

Prince George Registry
No: Cc1467/84

IN THE COUNTY COURT OF CARIBOO

PRINCE GEORGE, B.C.

September 14, 1984

BETWEEN:

RODMAN BRUCE FIELD

PLAINTIFF

AND:

BLUE NOSE ENTERPRISES
LTD., JOHN HARVEY
PRESCOTT BOGLE, and
INSURANCE CORPORATION
OF BRITISH COLUMBIA

DEFENDANTS

REASONS FOR

JUDGMENT OF

HARDINGE, C.C.J.

LL. HAWKINS, Esq.

appearing for the Plaintiff

DJ. BYL, Esq.

appearing for the Defendants

THE COURT: (Oral) This action arises out of a motor vehicle
accident in which the plaintiff was involved on the 3rd
of January of this year. At the time of the accident the
plaintiff was a passenger in a motor vehicle which was
struck from the rear by a second motor vehicle owned by the
corporate defendant and operated by the defendant, Bogle.
The vehicle in which he was a passenger had stopped at the
intersection of 15th and Ospika here in the City of Prince

1 George. The impact drove it ahead a distance of some five
2 feet. The relatively short distance that the vehicle in
3 which he was seated was driven forward, coupled with the
4 fact that apparently the road, at the time, was in fairly
5 typical winter condition (that is, had snow on it and was
6 somewhat icy), indicates to me that the impact could not
7 have been great.

8 The plaintiff, his driver, and the defendant Bogle
9 proceeded to a parking-lot immediately adjacent to the
10 intersection where the accident had occurred immediately
11 thereafter. There they exchanged particulars such as names
12 and addresses. The plaintiff then continued on to keep a
13 dental appointment to which he had been going when the
14 accident occurred. After that he phoned his family physician
15 to make an appointment and did, in fact, proceed to see his
16 doctor at approximately one o'clock in the afternoon that day.
17 After visiting the doctor's office he attended at the offices
18 of the Insurance Corporation of British Columbia, after which
19 he went home.

20 The plaintiff says he was dazed as a result of the
21 accident. If so, the degree and duration thereof must have
22 been minimal. Certainly, there is nothing to indicate he
23 was disoriented at any time. His actions following the
24 accident indicate quite the contrary. Within a few hours of
25 the accident, the plaintiff started to feel pain in his neck
26 and in the lumbar region of his spine. When he saw his
27 doctor that day no medication was prescribed. However, in

1 the course of the next few days the plaintiff says he
2 commenced to suffer headaches and that the pain in his back
3 became intense.

4 Accordingly, he returned to see his doctor, according
5 to my notes, on the 12th of January, some nine days after
6 the accident. On this occasion his doctor prescribed some
7 292's which the plaintiff was directed to take every four
8 hours. However, he said that because of the intensity of the
9 pain he was suffering, he took the pills on an hourly basis.
10 As a result, he ran out of the pills in four days' time.
11 Thereafter he got no further 292's or other equivalent
12 medication. Rather strangely, the plaintiff said that the
13 lack of a supply of 292's after his prescription was used
14 up did not affect his condition.

15 According to his evidence he went back to see his
16 family physician at the end of January because of the head-
17 aches and the pain in his neck and back. On that occasion
18 there seems to have been no further medication prescribed.

19 Apart from getting up to go to the wash-room and to
20 prepare his relatively rudimentary meals, the plaintiff
21 testified he stayed on the couch in his sixplex during the
22 first four to five weeks after the accident. There were
23 obviously some exceptions to that in that he did go out to
24 see his doctor, and I think there was evidence that he went
25 out to the corner store to buy cigarettes, so that he was
26 not completely bedridden.

27 By the end of January or early February he testified

1 he was getting around a bit. His favourite recreational
2 activity was, and is, playing pool and he started playing
3 that game again as soon as he felt able to get out of the
4 house. At the end --

5 MR. HAWKINS: Your Honour, Mr. Byl and I can be of some
6 assistance.

7 THE COURT: Yes, I have a note but it does not seem to make
8 sense.

9 MR. HAWKINS: There, there was -- his friend said he didn't see
10 him playing till the end of March but Mr. Field's evidence
11 was sometime from towards either mid or end of February he
12 played some pool.

13 MR. BYL: End of January to beginning of February.

14 MR. HAWKINS: That's --

15 THE COURT: That is the note I had.

16 MR. HAWKINS: Yes, there was some evidence that, although he
17 couldn't recall that, he could have played as early as the
18 end of January.

19 THE COURT: For the purposes of my reasons, I am accepting his
20 evidence, that he commenced playing pool at least on a
21 reduced scale early in February. He said the playing pool
22 caused the pain in his back to increase. It strikes me as
23 odd that a person who knows that a certain activity will
24 exacerbate the symptoms arising out of an injury would
25 persist in that activity. Nevertheless, that is what the
26 plaintiff did.

