said and he was not bound to treat the evidence of all of these witnesses generally as more important than the vast array of other evidence set out in his judgment. However, the judge took it into account in reaching his findings.

39. The appellant is inviting the appellate court to re-evaluate the weight to be attached to different aspects of the evidence, if not to retry the issues in the case, which an appeal court is neither entitled nor in a position to do.

40. The judge rejected the evidence of the appellant's wife, and concluded that Bailey and Toby Walkden were there to support their father and their evidence was no more than a general picture of someone who had been active but was less active now, and they were unclear whether the reduction in the appellant's activity post-dated the accident or his heart attack.

41. The Judge found Paul Collins was uncertain as to whether the appellant's DIY activities reduced after the accident or the heart attack, and the evidence of Alan Robinson and Dr Helmuth Weich was of limited assistance, it was unclear from their evidence whether the appellant's restrictions occurred post-accident or post-heart attack. Finally, the judge found that, in general terms the appellant's friends and acquaintances have given evidence from their perception based on how the appellant had presented to them, which he did not find to be credible or reliable.

Ground 1: conclusions

42. It was clear from Mr Hunjan's oral submissions, and his skeleton argument, that this ground of appeal is founded on the three sentences in the judgment (at lines 466-468) where the judge said:

> "[line 466] I have no reason to doubt the bona fides of these witnesses. However, their evidence [line 467] was of limited assistance. It was unclear that any witnesses were able to say that [line 468] the [appellant's] restrictions occurred post-accident or occurred post heart attack."

43. Mr Hunjan's argument was that, as a result of those three lines, the judge concluded that in respect of the evidence of <u>all</u> the lay witnesses "it was unclear that any of the witnesses were able to say that the [appellant's] restrictions occurred post-accident or post heart attack". That, to my mind, is a mis-reading of the judgment.

44. This is because, when the judgment is read as a whole, in these three lines the judge is *only* referring to the evidence of three particular witnesses, namely Paul Collins, Alan Robinson, Dr Hellmuth Weich. This is clear because, in this part of the judgment, the judge is dealing with the credibility of the lay witnesses (line 293), and he summarises the evidence of each witness in turn, and then expresses his views in relation to credibility. The judge dealt first with Mrs Walkden, and concluded she was prepared to give misleading evidence to the court (line 380-381). He then dealt with the appellant's children, Bailey and Toby Walkden, and concluded he had no reason to doubt their credibility. However, they were unclear whether the appellant's reduction in activity was after the accident or after the heart attack and, as a result, he gained little assistance from their otherwise helpful evidence. It was in that context, that the judge then turned to the evidence of Paul Collins, Alan Robinson and Dr Hellmuth Weich, which he summarised, and then expressed the conclusions set out at lines 466-468. The judge then turned to consider the credibility of the appellant's evidence (lines 472-1206). These three lines, upon which Mr Hunjan places so much reliance, were not therefore a general statement which applied to the evidence of all the lay witnesses, as Mr Hunjan contends.

45. The next point is that, even if Mr Hunjan is right (which I do not consider he is), and the judge was wrong on the evidence to find that "it is unclear that any of the witnesses were able to say that the [appellant's] restrictions occurred post-accident or occurred post heart attack", this ground of appeal does not take the appellant's case anywhere. The judge accepted that the appellant's friends and acquaintances had given "genuine evidence that from their perception [the appellant] has not undertaken cycling, beekeeping and the like. However, their perceptions are based upon how [the appellant] has presented to them. It is his presentation that is the issue" (lines 1689-1692). Therefore, what the appellant's friends and acquaintances observed, depended on what they were told by the appellant, or observed from the appellant's behaviour – which is how he presented himself to them after the accident. The judge did not doubt that any of these friends or acquaintances had told him the truth but, as he correctly said, their evidence was based on their perceptions of how the appellant had presented to them. Their evidence did not provide the answer to the critical questions as to whether the appellant had ongoing pain and, if so, how bad that pain was, and whether it was caused by the accident. The judge found that the appellant was not a credible witness when it came to the self-presentation of injury and pain (lines 1204-1206) and concluded that he had exaggerated his injury to the medical experts in this case (line 1695). Therefore, even if the appellant's friends and acquaintances had each been able to pin-point a point in time when the appellant had stopped outdoor activities, such as bee-keeping, cycling, camping and shooting, that evidence would have made no difference to the judge's findings of fact on the issues at the heart of this case, which he determined by reference to the appellant's credibility (and the vast range of evidence which had been placed before him).

