

Pain And Suffering For Plaintiffs With Pre Existing Injuries

April 29th, 2009

How do courts value pain and suffering (non pecuniary damages) when a person with a severe pre-existing injury is injured in a subsequent event? Reasons for judgment were released today by the BC Supreme Court, Victoria Registry, ([Monych v. Beacon Community Services Society](#)) dealing with this issue.

In today's case the Plaintiff was initially injured in a severe motor vehicle collision in 1992. As a result of this he was rendered a quadriplegic. Despite this he was able to lead 'a relatively active life until November 2006. He regularly left his home in his manual wheelchair and in his car for exercise, hobbies, entertainment and to visit friends and family. Prior to the November 2006 accident, Mr. Monych could use a manual wheelchair, drive a car, dress himself, bend at the waist and pick up objects, repair his vehicles and regularly engage in sexual activity with his girlfriend. Since the November 2006 accident Mr. Monych has been unable to do most of these things.'

In 2006, while in the care of the Defendant, the Plaintiff was injured while being transferred from his wheelchair. The Plaintiff fell during this transfer. As a result of this fall the Plaintiff broke both his legs. Madam Justice Gerow found that the Defendants were responsible for negligently assisting in the transfer of the Plaintiff.

The Plaintiff's injuries and their consequences were summarized as follows:

[41] *After reviewing the evidence, I am satisfied that as a result of the fall Mr. Monych suffered fractures to both his legs. The evidence is that the fractures have not healed and the prognosis is that it is unlikely they will. No surgical intervention is anticipated or recommended...*

[47] *As a result of the leg fractures Mr. Monych's legs were splinted, causing him a severe restriction of his ability to move around. While his legs were splinted, he was bedridden and he developed the ischial ulcers. As stated earlier, Dr. Clinton-Baker's opinion is that the long hospital stay was a result of the bilateral leg fractures and the ischial ulcers that developed for the first time while in hospital. I accept Dr. Clinton-Baker's opinion that the ischial ulcers developed during the long hospital stay that was necessary because of the bilateral leg fractures...*

[52] *After considering all of the evidence, I have concluded that but for the accident the injuries causing Mr. Monych's long hospital stay have resulted in a deterioration of Mr. Monych's condition to the point where he is restricted to his bed and his electric wheelchair. If the accident had not occurred Mr. Monych would not have suffered the increased restrictions and limitations on his activities*

In valuing the Plaintiff's losses for general damages Madam Justice Gerow noted a very important principle when determining the value of pain and suffering and loss of enjoyment of life namely that "to rob a disabled person of what little she has left is a monstrous injury, for that little she has is, for her, the whole of her life."

In awarding \$120,000 for the Plaintiff's general damages the court engaged in the following analysis:

[61] *The evidence from Mr. Monych, the lay witnesses and his caregivers is that Mr. Monych can no longer use a manual wheelchair, do self-assisted transfers to the toilet or shower, do independent transfers, bend at the waist to pick something up, change his own catheter bag, dress himself or drive an automobile. He has not been able to have a shower or use a toilet since the accident. As well, he can no longer take part in many of the extracurricular activities he used to, including visiting friends, going to the park with his girlfriend and working on automobiles. Prior to the accident of November 4, 2006, he was able to do all those things.*

[62] As well, the evidence establishes that Mr. Monych's personal life has been impacted. Prior to the accident, he had an intimate relationship with his girlfriend and that has not resumed since his return home from the hospital. Although Mr. Monych says he would like to resume a sexual relationship, the movement of the bones in his legs deters his girlfriend.

[63] Mr. Monych and the defendants have provided me with a number of cases to assist in determining the appropriate award for pain and suffering. Mr. Monych submits that an award for general damages of \$160,000 is appropriate, and that the range is \$70,000 to \$160,000. The defendants submit that their authorities support an award for general damages in the range of \$30,000. I have considered the authorities presented by the parties. As in most cases, there are aspects of the decisions which are helpful, but they also have features which distinguish them from this case.

[64] The defendants rely on *Ranta v. Vancouver Taxi Ltd.* (9 July 1990), *Vancouver B882210* (S.C.), as support for the argument that the appropriate amount for general damages is \$30,000. In that case, the plaintiff, who was a quadriplegic, sustained a broken leg due to the negligence of a taxi driver. In my view, the case has little application to the case at bar. *Harvey J.* found that the plaintiff had failed to establish that the defendants' negligence caused his present and continuing disability. The injuries that were attributable to the accident were much less severe than the injuries Mr. Monych has suffered and had no long lasting impact.

[65] I agree with the comments in *Boren v. Vancouver Resource Society for the Physically Disabled, 2002 BCSC 1134* at para. 60:

Counsel for the defendant submits the award for non-pecuniary damages should be limited to a consideration of the physical injury sustained October 11. I disagree. Rather, the circumstances here raise issues similar to those in Bracey (Public Trustee of) v. Jahnke, [1995] B.C.J. No. 1850 (S.C.), varied on other grounds (1997), 34 B.C.L.R. (3d) 191 (C.A.), in which Oliver J. observed at para. 27 that:

To rob a disabled person of what little she has left is a monstrous injury, for that little she has is, for her, the whole of her life.

[66] I am satisfied that Mr. Monych has suffered pain and suffering and loss of enjoyment of life as a result of the November 4, 2006 accident. As stated above, the evidence establishes that as a result of the accident, Mr. Monych suffers ongoing disabilities that have caused a severe restriction to his independence and ability to pursue the activities he was involved in prior to the accident. He has lost the independence of being able to transfer himself, his ability to exercise and go out independently in his manual wheelchair, his ability to drive vehicles, his sex life and much of his social life.

[67] Having considered the authorities and the evidence concerning the effect of the injuries on Mr. Monych, and allowing for the probability that his activities would have become more restricted, and his independence more compromised over time due to his ongoing medical conditions, I am of the view that the appropriate award for non pecuniary damages is \$120,000.