Prince George Registry
No. 12233/87

IN THE SUPREME COURT OF BRITISH COLUMBIA

Prince George, B.C.

June 5, 1989

BETWEEN:	)
CAROLYN FRANCES BEAL	)
PLAINTIFF	) REASONS FOR JUDGMENT
AND:	) OF THE HONOURABLE
WILLIAM HUMENIUK and ELSIE MARG DEVINE	) JUDGE LOW, L.J.S.C.
DEFENDANTS	)

D. BYL, Esq. appearing for the Plaintiff

G.A. WRIGHT, Esq.
M. GENDREAU, Esq. appearing for the Defendants

THE COURT: (Oral) The Plaintiff, now twenty-three years of age, suffered injuries in a motor vehicle accident on April 12, 1987. She was driving a car at 40 to 45 kilometres per hour when it was hit broadside by a vehicle owned by one of the defendants and driven by the other. The defendants admit liability.

The force of the collision propelled the plaintiff forward and to her left causing her head to hit hard against the left corner post or window. Her upper body spun around and fell back to the right in the direction of the front passenger seat.

Shortly after the accident the plaintiff went to the

emergency department of the Prince George Regional Hospital, where she saw Dr. Hawkins. Her neck was sore and stiff and she had a lump on the left side of her head. She had a severe headache which continued almost unabated for about eight months.

Two days after the accident the plaintiff saw her family doctor, Dr. Paterson, who diagnosed whiplash injury involving the neck muscles at the top of the spine. He expected, quite reasonably at that stage I think, that the problem would be resolved by the following September or earlier.

The plaintiff was given a soft cervical collar at the hospital on the day of the accident, which she wore continuously. At the end of September, Dr. Paterson prescribed a hard cervical collar which she wore intermittently on a daily basis until December. She took physiotherapy for 33 consecutive days, commencing two or three days after the accident and thereafter she had 40 more treatments continuing until the end of September. Those treatments improved the soreness and stiffness in her neck, but she became frustrated and predictably anxious because the problem with headaches was not resolving in proportion to the improvements in the muscular problem as one would expect. The headaches were constant, severe and unrelenting during the summer of 1987 every day. They decreased in number to four or five times per week in the late fall of 1987, but were still severe. The plaintiff went, to use her

words, "just about off the edge."

On November 18, 1987, Dr. R.H. Roydhouse, a dentist specializing in mandibular problems, examined the plaintiff thoroughly and diagnosed that the blow to the left side of her head caused damage to the left temporal muscle, which led to a jaw dysfunction and permanent damage to the temporomandibular joint. There has been a suggestion during the course of this trial that something should turn on the fact that the referral to Dr. Roydhouse in Vancouver was made by the plaintiff's counsel. The point was not strenuously pursued, but it should be laid to rest in any event. I know of no reason why an accident victim with an ongoing and frustrating problem should not take good advice where she finds it. The evidence as a whole suggests that the referral to Dr. Roydhouse was for treatment primarily and the defendants should be thankful that the problem was not left unattended. Had things stayed the way they were, the plaintiff's damages might have been substantially greater than they are.

Dr. Roydhouse confirmed his diagnosis during four subsequent visits from the plaintiff ending in February of this year.

Dr. R.K. Lindsay, a dental specialist in oral and maxillofacial surgery, did an independent medical examination of the plaintiff on March 17, 1988. He saw her for one hour or less. I find that there are some inaccuracies in what he says was reported to him by the plaintiff and, in

the absence of notes made by him on those points, I accept the assertive evidence about them from the plaintiff. In his report of March 28, 1988, Dr. Lindsay states there was no evidence of dysfunction of the temporomandibular joint and the plaintiff was simply suffering from pain in the affected neck muscles and pain, to a lesser degree, in the muscles on the side of the head including the temporal muscle. In his evidence, the doctor suggests the pain in the side of the head was "referred" from the pain in the neck muscles.