46. Mr Hunjan criticises the judge's analysis at lines 1689 to 1692 of his judgment and, in particular, the use of the word "perceptions". He submits that this "highlights the false basis upon which the judge has proceeded; he accepted apparently the evidence of these witnesses but seeks to describe their extensive evidence as "perception". It is not understood in this context what perception means …" (para 15 of the appellant's skeleton argument). The judge is quite clear in his judgment as to what is meant by the perception of the appellant's friends and acquaintances, and there is no foundation in this submission for the reasons identified at paragraph 45 above.

47. My conclusion in relation to this point, is sufficient to dispose of this first ground of appeal.

48. However, for completeness, I will deal with the points Mr Hunjan has made in relation to the lay witness evidence. I do so keeping firmly in mind the relevant legal principles I have summarised above. The lay witnesses called by the appellant at trial were (and following the order in the appellant's skeleton argument):

    a. *Paul Collins*. The trial judge took this evidence into account, and had regard to the whole of Mr Collins' evidence (lines 430-437). In cross-examination Mr Collins told the judge that the appellant "had offered to be the health and safety manager for the village committee but had not followed through but this had occurred after the heart attack. Likewise, he was uncertain as to whether the DIY activities reduced after the subject accident or after the [appellant's] heart attack" (lines 441-444). In those circumstances, the judge's finding that it was unclear whether Mr Collins was able to say that the appellant's restrictions occurred after the accident or after the heart attack, was entirely in accordance with the evidence.

b. *Alan Robinson*. The judge provided a very short summary of Mr Robinson's evidence in these terms: "He's been a friend of the [appellant] since about 2004 as their children were at school together. Mr Robinson is a farmer and the [appellant] kept about 13 or 14 beehives on his farm. Since the accident the [appellant] has slowly been getting rid of the hives" (lines 448-450). The judge's assessment of this evidence, namely it was true but of limited assistance, is set out at lines 466-468 of his judgment. Mr Hunjan submits that Mr Robinson's evidence was "further powerful evidence in support of the position of how the [appellant] had been prior to and after the accident; yet despite this evidence the judge only devotes three lines to this witness, which is [a] meaningless analysis of his evidence". It is obvious that the trial judge took Mr Robinson's evidence into account, and his summary of this evidence is accurate and sufficient. Further, in cross-examination Mr Robinson explained that he had asked the appellant to get rid of his hives, but the appellant had not done that. He was asked, "Do you know why that is?" and he replied "I assume it's since the accident" and then he said "He's said that his back's too painful to deal with it". I have considered Mr Robinson's evidence and, having done so, the judge's findings in respect of Mr Robinson's evidence (lines 448-450; 466-468; 1689-1692) are not findings which are insupportable on any objective view, and there is no basis for this court to interfere with them.

c. *Dr Hellmuth Weich*. The trial judge took this evidence into account (lines 454-468). Mr Hunjan submits that the judge's "analysis of his evidence is entirely inadequate and largely meaningless in the context of the issues in this case". I disagree. The judge provided a pithy summary of Dr Weich's evidence, and considered it to be of limited assistance.

d. *Moira Page*. Mr Hunjan's complaint is that the judge considered this evidence (and that of Sandy Soltysik) in the context of the appellant's loss of profit claim, which he dismissed. He submits that this evidence should have been considered with the other lay evidence earlier in the judgment when he dealt with the issue as to whether the appellant had any ongoing pain, and so on (lines 289-291). It is clear that the judge took this evidence into account, as it is addressed at lines 1758-1777 of his judgment. The fact that he summarised this evidence in the context of the appellant's loss of profit claim was entirely appropriate given that Ms Page was a self-employed business consultant, who attended monthly board meetings at Eartheat. There was no need to refer to this evidence earlier in the judgment, when he set out the evidence of the other lay witnesses, and there is no basis for criticising the judge for not doing so. In any event, it was in the light of Ms Page's evidence that the judge found that the appellant "moved from a hands-on role, undertaking physical installation work, to the marketing side under [Mr Page's] plan to try and save his business, not as a result of an inability to perform the physical side of the job" (lines 1775-1777).

