1226/83
Prince George Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

PRINCE GEORGE, B.C.
24 March, 1986

BETWEEN:	)	
	)	
DOROTHY MAY MEISE and EVERT KARL MEISE,	)	
	)	
PLAINTIFFS	)	REASONS FOR
	)	
AND:	)	
	)	JUDGMENT OF
DELMAR PILON and CHARLES SMITH AND THE INSURANCE CORPORATION OF BRITISH COLUMBIA,	)	PERRY,L,J.S.C.
	)	
DEFENDANTS	)	

D. BYL, ESQ. appearing for the Plaintiffs,

P.J. ROGERS, ESQ., appearing for the Defendants

THE COURT: (oral) On July 6, 1983, the plaintiff Dorothy May Meise was a pedestrian on a rural highway in circumstances of some singularity. She alleges that she was struck and injured by a light blue van motor vehicle driven by the defendant Delmar

Pilon with the consent of its owner, the defendant Charles Smith and she claims damages against these defendants. The defendants deny liability.

The action by the co-plaintiff Evert Karl Meise was discontinued on opening by learned counsel for the plaintiff, without objection by counsel for the defendants and hence on consent. The claim against the Insurance Corporation of British Columbia was similarly discontinued: the identity of the owner and driver of the allegedly offending vehicle having been ascertained before trial.

A number of defences were pleaded by the defendants Pilon and Smith among them being paragraph 6, framed in the following terms; "any injuries sustained by the plaintiffs as aforsaid arose as a natural and forseeable consequence of their engaging in an illegal and wrongful act and that it would be contrary to public policy for the plaintiff or others of them to recover any damages arising therefrom. The particulars of the illegal and wrongful acts in which the plaintiffs were engaged as ... "I presume that should read "are" ... "(a) disturbing the peace, (b) assaulting members of the Pilon family." This defence was adhered to until the opening by learned counsel for the defendants on the second day of the three day trial when counsel advised the court that this defence was abandoned by the defendants.

The Meise family who were living at home on July 6, 1983 comprised the plaintiff Dorothy May Meise, now aged 45, her husband George Meise, 52 and their four sons, Brent then aged 21,

Evert, 19, Kevin, 15 and Wade, 12. They lived on a farm of 160 acres on Bendixon Road in or near the City of Prince George. Their driveway gives on to Bendixon Road which then goes 3/8ths of a mile east to a "T" intersection at Lund Road.

The Pilon home is 123 feet east of Lund Road. The Pilon family and the Meise family were unknown to each other at the time in issue.

At about 5:30 p.m. on July 6, 1983, following dinner, the Meise family planned to go to a community pasture to round up and treat their cows for pinkeye. They had loaded their grey pick-up truck with portable corrals for this purpose. The son Brent, however, left home after dinner to go for a ride on his dirt trail bike. He proceeded east down Bendixon Road to and beyond the Pilon house. He saw two men outside the Pilon home making threatening gestures to him. He turned around and went back in a westerly direction on Bendixon Road. On reaching home, he saw in the driveway of the Meise house a car and two men. These two men were throwing rocks as he was riding by on his trail bike. This evidence is confirmed by Dorothy and was not challenged on cross-examination. The only reasonable inference that is open on the evidence is that these two men were Russell Pilon and William Pilon who are brothers of the defendant Delmar Pilon, and that they were the same two men earlier seen by Brent Meise, that they had driven from the Pilon house to the Meise house during the interval while Brent was riding his trail bike and I so find.

Neither Russell nor Bill Pilon were called by the defenants

to give evidence. They were both present in the courtroom in the spectators gallery during the trial. Brent drove on in a westerly direction on Bendixon Road without going into the Meise house at that time. The two men left at about that time and I find,on the balance of probabilities, that they returned in their car back to the Pilon house. Shortly thereafter a telephone call was received at the Meise's. Mrs. Dorothy Meise, the plaintiff, answered the phone but the caller was heard only by Evert Meise on the downstairs phone. The male caller gave a message to this effect; "are you riding your bike on the road. If you are, I'll get you for riding it. I'll get you no matter what we have to do." Meanwhile Brent had turned around to travel on his bike on Bendixon Road. On reaching the Meise driveway, he found that the two men had gone. Brent then decided to walk towards the Pilon house. He testified that he did not know these men and wanted to find out who they were. He took with him a two foot stick. He did not reach the Pilon house. He was intercepted by his brother Evert about 125 yards west of that house. Evert told Brent of the telephone call. Brent testifies that Evert told him that the caller had said that they had guns. Evert had travelled to this spot in search of his brother on his ten speed bicycle.

