

File No: 07-18132  
Registry: Vancouver

**In the Provincial Court of British Columbia**  
(CIVIL DIVISION)

**BETWEEN:**

**RAPHAEL KINGSLEY OHIRI**

**CLAIMANT**

**AND:**

**DEEP CHRIS MATTU  
SURINDER K. MATTU  
INSURANCE CORPORATION OF BRITISH COLUMBIA**

**DEFENDANTS**

**AND:**

**YASMIN ABULLAHI HASSAN**

**DEFENDANT BY COUNTERCLAIM**

**REASONS FOR JUDGMENT  
OF  
THE HONOURABLE JUDGE SENNIW**

**COPY**

**Appearing on his own behalf:**

**Raphael Kingsley Ohiri**

**Appearing on his own behalf:**

**Deep Chris Mattu**

**Appearing on his own behalf:  
Counsel for Insurance Corporation  
of British Columbia :**

**Surinder K. Mattu  
T. Goepel**

**Place of Hearing:**

**Vancouver, B.C.**

**Date of Judgment:**

**October 19, 2011.**

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[1] THE COURT: This claim arises out of a motor vehicle accident that occurred on September 21st, 2005 in New Westminster. The claimant, Mr. Ohiri, says that he is not at fault for the accident, that it was the fault of the defendant, Deep Chris Mattu. The defendant denies liability.

[2] ICBC counterclaims for alleged fraud on the part of the claimant and Mrs. Hassan, seeking repayment of monies expended as well as damages.

[3] The claimant and defendant, specifically Mr. Ohiri and Mr. Mattu, have differing versions of how the accident occurred and of events following the accident. Mr. Ohiri says that Deep Chris Mattu signed a note admitting responsibility for the accident. Mr. Mattu denies signing the note.

[4] As I will have to assess the credibility of witnesses given the issues in this matter, I will deal with the claim of fraud prior to determining liability. I will begin by describing the different versions of the accident.

[5] Mr. Ohiri says that shortly after 6:00 p.m. on September 21st he was going to a corner store in New Westminster which is at 12th Street and 5th Avenue. He turned left from 12th onto 5th and then signalled left to enter an alley in order to turn around and park on the left side of the street. Mr.

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Ohiri said that there were no parking spaces on the right, and that is why he was turning left. He was halfway through turning when he noticed a car behind him which hit him on his driver's side door as the car was trying to overtake him. He and the other driver got out of their vehicles and confirmed that neither was injured.

[6] Mr. Mattu suggested not involving ICBC. He told Mr. Ohiri that he was heading for an exam at Douglas College which was scheduled for 7:00 p.m. Mr. Ohiri called his wife, Mrs. Hassan. Mr. Mattu called his mother. Both women arrived and Mr. Ohiri's evidence was that Surinder Mattu, Mr. Mattu's mother, told Mr. Ohiri not to worry, that they would fix his car, and suggested that Mr. Ohiri call his mechanic. The mechanic was called, but he was closed.

[7] Mr. Ohiri said that Mrs. Mattu suggested they should make an agreement that her son was 100 percent responsible for the accident. Mr. Ohiri's wife, Mrs. Hassan, wrote a note. The note read as follows:

September 25<sup>th</sup>

D/L 7731905, 6:30 p.m. plate number 7777GS, December 25th, 1985.

I, Mattu, Deep Chris, acknowledge that I am 100 percent responsible for the accident that happened on the above date in New Westminster, B.C., by 12th Street and 5th A. I will pay for all the damages to

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his car. I hit Kingsley Ohiri, owner of a Mercedes ML320, plate 395EC1.

Sincerely,

Mattu, Deep Chris.

[8] Mr. Ohiri's evidence was that his wife left a space so that Mr. Mattu could write his name and that Mr. Mattu printed his name where it appears on the note. Mr. Ohiri said that the reason for the note was that it was too late to go to his mechanic. Just as they were all about to leave, Mrs. Mattu phoned her husband. She then told Mr. Ohiri and Mrs. Hassan that they would not fix anything, that they wanted to go through ICBC.

[9] At one point a fire truck came by, ascertained that the only damage was to the vehicles and carried on. Mr. Ohiri remembers that a police car drove by, asked if everyone was all right. Once that was confirmed the parties were told to exchange driver's information.

