

Pain And Suffering Without Objective Signs Of Injury

July 14th, 2010



The easiest personal injury cases to prosecute are those involving objective injuries. If a person suffers a broken arm or leg in a car crash there is no dispute as to what the injury is or what caused it. There may be some disputes regarding the consequences of the injuries but generally there is a lot of room for agreement in these types of lawsuits.

On the other end of the spectrum are chronic pain cases. Many people involved in traumatic events go on to suffer long term chronic pain. The pain can be invasive and sometimes disabling. It can interrupt domestic, vocational and recreational activities, it can even negatively impact personal relationships. Often the source of chronic pain cannot be objectively identified and people suffering from chronic injury face not only the pain but also the stigma that they are somehow exaggerating or even faking their injury. This skepticism can take a further toll and add to the cycle of chronic pain.

These cases bring challenges in prosecution and create a sharp focus on plaintiff credibility. Despite their challenges chronic pain disorders can be properly compensated at trial as was demonstrated in reasons for judgement released today by the BC Supreme Court.

In today's case ([Kasidoulis v. Russo](#)) the Plaintiff was involved in a 2005 intersection crash. Fault was admitted by the driver of the opposing vehicle. The trial focused on the extent of the Plaintiff's injuries and their value.

The collision caused several injuries to the Plaintiff which eventually turned into a chronic pain disorder. As is sometimes the case there was a lack of objective proof of the Plaintiff's injuries. Dr. Travlos, the Plaintiff's treating physiatrist gave the following evidence about the Plaintiff's injuries:

[21] Dr. Travlos was of the opinion that the complaints reported by Ms. Kasidoulis to Dr. Kneifel, which included headaches, chest pains, neck pains; back pains and emotional difficulties were a direct result of the accident. He was unable to identify any clinical or objective findings with respect to the back pain but was clearly of the view that Ms. Kasidoulis was genuinely experiencing the pain that she reported. There does not seem to be any serious dispute between the parties that Ms. Kasidoulis' pain is genuine and I accept that this is the case.

[22] In his second report Dr. Travlos concluded that Ms. Kasidoulis suffers from chronic pain disorder. That pain was affecting her daily activities, both social and work related. He was of the view that Ms. Kasidoulis would benefit from a

long-term “longitudinal” course of treatment designed to permit her to manage and cope with her pain. On the other hand, Dr. Travlos was clearly of the view that there should be no expectation that the pain would resolve and that it was no more probable than not that she will continue to have permanent on-going pain.

[23] In both his reports, and in particular in his March 2010 report, Dr. Travlos focused considerable attention on the necessity of Ms. Kasidoulis undergoing treatment and having access to the resources necessary to reduce the stressors in her life. As I read Dr. Travlos’ opinion, he was of the view that if Ms. Kasidoulis is given the opportunity to access a reasonable long-term treatment plan and the resources to relieve her household responsibilities, she could expect significant improvement in her ability to function and in her ability to cope with her pain.

[24] Dr. Travlos was of the view that it was unrealistic to expect that Ms. Kasidoulis would ever be able to work full-time, but that it was reasonable to anticipate that she could work between three and four days a week if the therapies that he recommended were pursued and were effective.

Mr. Justice Sewell accepted this evidence and awarded the Plaintiff over \$900,000 for her injuries and resulting disability including \$90,000 for her non-pecuniary damages (*money for pain and suffering and loss of enjoyment of life*).

In arriving at this verdict the Court made the following comments about causation and compensation for chronic pain cases with lack of objective proof:

[36] As is not uncommon in cases of this sort, the critical issue in this case is the extent to which the injuries Ms. Kasidoulis suffered in the accident are the cause of the difficulties described in the evidence...

*37] This case therefore requires consideration of the law as laid by the Supreme Court of Canada and our Court of Appeal with respect to causation. The law with respect to causation has been recently addressed and reviewed in *Athey v. Leonati*, [1996] 3 S.C.R. 458; *Resurface Corp. v. Hanke*, 2007 SCC 7 and *Hutchings v. Dow*, 2007 BCCA 148.*

[38] These cases establish the proposition that to impose liability on the defendant I must be satisfied that Ms. Kasidoulis would not have suffered her symptoms but for the accident or, in other words, that the injuries she suffered in the accident were a necessary cause of her post accident symptoms.

[39] I find that Ms. Kasidoulis suffers from debilitating mid and low-back pain. This pain and attendant low energy have had a significant impact on her life. I find that the symptoms being experienced by Ms. Kasidoulis are an indivisible injury which would not have occurred but for the injuries she suffered in the motor vehicle accident.

[40] I base this conclusion on a comparison of Ms. Kasidoulis’ energy and capabilities before and after the accident. I accept her evidence that she is suffering debilitating back pain. I also rely on Dr. Travlos’ conclusion that Ms. Kasidoulis is suffering from chronic pain syndrome. I can see nothing in the evidence which supports the assertion that Ms. Kasidoulis would be experiencing the pain or the level of disability she currently experiences had she not been injured in the motor vehicle accident. I therefore conclude that the defendant is fully responsible for the consequences of Ms. Kasidoulis’ present condition.

[41] I make this finding notwithstanding the lack of objective clinical evidence of serious injury. I note that neither Ms. Kasidoulis nor Dr. Travlos were cross- examined with respect to the genuineness of Ms. Kasidoulis’ reported symptoms. In his cross-examination of Dr. Travlos, Mr. Robinson did establish that there was a paucity of objective evidence of injury present. I note, however, that there is no indication that Ms. Kasidoulis was in any way feigning the symptoms she is experiencing. Given this fact and the fact that there was ample evidence before me contrasting Ms. Kasidoulis’ personality and abilities before the accident from those she presently possesses and demonstrates, I have no hesitation in concluding that the difficulties that she now faces would not have been experienced but the wrongful conduct of the defendant.

In addition to the above this case is worth reviewing in full for the Court’s discussion of damages for ‘*diminished earning capacity*’ at paragraphs 52-65. The Plaintiff was awarded \$550,000 for diminished earning capacity despite being able to

continue working in her own occupation because the Court was satisfied that the accident related injuries would prevent the Plaintiff from working on a full time basis as a teacher and instead would be limited to working on a part time on-call basis.