I am faced with choosing between the opinions of two highly qualified and very experienced specialists. I prefer the opinion of Dr. Roydhouse for several reasons. First, he did, in my view, a much more thorough examination of the plaintiff with considerable follow-up and opportunity to confirm his initial diagnosis. Second, Dr. Roydhouse took a more thorough history from the plaintiff and accepted from her several symptoms, which I also accept, and which were not considered by Dr. Lindsay. Third, as the treating specialist Dr. Roydhouse was simply in a better position to make an accurate diagnosis. Fourth, Dr. Roydhouse provided the plaintiff with a device known as a bitesplint, which is a partial plate inserted behind the upper teeth and worn by the plaintiff to restrict the clenching of her teeth and ease the pain resulting from the joint dysfunction. Dr. Lindsay, in his report, said that he agreed with this treatment, "to unload the muscles of her jaws", although it

would not alleviate the neck-muscle pain. It was not adequately explained to me why the bitesplint would have any effect upon pain in the temporalis muscle which, according to Dr. Lindsay, is a minor referred pain only. And finally, the diagnosis made by Dr. Roydhouse, on the whole of the medical evidence, is more consistent with the pattern of severe and persistent headaches not being alleviated by the effective treatment of the injured neck muscles.

The bitesplint has been partially effective, but is remedial only and not curative. It is an uncomfortable device that nobody should be expected to wear indefinitely. Dr. Roydhouse expressed the opinion, which I accept, that the plaintiff should have orthodontic treatment in the future which would cost about $4,000 and will necessitate the wearing of braces for one year to eighteen months. This treatment is likely going to be needed to realign the teeth to conform to the dysfunction which has resulted from the trauma to the temporalis muscle. Dr. Roydhouse believes the orthodontic work will leave the plaintiff pain free, but he says there is a 30 per cent chance it will leave her with discomfort for a period of about ten years. I believe he means that some headaches would continue for that long.

From the spring of 1988 the plaintiff's headaches began to decrease in frequency from four or five days a week to once or twice a week and lasting two to four hours, however, they are still severe and intense.

In summary, the plaintiff was totally disabled for a little more than a year after the accident, was partially disabled for three or four months after that and has been left with a condition which causes her bad headaches once or twice per week. This condition has interfered with her sporting activities and her social life. She will have to undergo uncomfortable orthodontic treatment with a likelihood of full recovery in due course.

I assess non-pecuniary damages at $20,000. The plaintiff will also recover $4,000 for the expected cost of the orthodontic work.

At the time of the accident the plaintiff was working full time as a gas station attendant in her father's business and I find her gross earnings were at a level of approximately $900 per month. Her plan was to continue working until the end of August, 1987, then work part time while she took some college courses preparatory to taking one year of teacher's training at Simon Fraser University commencing in September of 1988. Her goal was, and still is, to become an elementary school teacher. She planned to save as much as she could from her earnings to meet the expected cost of attending Simon Fraser University. I accept her evidence that during the fall of 1987 and of the winter and spring of 1988 she would have earned at least $500 per month working part time. In the spring and summer of 1988, because of the continuing headaches, she was unable to work as much as she would have worked.

I find the plaintiff lost wages at $900 per month for four and one-half months, amounting to $4,050. She then lost wages of $500 per month for eight months, totalling $4,000. From May through August, 1988, she earned $1,600 and might have earned $3,600. I think she could have worked more hours than she did during that time and I note that the record of hours worked does not show a consistent rising pattern, a situation for which there is no explanation in the evidence. I allow this part of the wage loss claim at $1,000, making a total wage loss claim of $9,050.

I am not satisfied that there is any basis for allowing a wage loss claim for the past college year. Nor am I persuaded there is any basis for awarding damages for the delay to the plaintiff in entering the work force as an elementary school teacher. I think that claim is speculative. The inconvenience of that delay is reflected in the non-pecuniary damages.

The plaintiff will recover special damages in the agreed amount of $1,800. She will also be awarded court order interest at the Registrar's rates from time to time and in accordance with the provisions of the statute as to various heads of damage. She will also recover costs.

MR. GENDREAU: Your Honour, this may be an appropriate time to advise the Court that there has been an amount of $3,480 paid with respect to wage loss to the regulations. My friend agrees too.

MR. BYL: That's admitted, Your Honour.

THE COURT: All right. That will be omitted from the wage loss portion of the judgment.