IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Bagasbas v. Atwal,***
2009 BCSC 512

Date: 20090416
Docket: M081193
Registry: Vancouver

Between:

Myla Bagasbas

Plaintiff

And

Gursimran Atwal and Sarbjit Atwal

Defendants

Before: The Honourable Madam Justice Satanove

Reasons for Judgment

Counsel for the plaintiff:	David Grunder
Counsel for the defendants:	Paul G. Kent-Snowsell
Date and Place of Trial:	March 26 and 27, 2009 Vancouver, B.C.

[1] The plaintiff was rear ended by the defendant at the intersection of 64th Avenue and 104th Street in Surrey, British Columbia on June 1, 2006. The plaintiff was stopped at the intersection; the defendant was unable to stop in time and he collided with her rear bumper. The defendant testified that he was travelling about 10 km per hour, although earlier he had thought he may have been going 20 km per hour. The impact was severe enough to cause the plaintiff to bite her lip, but did not cause significant damage to either vehicle.

[2] The defendant maintains that the plaintiff suffered no damages worthy of compensation. The plaintiff concedes that she suffered no loss of income, past or future, and has no residual injuries that she can relate to the accident, but she submits that she is entitled to damages of $40,000 for pain, suffering and loss of enjoyment, plus $305 for special damages.

[3] Initially, the concern of the plaintiff was pain and stiffness on the right side of her neck, shoulder and upper back. She complained of this to her family practitioner, Dr. Ladhani on June 5, 12, 22 and September 2, 2006. On November 2, 2006 she reported that her neck was improving with a good range of motion but she had a new complaint of pain in her right lower back radiating down to her leg. Dr. Ladhani ordered x-rays of her lumbar spine that reported normal. The plaintiff continued to have pain so Dr. Ladhani sent her for a CT scan on November 26, 2008. The CT scan revealed a moderately large spaced central herniation with pressure on the nerve roots, which is likely the cause of her ongoing complaints.

[4] Most of the evidence in this two day case was spent on which activities the plaintiff enjoyed before and after the accident. After detailed testimony in chief and even more detailed cross examination on the subject, it became apparent that the plaintiff's activities had not changed very much. She continued to work from the day after the accident without any accommodation of her complaint; she continued to travel with her husband in the summer of 2006; and in August 2006 she accompanied the Filipino dance group to which she belonged on a tour of Belgium where she performed, paraded and partied without apparent physical consequences.

[5] The evidence disclosed that the only pre-accident activity which the plaintiff has given up for the time being is running. She said she could no longer kayak, hike or bicycle, but the defendant produced some of the plaintiff's own photographs posted on her Facebook page that showed her doing these activities. There was no evidence of decreased capacity to perform household or work related chores. The plaintiff and her husband testified that if the plaintiff exerted herself, she tired more easily than before, but it was unclear whether this related to injury to her upper or lower back.

[6] The distinction between the plaintiff's complaints of upper back and lower back injury is significant, because there was no evidence linking the upper back injury to the accident. Dr. Ladhani said there was a temporal link between the complaint of pain in the neck, shoulder and upper back regions and the accident, but in his opinion no such link existed with respect to the plaintiff's lower back injury. Indeed, plaintiff's counsel made it clear from the outset of trial that the plaintiff was

not claiming for compensation for anything arising from her herniated disk or the condition of her lower back.

[7] The medical evidence before me was rather vague. Combining this evidence with the plaintiff's subjective evidence of her complaints, I find that on a balance of probabilities the plaintiff suffered a mild whiplash to her right neck, shoulder and upper back in the accident of June 1, 2006. I further find that the whiplash had probably substantially resolved itself within three months. Any further complaint of pain in the fall of 2006 is not supported by the objective evidence of the plaintiff's rather strenuous activities. The photographs of the plaintiff dancing illustrate arm, neck and back movements, executed in approximately two inch heels, that contradict any claims of restricted range of motion or significant pain in these areas. It has been said many times in many cases that the court must be careful in awarding compensation where there is little or no objective evidence of continuing injuries, or in the absence of convincing evidence that is consistent with the surrounding circumstances (***Butler v. Blaylock***, [1981] B.C.J. No. 31 (S.C.); ***Price v. Kostryba*** (1982), 70 B.C.L.R. 397 (S.C.)).

[8] Unfortunately, because of the inflated view the plaintiff took of her injuries, none of the cases cited by her counsel were of assistance in fixing non-pecuniary damages. Similarly, because the defendant refused to recognize any damages, his counsel provided no case law on an appropriate range of compensation.

[9] On my own research, this case is in line with the damage awards made in ***Bonneville v. Mawhood***, 2005 BCPC 422; ***Siddoo v. Michael***, 2006 BCPC 12; and

particularly, ***Saluja v. Wise***, 2007 BCSC 706, which are in the range of $1,500 to $6,500. Taking the whole of the evidence into account, which reflected some injury and pain, but not much loss of enjoyment of life, I award the plaintiff $3,500 for non-pecuniary compensation.

[10] The special damages related to massage therapy and chiropractic visits which took place after the date of substantial recovery of the plaintiff's mild whiplash. I find that these visits probably related to her disk hernia for which she does not seek damages from the defendant.

[11] Subject to Rules 37B, and 66, the plaintiff is entitled to her costs.

"The Honourable Madam Justice Satanove"