$35,000 Pain And Suffering For Moderately Severe Whiplash

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Reasons for judgement were released today by the BC Supreme Court awarding close to $45,000 in total damages as a result of a 2006 Surrey, BC car accident.

This case involved a rear-end crash and liability was admitted. The trial focused solely on damages.

The Court made the following findings of fact:

[50] I am satisfied that (the Plaintiff) suffered a moderately severe whiplash injury as a result of the accident in January 2006 that involved her upper, mid and lower back, neck, and shoulders. In addition, I am satisfied (the Plaintiff) suffered an injury to the web spaces between her thumbs and forefingers on both hands when they struck the steering wheel upon impact. As a consequence of these injuries, I accept that (the Plaintiff) suffered muscle stress headaches in the back of her neck that were distinct from her migraine headaches. Further, I accept that she had difficulty sleeping because of the pain from her injuries and, at least initially, because of the emotional distress caused by the serious nature of the accident.

[51] There is also cogent evidence that as a result of these injuries (the Plaintiff) was incapable to performing her crossing guard job and her noon hour supervision work from January 9 to March 10, 2006. Further, it is apparent that the pain (the Plaintiff) suffered as a result of these injuries was significant enough to warrant frequent and regular appointments with Dr. Rondeau up until October 2006 and twice weekly physiotherapy treatments from February 2006 to December 2006.

[52] After December 2006, however, there is no evidence that (the Plaintiff) sought medical treatment for her injuries. While (the Plaintiff) continued to do the exercises and stretches she was taught by her physiotherapist once or twice per week, she did not return to her doctor or seek other types of therapy until July 2008 when she began a course of massage therapy as recommended by Dr. Hershler. Moreover, (the Plaintiff) went to work and carried out her regular duties during this period with only limited discomfort as corroborated by the evidence of Ms. Sawicki and Ms. Hildebrandt. With her return to regular work duties, (the Plaintiff) was also capable of engaging in her only physical recreational activity: going for walks. As walking was a regular part of her job each day, it is likely that she was capable of returning to her pre-accident recreational walking soon after she returned to work.

Damages were assessed as follows:

1. *Non-pecuniary damages $35,000.*
2. *Past loss of wages $1,474.15.*
3. *Future loss of earning capacity $3,158.*
4. *Special damages $665.03.*

5. Cost of future care $1,353.

6. Loss of housekeeping services $4,704.

One procedurally interesting part of this decision was the issue of the admissibility of a treating doctor's CL-19 report. When people apply to ICBC for no fault benefits they have the right to obtain a report in the prescribed form from treating physicians. The prescribed form is known as a CL-19 which is a short form fill in the blanks type of a document in which treating doctors are asked to answer certain questions relating injuries and disability. In this case the Plaintiff wished for the doctor's opinion contained in the CL-19 to be admitted into evidence. The defence opposed arguing that the report does not comply with Rule 40A (the supreme court rule dealing with the admissibility of expert opinion evidence) The court ruled the report inadmissible finding as follows:

[6] Clearly both parties' positions have merit. There was nothing further (the Plaintiff's) counsel could have done to secure a report from Dr. Rondeau that complied with the Rules of Court. On the other hand, Mr. Sharma's counsel had no notice of the nature of Dr. Rondeau's opinion and an adjournment of the trial at this late stage would not have been appropriate.

[7] I heard Dr. Rondeau's evidence in a voir dire subject to a ruling on its admissibility. In my view, apart from his observations of (the Plaintiff's) symptoms and his chronology of events, his testimony had very little probative value. First, Dr. Rondeau did not diagnose (the Plaintiff) as having myofacial pain syndrome. This was simply a question in his mind when he completed the CL-19 form about six weeks after the accident which was far too soon to make such a diagnosis. Second, although he observed some signs that she suffered from post traumatic stress disorder, there was also no definite diagnosis of PTSD at the time the CL-19 was completed. It is also my view that the diagnosis of such psychological conditions may well be outside the expertise of a family physician. Accordingly, the weight that could be applied to the opinion evidence of Dr. Rondeau is very limited.

[8] In these circumstances, it is appropriate to exercise my discretion in favour of the defendant and exclude Dr. Rondeau's opinion evidence. The CL-19 does not meet the minimum requirements for a medical/legal opinion and it would prejudice Mr. Sharma if I were to admit the evidence despite its deficiencies. On the other hand, even if I were to admit Dr. Rondeau's opinion evidence, it adds little to the plaintiff's case.

Tags: cl19, ICBC claims, icbc medical report, moderate whiplash injury, pain and sufferig, rule 40A
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