

1 IN THE SUPREME COURT OF BRITISH COLUMBIA

2 (Before the Honourable Mr. Justice Dohm)

3 No. 24496

Terrace, B.C.

4 Prince George Registry

12 January 1994

5  
6 BETWEEN:

7 ROBERT BRUCE JACKSON )

8 Plaintiff )

9 AND:

10 COOPER PHILLIP GUNANOOT )

11 Defendant )

REASONS FOR JUDGMENT

OF

THE HONOURABLE

MR. JUSTICE DOHM

12  
13 D. BYL, Esq.

appearing for the Plaintiff

14 G. CRAMPTON, Esq.

appearing for the Defendant

15  
16 THE COURT: (Oral) The plaintiff, a 45-year-old Gitksan  
17 artist, claims damages for injuries he received on  
18 July 22nd, 1992 when the vehicle he was driving near  
19 Hazelton came into collision with a logging truck that  
20 he was passing, the collision occurring as a result of  
21 the defendant, Cooper Gunanoot, driving his vehicle  
22 out onto the highway where the plaintiff's vehicle  
23 and the logging truck were located. To avoid a head-on  
24 collision with Gunanoot's vehicle, the plaintiff turned  
25 right into the moving logging truck and thereafter into  
26 a ditch located on the left side of the highway where  
27 his vehicle came to rest.



1 Brothers Co. and my mother was a net woman (the  
2 best!) who hung nets for the same company for  
3 many years.

4 'During that time when I was able to visit  
5 Prince Rupert with my parents, I often admired the  
6 large Haida totems that were situated at the CN Park  
7 and also at the Salvation Army Park. I often dreamed  
8 of someday carving one of those majestic poles; at  
9 that age, however, it was just a dream - which over  
10 the years became reality.

11 'As children we made our own toys which we carved  
12 out of wood. That was the beginning of all things.  
13 From there, imagination and skill developed into this  
14 day of 1992.'

15 Robert took his first art training in Gitanmaax  
16 (or 'Ksan) School of Northwest Coast Art in Hazelton,  
17 B.C. in 1973. He has gone on to participate in group  
18 exhibitions throughout Canada and around the world.  
19 Major exhibits include Canadian Indian Art '74 at the  
20 Royal Ontario Museum (Toronto, Canada), Art of the  
21 Salmon People at the Museum of Northern B.C. (Prince  
22 Rupert, British Columbia), 'The Legacy: Continuing  
23 Traditions of Northwest Coast Indian Art', Edinburgh  
24 International Festival, (Edinburgh Scotland),  
25 Contemporary Indian and Inuit Art, Art of Canada,  
26 organized by the Department of Indian and Northern  
27 Affairs which toured the United States and Canada and

1                   exhibitions at the Inuit Art Gallery in Vancouver,  
2                   British Columbia.

3                   His pieces have been collected by the Department  
4                   of Indian Affairs and Northern Development (Ottawa,  
5                   Canada), the Museum of Civilization (Ottawa, Canada)  
6                   and the Museum of Northern B.C. (Prince Rupert, British  
7                   Columbia). He also has works in private collections in  
8                   Germany, Holland, Australia, Mexico, the United States,  
9                   Canada and in the Buckingham Palace in Great Britain."

10                  In addition to the biographical sketch is the fact that  
11                  the plaintiff has done work for Her Majesty the Queen  
12                  Elizabeth II and also for former Prime Minister Pierre  
13                  Trudeau.

14                  I think that there is little doubt that the plaintiff  
15                  is an accomplished artist who, as a result of this accident,  
16                  has been unable to carry on in his work, and this inability  
17                  I think has not only affected him financially, but also  
18                  psychologically. That said, I think the evidence is clear  
19                  that he is anxious to return to his work as an artist.  
20                  I do not think it can be said that he has enjoyed the last  
21                  sixteen or so months of his life.

22                  The complaints made by the plaintiff are the usual for  
23                  this type of injury; headaches, stiffness, sore back, sore  
24                  neck. There is no doubt on the evidence that, even though  
25                  he was wearing a seat-belt, the resultant collisions, both  
26                  with the logging truck and the ditch, would have provided a  
27                  golden opportunity for the plaintiff to have received the

1 injury which he speaks about and which is confirmed by the  
2 medical evidence here.

3 The plaintiff says that these complaints have  
4 persisted, that he takes Tylenol on a regular basis for his  
5 headaches, that he has been unable, by reason of his  
6 soreness and pain, to participate in his work as an artist  
7 at all in the first six months after the accident and there-  
8 after on an on-again off-again basis.

