Should a Claimant deduct the costs of travelling to work?

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Where a Claimant makes a claim for past and future loss of earnings, should they give credit for the costs of working (usually travel expenses)?

For a great many years, the answer was thought to be no. More recently, the NHSR and those they instruct have revived an old argument that such costs should be deducted.

At first, I thought it was just one of the delights of being against some of the old dinosaurs still found in place like 2TG. It is becoming more of an epidemic: everybody now wants a deduction - usually pitched in the Counter Schedule at 15-20% (presumably on the basis that Claimant will concede 10%).

Resist!

In 1988, the case of Dews v National Coal Board 1988 AC 1 was heard in the House of Lords, Lord Griffiths held:

> "Where ever a man lives he is likely to incur some travelling expenses to work which will be saved during his period of incapacity, and they are strictly expenses necessarily incurred for the purpose of earning his living. It would, however, be intolerable in every personal injury action to have an inquiry into travelling expenses to determine that part necessarily attributable to earning the wage and that part attributable to a chosen life-style. I know of no case in which travelling expenses to work have been deducted from a weekly wage, and although the point does not fall for decision, I do not encourage any insurer or employer to seek to do so. I can, however, envisage a case where travelling expenses loom as so large an element in the damage that further consideration of the question would be justified as, for example, in the case of a wealthy man who commuted daily by helicopter from the Channel Islands to London. I have only touched on the question of travelling expenses to show that in the field of damages for personal injury, principles must sometimes yield to common sense."

Whilst obiter, this could hardly be expressed more forcibly.

The case that Defendants rely upon is Eagle v Chambers 2004 EWCA Civ 1033. This litigation followed a serious RTA which occurred in June 1989. At her trial in 2003, the judge, Mr Justice Cooke, deducted 15% from Ms Eagle's past earnings as representing her travelling expenses for work. He made no such deduction in respect of future earnings – for the very good reason that the Defendant's legal team did not ask him to do so.

Unfortunately, the judge was not referred to the recent HL authority which described such a deduction, even if limited to past losses, as "intolerable".

This case went to the CA where, in a short passage the CA refused to interfere with the 15% deduction. It was said that the decision in Dews did not lay down a rule of law. Lord Justice Waller interpreted the passage in Dews as follows:

> "What the passage seeks to prevent is inordinate time being spent on not very significant items in the context of an exercise which is attempting to assess damages in a broad way. I would not disturb the judge's finding."

Putting these decisions together, it seems highly unlikely that the court would, save for those claimants who travel to work by helicopter, make a deduction for the costs of going to work.

My experience is that, faced with the passage from Dews, defendants back down. I encourage others to remember Dews.