[10] Mr. Mattu's evidence was that he was driving his mother's car, a Mercedes C230, shortly after 6:00 p.m., on his way to Douglas College where he had an exam at 7:00. He was following Mr. Ohiri as he travelled on 12th Street and turned left on 5th Avenue. He said that Mr. Ohiri pulled to the right side to park. Mr. Mattu said he waited five or 10

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seconds and then proceeded to pass Mr. Ohiri. Mr. Mattu said that Mr. Ohiri did not signal left but that his car swerved out from the curb to the left into the lane of travel, and Mr. Mattu hit Mr. Ohiri's driver's side door as a result.

[11] Douglas College was about five minutes from the accident scene, and Mr. Mattu said he was shaking because he was nervous. He saw people coming towards the accident scene from the bottom of the hill and not from cars parked on the street. Mr. Mattu said he was being pressured to admit that he was guilty, that it was his fault, by both Mr. Ohiri and Mr. Ohiri's wife, so he phoned his mother.

[12] His mother arrived and Mr. Mattu says that he did not sign the paper that was written by Mrs. Hassan. He said that the claimant was very aggressive with him, saying that he needed to sign the paper. Once Mr. Mattu's mother arrived, he decided to exchange information. Mr. Mattu said that the claimant tried to get the firemen who came by to convince him to sign the paper, and the firemen told him that he did not have to sign anything.

[13] Mr. Mattu's evidence was that he does not sign his name the way it is written on the note, that he always signs his name Chris Mattu.

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[14] On cross-examination Mr. Mattu said his mother showed up after he gave his driver's licence information and that his mother was not there when the note was written. His mother told him that they should exchange information and let ICBC deal with it. It was Mr. Mattu's evidence that the claimant hit him. He did not hit the claimant.

[15] Mr. Mattu was asked on cross-examination by Mr. Ohiri to produce some identification that was in his wallet. He had a card from the Toronto-Dominion Bank showed his name as Deep Chris Mattu, and it was signed Chris Mattu. His current driver's licence, which was also in his wallet, had his name shown as Mattu, Deep Chris, and it was signed Chris Mattu. On the day of the accident he did not give Mr. Ohiri any identification other than his driver's licence and insurance papers.

[16] On a statement which Mr. Mattu gave to ICBC he was asked to print his full name, and he printed Deep Chris Mattu. Mr. Mattu said that he does not write his name the way it appears on the note, with his last name first.

[17] Mr. Onyabano, a stranger to the claimant at the time of the accident, the claimant's wife, Mrs. Hassan, and Mr. Mattu's mother Surinder, the owner of the vehicle, also testified. Mr. Onyabano's evidence was that at about 6:15

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p.m. on the evening of September 21st he was in a vehicle with a friend, going to the same corner store where Mr. Ohiri was headed. He had just pulled over to the side of the street and parked when the accident occurred. He was 40 to 60 feet away from the accident. He said he saw the accident as he had just come out of his car and the accident was pretty much in front of him. He said that Mr. Ohiri's car drove by, followed by Mr. Mattu; that Mr. Ohiri signalled left, and as he was almost turning Mr. Mattu tried to pass and hit Mr. Ohiri on the driver's side.

[18] Mr. Onyabano went to the scene. Both of the drivers were unhurt and both were on the phone. Mr. Mattu's mother came. She said they should not go to ICBC, and that if Mr. Ohiri needed his car fixed that they would be responsible for fixing it. A lady who came to meet Mr. Ohiri said that they needed to write an agreement that Mr. Mattu was responsible. She wrote something out, gave it to Mr. Mattu who gave it to his mother, and they both read it. Mr. Onyabano's evidence was that Mr. Mattu printed his name on the top and bottom of the note. He said that Mr. Mattu's mother then spoke on the phone, came back and said she had just spoken with her husband and her husband said they should go to ICBC.

[19] Mr. Onyabano described Mr. Mattu as shaking when he got

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to the scene, that he was shivering. He said he had an exam to go to, that he was in a hurry and therefore he could not write the note, and that was why Mrs. Hassan wrote it. He said Mr. Mattu took the note to his mother. They both read it. Then he took it back to the hood of Mr. Ohiri's car and signed the note on the hood of the car. Mr. Onyabano says that he has been friends with Mr. Ohiri only since the day of the accident.