At that point both Brent and Evert saw two men coming around the corner of a shed on the Pilon property. One of them was carrying a gun. A shot was fired. The Meise boys heard the shot but could not make out in which direction it was fired. Brent and Evert quickly took to their heels and ran home, leaving

Evert's bicycle behind in the ditch at the side of the road. When they got back home their father Mr. George Meise was loading the truck. He was angry with them for having delayed the trip to the community pasture. Their parents heard from them about the shot that had been fired and that Evert had left his bike down the road.

The whole family then got into their loaded pick-up truck. Four of them occupied the front bench seat. The father was driving, next to him was the mother Mrs. Meise, then Evert and then Brent next to the passenger side door. The two younger boys, Wade and Kevin,were in the open box in the back along with the portable corrals. Wade was behind his father and Kevin was behind Brent. Instead of going to the community pasture, George Meise decided to drive to the spot on Bendixon Road where Evert had left his bike and to retrieve it and for no other reason. It was not his intention to engage in a fight with the Pilons or any other persons. Meise carried no weapons with him of any description.

As I have earlier mentioned, the distance from Lund Road intersection to the Pilon driveway is 123 feet. This was measured by Mr. and Mrs. Meise after these events and is not in dispute. The place where the bike had been left to the Lund Road intersection is 300 feet.

Mr. Meise went past the spot where the bike was, drove on a further 300 feet, turned around and drove back to the location of the bike. Brent got out of the pick-up and loaded the bike on the back. But at that stage Mr and Mrs. Meise heard some

hollering and yelling. Mr. Meise says that he is hard of hearing and he decided to go back easterly towards the Pilon house to find out what was wanted and because he was somewhat skeptical of the story the boys earlier related about the shooting. This action on his part was probably imprudent but I am satisfied that such was his limited intentions at that time. I think this is borne out by the fact that instead of turning the pick-up around to head east, he backed the pick-up truck up in the manner in which a person backs up to talk to somebody from inside his vehicle. He backed up about 125 yards and stopped at a point a short distance west of the Pilon driveway. The front wheels on the driver's side was about a foot or two feet from and parallel to a ditch on the south side of Bendixon Road. The pick-up truck, having been backed up, was now parked on the left or wrong side of the road. Sofar as concerns space, however, which was left available, the evidence which I accept shows that the distance from the off side of the pick-up truck to the north ditch across the road was 22 feet. I accept the evidence of Mrs. Meise and Wade that there was ample space for two cars to pass through that gap. In other words, it was the width of two vehicles.

Mr. Meise rolled down his driver's side window in order to talk to the two men who were there. These men, as I find, were Russell Pilon and Bill Pillon. Before he could say a word, they immediately became abusive, aggresive and foul mouthed. One of the men said, "you're nothing but a g.d. asshole, your retard is over there. I would like to meet you downtown some night." Mr. Meise said, "There's no need, I live just up the road half a

mile." At the same time one of the Pillon brothers grabbed him roughly by the front of his shirt. The driver's door opened and Mr. Meise was pulled out of the vehicle. I find that these two men were yanking him by the shirt and flailing at him with their fists. Mr. Meise did not retaliate. About ten seconds later Brent Meise left the pick-up by the passenger door to go to the aid of his father. He ran towards the back of the Meise pick-up. About ten to fifteen seconds thereafter, Evert left the pick-up by the passenger door and he also went to the area of the back of the pick-up. This left only Mrs. Meise in the front seat. She also alit from the passenger side of the pick-up about a further ten or fifteen seconds after Everts departure. I find that each of them left the truck in turn because of concern which they felt arising from circumstances which were created by Russell and William Pilon. These circumstances have less bearing perhaps upon the issue of Delmar Pilon's negligence than on the alleged contibutory negligence of the plaintiff Dorothy Meise but they are intertwined with both issues.