9 The plaintiff says that the difficulties he has  
10 incurred since the accident are ongoing, but that there has  
11 been improvement in the last few months. I do not intend  
12 to review his evidence in any detail in that regard. I  
13 think it is suffice to use the medical evidence of Dr. Dunne  
14 particularly and his letter dated October 28th, 1993, page 4  
15 until the end of that letter:

16 "Systemic review is unremarkable. He used to smoke,  
17 but quit, doesn't drink alcohol, has no allergies. He  
18 did initially take Ibuprofen and now takes Tylenol  
19 on occasion.

20 PHYSICAL EXAMINATION: On examination, he was a well-  
21 built man. His skin was normal, lung fields were  
22 clear, heart sounds were normal and his blood pressure  
23 was 130/80. He had good neck musculature and had full  
24 range of movement of his neck, except for lateral  
25 flexion, which was limited by about 25 degrees to the  
26 left and to the right. He had tenderness over the left  
27 paravertebral muscles and the left rhomboid and

1 trapezius trigger points. He had pain on movement  
2 against resistance. His forearms were normal and arms  
3 were normal. He had full range of movement of his  
4 shoulders. There was no muscle wasting, no sensory  
5 deficits and the reflexes were present, his grip was  
6 normal. He was able to bend over and touch his toes,  
7 but it was painful. He had pain on straightening his  
8 back and on hyperextending it. He had good lateral  
9 flexion and rotation and had no muscle weakness, no  
10 radicular features and no muscle wasting.

11 IMPRESSION: MULTIPLE SOFT TISSUE INJURIES - POST  
12 M.V.A.

13 His X-rays didn't come today, but the X-ray report  
14 suggests no significant abnormality. He has evidence  
15 still of limited range of movement of his neck and some  
16 trigger points, suggesting a regional myofascial pain  
17 syndrome. He also has some stiffness and pain in his  
18 back on flexion and extension.

19 I believe all of these to be mechanical as there is no  
20 underlying bony or neurological injury.

21 It is about a year since his accident now and it was  
22 a fairly high impact injury and it is not unusual  
23 for the symptoms to last this long. He is showing  
24 some degree of chronicity because of the myofascial  
25 pain involvement.

26 I think if he goes on a reconditioning program over  
27 the next three to four months, this should

1 significantly improve the function of his neck and  
2 back and should improve his muscle strength and  
3 therefore diminish his pain and probably diminish the  
4 number of headaches he is getting.

5 I have given him a set of exercises to do for his neck  
6 and he knows the ones to do for his back. If he has  
7 trouble with these, however, he should re-do them  
8 under the auspices of the physiotherapist in Smithers.  
9 I would expect him to be significantly improved and  
10 eventually relatively asymptomatic in another three to  
11 four months if he follows this program and that he  
12 should have no long-term sequelae to his injury."

13 During the trial, the plaintiff not only described, but  
14 demonstrated how he carried on some of his work. His work  
15 is that of a wood carver and an engraver and manufacturer  
16 of jewellery, both in silver and in gold. Looking at the  
17 work which he has done in the past, at least in part, there  
18 is no doubt that his work requires dexterity and, above all  
19 I think, concentration and the physical strength to carry  
20 the work out. All of those characteristics are necessary,  
21 and indeed there are others, but so far as these reasons are  
22 concerned, those three characteristics are of prime  
23 importance.

24 As I said, for the first six months after the accident,  
25 the plaintiff was unable to participate in any of his  
26 profession and thereafter from time to time as he felt able  
27 to do so. Work which would have taken perhaps a day before

1 the accident took him four or five days after the accident  
2 to complete.

3 The plaintiff, I think, must be free of pain in his  
4 back and neck and he must have the strength and muscle  
5 power to carry out his work effectively. He has been robbed  
6 of those features by reason of the accident and it is for  
7 this reason that perhaps this plaintiff has suffered some-  
8 what more than many others by reason of the soft tissue  
9 injury, which I would place at mild to moderate. In order  
10 for the plaintiff to do his work effectively, it is, I  
11 think, necessary for him to be able to concentrate. I  
12 think that characteristic by itself has been missing and  
13 one can understand why. Headaches, pain in the neck and  
14 back can be, and no doubt were and continue to be,  
15 debilitating so far as the plaintiff's ability to perform  
16 his artistry is concerned.

17 The plaintiff has little faith in the medical  
18 fraternity. It stems from something which occurred in the  
19 family to his brother involving a doctor. It is clear here  
20 with the lack of the large number of medical reports which  
21 we sometimes see in these cases, plain and simple, the  
22 plaintiff did not go to doctors very often as a result of  
23 this accident.

24 Dr. Dunne's letter, from which I have quoted earlier,  
25 I think says all that can be said about the plaintiff and  
26 his past and future as a result of this accident.

