IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Kahlon v. Prasad***,
2006 BCSC 2039

Date: 20060808
Docket: M053526
Registry: Vancouver

Between:

Tejbeer Singh Kahlon

Plaintiff

And:

Meena Prasad

Defendant

Before: The Honourable Madam Justice Sinclair Prowse

Oral Reasons for Judgment

In Chambers
August 8, 2006

Counsel for Plaintiff	K.L. Simon
Counsel for Defendant	S. Leong
Place of Trial:	Vancouver, B.C.

[1] **THE COURT:** On October 29, 2004, at approximately 6:45 a.m., a vehicle driven and owned by the Defendant rear ended a vehicle driven by the Plaintiff. In this action, the Plaintiff seeks damages arising from the injuries that he suffered in this collision. There is no dispute that this collision was caused by the negligence of the Defendant. Rather the issues are the nature, extent and duration of the Plaintiff's injuries and the quantum of damages arising from those injuries.

[2] As far as the background circumstances are concerned, this collision occurred as the Plaintiff was driving to work and as the Defendant was driving to the hospital to visit her daughter. It was dark. Traffic was heavy, with frequent stops.

[3] Though the Plaintiff could not remember whether he was moving or not when the collision occurred, the Defendant testified that he was stopped and that she was travelling between 15 to 20 kilometres an hour.

[4] As the Defendant testified, she tried to apply the brakes of her vehicle before the collision, but her foot slipped. As a consequence, she was not able to brake before impact.

[5] The Plaintiff's vehicle did not collide with the vehicle immediately ahead of it, no doubt because he was probably following his usual practice of travelling eight to ten feet behind the vehicle in front of him. The fact that he did not hit the vehicle in front of him also supports the conclusion that he was stopped, that is, that his foot was on the brake of his vehicle when the collision occurred. The Plaintiff did not anticipate the collision; that is, he was unaware that he was going to be hit until he was hit.

[6] The Defendant's vehicle was larger and higher off the ground than the Plaintiff's vehicle. As a result, the point of impact on the rear of the Plaintiff's vehicle was above the bumper, hitting the rear of his trunk. The bottom of the front licence plate on the Defendant's vehicle was bent backwards, probably caused as the bumper of her vehicle went over the Plaintiff's bumper and collided with the trunk of the Plaintiff's car. Though there was no structural damage done to the Plaintiff's vehicle, the cost to repair it was more than $700 to $800, which was the book value of the Plaintiff's vehicle. (His vehicle was a 1986 Mazda). As a consequence of the cost of repairing it being greater than its book value, his vehicle was classified or characterized as a write-off.

[7] After the collision the parties pulled over to the side of the road and exchanged information. Both were able to drive their vehicles away from the scene, although the Plaintiff had to tie his trunk down to close it. Neither the police nor an ambulance was called. After driving away from the scene, both parties carried on with their day.

[8] The Plaintiff went to his work with a commercial painting company. This company specializes in the interior and exterior painting of large commercial premises and multi-unit residential premises - many of these jobs being challenging because of such factors as height, the terrain on which the premises are situated and/or the intricacies of the work.

[9] At the time of the collision the Plaintiff had worked for this company for three years. He was, and still is, the most senior foreman. Not only does he organize and

supervise the crew with whom he is working, but because of his painting skills generally he does the more difficult jobs. For example, he does the hard-to-reach trim work.

[10] As far as the Plaintiff's symptoms and pattern of recovery are concerned, at the scene the Plaintiff felt okay. The next day his back was stiff and tensed up. As he testified, he thought that he would recover in a few days, but he did not. Because he did not improve within the next few days he went to see his family doctor on November 4, 2004. (This was six days after the collision). His family doctor diagnosed him as suffering from a musculoligamentous strain to his spine, the primary injury being to his low back. He prescribed muscle relaxants, and anti-inflammatory drugs.

[11] A week later (that is, on November 11, 2004) on his next visit his treating physician recommended that the Plaintiff attend for chiropractic treatment as he was still experiencing pain. Specifically, his treating physician referred him to Dr. Sidhu. The Plaintiff began these treatments immediately. (He began the chiropractic treatments on the same day that they were recommended).

