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Date: 19971215
Docket: 33588
Registry: Prince George

IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment
Mr. Justice Preston
December 15, 1997

BETWEEN:

KAREN ELIZABETH MEAKIN, Guardian Ad Litem for
STEPHEN JOHN MEAKIN and the said KAREN ELIZABETH MEAKIN

PLAINTIFFS

AND:

BENJI NELSON

DEFENDANT

Counsel for the Plaintiffs

Mr. D. Byl

Counsel for the Defendant

Mr. O. Hui

[1] This is an application pursuant to Rule 18A for judgment in a personal injury matter. Liability is admitted.

[2] The infant plaintiff, who is now four years old, was injured in a motor vehicle accident on May 20th, 1996. He suffered facial lacerations and scarring and injury to his left hip, bruising or a tear to his left kidney and some psychological or behavioural difficulties which his mother attributes to the accident. Immediately following the injury, the infant was hospitalized for a six day period in Prince George Regional Hospital. Three of those days were spent in the intensive care

unit. He was subjected to a number of medical procedures including X-rays, stomach pump, and C.T. scans. He has been followed by his family physician and by a consultant pediatrician since receiving the injuries. His counsel has satisfied himself that the matter is at a stage at which a trial is appropriate. He submits that the matter is an appropriate one for summary trial, and I agree with him.

[3] The Plaintiff's general practitioner, Doctor Dabbs, summarized the Plaintiff's injuries in a 27th of December, 1996 report as follows:

"This child, age two years and nine months at the time, was involved in a motor vehicle accident on May 20, 1996. He sustained facial abrasions and a forehead laceration. Additionally his left kidney was torn or badly contused. From all of these injuries, he has not fully recovered. His kidney function has remained normal throughout, although he did sustain a fractional loss of effective kidney function in the left lower kidney which has been demonstrable on repeat scanning. This has no implication for his future health and would not be expected to adversely affect him in any way."

[4] In a further report on August 20th, 1997, Doctor Dabbs

reported that a repeat ultrasound examination of the Plaintiff's kidneys was carried out on May 26th, 1997 and that no detectable abnormality was found. Doctor Dabs concludes, "We thus find him fully recovered and his left kidney completely healed."

[5] Doctor Patel, the consultant pediatrician, said in his September 5th, 1997 report,

"This young fellow suffered various injuries in a motor vehicle accident. He did have some abrasions and lacerations over his head, which seemed to have healed well with mild scarring. Stephen did also have some contusion or possible infarct to the left kidney, which on follow-up ultrasounds has completely resolved with normal ultrasonographic appearance. Also his renal function tests have been completely normal. Over the long term, I do not believe Stephen needs any further medical intervention and should not be in need of any specific treatment in future."

[6] The Plaintiff's mother, Karen Meakin, indicates that she has noticed that the infant has had increased difficulty in sleeping, increased concern while driving in motor vehicles and some nightmares since the accident. She attributes these to the circumstances surrounding the accident and his later treatment. I am satisfied that the accident has had some impact on the infant's overall feeling of well-being. That is a natural

consequence of these sorts of injuries.

[7] I will concentrate, however, on the other three injuries which the infant is said to have received. First, an injury to the left hip; second, damage to the left kidney; and third, the facial lacerations and scarring.

[8] Dealing first with the injury to the hip: this is not a clearly diagnosed injury. The medical reports raise the possibility of a chip fracture of the hip, but that is not established. The injury caused the infant some difficulty with walking for a period immediately following the accident. However, over the past approximately one and a half years since the accident, this has resolved. The injury to the kidney was obviously a serious one. I expect that it was potentially life-threatening. However, it resolved relatively quickly and does not now cause any difficulty and has not caused any difficulty since the very short critical period following the accident.

[9] The major injury is the facial laceration and scarring to the forehead. I have been provided with a number of photographs which show the damage to the infant's forehead a few weeks after the accident and at the present time. There were a number of small glass lacerations or abrasions on the forehead, some small abrasions or lacerations of a similar sort on the left cheek.

They were all visible immediately following the accident. However with the minor exception of some small and almost unnoticeable scarring at the hairline and on the left cheek, all that remains visible is the laceration across the forehead over the left eye and nose. That laceration is about one and a half inches long. It is not regular. It is slightly raised. Doctor Patel describes the scar as a healed scar with mild keloid tissue. The location of the scar immediately above the eyebrow and toward the centre of the forehead ensures that it will be visible and will remain a disfiguring laceration.

