

Indivisible Injuries In Action

October 6th, 2010



As I recently discussed, the law in British Columbia requires a Defendant to compensate a Plaintiff for any indivisible injury caused by their wrongdoing. If a subsequent event contributes to or aggravates the injury a defendant cannot reduce the amount of compensation the Plaintiff is entitled to. Reasons for judgement were released this week by the BC Supreme Court, New Westminster Registry, demonstrating this principle of law.

In this week's case (Fillmore v. McKay) the Plaintiff was involved in 2005 motor vehicle collision. The Plaintiff was riding his bicycle when he was struck by the Defendant's vehicle. The Defendant initially denied being at fault but during trial admitted that the collision was indeed a result of her negligence. The Plaintiff suffered various soft tissue injuries and a traumatic brain injury.

At trial the Defendant argued that some of the Plaintiff's injuries were made worse during a subsequent fall and that this should reduce the compensation the Plaintiff should receive. Mr. Justice Truscott rejected this argument and provided the following useful comments demonstrating the law relating to indivisible injuries in BC:

[145] *The plaintiff took a fall at work on July 9, 2005 when he says in his note that he aggravated his neck and shoulder. The defendant submits that this was a new incident not caused by him that should serve to reduce the plaintiff's personal injuries for which he has liability from the motor vehicle accident. The defendant even submits that it may have been this incident of July 9, 2005 that caused the plaintiff's back injury because his first complaint to Dr. Buie was not until after that.*

[146] *I have already concluded that the plaintiff's back injury occurred in the motor vehicle accident and not subsequently by this bike accident. The plaintiff does not say in his note that he aggravated his back on July 9, 2005, but only his neck and shoulder.*

[147] *As to the possible aggravation of his neck and shoulder injuries, Athey v. Leonati, [1996] 3 S.C.R. 458, makes it clear that the defendant remains liable where his negligence caused or contributed to the injuries and that liability is not reduced by any non-tortious contributing causes.*

[148] *Accordingly, even if the plaintiff's neck and shoulder injuries were aggravated by this non-tortious incident, the defendant is still fully responsible for the full extent of those injuries because his negligence caused them in the first place and thereby contributed to the extent of the injuries.*