The two younger boys, Kevin and Wade remained,throughout the circumstances to be related, in the open box at the back of the truck. This gave them a good opportunity to observe the events which gave rise to the claim of negligence. Additionally, they were not participants and would tend to be less distracted than Evert or Brent.

I was impressed by the manner in which Wade and Kevin gave evidence. I found them to be clear, careful, observant and truthful witnesses. The court's main concern was the facts

immediately surrounding the matter of the striking of Mrs. Meise by the defendant's van. In this regard I accept and chiefly rely upon the evidence of Mrs. Meise herself and the evidence of Kevin and Wade with regard as well to the evidence of Brent and Evert and to the circumstances later in which they were involved. Mr. George Meise was not in the position to observe the crucial events that occurred. One of the men left off harrassing George Meise and went around to the back of the truck to intercept Brent. I find that this man was Russell Pilon. He engaged in a tussle with Brent. Evert went to the back of the truck to assist Brent.

At about this time, the second Pilon brother apparently disengaged himself from George Meise. From his vantage point, Kevin saw this man run towards the Pilon garage and pick up a rifle from the grass. He saw that the man raised the gun to his waist and pointed it in the direction of Evert. Mrs. Meise also saw this through the window on the passenger side of the pick-up. At this time she heard some one holler, "Billy, don't shoot". From this evidence, which evidence I accept and in the absence of any evidence from these two men, I infer that the man with the gun was Bill Pilon and that the man who hollered was Russell Pilon. If Bill Pilon heard his brother, he paid no heed.

Evert's back was to him so I conclude that Evert was not then behind the pick-up. Bill Pilon fired at fairly close range. Mrs. Meise heard the shot. The evidence indicates that the gun was a .22 calibre rifle. The bullet struck Evert, it hit his right thumb. It appears that he then moved to a point behind the truck and there he fell to the ground. Mrs. Meise was naturally

concerned for her son. She testifies as follows: She stepped out of the pick-up truck by way of the passenger door to follow Evert. She walked towards the back of the pick-up and got to a point about one foot from the passenger side back corner of the truck. She had her back to east-bound traffic. She turned her body slightly north towards the middle of Bendixon Road. She went to take a step and at that instant she saw a blue blur and was struck in the left arm by the Pilon van. She fell to the road very close to the north or passenger side of the Meise pick-up. She heard no horn. She states that between her body and the north edge of the road - where there is a ditch - there was enough room for two cars to pass. She was wearing a white blouse with red and green swirls and a pale blue skirt. I accept her evidence that she was highly visible.

Kevin Meise testifies that he saw his mother hurrying along the side of the pick-up truck about one foot from it travelling east towards the back of the truck. He saw the van approaching when it was at a point by the front of the truck. No horn was sounded and he did not hear the truck. He saw this out of the corner of his eye. He could not estimate the speed of the van. At that stage his mother was one foot from the side of the parked pick-up truck. He says that at this point there was 20 feet between his mother and the narrow ditch. He saw the front passenger side corner of the van hit his mother on the left arm. She fell to the ground. She got up. It was clear that her arm was badly injured.

Wade Meise confirms this evidence in every essential

particular. Cross-examined he emphatically did not agree with defence counsel's suggestion that his mother had progressed to the back of the truck and had then moved out in order to follow Evert. Wade said that his mother was walking in a straight line one foot from the side of the pick-up truck.

After striking Mrs. Meise, the van proceeded further on down the road before it came to a stop. Mrs. Meise says that when she regained her feet she saw the van parked perhaps two, three hundred yards away, as it appeared to her. Mrs. Meise's left arm was hanging limp. About the time she was getting up, the Meise pick-up drove away. George Meise drove it with Kevin and Wade still in the back to depart the scene. When she stood up, Mrs. Meise saw the two Pilon men hitting Brent who was in the ditch. I find that one of them hit Brent over the head three or four times with the butt of the rifle. A rifle was produced but Brent could not positively identify it. The stock of the rifle was shattered. I find that either Russell or Bill Pilon did hit Brent with a rifle and with the results that I have described.

