

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20130108
Docket: M105954
Registry: Vancouver

Between:

Chuck Yip

Plaintiff

And

Sergio Frighetto

Defendant

Before: The Honourable Mr. Justice Butler

Oral Reasons for Judgment

Counsel for the Plaintiff:

Derek M. Mah

Counsel for the Defendant:

Michael J. Percival

Place and Date of Trial:

Vancouver, B.C.
December 5-7, 2012

Place and Date of Judgment:

Vancouver, B.C.
January 8, 2013

[1] **THE COURT:** The Nissan Sentra driven by the plaintiff, Chuck Yip, was rear-ended on April 28, 2010, as he attempted to merge at the intersection of St. Albans and Granville in Richmond. The defendant has admitted liability for the accident. The case proceeded to trial for an assessment of damages. Mr. Yip missed only one day of work as a result of his injuries and suffered no income loss. The only claims he advances are for non-pecuniary loss and special damages.

[2] Before turning to the question of quantification of Mr. Yip's claim, I will set out and comment on the evidence regarding the nature of the impact.

[3] The defence placed some emphasis on the circumstances of the accident. Four witnesses gave evidence regarding the accident and the force of the impact. Mr. Yip said the car was at a complete stop when it was struck. He said the impact was quite hard and that it was sufficient to push his vehicle forward about 12 inches, even though he had his foot on the brake. He said his body was forced forward and then back in a typical whiplash motion. Christian Ludwig, the passenger in Mr. Yip's vehicle, described the impact as a blunt, medium force which caused the vehicle to move forward about two feet.

[4] The photographs of Mr. Yip's vehicle show an area where the rear bumper was struck. There appear to be cracks and marks on the bumper, which was replaced at a cost of approximately \$800. There was some damage to the absorber that was not apparent on a superficial inspection.

[5] Mr. and Ms. Frighetto both said the impact was not significant. Neither of them was injured in the accident, even though they are elderly and Mrs. Frighetto has a bad back. The only damage to their car was cracking to the front licence plate frame. No repair work was performed or required.

[6] Mr. Ludwig was also injured in the accident and his injury claim went to trial earlier. The decision regarding his claim is reported at *Ludwig v. Frighetto*, 2012 BCSC 1721. Some of the witnesses who testified here also gave evidence at that trial. The defendant in that case argued that the impact was slight and could not

have caused a significant injury to Mr. Ludwig given that the defendant and his wife were not injured. I adopt Madam Justice Ross's common sense observation at para. 57 in that decision:

It is the case that this collision was at low velocity and resulted in very little appreciable damage to either vehicle. Moreover, neither of the Frighettos suffered any injury. However, they were both able to prepare for the collision. In any event the question is what injuries, if any, were suffered by the plaintiff.

[7] The lack of injury suffered by the defendant and his wife is not important to the questions I have to consider. The issues here are: What injuries were suffered by Mr. Yip and what amount should be awarded to him for non-pecuniary loss?

Assessment of Non-pecuniary Damages

[8] There is no issue about the principles to apply. In *Stapley v. Hejslet*, 2006 BCCA 34, the Court of Appeal outlined the factors to be considered when assessing non-pecuniary damages at para. 46. Those factors include the age of the plaintiff; nature of the injury, including any impairment of physical and mental abilities; severity and duration of pain; any resulting disability; emotional suffering; loss or impairment of life or lifestyle; and the impairment of family, marital and social relationships.

[9] While decisions which involve similar injuries can provide some guidance to a court, the assessment of non-pecuniary damages is necessarily guided by the individual plaintiff's personal experiences in dealing with his injuries and their consequences. The award is intended to provide solace to the individual plaintiff in light of his or her personal experiences. Accordingly, I need to consider Mr. Yip's personal circumstances, the nature of his injuries, and the way he has been impacted by those injuries.

[10] At the time of the accident, Mr. Yip was 41 years old. He worked for Creekside Foods as a purchasing manager. He was single and lived alone. He was involved in two previous motor vehicle accidents, one in the late 1990s and one in 2004. He does not recall the injuries he suffered in the first accident. He suffered a neck injury in the second accident. The injuries from both accidents resolved in due

course. He also had one workplace injury for which he made a claim in 2006. He fell down a flight of stairs at work and injured his low back and tailbone. He recovered from that injury in due course. By the time of the accident in question, he had no residual symptoms from the prior accidents. He was not suffering from any musculoskeletal injuries and had no complaints of back or neck pain.

[11] Prior to and after the accident, Mr. Yip suffered from conditions that have no bearing on this assessment, including gout and allergies. He also suffered from sleep apnea before the accident. He was referred to a specialist who recommended a tonsillectomy. After this was done in 2008, he says that he had no further issue with poor sleep patterns.

[12] The accident occurred during work hours, and Mr. Yip returned to work following the collision. He had a sore neck and back that night and saw his family doctor, Dr. Chang, the next day. Dr. Chang advised him to continue working so long as he could tolerate the discomfort. He was told to take Advil for the pain. He continued to work and returned to see Dr. Chang a week later and reported that he was feeling worse. He had pain in his neck, shoulders, low back, and was having difficulty sleeping. Dr. Chang referred him to physiotherapy. Between May 7 and the fall of 2010, he attended 12 sessions.

[13] Mr. Yip's pain symptoms improved throughout 2010. He saw Dr. Chang on a number of occasions and noted that his neck pain was affecting his sleep patterns. His inability to sleep made him irritable and short-tempered. In the summer, his neck pain caused him to wake up a couple of times per night. However, except for one day in late May, he was able to continue working.

