

Date of Release: February 12, 1993

No. 21636
Prince George Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:)	
)	
EVELYN HAMPLER)	REASONS FOR JUDGMENT
)	
PLAINTIFF)	
)	OF
AND:)	
)	
KEITH LITTLE and CANUCK TRUCK)	THE HONOURABLE
)	
DEFENDANTS)	MR. JUSTICE PARRETT
)	
)	

Counsel for the Plaintiff:	Dick Byl
Counsel for the Defendants:	P. M. Pakenham
Place and Date of Trial:	Prince George, B.C. February 11 & 12, 1993

This is an action for damages arising from a motor vehicle accident which occurred on May 7, 1991. Liability is admitted by the defendants and there are no issues of contributory negligence.

The plaintiff's wage loss was agreed to be \$9,000.00 and her special damages \$100.00.

The plaintiff at the time of the accident was 35 years of age. She was a single mother caring for three children aged 8, 15 and 17. She is now thirty-seven. At the time of the accident she was

employed as the assistant manager of IG Tax Services where she was primarily responsible for clerical functions and supervisory duties with respect to their operations.

Her work day was 9:00 a.m. to 5:00 or 5:30 p.m. and her leisure time was occupied with her children and such activities as swimming, bowling, horseback riding and fishing.

In the accident of May 7, 1991 her car was struck from behind while waiting at a red light. The impact was severe resulting in some \$4,500.00 worth of damage to her vehicle and rendering it a total writeoff. She suffered soft tissue injuries described as a flexion/extension injury to the neck. After the accident the plaintiff was dazed but after gathering her thoughts she spoke to the defendant then began to drive back to the City of Prince George to report the accident to the R.C.M.P. After driving approximately half a mile she began to feel ill and nauseous. She pulled her vehicle to the side of the road and her daughter, who had been a passenger in her vehicle, took over and drove to the police detachment.

After dealing with the police the plaintiff was taken to the Emergency Department of the Prince George Regional Hospital where she reported pain in her left shoulder, neck and back of her head. She also reported that her left arm felt numb. X-rays showed a reversal of the normal mid cervical lordosis. It also showed a

minimal disc space reduction at C5-6 and to a lesser extent C6-7. In essence the x-rays revealed degenerative changes and disc space narrowing at C5-6 and 6-7.

Dr. Bosman who saw her in emergency concluded that "the postural change is in keeping with muscle spasm and the disc space narrowing is in keeping with degenerative change which would be in keeping with her age group." His physical examination found generalized tenderness of the posterior muscles of the neck and a marked decrease (80%) of neck movement in all directions. The initial diagnosis was of a flexion extension injury of the neck and the prognosis was:

Mrs. Hambler's injury and physical findings were consistent with a flexion extension injury of the neck. The natural history of this injury is varied. Typically pain is moderate for 2 to 3 weeks and discomfort exists with limited movement for up to 3 months. Stiffness with some pain may last for up to one year.

On May 13, 1992 the plaintiff returned to Dr. Bosman. At that time she complained of severe neck and upper back pain, causing nausea. In addition she described tingling and numbness in the arms. On examination she was found to have painful lumbar neck movements and no neurovascular deficits in the arms. Dr. Bosman referred her to physiotherapy.

Her next attendance was May 24, 1991 when she complained that

the right side of her head felt numb together with pain of the upper back and the right side of her neck. In addition she complained that her fingers felt like "they were falling asleep." Dr. Bosman's physical examination revealed an improvement of neck mobility and a normal neurological examination of her hands.

On September 6, 1991 Dr. Bosman noted further improvement of her neck pain but a complaint of developing pain and stiffness ". . . associated with parathesis of the scalp with exertion." By December 16, 1991, 7 months post accident, Dr. Bosman noted continued improvement but complaints of continuing neck discomfort. He noted that she felt continuously exhausted and fed up with the pain. This examination occurred nearly two weeks after she resumed full time employment on November 4, 1991.

The plaintiff's course of treatment at the Phoenix Physiotherapy Clinic reflects a similar course of improvement and symptomology. In May, commencing on the 14th the plaintiff attended 11 sessions of physiotherapy, this treatment peaked in June with 19 sessions, dropping to 10 in July, 11 in August, 9 in September and again in October and finally 5 in November. The clinic records reflect gradual improvement from May 14th to 25th followed by the notation that in June her range of motion was improving satisfactorily with pain on extremes of motion. Her complaints are of constant headache and back pain. The records reflect continued right sided cervical pain and headaches in July

but by September although muscle spasms continued her range of motion was only limited at the extremes. In December the physiotherapist noted a full range of neck movement with discomfort at the extremes of movement. She reported that she was still experiencing headaches which improved with rest.