The defendant Delmar Pilon then appeared at the scene. It is at this stage that he is seen to enter the picture in person. He had walked from the point where he had parked his van. Mrs. Meise's left arm was hanging down limply. She was supporting it with her right hand. She had no doubt that her arm was broken. Mrs. Meise was overcome with alarm and hysteria at the sight of these men beating Brent and there was a lot of blood on Evert's hand. She was crying. She saw Delmar Pilon for the first time at this stage. She did not know who he was. She said, "can you

help us" He replied, "f--- off and go." Delmar Pilon got a rock a little larger than a baseball and was about to hit Brent with it. Mrs. Meise kicked at him and the rock fell to the ground. Brent, Evert and Mrs. Meise then made their way home.

The R.C.M.Police were called. Mrs. Meise was taken by police car to the Prince George Regional Hospital that evening. I find on the evidence of Kevin and Evert that Evert was also hit and knocked down by the van and suffered some bruises and scrapes. The details precisely of how this occurred were not clearly brought out. As earlier mentioned, Evert abandoned his claim for damages.

In relation to the present action, the evidence is not sufficiently clear to enable me to find that Evert was in plain sight of Delmar Pilon as he approached the scene, although I suspect that he was. The point was not referred to by either counsel during argument.

I turn now to the defendant Delmar Pilon's version. He is forty-five years of age and works as a log canter at a sawmill and was doing so on July 6, 1983. He had been working that day. At the end of work he was driving the blue van motor vehicle. He was alone. He was intending to go to the house of his uncle Charles Smith, the owner of the van, who also lives on Bendixon Road about 300 yards east of the Bill Pilon house. Delmar Pilon did not live in the Bill Pilon house at that time and still does not. He was driving east so the Meise pick-up truck was facing him. There was no on-coming traffic approaching him from the west and there was none behind him. He passed Lund Road. I find that from a point 9/10ths of a kilometer away, he had a

clear view in front of him as he proceeded east on Bendixon Road. That road is straight. There are no dips or hollows and no obstructions between the point where the Meise vehicle was parked facing the defendant in the defendant's lane and 9/10ths of a kilometer west. It was a bright sunny day. There is no evidence that the windshield of the blue van was dirty. Delmar Pilon testified that at Lund Road he was travelling between 40 and 50 miles per hour. He says that at that point he noticed a pick-up on Bendixon Road facing him in his lane. At this point in his evidence he said that this gravel road contained two distinct lanes or tracks. There is no evidence to confirm this. This was not put to any of the palintiff's witnesses on cross-examination. Mr. Rogers, learned counsel for the defendants, concedes this and did not pursue the matter. I am unable to find there were two distinct tracks.

On Examination in chief, Delmar Pilon did not say how far west he was from the pick-up when he first saw it. on cross-examination he was asked by Mr. Byl, 'you're going east on Bendixon, you could have seen the grey pick-up from 9/10ths of a kilometer.' His answer was "yes, if I had looked." He says that as he approached the truck he saw one person in the cab on the driver's side. He saw nobody in the box in the back and nobody on the roadway. He says that he figured that he would have to go around it on the wrong side and that he was watching for traffic. He gives no evidence that he saw any traffic. He says that he slowed down by putting the brake on. Since he did not say he meant the handbrake, I presume he intended to say and to

mean that he applied his brakes.

He said that as he drew even with the front end of the pick-up, which he describes as being two car lengths from it, he saw somebody get into the passenger side of the pick-up. He said, and I quote; "as I see, he goes in and shuts the door. I proceed by. I move to the other track leaving enough room for me to go by and not go into the ditch. As I go by, I was looking ahead for on-coming traffic. Just as I was going to pass on the passenger side, two people jumped in front of me with both hands raised in the air. They seemed to pop up from behind the pick-up. Before that I saw nobody. It was a woman and a man. These are the only two people I saw on the road. They were abreast of each other with their hands up moving towards the van. When I saw them, I was going 25 miles per hour, maybe faster or slower. I heard something like a hit or kick or thud against the van on the passenger side somewhere by the passenger door."

