

COPY

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20100422
Docket: M120374
Registry: New Westminster

Between:

Sterle Royston Hudson

Plaintiff

And:

Carol Broudy

Defendant

Before: The Honourable Mr. Justice G. R. J. Gaul

Oral Reasons for Judgment

Counsel for the Plaintiff:

R. Carter

Counsel for the Defendant:

P. Tung

Place and Date of Trial:

New Westminster, B.C.
April 21 - 22, 2010

Place and Date of Judgment:

New Westminster
April 22, 2010

[1] **THE COURT:** Mr. Sterle Hudson was in a motor vehicle accident on 3 June 2008. The driver of the other vehicle, Carol Broudy, has acknowledged she was responsible for the accident.

[2] There are two issues to be determined on this trial:

- a) What, if any, non-pecuniary damages is the plaintiff entitled to; and
- b) What, if any, special damages is the plaintiff entitled to.

Facts

[3] The facts are reasonably straightforward.

[4] Mr. Hudson is 34 years old and resides in Delta with his wife and eight-year-old daughter. He is a self-employed carpenter, having completed a four-year trade certification program at BCIT in 2002.

[5] Prior to the accident in June 2008, Mr. Hudson was in good health. Injuries he had suffered in previous car accidents in the early 1990s and in 2006 had completely resolved themselves.

[6] Mr. Hudson enjoyed playing basketball and soccer and handled most if not all of the outdoor chores around the home. He also contributed when he could to other household duties such as washing dishes and doing the laundry.

[7] The nature of Mr. Hudson's employment is sporadic. He takes on residential or commercial renovation projects under the trade name "SRW Building Services" and on occasion hires sub-contractors to assist him. When he is not actively engaged in a project, his energy and focus is on obtaining one.

[8] In June 2008, Mr. Hudson was looking for a new work project, as he did not have any underway at the time.

[9] On the evening of 3 June 2008 at approximately 6:00 p.m. Mr. Hudson was returning home in his wife's 1997 Ford F-150 pickup truck after having seen a potential client in Richmond. He was travelling eastbound on Steveston Highway

when he came to a full stop behind a minivan that was turning left at No. 4 Road.

Within a few seconds, he was struck from behind by Ms. Broudy's vehicle.

Mr. Hudson did not see Ms. Broudy's vehicle approaching; therefore he has nothing to say about the speed at which it was travelling.

[10] Ms. Broudy is a 60-year-old retiree who was formerly a payroll clerk with the City of Vancouver. On the evening of 3 June 2008 she was driving her 2005 Saturn Ion, a compact sedan, eastbound on Steveston Highway en route to the Silver City theatre in Richmond. She confirmed in her evidence that the roadway was wet as it had been raining that day and the traffic at that time was reasonably heavy.

[11] As Ms. Broudy approached the intersection of Steveston Highway and No. 4 Road, she noticed the traffic in front of her was stopped. As a result, she slowed her vehicle and brought it to a stop. At that point, her vehicle was located behind Mr. Hudson's truck.

[12] When Ms. Broudy saw the brake lights of Mr. Hudson's vehicle extinguish, she accelerated her vehicle only to discover his truck had or was still stopped. Ms. Broudy applied her brakes but her car slid into the rear of Mr. Hudson's truck.

[13] At trial, Ms. Broudy explained that she did not know how fast she was going when she struck Mr. Hudson's car. She acknowledged in cross-examination that she had indicated in her statement to ICBC that she thought she had been travelling 20 to 25 kilometres an hour. However, during her testimony she explained that she had been guessing when she provided that information to ICBC. In her testimony, she maintained that she did not know how fast she was going when her vehicle struck Mr. Hudson's and insisted she did not know how fast 20 to 25 kilometres an hour was when she provided the statement. She further explained that she began paying more attention to her speed after the accident, and would now say she was travelling between 5 and 15 kilometres an hour when she struck Mr. Hudson's vehicle.

[14] There was no damage to Mr. Hudson's vehicle. The only damage was to Ms. Broudy's vehicle and that consisted of a scratch and a puncture to the passenger side of the front bumper.

[15] It is obvious that the front bumper of Ms. Broudy's car struck the trailer hitch that was protruding from the rear of Mr. Hudson's truck and that it was this attachment that punctured the bumper of Ms. Broudy's car.