[12] Over the next eight-month period he underwent 31 of these treatments. At the end of December 2004 (as is set out in the records of his treating physician, as well as the treating chiropractor) he was still experiencing tenderness and did not have a full range of motion without experiencing pain. He found it difficult to bend. He had continuing pain in his neck, mid-back and lower back.

[13] The Plaintiff spent the period from the beginning of January 2005 until the beginning of April 2005 in India. (The purpose of this trip was to celebrate his marriage - a marriage which had been arranged the preceding year). The time in India was intended to have been spent in various gatherings and activities associated with that celebration, including a three-week honeymoon trip.

[14] The Plaintiff testified that, because of ongoing pain from the injuries in the collision, he found it painful to sit for long periods of time. As a result of this symptom, he found the 12-hour plane ride to India difficult to endure. He had to get up from his seat on a number of occasions and walk around to relax his back muscles. In addition, he found because of this back pain and his inability to tolerate long periods of sitting he was not able, (and consequently his bride was not able) to go on the honeymoon that they had intended to go on because it involved a long motor trip to reach the destination that they had intended to visit.

[15] In addition, while he was in India (the Plaintiff testified, and the evidence disclosed) that on four different occasions he went to the doctors. Though one of these visits included complaints of pain radiating from his back down his right leg, the complaints generally were the same as the complaints that he had made to his physician in British Columbia and to his chiropractor - namely, that he was having pain in his back and difficulty sleeping.

[16] Though the Defendant contended that the doctor's notations (that is, the doctor's notations in India regarding the pain down the leg and in particular the notation that it was not the result of a fall or an accident) should be construed as

meaning that it had been caused by some intervening event, I do not agree. I interpret this notation as meaning that the pain down the leg did not result from a fall or an accident. In other words, that there had been no intervening event.

[17] Further, the Defendant contended that the notations made (again by a doctor in India at the time) on January 28, 2005, that the back pain, ("back 1 month") should be interpreted as meaning that this back pain had only lasted a month.

[18] In my view. that is not an appropriate interpretation. Rather, I interpret it that for the last month that he has been in India he has been experiencing his back pain, which is a continuation of the back pain that he had been experiencing prior to his arrival in India a month before. In other words, I am not satisfied that there was any intervening event. Rather, the primary (if not the only reason) that the Plaintiff went to see the doctors in India was to get some relief and some assistance with the pain that he was experiencing from the injuries that he had suffered from this collision.

[19] With respect to the Plaintiff's situation generally while he was in India, I am satisfied on the evidence that his participation in various activities was less than it would have been had he not been injured and his participation was for shorter periods of time had he not been injured. The evidence showed that the Plaintiff is a social person. He had been (just a few years before) in India to celebrate his brother's wedding and he participated in all of the social activities, as was his nature. On this particular occasion it is clear in the evidence that he did not participate in all of the activities or/and that he did not participate fully in the ones that he did attend. In my view the explanation for this, and the evidence clearly shows, it was because

of the pain that he was experiencing from the injuries that he suffered in this accident.

[20] Upon his return to Vancouver at the beginning of April 2005, the Plaintiff resumed his chiropractic treatment. He continued with his treatment as directed by the chiropractor until October 24, 2005. During this period he underwent 17 further treatments.

[21] By September 2005, the injury to his spine had generally resolved. By November 2005, the injury to his mid-back and shoulders had resolved. By January 2006, the injuries to his low back had resolved.

[22] As far as the Plaintiff's ability to work is concerned, he did not miss any time at work. There is no dispute that his work is physically demanding. Included in the duties that he must perform is carrying and climbing high ladders - these ladders being 32 and 40 feet in length and weighing 150 to 200 pounds, respectively. His duties also include the task of carrying five gallons - that is 18 to 19-litre buckets of paint, not only from one site to another, but also up and down ladders.