He states that he stopped abruptly after going about 20 feet and came to rest in the ditch right by his brother's drive-way. He then saw the pick-up leave. He walked back to where the people were and saw his brothers and Mrs. Meise and Evert standing up fighting in the ditch. He says he pushed in between them and tried to stop them. He says that he was pretty rough in doing so. Evert got up. Mrs. Meise talked to Pilon. She asked him to be a witness to the fight, according to him. He replied that he could not do this. He says that she was doing alot of screaming and hollering. He believes that he used some obscenities to her but that she was using them to him also.

There is no evidence that he said to her, "you suddenly popped out from behind that truck," or words to that effect, which I would expect him to do in light of the evidence he gave at this trial as to what he claimed to have seen.

The Meises then left. He says that he was not aware of any bad feelings between his brothers and the Meises.

On Cross-examination he admitted, after answers he gave on discovery were put to him and after some evasion,that as he drove by the grey pick-up, he slowed down to 30 miles per hour or he also put it this way, less than 45 miles per hour. When learned counsel for the plaintiffs, Mr. Byl, asked him why he did not see anybody coming out of the pick-up truck, he replied, "maybe I wasn't paying no attention." He also said,for the first time, that there were trees and bush there. Yet he also admitted on cross-examination that there was a clear view for half a mile. He denied that he took a few kicks at the Meise boy in the ditch. He denied seeing Mrs. Meise's arm hanging down and appearing to be broken. He would not admit that it was impossible for him,as it was put to him by Mr. Byl, to stop his van in 20 feet at a speed of 30 miles per hour. He says that he recognized the gun as his brother Bills but claims he did not see it until later on in Bill's house. And at that time the stock was indeed broken. But Delmar Pilon said that he did not know how it came to be broken. Pilon's account of the man and the woman walking abreast coming towards him with their hands up was not put to any of the plaintiffs' witnesses on cross-examination. I reject as totally untrue his story that the woman and a man suddenly emerged from

behind the pick-up with their hands up and that they moved side by side towards the van. If that were true, it is impossible to understand how he could have avoided running into the front of the bodies of these two people since he does not say that he took any evasive action to avoid hitting them.

In addition to matters I have already mentioned, I find that the following portions of his testimony are untrue; (1) that there were trees and bush which obscured his vision, (2) that there was one person in the cab on the driver's side when he approached the pick-up truck, (3) that there was nobody on the road at the time he said, (4) that he saw somebody get in the passenger side of the pick-up and shut the door, (5) that he was going 25 miles per hour when he saw persons on the road. I find that he was going at least 30 miles per hour at all relevant times. (6) that Mrs. Meise asked him to be a witness to the fight, (7) that he did not kick one of the Meise boys who was in the ditch. On the other hand he made the admissions,that I have mentioned,during cross-examination as to his speed which I take into account.

I have no hesitation in finding that the defendant Delmar Pilon was negligent in failing to keep a proper or any look out; the pick-up truck was within his range of vision for about half a mile at the time the movement of the four Meises out of the truck began. The sequence of events in this regard, as related by the plaintiffs' witnesses, was not challenged. There were people around and about the pick-up to be seen by Delmar Pilon. I find that he knew or ought to have known that there were

pedestrians in the vicinity of the pick-up truck. The evidence shows that as he was driving east, he had available to him a full minute during which he could have seen the Meises circling around the truck had he been paying attention. In my view he did see them but drove on heedless of their presence.