e. *Sandy Soltysik*. The trial judge took this evidence into account (lines 1781-1803). Mr Hunjan points to Ms Soltysik's evidence in her witness statement that the appellant's physical decline was following the accident. However, this overlooks the evidence she gave in cross-examination, and which the judge referred to in his judgment (lines 1790-1792) that the appellant continued to be the lead sales generator and "he would do what he could to get sales and as a result they were not

as profitable as previous jobs". Therefore, after the accident, the appellant was out and about seeking to generate sales for his business, Eartheat, something he maintained he was unable to do.

f. *Toby Walkden and Bailey Walkden*. The trial judge took this evidence into account (lines 387-422). Mr Hunjan referred to the contents of their witness statements, and cross examination. Having considered that evidence, it is clear that the judge was correct to conclude that Toby and Bailey were unclear whether the reduction in the appellant's activity was after the accident, or after the heart attack. If anything, based on the transcripts of their cross-examination, that conclusion was generous to the appellant. Further, this was the evidence of the appellant's children, who were living at home at the time of the accident, and saw the appellant far more frequently than friends and acquaintances.

g. *The appellant and Joanna Walkden*. The trial judge took this evidence into account, but determined the appellant's evidence in relation to the injury was not credible, and that Mrs Walden had been prepared to give misleading evidence in court proceedings (lines 297-381; lines 474-1206). Based on the evidence before the judge, these were findings he was clearly entitled to reach in relation to the evidence of the appellant and his wife.

49. The judge did not therefore ignore or fail to take into account any of the lay witness evidence. Rather, he carefully summarised the evidence of each witness, and then identified his findings in relation to the credibility of that witness. He placed that evidence in the context of all the other evidence and, it was in that context. that the judge determined the weight to be attached to the evidence, and whether or not the evidence of a particular witness provided him with any assistance in relation to the central issues in the case. This was entirely a matter for the trial judge, and his approach cannot be faulted. Ground 1 is not made out.

Ground 2: the judge was wrong to find that the appellant was not suffering from a chronic pain syndrome

50. Mr Hunjan advanced two main arguments for the appellant in relation to this ground. First, the judge's finding that the appellant had continued pain, albeit at a mild level (lines 1734-1736), was in complete contradiction to the judge's finding that the appellant was not suffering from a chronic pain syndrome (lines 1717-1718). Mr Hunjan criticised the judge's analysis and assessment of the lay and expert evidence and submitted that the judge "should have concluded that the appellant was suffering from a chronic pain syndrome from which he had been and was continuing to suffer from severe limitations and restrictions and that would be the position for the remainder of his life" (paragraphs 44 and 45 of his skeleton argument).

51. Mr Hunjan's second argument was that the judge failed to provide any adequate explanation for his finding that the appellant "suffered an injury to his lower back". This is because the judge has failed to identify whether the back injury was an accelerating or aggravating injury.

52. Mr McLaughlin, for the respondent, submitted that the judge's finding that the appellant had not developed a chronic pain syndrome (which was used as a label for constant, severe, disabling pain and associated disability) as a result of the accident, was not contradicted by his finding that the appellant had ongoing mild backache. It was not the appellant's case at trial, nor the opinion of his various medical experts, that even if the appellant's back symptoms were only mild he still had a chronic pain syndrome. The appellant's medical experts did not give any such evidence at trial. Rather, whether the appellant had a chronic pain syndrome turned upon his credibility and, as the judge found he was not credible, the judge was entitled to prefer the evidence of the respondent's medical experts. As to Mr Hunjan's second argument under this ground, Mr McLaughlin accepts that the judge did not explain whether the appellant's injury to his lower back was an accelerating or aggravating injury. However, he submits this is irrelevant in the circumstances as the judge rejected the appellant's case that he had, in effect, suffered a life-changing injury as a result of the accident.

