

Citation: **Chahal v. Schellenberg**  
2005 BCSC 804

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Docket: M040426  
Registry: Vancouver

## IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment  
The Honourable Madam Justice Stromberg-Stein  
April 22, 2005

BETWEEN:

**BALWINDER SINGH CHAHAL**

PLAINTIFF

AND:

**JOEL DONEVA SCHELLENBERG**

DEFENDANT

Counsel for the Plaintiff:

K.L. Simon

Counsel for the Defendant:

A. duPlessis

[1] **THE COURT:** On August 10, 2001 the plaintiff, Balwinder Singh Chahal, was driving his father's 1999 Toyota Camry on Highway 1 when he was forced to stop due to congestion near the 200 Street exit in Surrey, British Columbia. He was struck from behind by the defendant. Although restrained by a seatbelt, the impact was significant, forcing Mr. Chahal forward and then, caught by the seatbelt, backward as the seat automatically reclined. Flying glass from the rear windshield

hit the back of his head but he was not cut. There was extensive rear end damage to his car and repairs were \$11,347.25.

[2] Liability is admitted. It is admitted Mr. Chahal was injured in the accident but the extent of his injury is disputed. The issue is quantum of damages under the categories of non-pecuniary damages, loss of opportunity and special damages.

[3] Immediately following the accident Mr. Chahal was in a state of shock but otherwise complained of no injuries. The next day he awoke with a stiff neck and back. He went to his family doctor, Dr. Randawa. The pain in his lower back continued, at times shooting down to his left knee. This caused difficulty walking and moving around the house, mostly when he first got up, and caused difficulty standing for prolonged periods at work. In addition, Mr. Chahal complained of headaches and some neck pain.

[4] The neck pain resolved shortly after the accident. The headaches and left lower back pain persists to this date. He still has frequent headaches. Back pain is experienced about once a week depending on the nature of his activities.

[5] Complicating his recovery from his accident injuries, Mr. Chahal, then 18 years old, was required to return to Singapore to complete his two-and-a-half-year compulsory national military service. Had he not returned, he would have been classified as a deserter and would have forfeited a \$5,000 bond. There is evidence that it is very difficult to avoid military service for any reason, including health reasons. He left Canada in September 2001 for his medical check-up. His service began December 14, 2001. Six days after, Dr. Randawa prepared a letter which

was sent to Singapore detailing Mr. Chahal's medical condition and limitations.

There is no question that compulsory military service came at a difficult time when Mr. Chahal's back was vulnerable due to injury in the car accident. Mr. Chahal was relieved of the physical aspects of military training, was downgraded in status from a regular recruit, and was assigned to the storeroom where he was required to lift heavy boxes and was unable to take adequate rest breaks. The impact on him was that he felt he was looked on with suspicion by his superiors as someone trying to avoid service. He finished his military service and returned to Canada in June 2004.

[6] In Singapore Mr. Chahal saw a number of doctors and medical officers for his ongoing back problems, including an orthopaedic surgeon who diagnosed recurrent fibromyositis of the lower back. The prognosis at that time was for chronic back problems. Mr. Chahal had some physiotherapy. He used painkillers and received some injections. He participated in compulsory military exercises three times a week as he was required.

[7] Before the car accident Mr. Chahal was in good health. He had a right shoulder tendonitis and had suffered from asthma. However, his asthma was worse in Singapore and better in Canada. Mr. Chahal was very active and a good sportsman. He played soccer, field hockey, cricket, and swam. Following the accident he stopped these activities. He now goes to the gym and uses light weights and does stretching exercises when he can during the day.

[8] In terms of his present circumstances, Mr. Chahal is 21 years old. He is somewhat overweight and deconditioned. He is not a Canadian citizen but has

taken steps to apply for citizenship. Since September 2004, he has been a full-time student at University College of the Fraser Valley studying toward a diploma in criminology. He intends to complete that program in two years. He works weekends at a gas station. He continues to suffer from frequent and random headaches as well as left side low back pain about one time a week which is aggravated by his physical activities and standing for long periods. He treats himself with over the counter painkillers and sitting for long periods which does not bother him. His goal is to pursue his dream of becoming an RCMP officer following completion of his diploma course.