This brings us to the question of his speed. I find that when he passed the truck he did so at a speed of at least 30 miles per hour. This was too fast under the circumstances. The crucial fact in this connection is that he drove by the pick-up within one foot of its north side. I accept the evidence of Mrs. Meise and her witnesses as to how she came to be struck. On this evidence it is clear that the defendant Pilon saw or should have seen Mrs. Meise walking along side the pick-up towards the rear. She was highly visible. He had ample time to avoid hitting her. There was adequate room on his left to pass by her. If there was not, he should have stopped. He does not say that he could not have avoided hitting her. His failure to take evasive action constitutes common-law negligence. He was also in violation of s. 183 (a) of the Motor Vehicle Act R.S.B.C.1979, Chapter 288 which provides that the driver of a motor vehicle shall exercise due care to avoid colliding with a pedestrian who was on the highway. He failed to give warning of his approach when it was necessary to do so, contrary to s. 183 (c) of the Motor Vehicle Act.

Additionally, in connection with these findings, I draw an adverse inference,as I am invited to do by Mr. Byl, from the failure of the defendants to call Russell and Bill Pilon as

witnesses. The inference is that these two witnesses would have supported the evidence given by the Meises and would not have confirmed the evidence of Delmar Pilon. Indeed learned counsel for the defendants invite the court to draw this inference.

It only remains to consider whether the defendants have established to the degree required that the plaintiff was guilty of contributory negligence as alleged by the defendants. On this issue, Mr. Rogers first undertakes to base an argument on the evidence of Pilon that two people suddenly popped out from behind the truck. I think it is fair for me to say the argument on this aspect of his evidence was given somewhat faintly. The theory must be, although not so expressed, that the driver, Pilon,was faced with a sudden emergency because a pedestrian or pedestrians suddenly emerged from nowhere to confront the driver. If those were the facts, I agree that an argument based upon the well known case of Engel v. Poss, 1958 16 DLR 2d, p430, Court of Appeal of Saskatchewan may be available.

In the present case, however, there is no foundation for the application of the principles enunciated in that case because I do not believe Pilon that Mrs. Meise did suddenly emerge from behind the pick-up or that two people were on the road as he stated. Defendant's counsel next argues that Mrs. Meise took half a step into the centre of the road and was hence further away from the pick-up than she was willing to say. Mr. Rogers said that she moved out to the middle of the road and was not concerning herself with traffic and failed to have regard for her own safety. This argument must be based upon acceptance of Mrs. Meise's

evidence that she was walking towards the back of the truck. The argument then, however, proceeds and is based on something for which I find there is no foundation in the evidence. I find that she did not conduct herself in the manner stated by Mr. Rogers. Learned counsel for the defendants did not argue that there was a legal duty on Mrs. Meise to look behind her while she was walking along beside the pick-up truck nor did he refer to any authorities on this point. I find that she left the pick-up vehicle and proceeded to the back of the truck in dramatic circumstances. She had seen a rifle. She had heard a shot. Her son had been hit. She was under the stress of circumstances created by the Pilons. Nothing likely would have stopped her in going to her son's aid. She had not intended to get out of the vehicle until these things happened. She walked to within a foot of the pick-up leaving 22 feet to her left for any vehicle approaching from the west to get by her. I agree with Mr. Byl that she acted reasonably in the circumstances with due regard for her own safety. The onus of proof on this issue rests upon the defendants.

In the circumstances I hold that even if it could be said, which I do not find, that Mrs. Miese was prima facie negligent in not looking behind her upon alighting from the pick-up or in walking along, a reasonable explanation for her conduct can be found in the attendant circumstances. Further that if it can be said that she ought to have looked back, a clear line can be drawn between any such failure and the negligence of the defendant Pilon who was the driver of a

vehicle on a clear day, in broad daylight, on a straight flat stretch of roadway with ample room to pass. I find no contributory negligence on the part of the plaintiff.

I turn now to the issue of damages.

Mrs. Miese was admitted to hospital for a displaced fracture to her left ulna, that is, her forearm. She was in a great deal of pain due to the injury and of some pain to both her knees for a few days. She underwent surgery the following day by way of closed reduction done by Doctor Crous. She was in hospital following that surgery for three days. Because of the bizarre events that had led to her injury, she was in great mental stress and anxiety over what might yet happen to her family at the hands of the Pilons. On the second day of her hospitalization, a full length cast was put on her arm. She took tylenol 3 for relief of her pain. Later, from time to time, she went through a series of new casts. On July 19th, she was in hospital as an out-patient for examination of her arm. She attended the hospital again on August 9th, on August 30th and on September 20th for X-rays as the arm was not setting properly. On October 17, 1983, she underwent further surgery. This was a bone graft operation which was taken from her hip for her arm. She testified that thiswas a terribly painful procedure. She was in hospital for four days after which time the pain diminished as the result of her taking pain medication and having injections for that purpose. There was bruising of her hip as a consequence of the graft. This went away in about a month. The operation has left a permanent scar of 4 inches on her hip and there is also a 4 inch