[23] Because of the pain in his neck, shoulders and back he was not able to perform the heavier aspects of his job - that is, he was confined to lighter duties. Rather than carrying ladders and cans, he had to find others to carry the ladders and the paint cans for him. Rather than climbing the ladders and carrying the paint up with him, he had to use other devices, such as swing stages and other lift devices, because he was not able to perform these tasks otherwise because of his injuries. I am satisfied that he did not resume doing heavier tasks until the end of August 2005.

[24] With respect to the issues raised in this case, as was set out earlier the issues pertain to the nature, extent and duration of the Plaintiff's injuries and the quantum of damages.

[25] As far as the nature, extent and duration of his injuries are concerned, there is no dispute that whatever his injuries were, he is now basically recovered from them, although his employer attested that he appears from time to time to still experience some pain.

[26] The Plaintiff contends that as a result of the collision he suffered a musculoligamentous injury to his spine, and in particular to his neck, mid-back and low back. As a result of these injuries he was functionally limited in that he could not bend or lift without pain in varying degrees for a period of 16 months (that is, from October 29, 2004, until January 1, 2006). During that period other movements were also limited by pain.

[27] The Defendant, on the other hand, contends that I should not accept his evidence with respect to the nature, extent and duration of his injuries as he was not a credible witness. Alternatively, if I do find that the Plaintiff was injured, the Defendant argues that at the very most he recovered from his injuries by the end of December 2004.

[28] I am satisfied that the evidence proves the contention of the Plaintiff. In particular, it proves that he did suffer a musculoligamentous injury to his neck, mid-back and low back as a result of this collision, the primary injury being to his low back. As a result of these injuries the evidence proves that in varying degrees he

experienced ongoing pain in these areas of his spine, resulting in limitations to his ability to lift; to carry heavy objects; to bend; to sit for long periods of time; and to stand for long periods of time. I am further satisfied that he had difficulty sleeping from time to time during this period.

[29] Further, I am satisfied that the evidence proves the injury to his cervical spine resolved by September 2005; that the injury to his mid-back resolved by November 2005; and that the injury to his low back basically resolved by January 2006.

[30] In my view these conclusions are consistent not only with the evidence of the Plaintiff (who I found to be a credible witness) but also with the observations of others - including his brother, his chiropractor, his treating doctor and his employer.

[31] The reasons that I found the Plaintiff to be a credible witness was not only that his demeanour on the stand was that of a credible witness (that is, in my view he appeared to be giving his evidence in a balanced and straightforward way and to be endeavouring to avoid exaggeration) but also that his evidence was consistent with his conduct throughout (that is, his conduct as observed by his brother, the chiropractor, his treating doctor and his employer).

[32] Moreover, the descriptions of his character and of his attitude are also consistent with his evidence and with his conduct. I will elaborate on the first two in just a moment. But with respect to his attitude in general, his employer attested that he was a person who was not a complainer and he just got on with things. This is entirely consistent with the attitude towards his injuries. That is, he went to his doctor, got his doctor's advice and then followed his doctor's advice. He really did

not complain again to his doctor, but just kept carrying on with his doctor's advice, which was to go to the chiropractor. He followed the chiropractor's advice.

[33] Moreover, the chiropractor attested that from time to time (particularly in the late spring of 2005) the Plaintiff was becoming more and more concerned that he was not going to recover from these injuries. In my view, this is entirely consistent with the general description of this man, namely, that he is a person who wanted to get better, strove to get better, and wanted to get back to his old level of health and was very concerned that he may not be able to achieve it. This is not consistent with any suggestion of him being a malingerer or exaggerating his injuries.

[34] With respect to the consistency of his conduct in the observation of others, the Plaintiff testified, for example, that as a result of his injuries he found it painful to sit for long periods of time. That he was experiencing such discomfort is entirely consistent with the observations of his brother, those observations having been made on the long plane ride from Vancouver to Singapore, which was the first leg of their journey to India. It was clear, in my view, from the evidence of the brother that the discomfort of the Plaintiff in sitting was readily apparent just by the body language of the brother.

[35] Moreover, the difficulty in sitting for long periods of time is entirely consistent with the fact that the Plaintiff found it necessary to cancel his long-planned-for honeymoon trip because it was going to involve a long motor trip, a trip which he could not tolerate because of his injuries.

