

# Legal Fees in a MVA Claim: What is Reasonable?



Article by Townsville Lawyer, Ivan Baxter, Senior Solicitor and Director of O'SheaDyer Solicitors Townsville.  
September, 2021

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There has been a recent case reported by the Supreme Court of Queensland, *Adamson v Enever & AAI Limited T/A Suncorp Insurance* [2021] QSC 221.

This case is interesting as it contains comments by Justice Applegarth about the fees Shine lawyers were charging their client, Mrs Adamson.

Justice Applegarth was so concerned about the fees Mrs Adamson was being charged by Shine Lawyers, he recommended she obtain independent legal advice about the costs agreement she had entered into with them (less than 2 weeks after seeing them) and about the extra costs over and above the standard costs recoverable from the CTP insurer. The Judge also recommended the matter be referred to the Legal Services Commission for consideration.

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## What happened to Mrs Adamson?

Mrs Adamson was injured when she was struck by a vehicle that failed to give way to her as she was walking across a pedestrian crossing. She was aged 63 at the time. Mrs Adamson was injured on the 13<sup>th</sup> October 2015 and entered into a costs agreement with Shine Lawyers 13 days later, on the 26<sup>th</sup> October 2015.

The claim was a quantum only claim from a very early stage. (Suncorp formally admitted liability on the 29<sup>th</sup> of February 2016.)

Liability was not an issue which meant that any law firm who acted for Mrs Adamson was not acting on a speculative basis. She had a definite claim for damages that was not going to be reduced by contributory negligence. It was also an uncomplicated claim in that there was no claim for past or future economic loss. Also, this was not a complex case involving severe brain injuries. There was no dispute that Mrs Adamson suffered a serious head injury when her head and neck hit the pedestrian crossing or that she suffered head, back, neck, and ankle injuries and some psychological effects as a result of being struck by the vehicle.

On the 29<sup>th</sup> January 2021, a mediation took place during which a settlement was reached. Suncorp agreed to pay Mrs Adamson the sum of \$350,000.00 plus standard costs and outlays to be agreed (or failing agreement, to be assessed).

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## What was this case about?

This case was essentially about whether Mrs Adamson had capacity. (Capacity to instruct Shine Lawyers to settle her claim and capacity to manage her settlement sum.)

The Court decided that she did have capacity.

In the course of deciding this matter Justice Applegarth was privy to information about the estimated legal costs Mrs Adamson was to be charged by Shine Lawyers. In paragraphs 136 and 139 the Judge expressed concern that the amount of settlement money left for Mrs Adamson, after her lawyers were paid, was low. He made extensive comments about the estimated *costs differential* and Mrs Adamson's capacity to address this.

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## Costs Differential

In a Motor Vehicle Claim where injuries result in considerable damages\* an injured person is entitled to recover *standard costs and outlays*, in addition to their settlement amount.

Often, this does not cover 'all of the costs' of their lawyer running their matter. However, in normal circumstances, **it is reasonable that 'standard costs and outlays' would cover a substantial component of the total costs. This means, the injured person should receive the great majority of their settlement money. They should not have to use a significant proportion of their settlement money to pay the difference between the 'standard costs and outlays' they recover, and their lawyers bill.**

In this case, the Judge noted (paragraph 139) '*my impression is that the estimated costs differential is well beyond what might be expected for a case of this kind.*'

[\*if the settlement amount is great than approximately \$80,000.00, an injured person/plaintiff is entitled to recover the standard costs and outlays in addition to their settlement amount.]

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## What did Judge Applegarth say about Shine's fees?

Justice Applegarth made several comments about the estimated legal costs of Shine Lawyers.

While the costs agreement and the amount of the fees charged by Shine Lawyers was not disclosed, the Judge was given a figure for estimated legal costs. He stated in paragraph 105 that '*the estimated legal costs (excluding disbursements) to which Mrs Adamson is said to be liable under her costs agreement with Shine Lawyers seem to me to be extremely high, indeed excessive.*'

In para 109 of the decision, the Judge stated: '*It will be for Mrs Adamson to decide, with the support of her daughter and any independent legal advice she chooses to obtain, what, if anything, she does to challenge the costs agreement that she entered less than two weeks after the accident or the quantum (amount) of the costs which Shine Lawyers claims from her.*'

Clearly, the standard fees and outlays that Suncorp were to pay, fell very short of the amount owing to Shine Lawyers per the costs agreement. This meant a significant proportion of Mrs Adamson's settlement money would be required to pay all of Shine Lawyers' fees. The Judge noted in para 139 '*my impression is that the estimated costs differential is well beyond what might be expected for a case of this kind.*'

The judge noted in paragraph 136, '*An aspect of Mrs Adamson's capacity in relation to her receipt of the settlement sum is her ability to maximise the net proceeds of the settlement available to her by minimising the differential between the standard costs she can recover from the second defendant and the costs she must pay Shine Lawyers. One way to address that financial matter is to ensure that the standard costs are assessed in a reasonable amount and in her best interests... Another way is to ensure that she is not required to pay Shine Lawyers more than she should. She may need advice and other assistance about that to ensure that their costs are assessed properly, not simply on the basis of applying the terms of the costs agreement to the number of hours recorded as work done on her file.*'

In paragraph 140 the Judge noted that the matter of '*the costs differential... would be assisted by a consideration by the Legal Services Commissioner of the terms of the costs agreement, the circumstances under which it was executed and the estimate of the recoverable indemnity costs including gst and uplift.*' The Judge made a Direction that a copy of his reasons for Judgement be provided to the Legal Services commissioner.

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## Be Aware

It is important to be clear about the fees your lawyer is going to charge you to act for you in a motor vehicle injury claim.

Lawyers are required to enter a costs agreement with their clients in these types of matters. It is important that you truly understand the costs agreement.

People are always able to obtain advice about a costs agreement from another lawyer if they have concerns.

If you have concerns, you should obtain advice from an experienced lawyer who works in personal injury law. A good lawyer will not charge you for this.

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## Note

This case [*Adamson v Enever & AAI Limited T/A Suncorp Insurance [2021] QSC 221*] is about a Motor Vehicle Injury Claim.

In a Work Accident Claim, it is more difficult to recover costs. The relevant legislation in Queensland says (as a general rule) *unless you end up in court and the amount awarded by the judge is equal to or greater than your MFO (Mandatory Final Offer) at the CC (Compulsory Conference)*, you are not entitled to recover any legal costs. This means you won't recover solicitors' fees, outlays, report fees or barristers' fees etc.

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**Ivan Baxter** is a Townsville lawyer with over 30 years' experience. He is the Director of OSheaDyer Solicitors Townsville. Ivan has experience in many areas of law including Wills + Estates, Family Law and Litigation. He now practices exclusively in Litigation managing compensation claims.

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