27 I do not question the plaintiff's motives in perhaps



1 not following precisely the medical advice he received, but  
2 I think to some extent it poses a difficulty for me in being  
3 able to accurately assess portions of his claim, and I  
4 think this will be clear shortly.

5 So far as his general damages is concerned, I think  
6 that this case falls in the category of somewhere between  
7 \$20,000.00 and \$25,000.00 and I fix the amount at  
8 \$22,500.00. The reason that I am assessing it at that  
9 point and not something lower -- and I had in mind somewhere  
10 around \$18,000.00 I think as I heard the evidence -- is  
11 because of the possibility Dr. Dunne raises in his letter  
12 when he speaks of the plaintiff showing a degree of  
13 chronicity because of the myofascial pain involved. This  
14 factor alone I think distinguishes this case from many  
15 others and I fix general damages at \$22,500.00.

16 So far as the loss of income from his profession is  
17 concerned, I think the evidence would support a finding  
18 that the plaintiff's net income from his work as an  
19 artist is somewhere around \$2,000.00 per month. I  
20 recognize that his income has fluctuated, but that is  
21 inherent in his work. There is certainly no evidence to  
22 indicate that the \$2,000.00 figure is not a safe one and  
23 a fair one.

24 Associated with this portion of the claim is the  
25 plaintiff's allegation that he lost \$10,000.00 as a result  
26 of his inability to participate in the annual fishing  
27 which he proposed to undertake on behalf of his family in

1 the Gitksan tribe. Unquestionably, the plaintiff made  
2 preparations in July and August to participate in the  
3 fishing activity. Indeed, as I have already said, he was  
4 on his way to a meeting involved in that activity on the  
5 day of the accident. I think the preparations which he  
6 made clearly show that this was not to be a flash in the  
7 pan, that indeed he was serious about involving himself  
8 and his immediate family in the activity. Steps were  
9 taken and, but for some three to four days work, he was  
10 ready, as were his employees, for the fish.

11 I do not intend to quarrel with the figure produced  
12 by the plaintiff that his loss in 1992, during July and  
13 August, was \$10,000.00. I allow that portion of the claim.  
14 I note, though, that the activity took place, not over one  
15 month, but over a period of two months and therefore during  
16 July and August he would not have been able to participate  
17 in his usual work of carving and engraving and manufacturing  
18 jewellery.

19 So far as the season in 1993 is concerned, I have some  
20 real difficulties. I do not think it can be said from the  
21 evidence that the plaintiff was as prepared in 1993, and  
22 by that I mean this: there is no evidence -- indeed the  
23 evidence is to the contrary -- that the plaintiff took  
24 any steps to participate in the fishing activity. It is  
25 not enough for him to say, "I was too sick to do so," or  
26 "I did not have the strength to do so."

27 It seems to me in a claim of this nature that he, as a

1 minimum, ought to have tried it. He says he did not and I  
2 think that has to be held against him, not to the point  
3 where I would wipe out the opportunity to make profit from  
4 the activity, but to lessen it by 50 percent. I fix his  
5 loss for his inability to fish in 1993 at \$5,000.00, and I  
6 think, with respect, that is being generous on the evidence.

7 With respect to the loss of income, I would provide for  
8 a loss in the months of September to December of 1992, for  
9 the months of January 1993 to June 1993 and for the months  
10 of September 1993 to December 1993 at \$2,000.00 per month.

11 With respect to the future and determining the risk  
12 and possibility of a continued problem for the plaintiff,  
13 I am prepared to provide for a period of six months. It  
14 is hoped during that time that the plaintiff will  
15 take greater steps to rehabilitate himself and to use that  
16 time to get himself more involved in his artistry. The  
17 year suggested by his counsel is, I think, excessive in  
18 the circumstances, having in mind that the plaintiff  
19 perhaps did not take all the steps that were reasonably  
20 required of him in the past sixteen or so months to  
21 rehabilitate himself so that he could carry on, on a  
22 full-time basis, with his profession.

23 I understand that it is not an easy process, but I  
24 think if the plaintiff uses the next six months to ease  
25 himself back into his profession, that at the end of June of  
26 this year he ought to be back to his position prior to the  
27 accident and to a position that he himself wants to be at.

1 Special damages are allowed at \$1,024.00 and costs  
2 will be on a scale 3.

3 I want to make one other comment, and this is directed  
4 at Mr. Jackson, that your counsel did an exceedingly good  
5 job in this case. He was very thorough and no criticism  
6 can be levelled at him for the figures which I have  
7 arrived at. Those are my problem. But so far as presenting  
8 the case, it has been a long time since I have had one  
9 presented as well.

10  
11  
12  
13  
14