

Pain And Suffering And Your ICBC Injury Claim

February 23rd, 2009

If you have an ICBC Injury Claim for Non-Pecuniary Damages as a result of a BC Car Crash (a tort claim) the best way to determine the potential value of your non-pecuniary damages (damages for things such as loss of enjoyment of life, pain and suffering) is to look at how courts have treated similar ICBC injury claims.

When looking to previous court cases for guidance some of the things you will want to look at are similarities with the type of injury, the severity of injury, the age of the Plaintiff, whether the injury involves a dominant or servient limb, the types of treatments involved and the prognosis. Another useful factor is recency. If you can't find recent cases with similar injuries and are relying on older cases you should adjust the damages for inflation to get a sense of what they would be worth today.

No two injuries are identical and the best one can usually hope to do is find ICBC Injury Cases with a similar injuries to help establish a potential range of damages. In recognizing the uniqueness of each ICBC Injury Claim Mr. Justice Halfyard said the following in the case of Tuner v. Coblenz:

It is well accepted that previously-decided cases have limited value which usually consists in establishing a general range of damages within which the award in a particular case may fall. No two plaintiffs will ever be the same in age, previous state of strength and health, occupation and other activities. The injuries sustained by one plaintiff will never be the same as those received by another, in kind or severity. The reaction of any two persons to the pain of a similar injury, or to particular treatments, will be different. The length of time that has passed between the date of the injury and the date of trial will vary from case to case, and can be a significant distinguishing feature.

As an ICBC Injury Claims Lawyer I have enjoyed publishing this blog to help people have access to a database of ICBC Injury Claims. Time permitting I intend to keep this service up. To this end, here is the latest ICBC Injury Claims update.

[Reasons for judgement were released today by the BC Supreme Court \(Rattenbury v. Samra\)](#) awarding a Plaintiff \$30,000 in non-pecuniary damages as a result of an ICBC Injury Claim.

In today's case the 23 year old plaintiff was injured when he was involved in an intersection crash in Surrey, BC. The crash occurred when the Defendant attempted a left hand turn in front of the Plaintiff's vehicle. Fault was admitted leaving only the issue of quantum for trial (value of the claim).

In this case the Plaintiff suffered a concussion and had headaches, neck pain and shoulder pain. These injuries resolved fairly quickly. The most serious injury was an alleged low back injury. The Plaintiff's physician gave evidence that the collision caused a disc injury to the L5/S1 level of the Plaintiff's spine.

The court rejected this opinion and found that this disc injury could have easily preceded the car crash given the Plaintiff's very active lifestyle. The court did find, however, that even if the disc injury was unrelated to the car crash this disc injury became symptomatic with pain because of the collision. The court made the following finding:

[86] *I find myself unable to accept Dr. Fritz's opinion that the disc injury occurred in the motor vehicle accident. Certainly the disc injury does exist but Dr. Fritz agrees that it is impossible to prove when it occurred and it could just as easily have occurred from the plaintiff's other activities than from the motor vehicle accident. Dr. Fritz did not treat the plaintiff before his accident and it is therefore understandable that he would conclude that the disc injury occurred in the accident when the plaintiff demonstrated a restricted straight leg raising after the accident. However, I do not think that is enough to prove the disc injury occurred in the accident itself.*

[87] *In my view it is enough to prove, however, that even if the disc injury preceded the accident, it became symptomatic with back pain because of the accident. The evidence is that the plaintiff had no back problems before the accident and was a completely healthy and physically active young man. As a result of the accident he could not play soccer for six months and was unable to do any of the heavy lifting in his job at Black & Lee.*

[88] *The plaintiff's evidence of originally not being able to do any heavy lifting at work but being able to do it at the time of his examination in January 2008, and then not being able to do it again by the time of trial, is certainly strange. However Dr. Fritz was never questioned about this evidence and it is logical to me that the plaintiff may have been able to resume the heavy lifting for a time after the accident, with back pain, but over time became too wearing on him and he had to stop.*

[89] *I am satisfied that it has been proven that the plaintiff has chronic back pain resulting from the disc injury, even if that injury preceded the accident. I must accept Dr. Fritz's opinion that it is chronic because I have no other medical opinion.*

[90] *I do conclude, however, this chronic back pain is only mild in nature, in the nature of a nagging back pain that does not disable the plaintiff from pursuing his soccer at the highest level or his golf or any other sports that he used to enjoy, and does not prevent him from working full time at the business in a more supervisory role.*

The following damages were awarded after a 2 day trial:

Non-Pecuniary Damages: \$30,000

Past Wage Loss: \$1,088

Special Damages: \$271.56