[36] Moreover, the notations of the chiropractor as to the Plaintiff's complaints with respect to his injuries are entirely consistent with the Plaintiff's injuries, and also with respect to the injuries are the observations of his employer. That is, from time to time his employer would attend the jobsite and observe the Plaintiff. The Plaintiff, in his reports to his doctor, complained that he had trouble standing - that he would become stiff at work; he had trouble lifting; and he had trouble bending. These complaints were substantiated by his employer as he noted that the Plaintiff appeared to be in pain when doing these functions. The employer also attested that, as far as he could tell, the Plaintiff was not always aware that he (the employer) was watching him when in fact the employer was watching him.

[37] The Defendant submitted that I should put little, if any, weight on the evidence of the Plaintiff because he testified that as a result of these injuries he was not able to mow the lawn. The Defendant pointed out that given that these injuries happened at the end of October that there was really little opportunity or necessity to mow the lawn, and that therefore including this as one of the activities that he was unable to perform was an indication that he was exaggerating his evidence.

[38] Though there may not have been a lot of opportunity to mow the lawn, it was just an example of the kind of tasks that he was now unable to perform that he had done prior to his injuries

[39] Rather, he stated that he found it difficult to do tasks that involved bending, lifting and carrying. Therefore, for example, carrying in heavy groceries was something he then could not do. Types of yard work were things that he could not

do that he had been able to do prior to his injuries. For that reason I did not find that a reference to mowing the lawn was an indication that in fact the Plaintiff was not a reliable witness.

[40] Moreover, the Defendant submitted that the reference that the Plaintiff made to a leg injury and not remembering what the leg injury was at trial, (he had described it at his examination for discovery as being a minor injury and at trial he could not remember any injury) in my view is not significant. It may indicate that the Plaintiff is not an excellent historian. There were other things that he could not remember, e.g., he could not remember whether his car was moving or not when he was injured.

[41] In any event, the notations made in the doctor's notes about a leg injury, clearly indicate that it was unrelated to the injuries sustained in this accident. In other words, the Plaintiff has never claimed that he suffered any leg injury that is related to these injuries, or that the leg injury (whatever it may have been) interfered whatsoever in his ability to function. The only evidence of injuries interfering with his ability to function pertain to the injuries arising from this accident.

[42] For these reasons I did not find the fact that he did not remember an incidental leg injury that occurred a year ago a basis on which to conclude that he was unreliable.

[43] The Defendant also contended that I should put little weight on his evidence because he testified that it was because of his back injury that he found it difficult to

sit for the long periods from Vancouver to Singapore, when anyone would have found that difficult to sit.

[44] Although it may have been difficult at the best of times to sit for 12 hours in a plane seat, I am satisfied that this witness, because of his injuries, found it more difficult and more uncomfortable to sit for this length of time than he would otherwise have felt had he not been injured. Again, the fact that he was getting up and walking around was clearly more frequent than other passengers because it was sufficient to draw the attention and to be memorable to his brother. In other words, his brother recalls that he was up and walking frequently.

[45] For all of these reasons I am not satisfied that these are a basis to conclude that the Plaintiff is not reliable. As I stated before, in my view the Plaintiff presented (when giving his evidence) as a credible witness. His evidence was consistent with his own conduct and the observations of others. It was also consistent with his personality and pattern of behaviour, as described by others, prior to the accident.

[46] The Defendant also submitted that I should conclude that the injuries of the Plaintiff could not be as extensive as claimed because of the damage that was done to the vehicle.

[47] Although damage to a vehicle is a factor to be considered, it is not determinative of the issue. As was stated in ***Gordon v. Palmer***, 78 B.C.L.R. (2nd) 236 a decision of the Supreme Court:

> I do not subscribe to the view that if there is no motor vehicle damage then there is no injury. This is a philosophy that the Insurance

> Corporation of British Columbia may follow, but it has no application in Court. It is not a legal principle of which I am aware and I have never heard it endorsed as a medical principle.