[16] I find Ms. Broudy's vehicle was likely travelling between 15 to 20 kilometres an hour at the time of the collision, and I say that because of the nature of the damage to her car. To puncture a vehicle's bumper requires more than just a tap.

[17] The two vehicles pulled off to the side of the road and the parties exchanged driver and vehicle information. After that, they both went on their respective ways. Immediately after the accident, Mr. Hudson exhibited no signs of any injuries or physical discomfort; nor did Ms. Broudy.

[18] The next morning, however, Mr. Hudson's back and neck were sore and stiff. He attended at his doctor's office a couple of days later, on 5 June, complaining of a sore back and neck. His doctor gave him exercises to perform as well as a prescription for Robaxacet Platinum. A follow-up visit within a week or so found Mr. Hudson's condition unchanged with ongoing back and neck pain and stiffness. His doctor recommended that he maintain his exercise routine and also attend for physiotherapy. In compliance with the latter recommendation, Mr. Hudson attended five sessions of physiotherapy.

[19] The medical evidence on this trial came from Dr. Trevor Wilson. Dr. Wilson is Mr. Hudson's general physician and he has acted in that capacity since 2002.

[20] According to Dr. Wilson, Mr. Hudson attended at his office on 5 June 2008 complaining of mid-shoulder and back pain that was radiating upwards. Upon examination of Mr. Hudson, Dr. Wilson noted that he had a full range of movement in his neck with tenderness in the trapezius muscles but no spasms. Dr. Wilson's diagnosis was that Mr. Hudson was suffering from a cervical strain. He provided Mr.

Hudson with various back and neck exercises, recommended the application of ice to the affected areas and prescribed Robaxacet Platinum on an as needed basis. I pause to note that Robaxacet Platinum consists of a muscle relaxant along with an anti-inflammatory.

[21] Dr. Wilson next saw Mr. Hudson on 26 June 2008. Mr. Hudson continued to complain of soreness between his shoulder blades, especially at the end of the day. Upon examination, Mr. Hudson exhibited tenderness to the trapezius muscles with a full range of movement. Dr. Wilson's diagnosis remained unchanged, that is, Mr. Hudson was suffering from an upper back and cervical strain. The only alteration to Mr. Hudson's treatment plan was the inclusion of physiotherapy.

[22] On 21 August 2008, Mr. Hudson saw Dr. Wilson for a third time. However, this visit was for a medical issue unrelated to the motor vehicle accident. Although it is unclear as to the extent of any discussions, it would appear that Mr. Hudson spoke with Dr. Wilson about his motor vehicle accident injuries. It would also appear that Mr. Hudson requested a referral to a chiropractor and that Dr. Wilson acceded to that request.

[23] Since August 2008, Dr. Wilson has not seen Mr. Hudson for any of the motor vehicle accident related issues.

[24] Clinical records admitted at trial indicate that Mr. Hudson did attend five physiotherapy sessions between June and August 2008. Because future sessions did not coincide with his schedule and because he was noticing improvements in his symptoms, Mr. Hudson decided to stop attending physiotherapy. For the same reason, he also decided against pursuing any chiropractic treatment.

[25] Mr. Hudson claims he suffered pain and stiffness to his neck and back, sleeplessness and associated headaches and anxiety as a result of the motor vehicle accident. He also claims that the injuries diminished his enjoyment of life in that he was not able to participate in his daily activities such as playing with his daughter, playing soccer or basketball or attending to his household chores to the

same degree. His injuries also affected his ability to be intimate with his wife. He experienced residual anxiety whilst driving however he admitted that feeling may have been a leftover from earlier motor vehicle accidents.

[26] By Mr. Hudson's own evidence, his pain was prominent and constant for the first three or four months. It diminished over time and by six months post-accident the pain had dissipated significantly and was only occasional, usually after work. Over the next six months the pain resolved itself to the point where he was no longer suffering any effects of the accident.

[27] In other words, for the first three to four months Mr. Hudson suffered regular pain and discomfort. At six months, the pain had diminished and was only occasional, and by 12 months post-accident Mr. Hudson was free from pain.