[9] In terms of medical evidence, there is no report from Dr. Randawa, Mr. Chahal's family doctor in Canada, who saw Mr. Chahal immediately following the accident. In terms of seeing Dr. Condon, Dr. Condon's practice is confined to pain management due to acute or chronic soft tissue type injury. On February 5, 2005 Dr. Condon examined Mr. Chahal one time at the request of plaintiff's counsel. He did not have the opportunity to review the medical records of Dr. Randawa or Dr. Singh in Singapore. He relied on Mr. Chahal's report of medical history and injury, which is somewhat inconsistent with the evidence before me. Dr. Condon's examination of Mr. Chahal revealed that everything was normal except for his back, where Dr. Condon noted a loss of usual lumbar lordosis and found the lower back tender on palpitation. Dr. Condon considered the report of tenderness in this case to be both subjective and objective. Dr. Condon diagnosed musculo-tendinous injury with myofascial pain affecting the left lumbar paraspinal muscles. Translated, that means a soft tissue injury, due to a sprain or strain in the left lumbar area, causing

pain, tenderness and soreness on the mid-spine to the pelvis level. Dr. Condon recommended a self-managed program of regular daily exercise with frequent stretching. He does not believe Mr. Chahal will tolerate intensity-level exercise. Dr. Condon's prognosis for a full and complete recovery is guarded as Mr. Chahal's lower back will always be vulnerable and pose a residual problem if the muscles are overloaded, although a moderate degree of recovery could be achieved if Mr. Chahal persists in his self-motivated rehabilitation.

[10] In rebuttal of Dr. McPherson's medical opinion, Dr. Condon maintained that on a different day his examination of Mr. Chahal supports his diagnosis and prognosis. Further, Dr. Condon maintained that Dr. McPherson glossed over Mr. Chahal's three-year medical history and complaints of back pain in Singapore. Dr. Condon maintains there is no evidence to support Dr. McPherson's finding that Mr. Chahal's obesity is the source of his lower back pain. Although Dr. Condon agrees Mr. Chahal's weight and moderate deconditioning will compound his situation by impairing his ability to exercise, and thus his ability to control his weight with exercise, Dr. Condon is of the view that Mr. Chahal's complaints of back pain originate with the car accident and continue, underlying a chronic condition.

[11] I accept Dr. Condon's evidence that when he saw Mr. Chahal there was evidence to support his diagnosis and prognosis. However, Dr. Condon's prognosis must be tempered somewhat because of his understanding, based on Mr. Chahal's inaccurate reporting, that Mr. Chahal was suffering constant back pain which was also aggravated by sitting, facts that are not borne out by the evidence. I also accept that when Dr. McPherson saw Mr. Chahal there was no evidence of injury or

disability. This is consistent with Mr. Chahal's evidence that he now experiences back pain about once a week. I agree with counsel for the defendant that neither doctor indicates that Mr. Chahal is precluded from pursuing any occupation. Neither doctor states that Mr. Chahal will be permanently or partially disabled from working in any occupation and no doctor indicates that Mr. Chahal will be unable to meet the physical requirements necessary to join the RCMP or to participate in the recruitment process.

[12] What is important in this case is that despite the lack of medical documentation from all Mr. Chahal's health providers and from the Singapore army the defendant does admit that Mr. Chahal was injured in the car accident. I find Mr. Chahal to be a credible and reliable witness who has consistently and persistently reported headaches and lower back pain originating with the car accident and continuing to date. The injury to his lower back, caused by the accident, left Mr. Chahal vulnerable to re-injury. Because of his compulsory army service he did not have the opportunity to properly rehabilitate his back.

[13] While there is a reference in Dr. Condon's report that Mr. Chahal said he had two falls in 2004 which injured his lower back, Mr. Chahal did not testify about any falls or injuries to his lower back while in the army. There is no evidence of any intervening events.

[14] Returning to damages and dealing first with non-pecuniary damages, it is the position of plaintiff's counsel, based on her authorities, that the range of non-pecuniary damages is \$30,000 to \$40,000. She submits that non-pecuniary

damages should be assessed at \$37,500. It is the position of defendant's counsel, based on his authorities, that the range of non-pecuniary damages is \$17,000 to \$20,000 and an appropriate award is \$17,000.

[15] I conclude that non-pecuniary damages in the amount of \$25,000 is appropriate in the circumstances of this case based upon Mr. Chahal's injuries, his age, the duration of his symptoms, the frequency of his ongoing symptoms, the consistency of his complaints, the effects on his lifestyle, including recreational pursuits, the impact upon his military service and physical fitness, and the likelihood his symptoms will endure for at least sometime into the future.

