IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Sidhu et al. v. Brassel,***
2005 BCSC 347

Date: 20050310
Docket: M041904
Registry: Vancouver

Between:

Amit Singh Sidhu and Pavleen Kaur Sidhu by their Litigation Guardian, Gursatinder Kaur Sidhu, Hardeepak Singh Sidhu and the said Gursatinder Kaur Sidhu

Plaintiffs

And

Peter Richard Brassel

Defendant

Before: The Honourable Madam Justice Dillon

Reasons for Judgment

Counsel for the Plaintiffs	K. Simon
Counsel for Defendant	R. Dhami
Date and Place of Trial	March 2 and 3, 2005 Vancouver, B.C.

[1] The plaintiff, Gursatinder Kaur Sidhu, was injured in a motor vehicle accident on July 10, 2003. Liability is admitted. The issues at this Rule 66 trial were non-pecuniary damages and wage loss. There is no claim for future loss. All other plaintiffs have settled in this action.

[2] On July 11, 2003, the plaintiff, her family and guests were headed for a picnic at a lower mainland park when their 1994 Ford van was hit at the rear by a motorcycle driven by the defendant. The plaintiff's husband had stopped the van behind a line of traffic when the motorcycle failed to maneuver and struck the right rear corner of the van. The motorcycle, of the lightest class, was traveling slowly but managed to do about $2,000 damage to the Sidhu van. The plaintiff was seated at the right rear of the van with her two children.

[3] The plaintiff did not disembark from the van at the scene but continued on to the park. She does not remember feeling any pain at that time. But, by the time that she returned home, she was stiff such that she cancelled her night shift as a care aide at a local hospital. The stiffness in her neck, shoulder pain and right-sided headache continued into the week despite her self medicated Tylenol and homeopathic medicines.

[4] The plaintiff continued on with schooling as a practical nurse that she had started on July 7, except for one day on July 14. This was an intensive 35 week programme that the plaintiff had begun to upgrade her qualifications. She had been trained in the Punjab in homeopathic medicine and surgery but her qualifications were not recognized when she came to Canada in 1991. She had worked as a care

aide and nursing assistant for many years. She had waited a long time to commence this course, had paid a significant tuition, and carefully planned her work and family life to facilitate taking this programme. She had given up her regular part-time status as a nursing assistant to become casual so that she could continue to work on weekends and the occasional night shifts as she took the course. Her expectation to work and attend school was realistic given her background and seniority, although I do not think that she would have been able to work quite so much as she thought. She was determined to continue despite her pain after the accident as she had been healthy and confident before.

[5] By July 18, 2003, the pain had not improved so the plaintiff decided that she needed medical advice. He attended upon her family doctor, Dr. Chua. He noticed moderate tenderness with restricted movement in the neck. There was also tenderness in the upper trapezious muscles. He diagnosed moderately severe cervical strain and trapezius strain. He prescribed Advil. He thought that she was unable to return to her part-time job as a nursing assistant but was able to attend her course.

[6] On July 25, 2003, the plaintiff's pain continued with recurrent headaches and slight tinnitus. Dr. Chua determined that there had been a moderately severe thoracic strain besides the cervical and trapezius strain. Advil continued to be recommended.

[7] The plaintiff attended to her family doctor on August 15, September 9, October 20, and December 5. When the moderate pain had continued, the doctor

prescribed an anti-inflammatory and physiotherapy. The plaintiff was unable to return to work and continue with school as she had planned. She cancelled most shifts that would have been available to her at work but did manage to return to work for 4 days in October while continuing with school. She could not return to work on October 21 as the doctor had recommended. She had attended physiotherapy for a month but the expense was too much. She did exercises as recommended and used a gel pack on her neck. The pain in her shoulder and neck and headaches continued.

[8] By December 5, five months after the accident, the pain was improving. There was still tenderness and stiffness in the neck and upper trapezius muscles. Anti-inflammatory medication was continued. Dr. Chua advised that she could return to work the following week. The plaintiff did return to work in December, working 12 shifts, including many during the holiday season when salary was paid at a premium. This work coincided with slack time at school.

[9] The plaintiff continued with work and school to the end of March 2004 when she completed her training and became a practical nurse. From January to March, the plaintiff worked increasing hours with a dip in February. At this time, the anti-inflammatory medicine was causing abdominal upset so Dr. Chua changed the medication. The plaintiff continued to work and attend school while in pain with the assistance of medication. By April 2004, the plaintiff was back to her regular work schedule.