53. In my view, Mr Hunjan's first argument is based on a mis-reading and a mis-understanding of the judge's findings of fact and conclusions in relation to the main issues in the case, namely to whether the appellant had any ongoing pain and, if so, how bad was it, and whether that pain was caused by the accident. The judge had a wealth of evidence before him on these issues from lay witnesses, medical experts, contemporaneous documents and so on. The judge devotes most of his judgment to summarising, and analysing all this evidence which was placed before him in relation to these issues. He does so, in my view, succinctly and with considerable care and, as a result, he found that the appellant was not a credible witness, and had exaggerated his injuries. It was in that context that the judge rejected the appellant's case that he was suffering from a chronic pain syndrome. The appellant did not suffer a life-changing injury as a result of the accident which meant he was unable to work. There was ample evidence before the judge on which to reach this conclusion, and it is not a finding of fact which cannot be reasonably explained or justified. Furthermore, it is not contradicted by the judge's finding that the appellant continued to suffer back pain at "a mild level". This is because it was clear from the evidence before the judge that this mild pain did not prevent the appellant working or, indeed, doing outdoor activities such as white water rafting. Pain at that level was not what the case at trial was about and, as a result, it is neither here nor there that the judge did not identify whether the back injury was an aggravating or accelerating injury. Therefore, Mr Hunjan's second argument does not take this ground of appeal any further. Ground 2 is not made out.

Ground 3: The judge was wrong to reject Mrs Walkden's evidence in relation to the appellant's injuries

54. Mr Hunjan submitted that Mrs Walkden's evidence was "entirely at one with the evidence of all the other witnesses as to the consequences of the [appellant's] injuries. Generally, in considering the reliability of her evidence as to the [appellant's] injuries, the judge should have taken the same into account but failed to do so" (paragraph 47 of his skeleton argument). Further, the judge was wrong to reject her evidence because he found that she has been prepared to give misleading evidence in court proceedings. Mr McLaughlin submitted the judge's assessment of Mrs Walkden's credibility was entirely a matter for him and cannot be challenged on appeal.

55. There was evidence before the judge about the litigation commenced by Funding Circle Ltd against Eartheat to recover sums due under personal guarantees the appellant and Mrs Walkden had entered into as security for a loan to the company. In a witness statement and defence to those proceedings provided by Mrs Walkden, the judge found that "the clear impression being given by that evidence is that [Mrs Walkden] had a very minimal role within Eartheat, essentially, she only knew such information about Eartheat as a husband was prepared to tell her". However, in cross-examination at trial the picture that emerged was rather different and, in particular, that Mrs Walkden worked five days a week at Eartheat between January 2012 and November 2016, and she sat in meetings with the accountant and the business manager, and had knowledge of the renewables industry. The judge concluded that "that evidence is more detailed and extensive than someone who has in effect a passing acquaintance with a husband's business" (lines 374-376) and that she had lied to the court in the litigation between Funding Circle Ltd and Eartheat. This finding by the judge is unassailable. It was entirely reasonable for the judge to assess the credibility of her evidence in relation to the appellant's injuries in the light of this finding. Ground 3 is not made out.

Ground 4: The judge was wrong not to attach any weight to the amount of physiotherapy and that he was still seeking a spinal injection

56. Mr Hunjan pointed to the large number of physiotherapy appointments that the appellant attended, together with the steps he took to obtain a spinal injection on holiday in South Africa in December 2014, and submitted that the judge had failed to explain why, if he considered the appellant was only suffering from "mild" problems with this back, he should have sought such extensive treatment and a spinal injunction. This ground is hopeless. It is plain that the judge took the number of physiotherapy appointments into account (lines 513-562, 677-678), together with the appellant's evidence about the spinal injection. It was entirely a matter for the judge as to the weight to be attached to this evidence. He was not impressed with the appellant's evidence that he had obtained a spinal injection in South Africa (lines 710-783) and concluded that it was an issue "that stirs some doubt about the credibility of the [appellant's evidence]". Ground 4 is not made out.