[16] Dealing with loss of opportunity, it is the position of plaintiff's counsel, based on her authorities, there is a real and substantial possibility, and not mere speculation, that the plaintiff will suffer a loss of opportunity to compete or be competitive in the RCMP recruitment process. Counsel argues that proof of Mr. Chahal's success in the recruitment process is not required and is not at issue. Rather, when he applies to the RCMP his competitive ability will be impaired or diminished by his accident and injury. Counsel submits there is a real possibility Mr. Chahal will enter the RCMP recruitment process a different candidate due to his accident injury because it will affect his self report on the medical questionnaire as well as his ability to participate in the physical aspects of the process. Counsel argues there is no issue Mr. Chahal is a suitable candidate for the RCMP given his background. Counsel submits one way to quantify the claim is to adopt the approach of the court in *Mori v. Weeks* 2001 BCSC 1094, [2001] B.C.J. No. 1688, and assign an arbitrary value of \$25,000.

[17] The defendant submits there is no evidence of a real possibility of a loss of the ability to competitively participate in the recruitment process. In any event, there are many factors that would negatively impact, including Mr. Chahal's asthma, his deteriorating vision, his shoulder and knee injuries unrelated to the accident, and his lack of volunteer work in the community.

[18] Mr. Chahal's goal was and is to become a member of the RCMP. Each year, in B.C. alone, 2,500 applicants take the RCMP exam, the second stage of the eight or nine-step application process after the initial information session. Following the exam, approximately 1,500 application packages are handed out each year. From that number, approximately 300 recruits are hired. Mr. Chahal has always wanted to follow in his father's footsteps and be a police officer. His background demonstrates that he has the character to be a serious candidate and to be an RCMP officer. He graduated from high school as an honour roll student. He is disciplined and law-abiding. He was a good sportsman before the accident. Presently he is enrolled in a diploma criminology course which he anticipates completing in two years. In addition to obtaining his Canadian citizenship, a pre-requisite to joining the RCMP, another issue he faces is his ability to meet the physical demands of the recruitment process given his lower back injury and headaches attributed to the accident.

[19] To advance in the recruitment process he must be capable of passing the timed PARE test which measures physical ability through a series of designated tests. The test is designed to be inclusive and most males can pass the test. An out-of-shape, deconditioned male, depending on motivation, can work to pass the test. Mr. Chahal has two years to work towards meeting the physical requirements.

An applicant's disclosure on a medical questionnaire can block movement through the recruiting process if medical staff determines medical issues preclude an ability to meet required medical standards. In addition to disclosing his back injury and headaches, Mr. Chahal will also be expected to disclose his asthma, his deteriorating vision, the surgically-repaired knee and his previous right shoulder tendonitis, all unrelated to the accident.

[20] I agree with plaintiff's counsel that there is a real and substantial possibility, and not mere speculation, that Mr. Chahal will suffer a loss of opportunity to compete, or to be competitive, in the RCMP recruitment process, in part due to his accident injury. I also agree with defendant's counsel that there are many other reasons why Mr. Chahal would not be able to compete or be competitive in the process. Therefore, to quantify Mr. Chahal's claim, I adopt the approach of the court in *Mori v. Weeks* and I assign an arbitrary value of \$10,000 for loss or opportunity.

[21] In terms of special damages, I am satisfied that Mr. Chahal has proved his claim for special damages in the amount \$476.16.

[22] In terms of costs, counsel, we are dealing with Rule 66.

[SUBMISSIONS RE: COSTS]

[23] What I should say is there is court ordered interest on the special damages, and I do not know anything about GST.

[24] **MS. SIMON:** Shall we come back and make submissions on the costs?

[25] **THE COURT:** I hope not but if you have to. Notify the registry if you have to come back before me and just send me – it does not have to be extensive - just a couple of pages, outlining your submissions. If you feel that it is necessary to come before me in person, then that is fine.

[26] **MS. SIMON:** My lady, I'm sure counsel can agree as to costs.

[27] **THE COURT:** All right. Thank you. Thank you, counsel. Your assistance in this case was appreciated.

“S.S. Stromberg-Stein, J.”  
The Honourable Madam Justice S.S. Stromberg-Stein