scar and a deformity on her arm. The arm was shown to me at trial and I observed the scar and the slight but visible deformity to her arm. It is a kind of depression in the arm. She has experienced some loss of strength to her arm up to the present time.

On October 25, 1983 she returned to hospital to have staples removed from her hip and for X-rays and again on December 6, 1983, for X-rays for removal of a splint which had been put in place of a cast. Between July 6, 1983 and January, 1984, her casts were changed five or six times. She last wore a cast on February 8, 1984. On that date Doctor Crous found that she was experiencing pain at the fractured site and she was booked for further surgery. On May 10th, she was admitted to hospital for further surgery to remove some callus formation and there was a bony spur in her arm. This had caused her pain and discomfort between February and May before it was removed. She was two or three weeks recovering from this surgery.

By January, 1984, she was able to resume some of her domestic and farm duties. At the present time her arm is free from pain. Her only problem is that she has less strength in her arm than she formerly had. I find she is not exaggerating that at all and it is not what would be called a serious matter.

Mrs. Meise had been employed as a part-time worker at Ruff's Greenhouse. Her loss of wages from this source of employment is admitted at $2,580.00. Certain special damages were admitted at $722.72.

Mrs. Meise was a prodigious worker and a very busy woman.

The Meises have a farm of 160 deeded acres and 320 leased acres. They have 30 head of cattle, 15 to 20 pigs, 60 sheep, 3 horses and chickens and geese. Mr. Meise is a steadily employed millwright. Much of the farm work and all the domestic chores, including the care of six sons and her husband, fell to Mrs. Meise. She drove tractor, helped in the hayfield and in the summer, to use Mr. Meise's words, "she worked as hard as any man."

As a result of the accident, she was disabled from doing any of her normal work for a period of about one year. As a consequence she was obliged to obtain domestic help and there was a relatively large claim for reimbursement of $11,882.00 for payments made to the help that was engaged over that period of time. The claim is fully supported by documentary evidence and by evidence of the witnesses who were paid. There is no doubt that the work was actually done by these witnesses, Mrs. Ivy Bruvold and Mrs. Corine Dingwall and that there were some transportation expenses for Denise Meise and Edith Johnson. I also find that the work that was done was necessary.

Two objections to this claim of $11,882.00 were raised by Mr. Rogers; the first is that Miss Dingwall was not a professional or experienced housekeeper. I am not sure that it is required that a person be a professional housekeeper. I am satisfied on the evidence of Miss Dingwall that she worked very hard and very long hours and performed her tasks with satisfaction to all concerned. Her rates were reasonable. I am not able to give effect to this objection. Secondly, it was argued that the sons ought to have been able to do some,at least, of the work

done by Mrs. Bruvold and Miss Dingwall. This matter was not explored in any way during cross-examination and I do not find evidence to support the objection.

The plaintiff also claims exemplary damages against the defendant Delmar Pilon. Mr. Byl submits that the conduct of Pilon in passing a stationary truck at at least 30 miles per hour within a foot without souding the horn or giving any notice of his presence on the highway when he must have known that pedestrians would be at that place constitutes malicious and reckless behavior warranting an award of exemplary damages.

Counsel relies upon the case of Robitaille v. the Vancouver Hockey Club Limited, 30 BCLR p 268. He refers to a passage from the judgment of the Court of Appeal found at page 308. In my view, the facts of that case are significantly different than those presented here. I do not intend to fully canvass the facts in Robitaille. I think it is enough to say that the trial judge found that the defendant club had exerted pressure, abuse and threats upon the plaintiff. There was a callous disregard for the plaintiffs feelings and well being stretched over a considerable period of time. There was evidence that the management of the hockey club had acted contrary to medical opinion to the detriment of the plaintiff. I am not able to equate the conduct in that case to that of the conduct in the present case which was in fact a simple though highly unusual running down case.