Ground 5: The judge was wrong to place excessive weight on "snapshots of evidence" of dubious reliability and probative value

57. Mr Hunjan submitted that the weight given by the judge to eight particular topics (which Mr Hunjan described as "snapshots") was wrong. These topics, were identified by reference to the following headings in Mr Hunjan's skeleton argument:

    a. spinal injection – South Africa;

    b. white water rafting trip;

    c. DVD surveillance evidence;

    d. morphine tablets;

    e. non-attendance at the GP and visiting the Soaring Eagle;

f. Eartheat documentation;

g. involvement of Alpha Innotek with Eartheat; and

h. Cirencester Friendly Society.

58. This is a complaint in relation to the judge's findings of fact on the various sub-issues which formed the basis of the respondent's challenge to the appellant's credibility. This ground of appeal is not advanced on the basis that there was no evidence for the judge to make the findings of fact that he did in relation to each of these sub-issues. Rather, it is another complaint about the judge's assessment of the evidence before him, and the weight he attached to it in making his findings of fact on each topic. That was a matter entirely for the trial judge. The judge dealt with each of these topics with care, summarised the relevant evidence, and then set out his findings of fact (which I have set out at paragraph 18(d) above, 19(f) and 20). The reasons in the judgment for each finding are clear. This ground of appeal is also hopeless and, as a result, I do not need to deal with each topic heading individually.

Ground 6: The judge was wrong to conclude that Professor Abel strayed outside her area of expertise

59. Mr Hunjan submitted that the judge was wrong to reject Professor Abel's evidence that the stress caused to the appellant by the accident materially contributed to his heart attack. He submitted that the judge was wrong to find that Professor Abel had strayed outside her area of expertise, and that that undermined her opinion generally. Mr McLaughlin submitted that the judge was, on the evidence, entitled to prefer the evidence of Dr Bond (and thereby reject the evidence of Professor Abel) and this is a further finding that is unassailable. I agree with Mr McLaughlin. The judge carefully considered the evidence of these two medical experts, together with all the other evidence before him, and concluded that "such stress as the [appellant] has suffered in the index accident did not cause the subsequent heart attack". That finding was plainly open to him on the evidence, and it is not one that no reasonable judge could have made. Ground 6 is not made out.

Ground 7: The judge's approach to quantum and the forensic accounting evidence

60. It is plain from Mr Hunjan's skeleton argument, and his oral submissions, that this ground is a further complaint that the judge's findings of fact, in relation to the nature of the injuries suffered by the appellant, was wrong. In that way, it is not a free-standing ground of appeal, but depends on the success of the earlier grounds. The judge rejected the appellant's case that, as result of the accident, the limitations and restrictions imposed on him were severe. For the reasons identified above, the appellant's grounds of challenge against that decision are not made out and, as a consequence, ground 7 also fails.

Ground 8: The judge was wrong to find the appellant fundamentally dishonest

61. Mr Hunjan submits that the judge could not and should not have come to the conclusion that the appellant was fundamentally dishonest. In particular, the judge did not find the appellant to have been fundamentally dishonest in the written judgment he handed down

on 7 July 2020, and in his skeleton argument he points out that "the word "dishonesty" is not even used although there are references to exaggeration, those have to be taken in their proper context" (paragraph 93 of his skeleton argument).

62. There is nothing in this ground of appeal. The judge removed, at the request of Mr Hunjan, the reference to dismissing the claim under section 57 of the 2015 Act (a point which was not apparent from the appellant's skeleton argument). This was so that parties and, in particular, the appellant could make submissions to the judge, following the hand down of the judgment, on this very topic. In the light of the request from Counsel, that was an entirely appropriate and sensible approach for the judge to take. There was ample evidence before the judge to conclude that the appellant had been "fundamentally dishonest in relation to the primary claim or related claim" and the claim should be dismissed under section 57. The judge gave clear reasons in his *ex tempore* judgment on 7 July 2020. This, again, is not a conclusion which no reasonable judge could have reached on the evidence.

Conclusion

63. The appeal is dismissed.