[28] I found all of the witnesses to have given credible and reliable evidence. With respect to the evidence of Mr. Hudson and Ms. Broudy, I have no reason to reject any of their evidence nor do I find that I have to accept one over the other. I found they testified in a reliable manner and, as I have said, their evidence was credible.

[29] I find Ms. Broudy's vehicle slid into the rear of Mr. Hudson's truck at a speed of between 15 and 20 kilometres an hour. It was a reasonably mild collision because the distance between the two vehicles was quite small. This collision caused Mr. Hudson's vehicle to rock forward and back, but not to change its position. It caused his body to shift forward and backwards resulting in his head striking the seat's headrest. The force of the impact caused no damage to Mr. Hudson's truck; however Ms. Broudy's vehicle's front bumper was punctured.

[30] I am satisfied on a balance of probabilities that Mr. Hudson suffered the pain and discomfort he has described and that it was directly attributable to the motor vehicle accident in June 2008. More particularly, he suffered a sore neck and back on a regular basis for three to four months. Because of this pain, Mr. Hudson's sleep was disrupted and he consequently suffered some headaches during this time. By six months the pain in his back and neck had subsided to such an extent that he

was sleeping properly again with no headaches. He was at this point only feeling the occasional pain in his neck and back and by 12 months his symptoms had resolved themselves.

[31] I do not find that the symptoms he was exhibiting in the days and weeks following the accident were fabricated or exaggerated, nor do I accept that they are attributable to any prior accident. Perhaps it would have been preferable if Mr. Hudson had adduced additional evidence from family members or friends to describe the magnitude of his injuries and the effects they had on his life, however, this deficiency does not in my view reduce his case to the point of being unbelievable. By Mr. Hudson's own admissions, the injuries he suffered from the accident were resolved in six to 12 months. I find he was candid and credible in acknowledging this. From this I have concluded the injuries were not of a significant or life altering nature and therefore I find it was not fatal to his case that he failed to present such additional evidence.

[32] I accept that the injuries disrupted Mr. Hudson's daily routine for the six to 12 month period following the accident. I note that he also had work and family pressures unrelated to the accident that affected his ability to socialize and play sports and I have taken that into consideration in reaching a quantum of damages to be awarded.

[33] Mr. Hudson submits that he suffered mild to moderate soft tissue injuries to his neck and back and that he should receive compensation in the range of \$15,000 to \$20,000 in non-pecuniary damages. In support of this position, the plaintiff relies upon the following authorities: *Faedo v. Dowell*, 2007 BCSC 2985; *Laxdal v. Robbins*, 2009 BCSC 1074; *Nickerson v. Allen Estate*, 2006 BCSC 562; *Patriquin v. Decloedt*, 2001 BCSC 1087; and *Toth v. Donaldson*, 2006 BCSC 1985.

[34] Mr. Hudson also claims the cost of his physiotherapy treatment, \$120, arguing that the treatment was necessary on account of the motor vehicle accident.

[35] The defence submits that the accident was of such a minor nature that the Court should conclude Mr. Hudson suffered no compensable injuries. In the alternative, Ms. Broudy says Mr. Hudson is entitled to nominal damages in the range of \$3,500 to \$5,000. In support of its position on quantum, the defence relies upon a number of case authorities: *Bagasbas v. Atwal*, 2009 BCSC 512; *Gill v. Mansour*, 2004 BCSC 1537; *Saluja v. Wise*, 2007 BCSC 706; and *Mohammed v. Rai*, 2005 BCSC 1918.

[36] The defence also argues the special damages sought by Mr. Hudson, \$120 for physiotherapy, are to be awarded only if the Court is satisfied the need for such treatment was attributable to the motor vehicle accident.

[37] I found the plaintiff's case authorities helpful in that they provided some guidance on the question of quantum of damages; however I do not agree Mr. Hudson's injuries fell into the category of moderate soft tissue injuries. They were mild injuries, not moderate, and therefore the range of non-pecuniary damages suggested by the plaintiff is, in my view, too high.

[38] The case authorities relied upon by the defence were also helpful; however they relate to plaintiffs with injuries that have resolved themselves faster than those of Mr. Hudson and therefore the range of non-pecuniary damages suggested by the defence is, in my view, too low.