In January 1992 the plaintiff returned to the care of her family doctor, Dr. Ruth Nowlan, with complaints of neck pain radiating to her skull and her right arm. She indicated there had been considerable improvement since the accident but that she was still experiencing pain. Dr. Nowlan's physical examination revealed a full range of motion of her neck and shoulders with some tenderness over the right posterior neck muscles. The plaintiff was at that time continuing physiotherapy but next saw a doctor on May 25, 1992.

Dr. Nowlan's concluding diagnosis in her report of August 7, 1992 is:

The diagnosis is recurring pain due to the flexion/extension injury of her neck in May, 1991. Her prognosis is good in that over the past year the pain has diminished considerably and is less frequent. She has had to make some adjustments to her life because of the pain. However, I think her prognosis is very good and I expect that over the next few months she will gradually become pain free.

Mr. Pakenham on behalf of the defendants does not challenge

the plaintiff's general credibility but both in his cross-examination and argument he points to a troubling series of inconsistencies and contradictions arising from the documents and takes the position that the accuracy of her evidence must be questioned. In particular he challenges her assertion that prior to the accident she was symptom free.

I am satisfied on the evidence that the plaintiff neither intended nor attempted to deliberately mislead, but I accept and find on a balance of probabilities that she had a long standing problem with headaches and lower back problems that predated the accident by at least two years and had not resolved as of the date of the accident. The history taken at the Victoria Physiotherapy Clinic on September 21, 1989 notes a problem with her right hip which occurs on lifting or walking. The plaintiff accepted in cross-examination the description that the records disclosed intermittent episodes of severe back pain.

The plaintiff's personal life had involved a series of problems including a stressful marriage breakup and troubling difficulties with her eldest child. These difficulties have been reflected in her medical history with diagnoses and treatment for depression. Her clinical records also reflect physical symptoms associated with those problems. An example can be found on July 12, 1989 where it is noted:

"feels awful, can't sleep, miserable,
headaches and backache."

On July 4, 1990 she complains of dizziness and nausea on waking and on July 11, 1990 Dr. Nowlan notes a ten year history of headaches.

Each case must, of course, be treated as unique to some extent, and in the present case there are certainly some unique features. The plaintiff is indeed, as Mr. Byl suggested, a woman of some considerable strength. She has endured a stressful marriage breakdown, troubling problems with her child and the raising of three children as a single parent while pursuing employment and a career full time. In large part she has done this, in my view, because of her ability to focus on things and to pursue them.

It is that very strength which has, I find, led her to attribute the symptoms which followed the accident of May 7, 1991 solely to the accident.

The plaintiff led an extremely busy life and during the course of that she encountered difficulties both physically and emotionally. On top of that lifestyle she suffered a flexion-extension injury of moderate severity. The ensuing symptoms resulted in a substantial disability for a period of two months during which she was largely dependent on others. Her condition improved gradually over that time period and the ensuing four months leading up to her return to work on November 4, 1991. At

that time she was able to return to full time employment which she maintained with the exception of the holiday period over Christmas and New Years.

I conclude that the plaintiff's return to work, while desirable financially and, in all probability, from a personal perspective, slowed her rate of recovery and extended the time necessary for that to occur. Having carefully considered her evidence and the medical records, I find, on a balance of probabilities, that the plaintiff has now recovered to the point where she has achieved the level of health she enjoyed prior to the accident, although she continues to suffer to a minor extent I am not confident that her present complaints are attributable to the accident.

Although I have categorized the plaintiff's injury as "moderate", it is, in my view at the low end of that range. The authorities placed before me are helpful in covering the area but most have unique features which differ from the case at bar.

I fix the plaintiff's non pecuniary damages at \$16,000.00. In doing so I have specifically taken into account the dates of the awards to which I have been referred and inflationary factors.

No submissions were made with respect to costs. In the event those cannot be resolved they may be spoken to.

"W. G. Parrett J."

Prince George, B.C.
February 12, 1993