27 The plaintiff did not say how long he continued to

1 suffer headaches. Likewise, he did not say when his neck
2 ceased to trouble him. The back pain gradually lessened in
3 intensity and frequency until about the middle of June or
4 early July. Since that date the plaintiff seems to have
5 been pretty well symptom free.

6 According to the medical reports that have been filed,
7 the plaintiff seems to have suffered soft-tissue injuries to
8 his neck and lower spine. The family doctor, as I will
9 describe the first doctor at any rate, prescribed the 292's
10 and the first course the physiotherapy treatment. The
11 plaintiff went to the physiotherapist on the advice of his
12 family physician. Twenty-one treatments were received
13 between the 27th of February and the 24th of April with a
14 break of about nine days which he took off in order to
15 enable him to take a course relating to his apprenticeship
16 as a carpenter. That course he completed successfully,
17 although he says with some degree of discomfort. He never
18 considered dropping out due to his discomfort.

19 Apparently the plaintiff lost the confidence he had had
20 in his family physician so he went to see a second doctor on
21 the 2nd of May and again on the 26th of July of this year.
22 The new doctor prescribed some anti-inflammatory medication
23 and recommended some further physiotherapy treatments which
24 were taken between the 27th of July and the 1st of August.

25 Unfortunately, I have not had the benefit of a report
26 from the plaintiff's family physician. He was the doctor who
27 first saw the plaintiff after the accident. He therefore

1 should have been in the best position to diagnose the degree
2 of severity of the plaintiff's injuries. As a report from
3 this doctor was not forthcoming, I infer that in that
4 doctor's opinion the plaintiff's injuries were not substantial.
5 In drawing that conclusion, I rely upon the decision of Mr.
6 Justice Wilson, later Chief Justice Wilson, of the Supreme
7 Court of this province, in Barnes v. Union Steamships.

8 Later medical reports suggest the plaintiff had suffered
9 moderately-severe injury to the soft tissues of his neck and
10 lower spine. However, on the basis of the evidence I have
11 heard and read, I would characterize the injury to have been
12 relatively mild. I have no doubt the plaintiff did suffer
13 discomfort and that it was significant for a period of about
14 three weeks following the accident. Thereafter his condition
15 would probably have improved more rapidly if he had not
16 resumed his pool playing so soon. Indeed, some of the
17 physiotherapy treatments would likely have been unnecessary
18 if he had taken better care of himself.

19 The only evidence I have of special damages is that the
20 plaintiff spent about \$30 for medications and about \$50 for
21 taxi fare to get himself to his physiotherapy sessions. I
22 fix the amount of special damages at \$80. General damages
23 for pain, suffering, and loss of enjoyment of life, there
24 being no claim for loss of income, are assessed at \$2500.
25 The plaintiff is entitled to prejudgment interest at the
26 rate prevailing from the date of the accident and to costs.
27 There will be judgment accordingly.

1 MR. BYL: There is one further matter, Your Honour. Pursuant to
2 Section 24 of the Insurance (Motor Vehicle) Act, the
3 plaintiff has received the sum of \$1,000 in payments.

4 MR. HAWKINS: That's admitted, Your Honour.

5 MR. BYL: And if the judgment would then be for \$1500 --

6 MR. HAWKINS: Well, no. I think the judgment's still for \$2500
7 but half of it, or part of it's already been advanced. I
8 don't think --

9 THE COURT: It would seem to me that that would probably be
10 correct Mr. Byl, I have fixed the amount of damages -- well,
11 I guess -- do you have authorities? I frankly am not sure
12 which way the judgment should go.

13 MR. BYL: I've run into this problem before. To my mind, there is
14 no authority in the Province of British Columbia. I have
15 researched the problem about six months ago and with a
16 little squabble with Mr. Cole, and in the absence of the
17 authorities and by -- 25 less the payment, or 1500 --

18 MR. HAWKINS: Well, I would submit that what it amounts to, in
19 fact, the documentation that came with the, the \$1,000,
20 indicated it was in an advance, a credit towards it, but
21 you know, I would submit, Your Honour, assess this claim as
22 worth \$2500 and part of it's paid and certainly the fact
23 that part of it was paid earlier would affect the interest,
24 but I think --

25 MR. BYL: I'll agree.

26 MR. HAWKINS: The award is still \$2500.

27 THE COURT: That makes sense to me. I am inclined to say I am

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assessing damages and that is the figure I have assessed them at. If there has been some advanced that obviously has to be set off against the damages.

MR. HAWKINS: I'm just -- and it's pleaded as a set off.

THE COURT: And I will leave it at that.

MR. BYL: Thank you, Your Honour.

MR. HAWKINS: Thank you.