[20] Yasmin Hassan said that on September 21st, 2005 she got a phone call from Mr. Ohiri, who was then her husband. It was between 6:00 and 6:30 in the evening. He said he had been in an accident, and so she drove to the scene. She said that at the scene Mr. Mattu was nervous and shaking but that everyone was okay, and she asked to see Mr. Mattu's driver's licence. She handwrote a note on the hood of Mr. Ohiri's car, where Mr. Mattu admitted fault, and he wrote his name at the top and bottom of that note. Mrs. Hassan said she wrote the note because Mr. Mattu was nervous and shaking.

[21] Mr. Mattu's mother arrived after the note was signed and Mr. Mattu and his mother spoke. She said that when Mr. Mattu's mother arrived, that she made sure everyone was okay and said that there would be no problem, that they would take care of the damages to the car. Mrs. Hassan phoned their

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mechanic, but he was closed. Mr. Mattu's mother then phoned her husband and said they would go through ICBC and that they were not paying for any damages to the car. Mrs. Hassan denies writing Mr. Mattu's name on the note.

[22] Surinder Mattu, Mr. Mattu's mother testified. She said that her son had called her as he had had an accident. She got to the scene in 15 to 20 minutes. She first asked how everyone was; they were all okay. Mr. Ohiri said that Mr. Mattu was 100 percent at fault. She said there were four or five people there, all of whom were saying that it was her son's fault. She phoned her husband and told him about the note that had been written. He said that his son did not have to sign anything. Mrs. Mattu said she never saw the note and that she did not see her son sign the note. She then told Mr. Ohiri that they were going to ICBC. Mrs. Mattu denies telling Mr. Ohiri that there was no problem, that they would fix his car and so he should call his mechanic.

[23] On cross-examination she said that her son had told her the information had been exchanged. Mrs. Mattu said she was there when the firemen came.

[24] Donald Gamble was qualified as an expert in forensic document examination. He explained to the court that he compared the printing of Mattu, Deep Chris in the two places

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where it appears on the note with Mr. Mattu's signature on his statement to ICBC, his signature on a copy of an ICBC transfer tax form, a copy of the certificate insurance signed in two places "Chris Mattu", and a four-page handwritten statement by Mr. Mattu containing both upper and lower case printing as well as his signature. Mr. Gamble concluded that the person who wrote the statement and signed the four documents is not the same person who printed Mattu, Deep Chris on the note.

[25] An investigator with the Special Investigations Unit of ICBC, Gerry Poitras, testified. His evidence was that in his interview with Mr. Ohiri, Mr. Ohiri continued to maintain that Mr. Mattu had written his name on the note.

[26] Mr. Ohiri argues that Mr. Onyabano and Mrs. Hassan's evidence is consistent with what happened and with why the letter was drafted and signed at the scene. Mr. Ohiri says that I should believe the evidence of his witnesses. Both Mrs. Hassan and Mr. Onyabano are consistent in their version of events. Specifically, Mrs. Hassan said that after the Mattus agreed to pay for repairs to Mr. Ohiri's car and a call was made to his mechanic which was not answered, that then Mrs. Hassan drafted the letter which was signed by Mr. Mattu.

[27] Mr. Ohiri takes issue with the evidence of Surinder Mattu and of Deep Chris Mattu, saying there is a conflict in their

evidence. Mr. Mattu says that the firemen came and left before his mother came and his mother says that she was there when the firemen came. Further, he says that Mrs. Mattu's evidence was that there was no argument happening when she arrived at the scene, which is inconsistent with Mr. Mattu's evidence that he was being harassed to sign the note. Also, Mrs. Mattu said that no police or ambulance attended, only the fire truck, but in her statement to ICBC she said that somebody had called the police.

