

Mechanics Found Liable For Single Vehicle Collision For Negligent Brake Repair

Reasons for judgement were released today compensating a Plaintiff as a result of injuries and loss sustained in a 2006 single vehicle collision that occurred in Vancouver, BC.

The Plaintiff, an 80 year old woman, was driving her Nissan back home from the hair salon. She drove down hill, applied her brakes but they did not respond. She lost control of her vehicle and smashed into a lamp standard prior to coming to a stop. The collision was significant and caused numerous injuries.

The Plaintiff sued Kal Tire Ltd. who serviced her vehicle in the years prior to the crash. ICBC also sued Kal Tire Ltd. for repayment of funds they paid to the Plaintiff as a result of this crash.

The court found that Kal Tire was responsible for this collision and thus ordered that damages be paid to the Plaintiff and to ICBC. The key finding was made at paragraphs 51- 53 which I reproduce below:

[51] *The evidence demonstrated on the balance of probabilities that Kal's negligence in servicing the Nissan's brake system caused the brakes to fail. Mr. Brown's physical observations of undisturbed front bleed screws is consistent with a failure to properly perform the brake fluid flush. This would have left existing contaminated brake fluid in the system.*

[52] *Ms. D'Oliveira did not notice a change in the brake system functioning after the servicing. The brakes may have been performing poorly before the servicing, which led to the replacement of the rear wheel cylinders. If the brake fluid flush was done incorrectly, brake function would not improve despite the servicing. Alternatively, Ms. D'Oliveira may not have been particularly sensitive to the sponginess of the brakes. While it appeared sudden to Ms. D'Oliveira, the brake system was likely performing poorly even prior to servicing, and there simply continued to be a slow deterioration leading to complete failure.*

[53] *As a result, Kal is liable for Ms. D'Oliveira's injuries arising from the accident, and for the sum agreed between the parties in the ICBC Action.*

The Plaintiff suffered various injuries which are summarized at paragraphs 54-56 of the judgement which I reproduce below. The court assessed the Plaintiff's non-pecuniary damages at \$40,000.

[54] *Ms. D'Oliveira suffered significant orthopaedic injuries of ten broken ribs, a crushed right heel, and a fracture to the C-7 vertebra. She had surgery on her heel to insert pins, had a cast on her leg for seven weeks, and was placed in a neck collar. She spent 52 days in a hospital setting. She was discharged using a wheelchair, but shortly afterwards was able to walk with a walker and then a cane. During this time she was assisted in household activities by her son and sister.*

[55] *Ms. D'Oliveira was able to walk unaided about nine months after the accident. By that time she was mostly pain-free, and able to resume most of her activities.*

[56] *Ms. D'Oliveira's on-going problems are that she is unsteady on her feet. She has given up her regular stay-fit classes. She is more cautious in turning her head. She has to wear wide shoes to accommodate swelling.*