

12 Tinnitus as Suffering

Tinnitus is ringing in the ears. Douek and Reid showed the remarkable correlation between the pitch of tinnitus and the frequency of the hearing loss (Douek and Reid, 1968). This is true of acoustic trauma groups who have high tone tinnitus. There is lack of adequate medical criteria for assessing tinnitus. Goldner noted that among shipyard workers exposed to the noise of riveting hammers, tinnitus was the most common complaint (Goldner, 1953). It was often considered to be more disabling than deafness and in some it caused a handicap. Atherley in a study of foundrymen found that 33 out of 55 experienced tinnitus (Atherley, 1967).

There is a difference between tinnitus which eventually disappears as often the case with military men, and that which is "forever present" as in *Bailey v ICI Ltd*, 1979, Manchester. "The tinnitus, of course, will remain for the rest of his life. Part of every day he is conscious of the tinnitus and he is very conscious of the tinnitus when he is concentrating on his hearing. When he is concentrating on listening to music he becomes conscious of the buzzing," Mr Justice Caulfield.

In that case, it was the medical submission that the outlook for tinnitus was bad. It was, said Mr Devine, an emotional and psychological problem. Fortunately, according to Mr Clark, the majority of affected individuals were not overconscious of the tinnitus. They learned to live with it. Mr Clark gave as an example of his theory that in the Black Country he was meeting men in heavy industry in that area who were suffering from noise deafness and who must be suffering from tinnitus, but only 15% of those people referred to it when they were examined by Mr Clark. Mr Clark "perhaps on more dangerous ground", said that women rather than men were more likely to be disturbed by tinnitus,

possibly because of emotional instability. Damages were awarded for pain and suffering and loss of amenity.

In *Heslop v Metalock (Britain) Ltd*, 1981, no attempt was made to apportion compensation between tinnitus and direct loss of hearing, perhaps because the major portion was attributable to loss of hearing.

In *O'Shea v Kimberley Clark Ltd*, Oct 7 1982, Mr Justice Boreham awarded £7,000 compensation under general damages for pain and suffering and loss of amenity and inconvenience. The hearing loss was minimal and the tinnitus was severe with distressing effects.

The facts of the case taken from the judgment illustrate the factors taken into consideration: "He said that this ringing, which he likened to the ring of an anvil caused him distress and headaches. Hardly a day passed without his having a headache; he took analgesic tablets in order to mitigate or relieve them. He purchased something like 48 of those tablets a week. If he woke up during the night, he found it difficult to get back to sleep. He sometimes felt tired and sleepy during the day, and as a result of that he became quick-tempered and snapped; the recipient of that sort of behaviour was usually his wife or other members of the family. In order to reduce the effect of the noise he had taken to wearing tinnitus maskers. The purpose of that equipment was to produce another noise, a sort of diversionary noise, to distract him from this constant ringing. After about an hour to an hour and a half, the maskers themselves become tiresome: the distracting noise itself. In a crowd, particularly in a public house, it was more difficult for him to hear."

Mr Douek accepted that the sensation and symptoms were frequently the result of noise induced hearing loss. It was often difficult for plaintiffs to describe. Its effect was subjective;

what was bearable to one patient might be quite intolerable to another. Mr Douek found the plaintiff's complaints entirely consistent with his experience of trauma due to excessive noise.

The learned judge said, "Above all I accept the consequent tension and irritation and the resultant frequent headaches by reason of this distressing affliction." Judicial dicta on tinnitus point in the direction of suffering, under the legal heading "Pain and Suffering" rather than to disability, under the heading "Loss of Amenity". Tinnitus has many parallels in its nature and even in its therapy with pain [1].

The formulators of the early Blue Book were very much constrained to classify everything under impairment, disability and handicap. They had great difficulty fitting tinnitus in at all. It is more appropriate to consider it as suffering.

Tinnitus may add very little to disability ratings. However, the pain and suffering aspect may qualify it as a separate item for compensation in its own right. Some practitioners are taking a more detailed clinical

history as the Iron Trades in particular are very keen to know when tinnitus came on, whether it interferes with sleep, whether it is maskable etc (Vize, 1986). Perhaps the pain and suffering aspect of tinnitus will draw more judicial attention when pleaded separately.

Whether tinnitus and hearing loss are two separate injuries or two manifestations of the same injury is in principle a legal issue, but its determination would also depend on available evidence: "a mixed issue of law and fact" is the legal description of such a situation.

The scientific facts linking tinnitus and hearing loss are not resolved so it may be necessary to examine non-scientific facts by default. Many claimants are now given the advice to mention tinnitus to medical examiners. Even so, the clinical impression is that the vast majority of claimants do not realise the relevance of hearing loss to their tinnitus. On broad jury principles, a jury of twelve honest men and true [2] would therefore be more likely to find in favour of two separate injuries [3].

[1] Tinnitus defies simple comparison with ordinary medical conditions but the analogy with pain from Dr Coles is apt.

[2] Not necessarily men, nor necessarily bright. Not even necessary in civil cases as the judge can also serve as a notional jury. British judges tend to specialise and are more astute than juries.

[3] More judicial attention might enhance the quantum of damages. Very severe tinnitus and hearing loss were awarded £7,000 and £12,000 in separate 1982 cases. Add the Lord Chancellor's annual adjustment for inflation. There is no precedent for adding £7,000 to £12,000 where a claimant suffers from both but it is certainly worth pleading separately. Compensation tends to be higher in non-industrial situations. Tinnitus was settled for £75,000 where a Hollywood actress had a pistol let off near her head in a Thames TV studio. She claimed, supported by 3 Beverley Hills psychiatrists, that her career was in ruins. The Medical Defence Union settled a case for £70,000. The civilian doctor allowed a young soldier to go back to firing a loud weapon after he had complained of tinnitus and hearing dullness initially. No audiogram was done.