Now, if it had been established that the defendants had combined with his brothers to act towards the Meises as they did prior to the accident, this might enhance the plaintiff's cause

in this respect but it is not submitted here that the defendant Pilon deliberately and unconscionably ran down Mrs. Meise. In my view exemplary damages are not warranted and the claim under this head is disallowed.

In any event, that judgment I think must prevail because, as Mr. Rogers has pointed out, the claim for exemplary damages was not pleaded and he relies on the case of Nichols v. Guill, 1983 44BCLR p. 185.

Using the comparitive approach by reference to comparable cases to which I was referred, I award general damages to the plaintiff Dorothy Meise for pain and suffering of $12,500.00. I award the following damages additionally; for past wage loss, $2,580.00; special damages for housekeeping, $11,882.00; other agreed special damages, $722.72. This brings the total amount to $27,684.72. The plaintiff also requests solicitor/client costs on the grounds that the defendants alleged in their Statement of Defence that the plaintiff had been guilty of assault and of disturbing the peace but have abandoned this defence at trial. This was the paragraph which I earlier referred to in this judgment.

The plaintiff referred me to the case of Gaspari v. Creichtn Holdings, 1984 52 BCLR 30 and Larson v. Prince George Golf and Country Club which was an unreported decision of my brother the Honourable Judge Hardinge, dated December 22, 1983, No. 0803/83, Prince George Registry.

Both those cases involved pleaded allegations of a criminal nature that were not abandoned until trial or not proved.

These were allegations of fraud in the first case and in the second case,it appears, of theft by an employee. These are charges which reflect upon and strike at the integrity and honesty of the litigant which by their very nature could seriously affect that litigant in his or her ability to make a living in any occupation in which the elementsof trust and truthfulness are involved. I think there is a difference between allegations of this description and an allegation of disturbing the peace and assault, neither of which carry any moral stigma. It has been held that except in rare and unusual cases, the tariff providing for party and party costs should not be departed from. In this connection I might observe that the new tariff of party and party costs will come into effect on April 1, 1985. The material date in this regard is the date of taxation regardless of the date of the order awarding costs at its filing.

It seems to me that in view of the higher scale that has now become available, that applications of this kind for solicitor/client costs or costs on a higher scale will now fall to be considered in light of the new tariff.

For the foregoing reasons, I will decline respectfully to award solicitor/client costs as asked.

In summary, the plaintiff will have judgment against the defendants jointly and severally for $27,694.72 with court order interest thereon, at the registrar's rates prevailing from time to time.

Subject to what counsel may say, the items of $2,580.00, $11,882.00 and $722.72 will be regarded as special damages to be

calculated under the appropiate section of the Court Order Interest Act. The plaintiff will have her party and party costs of this action. Is there anything counsel wish to say about my comments in regard to the special damages? Mr. Byl?

MR. BYL: No, Your Honour.

THE COURT: Mr. Rogers?

MR. ROGERS: Not on special damages, Your Honour. The only question that I might have is that judgment was awarded against the defendants jointly and severally and I would just like to make it clear that is not a judgment against I.C.B.C. because the claim against I.C.B.C. was discontinued.

THE COURT: I referred to that at the beginning of my judgment. I am referring to the defendant Delmar Pilon and the defendant Smith.

MR.ROGERS: Thank you, Your Honour.

THE REGISTRAR: Your Honour, Is there any disposition with respect to the rifle?

THE COURT: The rifle unfortunately was not entered as an exhibit, it remains as Exhibit A, even though we did have evidence of it, it was identified at a later stage in the trial through Pilon himself. Unless counsel have something to say, sofar as I am concerned, that rifle could be returned to Bill Pilon or Russell Pilon. Mr. Byl?

MR. BYL: I have no concerns with that.

THE COURT: Mr. Rogers?

MR. ROGERS: No concerns, Your Honour.

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