[10] Defence counsel, Mr. Hui, has referred me to a number of cases dealing with the quantum assessment of scarring injuries. The first one that I will refer to is *Nedokus v. Pouliot*, February 7, 1985, a decision of Judge Cashman as he then was, in the County Court of Vancouver Island. The Plaintiff in that case, a twenty-seven year old woman, suffered pain over her right hip, her forehead and her jaw, and suffered a superficial laceration extending from the bridge of her nose onto her forehead. Judge Cashman observed,

"She is, however, left with a small scar on her face, which shows up in the summer time when she tans."

He awarded seven thousand dollars general damages.

[11] The next case to which I will refer is *Nixon v. Marrs*, July 4th, 1986, a decision of Judge Hutchison as he then was, in the County Court of Yale. In discussing the appropriate range of damages, Judge Hutchison said at page 7,

"The medical reports were filed and they are contained in the Plaintiff's documents. There is Dr. Knight's report, Dr. Murphy's and Dr. Zander's. These indicate a severe laceration to the head, stitches; the boy was four days in the hospital and suffered from headaches. He was stitched and the scar still shows slightly below the hairline although his hair protects it. Because of his age, he is perhaps unhappy with a scar on his forehead but it is not an uncommon thing for a young man to have scars from one high jinks or another. The question is what is a fair range."

Judge Hutchison awarded seven thousand dollars for non-pecuniary general damages.

[12] In *Syme v. Wong*, Mr. Justice Drost on January 4th, 1988, in the Supreme Court in Vancouver dealt with the quantification of injuries suffered by a nine year old girl. She received these injuries when she was attacked and bitten by the Defendant's dog. On page 3 Justice Drost observes,

"A school photograph of Jennifer, taken on November 29th, 1986, reveals a light scar above her upper lip where the laceration occurred. In the lighting provided in the courtroom and at a distance of several feet, I was unable to discern any scar which confirms Dr. Raugh's conclusion that:

'From a physical point of view, she is left with a small facial laceration with little cosmetic consequence.'

Mr. Justice Drost assessed general damages at seven thousand five hundred dollars.

[13] Mr. Justice Hood dealt with injuries to a four year old infant plaintiff in *Troughton v. Hunaus*, a September 9th, 1992 decision of the Supreme Court of British Columbia in Vancouver. He dealt with the evidence respecting the scar at page 3. He said,

"There is also in evidence three photographs of this lovely child. In the first one, taken in June 1990, the scar appears to be a faded red colour. In the second one, taken in August 1992, the scar appears to have whitened, and in the third one taken by an ICBC adjuster this spring, it is white and can barely be seen. In fact, in my opinion, the scar is neither unsightly nor disfiguring in the true sense of the word. At its

worst, it represents a relatively minor deformity. However, it is there to be seen, at least on occasion, and I am sure all involved wish it was not, and it is compensable."

He noted later,

"I note that the infant plaintiff was not brought into court, and I did not observe her scar directly."

Mr. Justice Hood awarded seven thousand dollars for non-pecuniary general damages.

[14] I will make the observation, first of all, that some of the cases to which I have just referred are a number of years old. They all deal with scarring that is considerably less disfiguring than that suffered by the infant plaintiff in this case, and I must as well take into account the other injuries which the infant in this case suffered in making an assessment of non-pecuniary general damages.

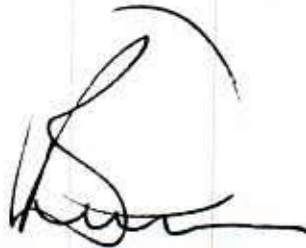
[15] I am satisfied that the appropriate award for non-pecuniary general damages in this case is fifteen thousand dollars, and that will be my award.

[16] Are there any other categories of damages or costs that I should deal with?

[17] MR. BYL: No other categories, My Lord, and I would ask that costs be on Scale 3.

[18] MR. HUI: My Lord, the only observation I would make is that I've known that sometimes the courts will on relatively simple personal injury matters award Scale 2. That's the only submission I have on that.

[19] THE COURT: I am not aware of that practice. I am satisfied that this is a normal personal injury action. I think that it is commendable that both counsel have cooperated obviously in dealing with this on a Rule 18A application. Costs will be awarded on Scale 3.



Mr. Justice Preston