[14] Mr. Yip saw Dr. Chang on January 6, 2011, at which time he reported that his low back pain had completely resolved. His neck pain and stiffness continued to bother him. He frequently woke at night with neck pain. At the time, he had a full range of motion in his neck. Dr. Chang advised him to resume all of his normal activities as tolerated.

[15] Dr. Chang saw Mr. Yip on June 11, 2012 for the purpose of preparing an updated medical-legal report. At that time, Mr. Yip reported that his neck and upper back symptoms had improved but that he still experienced occasional episodes of neck pain and sleep disturbance. He continued to take Advil from time to time.

[16] In his final report of June 15, 2012, Dr. Chang diagnosed the following injuries:

- (1) Improving neck/upper back strain – grade 2
- (2) Resolved low back strain – grade 1
- (3) Improving sleep disturbance with occasional waking during the night. This cause of his sleep disturbance is likely multi-factorial with his neck pain being one of the factors.

[17] Dr. Chang also opined that other than neck exercises and the occasional use of Ibuprofen, Mr. Yip would not require further active treatment. He indicated that Mr. Yip's prognosis was good and said that it may take a few more months before Mr. Yip's neck symptoms completely settled. He opined that Mr. Yip's sleep disturbance would improve when his neck pain settled.

[18] Mr. Yip was also seen by Dr. Underwood, a physiatrist, at the request of plaintiff's counsel. The opinions set out in her report of May 24, 2011 are consistent with Dr. Chang's views. She concludes that Mr. Yip's neck and back symptoms were caused by the accident. She is of the view that his prognosis is good if recommendations are followed.

[19] Mr. Yip provided additional evidence relevant to the assessment. He indicated that he does not have neck pain in the daytime; the problem only occurs at night. At the present time, he says he is still awakened by the neck pain most nights. He started to use the gym facility in his condo early in 2011. He began by using the treadmill 15 minutes at a time. This has increased. He had some difficulty golfing as a result of his neck pain in 2011 but is now back doing all of the activities he did prior to the accident.

[20] The defendant notes that Mr. Yip has not been referred to a neurologist, as he was prior to the accident, to deal with his sleep apnea. Further, he has not been referred to a psychologist or psychiatrist for any mood disturbances. Indeed, Mr. Yip was not referred to any specialists to deal with any of the injuries or symptoms suffered in the accident.

Plaintiff's Position

[21] The plaintiff argues that the range of damages is \$25,000 to \$60,000 depending on how long the pain persists. The plaintiff says that his neck pain and poor sleep patterns have persisted for two and a half years and are likely to continue for at least another half year. In these circumstances, he says the proper award for non-pecuniary damages is \$40,000. He relies on the following decisions: *Orrell v. Lynch*, 2008 BCSC 1696; *Pratt v. Barlow*, 2008 BCSC 1764; *Driscoll v. Desharnais*, 2009 BCSC 306; *Ryan v. Klakowich*, 2011 BCSC 835; *Guzman Gonzalez v. Dueck*, 2012 BCSC 792; *Connolly v. Cowie*, 2012 BCSC 242; *Scoffield v. Jentsch*, 2012 BCSC 1130; and the *Ludwig* decision.

Defendant's Position

[22] The defendant says that the appropriate range of damages is \$13,000 to \$18,000. He relies on the following decisions: *Rempel v. Froese and Froese*, 2006 BCPC 481; *Bentrott v. Weich and Murray*, 2008 BCPC 50; *Darji v. Regimbald*, 2006 BCSC 834; *Parmar v. Lahay*, 2011 BCSC 1628; and *Shen v. Buchanan*, 2006 BCSC 432.

Decision

[23] Mr. Yip has suffered a soft tissue injury which has caused him neck pain and sleep disturbance. While the duration of the neck symptoms is longer than his family physician expected, both experts are of the view that the symptoms will settle down in the near future. While the duration of the neck symptoms has exceeded expectations, the symptoms have not seriously affected his everyday life. After eight months, he was given the green light to carry on with his usual activities. With minor exceptions, he has been able to do that. In recent months, he has been left with

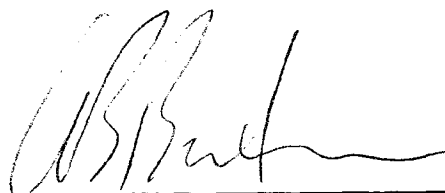
nagging sleep disturbance and neck pain which does not affect him in the daytime. He is now able to take part in all activities he enjoyed before the accident. I infer that his sleep disturbance has not been as severe as the sleep apnea he experienced before the accident as he has not been referred to a specialist for that problem.

[24] Of course, one of the significant features of this case is that Mr. Yip was able to continue his employment even when the pain symptoms were at their peak. Based on Mr. Yip's evidence, I do not conclude that he has been particularly stoic. In other words, I am of the view that he was able to continue with his work because the pain symptoms were not severe or disabling.

[25] In light of these findings, I conclude that the appropriate award for non-pecuniary damages is \$25,000. In arriving at this award, I have considered the authorities referred to by counsel. I have found them all to be instructive but will only comment on the *Ludwig* decision. Mr. Ludwig's injuries and symptoms have some similarity to those suffered by Mr. Yip. However, he had a broader array of symptoms which, on my reading of the decision, affected his enjoyment of life to a greater extent. Accordingly, I have awarded an amount to Mr. Yip which reflects the difference both in the nature and degree of the symptoms he has suffered and the impact those injuries have had on him.

[26] In addition to the award of non-pecuniary damages, I award \$334 for special damages plus interest on that amount, and subject to the submissions of counsel, I also award costs to Mr. Yip in accordance with Rule 15-1(15).

[27] That concludes my reasons.



The Honourable Mr. Justice Butler