20010420
Docket: SC09478
Registry: Prince George

IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment
Mr. Justice R.M.P. Paris
April 20, 2001

BETWEEN:

OLGA SIDORENKO

PLAINTIFF

AND:

REINHARD KAHLKE and ELAINE INGRID KAHLKE

DEFENDANTS

Counsel for the Plaintiff: D. Byl/M. MacDonald

Counsel for the Defendants: A. Gosseltine

[1] **THE COURT:** This is a claim for damages for injuries sustained in a motor vehicle accident on September 11th, 1999. The plaintiff was a front seat passenger. Her vehicle, a Mustang, was rear ended by the defendant's vehicle, a van. There was considerable damage to the front end of the van. The plaintiff's boyfriend, who was with her at the time and driving, described the plaintiff's head as being whipped forwards like a snake, and he feared at the time that she

might have broken her neck. He said she was incoherent after the impact. Her neck was stabilized by ambulance attendants and she was taken to hospital, and she continued to be incoherent on the way to the hospital. X-rays were negative.

[2] In the event, there was nothing remarkable about the plaintiff's injuries, in the sense that they were typical whiplash injuries. She had a sore neck and shoulder muscles, and some headaches for a few weeks. She also had pain down into her mid-back area. The pain in that area has continued until the present time, although it is now on an intermittent basis. It is now approximately one and a half years after the accident.

[3] The plaintiff was a hairdresser at the time of the accident. She missed work the day after the accident. Thereafter, she worked steadily, except that she maintains that she had to take some time off from time to time because of discomfort and pain. Her coworkers say they never heard her complain of pain or discomfort from the accident, and were not aware of her taking time off because of her injuries. Her employer described her as a very hard worker, one of the best workers she ever had.

[4] The only medical evidence was that of her family physician, who treated her for the injuries. He said that in

his opinion her symptoms were genuine, and she was not malingering or exaggerating. For example, on his last examination of her, in October 2000, he still identified tenderness in her mid-back area. He said that because her symptoms still persist, at least to some degree, her prognosis is guarded.

[5] A failure to mitigate defence is not argued, but counsel for the defendants suggests that the plaintiff's failure to pursue physiotherapy and the other treatment modalities that the doctor recommended indicate that her symptoms cannot have been as severe as she makes out. However, her physician, Dr. Bond, points out that the object of those treatments is mainly to get people active and back to work as soon as possible, because that, in the long run, is the most helpful thing for recovery from these types of injuries, and she did just that.

[6] Although pleaded, a seat belt defence was not argued, and indeed I would not on the evidence have been able to find it established.

[7] A surveillance tape of the plaintiff on February the 3rd, 2001, was tendered. It showed the plaintiff at a car wash washing her car, inside and out, The whole process taking close to an hour. At one point she put her hands near the small of her back in a gesture indicating some discomfort.

Unfortunately, from the defendant's point of view, as with so many of these kinds of tapes, I do not find it to be of much help. That is because, firstly, the discomfort from these kinds of injuries in these cases, and, incidentally, as described by the plaintiff, does not remain constant, but becomes, after a while, intermittent. A tape like this is a snapshot. Because she was doing quite well on this particular day does not necessarily mean that she did not experience discomfort at other times. There is also the simple fact that most people with these kinds of injuries, and certainly a person with the backbone of the plaintiff, try to get on with their lives the best they can, notwithstanding their discomfort and notwithstanding their pending litigation. In sum, I do not find the images on the tape inconsistent with the plaintiff's description of her symptoms.

[8] The defence also argues that the evidence of the plaintiff's coworkers that she never complained to any extent about her injuries indicates her symptoms are not as severe as alleged. Again, however, that is also consistent with getting on as best she could. Furthermore, I cannot dismiss out of hand, without very good reason, the sworn evidence of her, her boyfriend, and of the physician who treated her.

[9] Another issue was raised. It was suggested that the evidence establishes that after the plaintiff moved to Vancouver in the summer of 2000 she became an exotic dancer, Although there is no direct, that is visual, evidence of that fact, and that therefore her symptoms cannot be as severe as she claims. The plaintiff adamantly denies that she is an exotic dancer, although she admits that she did it on one occasion at a private party.

[10] I find that I do not have to resolve the issue because, in my view, even if she is, it is virtually insignificant in the circumstances of this case. Firstly, I cannot say that being an exotic dancer is inconsistent with her description of her present symptoms, which, after all, are not severe. Secondly, the fact that if she has been untruthful about the issue, <u>if she has been</u>, and I emphasize I make no finding on the subject, would not so taint her credibility generally to the extent of making her testimony about her condition totally unreliable, particularly when combined with the medical evidence and the evidence of her boyfriend. Given her closeness to her mother, and her family background, there are obviously powerful reasons, completely unrelated to this lawsuit, for her to be less than frank about the issue, and sometimes people paint themselves into a corner that is

extraordinarily difficult to get out of. That is the human reality, although, of course, less than complete frankness with the Court is never to be condoned. But in my mind, being untruthful about that almost entirely collateral issue is not inconsistent with being truthful about the principal issues in this case. To repeat, I make no finding on the issue, I simply don't know what the truth in that regard is.

[11] Plaintiff's counsel describes the injuries sustained as a mild to moderate whiplash, and on the balance of the evidence I must agree. I assess non-pecuniary damages at $15,000.

[12] There is a claim for loss of income. Plaintiff at first computed her claim at about $1500 by reviewing the work schedules and payroll records of her employer quite some time after the fact. However, her counsel concedes that given a closer examination of the records, and the testimony of her coworkers, the loss must be considerably less than that. It seems to me reasonable, however, that she lost some time due to the discomfort of the injuries. Anything like a precise calculation is impossible to make. However, once the Court is satisfied that there has been a loss, it must do the best it can to assess it on the evidence it has. I assess loss of past income at $500.

[13] There was no claim for special damages put before me.

[14] Costs will follow the event.

[15] MR. BYL: My Lord, pursuant to Rule 37, I had delivered to my learned friend an offer to settle on the 20th of February of this year for $6500, I would ask for double costs for the events after the 20th of February.

[16] THE COURT: Well, pursuant to the rules, you're entitled to that.

[17] MR. BYL: Thank you.

[18] THE COURT: All right, thank you.

The Hon. Mr. Justice Paris