[28] Mr. Ohiri says that Mr. Mattu's identification shown in court had Mattu, Deep Chris on it, just as it was on the note. The photocopy of his driver's licence which was in evidence also has that name on it. The statement given to ICBC signed by Mr. Mattu had his name printed below on the note, Deep Chris Mattu. Mr. Ohiri says that Mr. Mattu testified that everyone was forcing him to sign the document, yet Mr. Mattu voluntarily provided his identification and exchanged documents at the scene of the accident. Mr. Ohiri says it is inconsistent that someone would be willing to exchange documents at the scene but then not to sign the statement.

[29] In taking issue with the expert's opinion, Mr. Ohiri listed the different items that were used for comparison with the printed name Mattu, Deep Chris on the note, and pointed

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out that the expert said an individual's writing can change depending on the circumstances. Those circumstances can include the writer's mood, the surface on which the thing is written, the position of the writer, the emotion being felt by the writer and the writer's body posture.

[30] The expert was shown Mr. Mattu's signature in three different manners, including capital letters and lower case printing. Mr. Ohiri argues that on the transfer tax form where in one place the same name, Mattu Deep Chris is written as it is on Mr. Mattu's driver's licence. He therefore asks me to conclude that Mr. Mattu did in fact print Mattu, Deep Chris in two places on the note.

[31] I am persuaded by the evidence of Mr. Mattu and of the expert. Mr. Mattu said that he always signed his name Chris Mattu, using his middle and last names. He also said that when printing his name or signing his name he never wrote it with his last name first -- that is, Mattu Deep Chris. The evidence was that on the transfer tax form someone else had filled out the area where his name was written Mattu Deep Chris. The expert had numerous samples of Mr. Mattu's handwriting to compare with the printing on the note, and it was his conclusion that the writer of all of those samples was not the person who printed Mattu, Deep Chris on the note.

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[32] I find that whoever printed Mattu, Deep Chris on the note was not familiar with Mr. Mattu and how he normally signed his name. I also find that the inconsistencies that Mr. Ohiri pointed out in the evidence between Mr. Mattu and his mother are not material. I reject, therefore, the evidence of Mr. Ohiri, Mrs. Hassan, and Mr. Onyabano, that they saw Mr. Mattu print his name at the top and bottom of the note.

[33] Turning to the issue of liability, Mr. Ohiri says that his evidence as to what happened on the day of the accident is consistent with that of his witness, Mr. Onyabano. Mr. Ohiri says that Mr. Mattu is inconsistent in his evidence. On cross-examination he said that Mr. Ohiri had parked on the right side of the road and then swerved out from the space, which is not the same as what his statement to ICBC adjusters said, where Mr. Mattu said "I thought he was going to park," referring to Mr. Ohiri.

[34] Mr. Ohiri argues that thinking that he was going to park is not the same as Mr. Ohiri having parked. Further, Mr. Ohiri questions how he could hit somebody from the side of his vehicle onto that person's front bumper. He contests the defendant's evidence that he did not have his signal light on. Mr. Ohiri takes issue with the evidence of the ICBC adjuster, Wilson Tung. He says that Mr. Tung is not credible to be an

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adjuster because he did not interview any of the witnesses, any of the parties to the action, nor go to the scene, and further, that he does not know off the top of his head the *Insurance Motor Vehicle Act*. Mr. Tung testified that he gave his evidence based on a review of the documents in the file, which was assigned to him in 2010.

[35] Likewise, Mr. Ohiri takes issue with the evidence of the investigator in the Special Investigations Unit, Gerry Poitras. Mr. Poitras could not identify Mr. Ohiri. He interviewed another witness who was there with Mr. Onyabano and Mrs. Hassan over the phone. Mr. Ohiri says that I should not believe that Mr. Poitras went to the scene of the accident because he could not recall whether he went there on his own or with someone. He said that Mr. Poitras is not credible to give evidence because he did not investigate the accident properly.

[36] In summary, Mr. Ohiri submits that ICBC had predetermined the case before the investigation. They accused Mr. Ohiri of being responsible for the accident before Mr. Tung became involved, before the handwriting analyst became involved, and he says that from day one ICBC was only talking about the note but never bothered to look at who was at fault for the accident. Mr. Ohiri stresses that he pursued his case despite

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the difficulties of doing so from day one.

[37] Given the finding that I have made with respect to the note -- that is, that Mr. Mattu did not sign it -- I do not have any confidence in the credibility of Mr. Ohiri and his witnesses. Consequently, in making my determination on liability I must turn to the evidence of the defendant.

