

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Citation: *Blenkarn v. Mills*,  
2018 BCSC 710

Date: 20180502  
Docket: M121001  
Registry: Vancouver

Between:

**Annette Blenkarn**

Plaintiff

And

**Elwood Mills, Darlene Bork, Jill Adrian, Jennifer Hicks and Laura Lopez**

Defendants

- and -

Docket: M153383  
Registry: Vancouver

Between:

**Annette Blenkarn**

Plaintiff

And

**Ling Jie Huang and Wen An Tang**

Defendants

- and -

Docket: M153336  
Registry: Vancouver

Between:

**Annette Blenkarn**

Plaintiff

And

**Aruna Marjorie Simpson**

Defendant

Before: The Honourable Mr. Justice Affleck

**Reasons for Judgment**

Counsel for the Plaintiff: M. Chandler  
B. Scheidegger, Articling Student

Counsel for the Defendants Elwood Mills and Darlene Bork: R.C. Brun, Q.C.  
H. Mathison

Place and Date of Hearing: Vancouver, B.C.  
March 28, 2018

Place and Date of Judgment: Vancouver, B.C.  
May 2, 2018

[1] These are further reasons for judgment on the question of costs.

[2] The plaintiff commenced three actions for injuries alleged to have been tortiously caused in five motor vehicle accidents. The first injuries were alleged to have been caused by the negligence of Mr. Mills who was sued in action number M121001 along with other defendants in later accidents. Except for Mr. Mills all defendants in all actions admitted liability.

[3] In Reasons for Judgment indexed at 2016 BCSC 1976 I held Mr. Mills was not at fault for the plaintiff's injuries in the first accident and I held that action number M121001 was dismissed.

[4] The dismissal of action M121001 was erroneous because the plaintiff was successful against all other defendants in that action. Only the claim against Mr. Mills was dismissed.

[5] It had been agreed at trial that the plaintiff's injuries from all accidents were indivisible and I determined that one third of the plaintiff's loss and damage was attributable to the first accident.

[6] In reasons indexed at 2016 BCSC 1976 I awarded costs to the plaintiff throughout these several proceedings.

[7] A later controversy arose over whether the award of damages exceeded the pretrial offers. I decided that it had. It was also argued by the defendants that as a consequence of s. 3(1) of the *Negligence Act*, R.S.B.C. 1996, c. 333, the plaintiff ought to be deprived of one third of her costs. In reasons indexed at 2017 BCSC 1904, I concluded that was not the effect of the *Negligence Act*. I did not vary the costs award.

[8] The defendant Elwood Mills now applies for a variation of the costs order concerning himself only. He submits that an effect of the costs award is that, although he was a successful defendant, not only is he deprived of the costs in his favour he also must pay costs to the plaintiff. Mr. Mills submits that as a successful

litigant he is entitled to an award of costs, unless, acting judicially, this Court exercises a discretion to deprive him of costs.

[9] Mr. Brun submits the trial time related to Mr. Mills alleged negligence was about 2.5 days for which he should be entitled to costs and he should be awarded associated costs and disbursements for examinations for discovery and that those costs and disbursements should be set off against the plaintiff's assessed costs and disbursements. If I agreed with Mr. Brun I would accept that proposal as a basis for awarding the costs related to Mr. Mills but I do not agree with Mr. Brun, notwithstanding his forceful submissions.

[10] The plaintiff submits the approach advocated by Mr. Mills to the issue of costs is inappropriate firstly because all defendants had the same counsel at trial and all were indemnified by the same insurer, and secondly because costs awards should not become a "second trial" (in this case prolonged over many months) that gives rise to new levels of complexity thereby thwarting the object of the Rules of Court to foster the just, speedy and inexpensive determination of proceedings on their merits.

[11] Those submissions have some validity but I prefer to rest my decision on the fact that the plaintiff was substantially successful overall at the trial. Rule 14–1(9) provides that costs are to follow the event and thus "costs of a proceeding must be awarded to the successful party unless the court otherwise orders". The three actions that were tried together were each a "proceeding" and the plaintiff was awarded damages in all three. It is correct that she was not successful in proving Mr. Mills' liability but I do not accept that is a proper basis for apportioning costs which has generally been disapproved (see: *Gaudreault v. Gobeil*, 2015 BCSC 1197 and *Kovac v. Moscone*, 2014 BCSC 259).

[12] My order remains as it was in my reasons indexed in 2017 BCSC 1904. The plaintiff is entitled to an award of costs throughout these proceedings.

"The Honourable Mr. Justice Affleck"