

More On ICBC Claims, Impaired Driving And Civil Consequences In BC

November 23rd, 2008

Reasons for judgment were released on November 21, 2008 awarding a Plaintiff just over \$230,000 in damages as a result of injuries and losses sustained in a 2004 Vancouver Island motor vehicle collision.

The Defendant was impaired by alcohol when the collision occurred. As a result the Defendant was in breach of his ICBC insurance and ICBC defended the action as a statutory Third Party. In such situations the issue of fault is rarely admitted and although that was the case here liability was not seriously contested at trial and the court found the impaired driver wholly liable for the crash.

It was a significant crash and the Plaintiff sustained various injuries. The most contentious injury of the Plaintiff was a hip injury and the reasons for judgment focus largely on whether the Plaintiff's hip ongoing hip problems were causally related to the collision. The court found in the Plaintiff's favor with the key findings being made at paragraphs 75-79 which I reproduce below:

[75] *The findings of Dr. Leith indicate a causal connection between the plaintiff's hip injury and the Accident. Dr. Leith found that Mr. Hartnett's left hip injury is a soft tissue injury to the left greater trochanter region of the hip. Dr. Leith concluded, at pages 4 and 5 of his report, that Mr. Hartnett's hip symptoms are "most likely the result of the subject MVA based on the temporal relationship to the Accident and the fact that there is no indication that Mr. Hartnett had any pre-existing conditions to these areas".*

[76] *Dr. Leith's finding that Mr. Hartnett had no prior injuries to his hip is consistent with the evidence led at trial. The evidence did not disclose that Mr. Hartnett had any hip problems, or physical limitations in performing road service prior to the Accident. Further, the evidence of Mr. Hartnett and his wife demonstrates Mr. Hartnett's willingness to work through pain and his stoic nature. Mr. Hartnett's reluctance to disclose his hip injury to his physicians does not indicate a lack of connection between the Accident and the injury. Rather, it simply demonstrates that Mr. Hartnett was reluctant to complain about his hip injury based on his personality and his hope that it would gradually heal on its own.*

[77] *I find Mr. Hartnett's hip injury is casually related to the Accident since the evidence demonstrates, on a balance of probabilities, that he would not be suffering a hip pain but for the Accident.*

FUTURE PROGNOSIS:

[78] *The reports of Drs. Leith and Gilbert both indicate the prognosis for Mr. Hartnett's injuries is positive and that surgery will not be required. Neither examination finds any substantive problems in Mr. Hartnett's hip, which is his principal, ongoing complaint, along with his shoulder and lower back. Based on an initial review of these reports, it may seem that the severity of Mr. Hartnett's injuries is minimal and any corresponding impacts on his work and personal life would also be negligible. However, I am persuaded, based on the evidence of Mr. Hartnett and his wife, that the injuries to his hip, lower back and shoulder are in fact significant and continue to cause him considerable pain during various physical activities, especially certain aspects of his employment, recreation and home maintenance activities. I found that both Mr. Hartnett and his wife gave their evidence in a straightforward and honest manner with respect to their recollections and assessments of the Accident and its impact on Mr. Hartnett and the family. I also agree with the conclusion reached by Dr. Leith, that given the time elapsed since the Accident and the extent of Mr. Hartnett's pain, it is likely that these injuries will continue to affect him in the future.*

[79] *It is clear that Mr. Hartnett experiences greater amounts of pain while working road service, as compared to yard service. He has twice attempted to work road service since the Accident, for a total of 12*

months, and found the job duties resulted in a significant increase in pain. As a result, he was forced to elect yard service because the job requirements in that position, while still painful, were more manageable. Based on all of the evidence, I find these injuries will continue to adversely affect Mr. Hartnett for the foreseeable future.

The court awarded the following damages:

· Non-pecuniary damages:	\$60,000
· Loss of income-earning capacity:	\$150,000
· Loss of home maintenance capacity:	\$10,000
· Past wage loss:	\$16,280
• Future cost of care:	\$1,000

I have [previously blogged](#) about the civil consequences of impaired driving in BC and cases like this serve a stark reminder that the financial consequences can be significant. As an ICBC personal injury claims lawyer I have unfortunately seen the long term impact of impaired driving too many times. If a person drives drunk in BC and negligently causes injury to another they can be held in breach of their insurance. If this happens ICBC (assuming they follow the statutory protocol) have the right to defend resulting tort claims as a 'statutory third party' and after they pay the settlement or judgement can come after the Defendant directly for repayment. Unlike most creditors ICBC enjoys certain statutory rights which give them greater teeth to collect from a breached defendant. This case shows that the financial consequences of impaired driving causing injury in BC can easily be in the hundreds of thousands of dollars.