[38] Mr. Mattu testified that he was following Mr. Ohiri as they turned left from 12th Street to 5th Avenue; that Mr. Ohiri pulled over to the right side to park. Mr. Mattu said he waited five to 10 seconds and then proceeded to pass Mr. Ohiri. Mr. Mattu said that Mr. Ohiri did not signal left but that his car swerved out from the curb to the left into the lane of travel. In Mr. Mattu's statement to ICBC which was given two days after the accident he described what happened as follows:

I was travelling on 12th Street in New Westminster. There was a car ahead of me. We had been travelling together for approximately two blocks. As we approached the intersection of 12th and 5th the vehicle ahead came to a stop and then made a left-hand turn. I continued to follow behind it. Right after he turned he moved forward past the turn and then slowed down and moved to the right. Then I cautiously looked to the side as I was going to pass. I thought he was going to park on the right-hand side of the road. There were a couple of parking spaces available. There's no dividing line in the centre of the road. The other car pretty much stopped there, and then all of a sudden when I was right next to his back driver's wheel he made a left-hand turn into an alleyway or a small driveway.

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[39] There is also a diagram that is on the third page of the statement, where two rectangles are identified as "my car" and "other car." They are shown one following the other on both on 12th and on 5th.

[40] Mr. Mattu's statement is inconsistent with his viva voce evidence. His evidence is that Mr. Ohiri had parked and Mr. Mattu had waited. That is not what he said in his statement.

[41] In considering the defence evidence, I find that Mr. Ohiri turned left without signalling and at a time when it was unsafe to do so, and that Mr. Mattu attempted to overtake another vehicle when it was unsafe to do so.

[42] The relevant sections of the *Motor Vehicle Act* are as follows. S. 159:

A driver of a vehicle must not drive to the left side of the roadway in overtaking and passing another vehicle unless the driver can do so in safety.

S. 166:

A driver of a vehicle must not turn the vehicle to the left from a highway at a place other than an intersection unless

(a) the driver causes the vehicle to approach the place on the portion of the right-hand side of the roadway that is nearest the marked centre line or if there is no marked centre line, then as far as practicable in the portion of the right half of the roadway that is nearest the centre line

(b) the vehicle is in the position on the highway

required by paragraph (a), and

(c) the driver has ascertained that the movement can be made in safety, having regard to the nature, condition and use of the highway and the traffic that actually is at the time or might reasonably be expected to be on the highway.

[43] I am also bearing in mind s. 144(1)(a) of the *Motor Vehicle Act*, that a person must not drive a motor vehicle on a highway without due care and attention.

[44] I have reviewed the decisions of *Beauchamp v. Shand* [2004] BCSC 272; *Bathgate v. Korolek* [2010] BCSC 37; *Stewart and Fetterley* (phonetic) [1985] Carswell B.C. 2797; and *Mergle v. Formosa Resources Corp.* [1994] CanLII 968, a decision of the British Columbia Supreme Court, and I find that the facts that I am dealing with are most similar to those in the *Mergle v. Formosa Resources* case. So following that decision, I find Mr. Ohiri two-thirds responsible for the accident and Mr. Mattu one-third.

[45] Regarding the issue of fraud, I find that both Mr. Ohiri and Mrs. Hassan made a representation to ICBC that Mr. Mattu printed his name on the note, knowing that that representation was false. I further find that Mr. Ohiri intended that ICBC rely on that statement, so pursuant to s. 19 of the *Insurance Motor Vehicle Act* Mr. Mattu made a wilfully false statement

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with respect to a claim under a plan of insurance. The nature of that fraudulent statement goes directly to liability and would be capable of affecting ICBC either in the management of the claim or in deciding to pay it. (*Inland Kenworth Ltd. v. Commonwealth Insurance* [48] B.C.L.R. (2d) 305.)

[46] ICBC says that as a result of Mr. Ohiri's fraud he is liable to pay back all of the money that ICBC paid out as a result of his claim as well as an amount for adjusting and investigative costs, and is seeking punitive damages. In total, ICBC made payments of \$9,734.25 as a result of that accident. I find that Mr. Ohiri, pursuant to s. 19 of the *Insurance Motor Vehicle Act* and the common law, is liable to ICBC for that amount.