[10] The plaintiff still has lingering, intermittent pain as a result of the accident. She takes anti-inflammatory medication when needed. This means that she can be free of pain for a week but then have a recurrence. She has returned to work as a regular part-time practical nurse. The plaintiff has resumed her family activities such as reading to her children and gardening, which she had been unable to do for awhile after the accident. Her social life based on family gatherings was curtailed but she expects to be able to resume these soon. Although she is able to do more housework now, her husband has developed the habit of helping, which the plaintiff appreciates. The general mood in the family has improved as the health of the plaintiff improved.

[11] Dr. Chua concluded that the plaintiff sustained a moderately severe cervical strain, upper trapezius strain, and thoracic strain in the July 11, 2003 motor vehicle accident. She was totally disabled from her nursing assistant job until December 2003. He expected that her residual pain would gradually diminish over time without permanent disability.

[12] The range of award for non-pecuniary damage was argued to be between $6,500 to $30,000 with the plaintiff recommending an award of $25,000 to $27,000 and the defendant recommending $6,500 to $11,000. All of the cases suggested by the defendant involved mild to moderate strain with minimal loss of work (***Clark v. Stock*** (2002), 23 C.P.C. (5th) 165, 2002 BCSC 759; ***Ramzan v. Ho*** (1996), 17 B.C.L.R. (3d) 307 (S.C.); ***Chaudhry v. Johnson***, [1995] B.C.J. No. 2879 (QL) (S.C.); ***Mangat v. Jackson***, 2004 BCSC 319; ***Way v. Frigon***, 2001 BCSC 573). That is not the situation here where the plaintiff suffered moderately severe strains

that disabled her from work for five months despite her continuing with school. Symptoms are still present twenty months after the accident. The plaintiff has worked hard to recover and tried to continue with her life as much as possible despite the pain. There was no attack on her credibility. The range suggest by the plaintiff is more realistic, although this plaintiff has not pursued all of the alternative remedies and visited her doctor as much as others. Nor has she suffered notable sleeplessness, tingling, numbness, depression, or extraordinary fatigue as secondary effect. (***Bednarek v. Kaila***, [1999] B.C.J. No. 1042 (QL) (S.C.); ***Belanger v. Johnsen***, [1998] B.C.J. No. 446 (QL) (S.C.); ***Boag v. Berna***, 2003 BCSC 779; ***Craddock v. Wood***, 2002 BCSC 1528; ***Ingram v. Rosario***, 2002 BCSC 1695; ***Lee v. McGuire***, 2005 BCSC 241; ***Johnston v. Day***, 2002 BCSC 480). In all of the circumstances, an appropriate award for non-pecuniary damage is $19,000.

[13] The wage loss claim is somewhat more difficult as the plaintiff continued with her planned schooling during the period of time when she would have been totally disabled from work. I find that this time was five months. The plaintiff presented evidence of the shifts and pay that may have been available to the plaintiff based upon her seniority from July through to October 2003. Given the plaintiff's tenacity, determination to succeed, excellent work history, and family financial need, I accept that she would have worked as much as possible during this time, but not quite as much as she thought due to the rigors of school and travel. I calculate wages lost during this time based roughly on two shifts per week with an extra four shifts per month for a total of about 12 shifts per month in addition to attendance at school. This is about 450 hours lost from July to December 2003. Over this period of time,

the average wage was $22.54 per hour plus premiums. It is not possible to do an exact calculation. I estimate wage loss during this period of $12,000.

[14] The plaintiff returned to work more regularly from January to April but still lost some time as indicated from her work history. This coincided with a period of practical training in the practical nurse programme during which I find that the plaintiff would not have been able to work as much. She had also developed complication from the prescribed medication. I estimate that there were 30 lost hours during this period and roughly calculate wage loss at $700.

[15] Total wage loss is calculated at $12,700.

[16] The plaintiff provided evidence of special damages at $531.39.

[17] The plaintiff is awarded non-pecuniary damage of $19,000 plus wage loss of $12,700 plus special damage of $531.39 for a total award of $32,231.39. The plaintiff is entitled to court order interest and costs on the scale of 3. In the event that there was a formal offer to settle or other reason to depart from the usual rule of costs, either party is at liberty to apply to the court.

"J.R. Dillon, J."
The Honourable Madam Justice J.R. Dillon