[39] Having considered all of the evidence and submissions, as well as the jurisprudence cited by counsel, I find the appropriate award for non-pecuniary damages to be \$7,500. I also find Mr. Hudson is entitled to \$120 in special damages.

[40] I do not accept the argument that there should be a reduction in this amount on account of failure to mitigate on the part of Mr. Hudson. He could have gone to chiropractic treatment; that is true. It was he who sought that treatment; it was not Dr. Wilson who recommended it. Dr. Wilson acceded to the request. I accept

Mr. Hudson's explanation for not attending chiropractic treatment and I do not find that his damages should be discounted on account of any failure to mitigate.

[41] My ruling is therefore \$7,500 for non-pecuniary damages, and \$120 for special damages.

[42] I will hear your submissions on costs.

(SUBMISSIONS RE COSTS)

[43] **THE COURT:** The issue to be determined is what costs the plaintiff is entitled to. Under Rule 57(10) a plaintiff who recovers a sum within the jurisdiction of the Provincial Court under the *Small Claims Act*, that amount is \$25,000, is not entitled to costs other than disbursements unless the Court finds there was sufficient reason to bring the proceedings in the Supreme Court and so orders.

[44] This was a very straightforward case. Mr. Hudson's case consisted of his own evidence, which I found credible, and that of his medical doctor, which to a great degree was non-contentious. The defence evidence consisted of Ms. Broudy's testimony.

[45] Was there sufficient reason in the circumstances of this case to have launched these proceedings in the Supreme Court?

[46] The plaintiff says there were two particular reasons for bringing this action in Supreme Court. First, because it is always difficult to assess the amount of damages that may be awarded. However, I think Mr. Carter has quite candidly and properly acknowledged that in the present circumstances it was clear, if not when the statement of claim was filed then shortly thereafter, that Mr. Hudson's claim was unlikely to exceed the Provincial Court's monetary jurisdiction. In his submissions the plaintiff sought an award of damages of \$15,000 to \$20,000; therefore I can only conclude that the plaintiff eventually accepted he was not going to receive an award of non-pecuniary damages beyond the Provincial Court's jurisdiction. I therefore reject this reason.

[47] More importantly, Mr. Hudson argues he needed to retain counsel and have the matter resolved in Supreme Court because of the defence's vigorous attack on his credibility, and perhaps their attempt to paint him as some sort of malingerer or perhaps even a liar.

[48] I do not see the situation in the way the plaintiff categorizes it. Both sides to an action are entitled to and often do attack the credibility of opposing witnesses. That does not necessarily mean they wish to portray the witnesses as liars. One can attack the credibility of a witness on a number of grounds -- because of poor recollection, for example. There could also be allegation of fabrication, but that is not necessarily always the case.

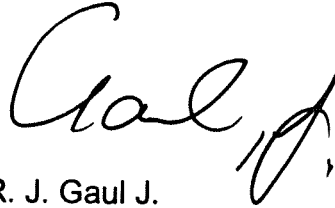
[49] The fact that Ms. Broudy is defended by a large institution, ICBC, is not a sufficient reason to justify holding this trial in Supreme Court. The defendant is entitled to defend herself from a claim, just as a plaintiff is entitled to prosecute that claim.

[50] Was the fact that Mr. Hudson needed to hire a lawyer, sufficient reason to justify launching this case in Supreme Court?

[51] I said at the outset of these reasons this was not a complex matter. It was a straightforward question where liability was acknowledged, there was no claim for past wage loss or future loss of earning capacity. It was simply a quantification of damages or, to put it a different way, a determination of what damages were to be attributed to the accident and thereafter a quantification of them.

[52] This is something that could very well have been done in Provincial Court and while it is true a plaintiff in Provincial Court cannot recover his legal fees, I do not find that in the circumstances of this case the fact that Mr. Hudson felt obliged or needed to have counsel is sufficient reason to have launched this case in Supreme Court.

[53] I am therefore not satisfied there were reasons to bring this matter in Supreme Court and therefore pursuant to Rule 57(10) Mr. Hudson is not entitled to costs other than disbursements.

A handwritten signature in black ink, appearing to read "Gaul J.", with a stylized flourish at the end.

G. R. J. Gaul J.