[47] The adjuster who took over responsibility of the file testified that five to six hours were spent by ICBC adjusters on the file, including taking statements, conducting interviews, going to the scene of the accident and discussion of the claim with other adjusters. However, I have no evidence as to the amount of time that an adjuster would normally spend on a file where fraud was not alleged, so I cannot with any accuracy determine a sum spent on adjusting costs as they relate to the fraud alone.

[48] The investigator from the Special Investigation Unit

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testified that investigators are brought in in cases of fraud, either civil or criminal fraud; where there is a difficult interview to conduct; or where the adjuster needs help locating people. I have no evidence that Mr. Poitras was brought in to deal with a difficult interview or because help was required locating people. I therefore conclude that he became involved in the file strictly because of the allegation of fraud. Mr. Poitras spent approximately nine hours over the course of two to three months investigating this file. Mr. Tung testified that the lowest hourly rate for an investigator is \$44.65, so if I were to use that rate and calculate it for nine hours the cost to ICBC for having Mr. Poitras conduct an investigation into the fraud was \$401.85. Therefore, the Corporation is entitled to recover against Mr. Ohiri in that amount.

[49] Mr. Ohiri represented to ICBC that Mr. Mattu wrote his name on the note and was admitting liability for the accident. The accident occurred in September 2005, and the trial was some six years later. Mr. Ohiri maintained this position up to and through the trial. Mrs. Hassan has likewise maintained this position.

[50] Counsel have referred me to a number of decisions where fraud was found to have been committed against the Insurance

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Corporation of British Columbia and punitive damages were awarded. The purpose of punitive damages is to punish an individual through specific and general deterrence and denunciation. They may be granted in situations where an individual has committed an actionable wrong which has injured a claimant, and the conduct of the individual in committing that wrong is deserving of the condemnation of the court. To determine an appropriate quantum of damages the proper approach is to focus on the individual's misconduct and not the claimant's loss. The quantum of damages should be the lowest award that would serve those purposes and proportionality is the governing rule for quantum.

[51] I must consider the following factors: One, whether the claims pertain to a fraud on the public and the effect of those claims on that public body and taxpayers; two, whether the individual's conduct includes criminal conduct and whether the individual has been charged criminally; three, whether the acts were planned, organized, and/or deliberate; whether specialized knowledge was used; whether persons were recruited for profit; whether families or children were used; and whether the individual participated in multiple fraudulent claims; Four, whether the individual has abused the court process by, for example, commencing actions in pursuit of his

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or her fraudulent claims; and five, the financial means of the defendant. (*ICBC v. Akers et al* [2003] BCSC 1407.)

[52] Here we have a fraud on a public body which has an impact on of all people who obtain insurance through ICBC as residents of British Columbia are required to do for their motor vehicles. Mr. Ohiri has not been charged criminally. The fraud here appears to be something that arose spontaneously out of the circumstances. It was not planned and it is a single incident. However, Mr. Ohiri did involve his wife.

[53] Mr. Ohiri continued to maintain that Mr. Mattu himself had written his name on the note, not only with the ICBC adjuster and investigator, but also throughout the conduct of this court action. I have no information as to Mr. Ohiri's financial means.

[54] Taking into account the cost of repairs to the vehicles to ICBC, the fact that it was a single incident and that there was no premeditation or plan in advance and that the actions of Mr. Ohiri and Mrs. Hassan had no specific impact beyond this particular incident, I assess punitive damages against Mr. Ohiri in the amount of \$1,000 and Mrs. Hassan in the amount of \$500.

[55] Mr. Goepel, did you wish to address costs?

[56] MR. GOEPEL: We'd like costs too. There's a series of disbursements that we had, making the books. Mr. Gamble is a disbursement as an expert. We could leave it as we were awarded costs and we'll come back and get them assessed at a later date. I don't know what the number is off the top of my head.

[57] THE COURT: All right, so we will leave costs, then, to be assessed. And Madam Registrar is just writing up a trial record.

(REASONS FOR JUDGMENT CONCLUDED)