[48] Moreover, as ordered by the Court in ***Boag v. Berna*** 2003 BCSC 779:

> I am satisfied that the motor vehicle accident could not be described as violent. However, I am aware that it is often inappropriate to equate the damages to a motor vehicle to injuries that may be sustained by occupants of that vehicle. That a piece of steel is not dented does not mean that the human occupant is not injured.

[49] In this particular case, there was damage to the motor vehicle. Whatever the severity, it was severe enough to damage the trunk, although it did not result in structural damage to the vehicle.

[50] Unfortunately, the point of impact was not bumper-to-bumper. Bumpers are designed to absorb some of the impact. It was rather a bumper to the back of the trunk. Given that fact, the Plaintiff probably experienced a greater impact than he would have experienced had it been bumper-to-bumper.

[51] In any event, I am satisfied that this Plaintiff's injuries were caused by this accident. He did not have any injuries prior to the accident, and he had them immediately after.

[52] To conclude, I am satisfied that this Plaintiff suffered a musculoligamentous injury to his neck, mid-back and low back; that those injuries resolved within 14 months of the accident; and that during that 14-month period that the Plaintiff experienced ongoing pain in varying degrees and limitations on his function, those

limitations including, but not being limited to, bending, lifting, standing and sitting for long periods.

[53] With respect to the issues raised regarding damages, the only claims made are for special damages and general damages. As was touched upon earlier, the Plaintiff did not miss any time from his employment because of these injuries. Moreover, his injuries have completely resolved.

[54] As far as special damages are concerned, there is no dispute that a Plaintiff is entitled to recover from a Defendant actual expenses incurred as a result of his or her injuries, provided that it was reasonable to incur that particular expense given the surrounding circumstances at the time that it was incurred.

[55] In this action, the Plaintiff is seeking to be reimbursed in the amount of $851.56, being the balance owing on the expenses incurred for chiropractic treatment, for mileage and parking to attend those appointments and other medical appointments, and for prescriptions.

[56] The amount initially sought was $866.56, but during the course of this trial the Plaintiff attested that he may have been mistaken with respect to the amount claimed for medication that he was prescribed when in India. Rather than the expense being $100 it may have been between $80 to $90. I have rounded that off to $85.

[57] Given that the Plaintiff began the chiropractic treatments on the recommendation of his doctor; that he continued to attend them on the

recommendation of the chiropractor until he recovered; that the injuries treated in those sessions were the injuries that the Plaintiff suffered in this collision; and that the mileage to and from the doctor's appointments only include those appointments which pertain to this accident, I am satisfied these expenses were reasonable and recoverable.

[58] In addition, with respect to the expenses for medication I am satisfied that these were incurred to alleviate the continuing pain that he was from the injuries that he suffered in this collision. Though the Plaintiff did not have the receipts for these expenses that he incurred to purchase the prescriptions in India, I accept his evidence that those expenses amounted to between $80 and $90. As I set out earlier, I have set that amount at $85.

[59] As far as general damages are concerned, the Plaintiff's symptoms lasted for over a year - that is, close to 14 months. During that period of time, in varying degrees, he suffered ongoing pain which limited the involvement that he had in his work, although it never resulted in any time lost at work. In addition, he had trouble sleeping.

[60] These injuries and the pain from them did interfere in his personal life. It reduced the level of his participation in the activities associated with his wedding, including precluding him and his bride from going on the honeymoon trip that they had planned. Many of these activities cannot be repeated because they are activities that take place at an event which usually only occurs once in one's life.

[61] Further, applying the various principles set out in the cases produced in this proceeding, I am satisfied that the Plaintiff should be awarded the amount of $25,000 in general damages. That is the amount that he is awarded.

(DISCUSSION BETWEEN THE COURT AND COUNSEL RE COSTS)

[62] THE COURT: As the successful party, the Plaintiff is awarded costs. If further directions are required pertaining to quantum, the parties are at liberty to apply for directions by applying to the Court at any mutually convenient time. You are at liberty to do it at 9:00 in the morning, if it is less than one hour. If you prefer to do it by telephone conference that can be arranged.

"Sinclair Prowse J."