The Art Of Valuing Pain And Suffering In ICBC Injury Claims

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Today reasons for judgment were released by the Vancouver Registry of the BC Supreme Court in 2 separate Injury Claims where Pain and Suffering was valued. In each case the Plaintiffs suffered different injuries which effected their respective lives to different degrees. Yet both Plaintiffs were awarded exactly $55,000 for their non-pecuniary damages. How can this be? The answer is that valuing claims for pain and suffering is an art, not an exact science.

When asking a personal injury lawyer how much a claim for pain and suffering is worth it is difficult if not impossible to value a claim at an exact dollar figure. The only truthful answer is "*whatever the judge or jury gives you*". Instead of attaching an exact dollar figure to any claim personal injury lawyers learn that claims can best be valued within an approximate range of damages. One judge can award a plaintiff $50,000 for a disc herniation and another can award a plaintiff with the exact same injuries $80,000 and there is nothing wrong in law with this so long as the award falls within the accepted range of damages for similar injuries.

Today's cases demonstrate this quite well. In the first case (Morrison v. Gauthier) the Plaintiff was injured in a 2006 BC Car crash. Her vehicle was rear-ended in Coquitlam BC. The Defendant was fully at fault for the crash.

The Plaintiff suffered fairly severe injuries which included an L4-5 disc herniation which from time to time "*puts pressure on the L4 nerve root and that the result for the plaintiff is not just pain in the low back - which is always her lot - but intense pain that, amongst other things, travels down the back of her leg*". In addition to this the Plaintiff suffered soft tissue injuries and a concussion in the collision.

Mr. Justice Stewart found that the effects of the Plaintiff's back injuries were likely permanent and had a rather profound impact on her. He stated that "*the effect…on the Plaintiff's life was dramatic…her capacity to (keep her work and home environment in order) has been severely reduced .*" He went on to find that the Plaintiff was incredibly athletic before the collision and "*was a woman who on the basis of the evidence placed before me, I can only describe as a dynamo"* and as a result of the car crash *"she became…ornery. She withdrew from her friends. She became moody and - stunning for her - one who sat idly watching television and gaining unwelcome weight. To some extent she became - utterly new to her - a chronic complainer*." Lastly he stated that (the defendant) "*managed to reduce a woman operating at an athletic level undreamt of by 99% of the population to a woman who must now, often, be helped out of a chair. (the Plaintiff's) compensable loss if overwhelming*".

Mr. Justice Stewart awarded the Plaintiff $55,000 for her non-pecuniary damages.,

In the second case (O'Rourke v. Kenworthy) released today by the BC Supreme Court the Plaintiff was involved in a 2004 BC Car Crash. The Defendant was 100% at fault. Madam Justice Wedge found that the Plaintiff was injured in the crash. Specifically the court found that the Plaintiff suffered from neck and back pain which was "*severe for several months, which then alleviated considerably over the next year or so*." The Plaintiff curtailed many of the physical activities which she enjoyed by after about a year she "*resumed most of these activities despite continuing ot experience pain*". By the time of trial she "*continued to have pain in her neck and back, but it is not disabling. She has been able to work, and she is currently able to work. She participates in numerous sporting activities and continues to hike, which is her first love. She has continued to travel extensively. No medical professional offered the opinion that (the Plaintiff's) pain is chronic in nature, or that it is caused by anything other than soft tissue injuries. They all agreed that her symptoms are expected to improve and will likely resolve gradually over time…At most (the Plaintiff) is at risk of suffering exacerbation's of her pain if she engages in certain rigorous activities*."

Scrutinizing the facts of the above two cases the first Plaintiff appears to have suffered more severe injuries which had a more profound effect on her life. Yet both were awarded the exact same figure for pain and suffering. This does not necessarily mean that either award was wrong in law, rather the difference can readily be explained by the

fact that pain and suffering awards are assessed within rather large ranges of acceptable damages. A more severe injury valued on the lower end of its respective range of damages can equal a more minor injury valued on the generous end of its range.

In the end, cases like this speak to the art of assessing pain and suffering in BC Injury Claims. As with any art '*feel*' becomes important and this is gained through time and experience. The more cases you read, the better you will get at the art of valuing non-pecuniary damages and determining the potential value of any given BC Injury Claim.