

## **JUDGE AWARDS \$536,587.00 TO PLAINTIFF WHO WAS UNABLE TO CONTINUE IN HER “DREAM JOB” AS A HAUL-TRUCK DRIVER.**

**HALE V. HILL**  
**2021 BCSC 46**

The Reasons for Judgment of The Honourable Madam Justice E. McDonald were given in Vancouver, BC on January 13, 2021.

### **INTRODUCTION**

The Plaintiff, Lorraine Hale, was 54 years of age at the time of trial. She was involved in two motor vehicle collisions. The first was on April 19, 2016 and the second on May 27, 2016. The defendants have admitted liability and there is no allegation of contributory negligence or failure to mitigate. Ms. Hale suffered soft tissue injuries to her neck and back. However, the defendants say that Ms. Hale’s injuries, including lower back pain, were resolved by the end of 2017 and her current complaints are unrelated to the accidents.

Ms. Hale grew up and currently lives in Merritt, BC. She has one daughter, Karen, and three grandchildren, ages 7, 10 and 13. Prior to the accidents she enjoyed lots of physical play with her grandchildren, going to playgrounds and engaging in activities such as giving them piggy-back rides. She was also an avid softball player and motorcyclist. She enjoyed hiking and road trips, as well as weekly get-togethers, with her large extended family, to play cards, watch a movie or have dinner. Ms. Hale testified that her health was good and that, while she smoked and has almost always been “plump”, she was strong, active and had no chronic illnesses.

Ms. Hale’s working career has been active and varied. In 2014, she moved to Alberta to begin operating heavy equipment. In December 2014 Ms. Hale suffered a back injury at her workplace. She was on modified duties for six weeks and then returned to regular work duties in mid-January, 2015. Ms. Hale said that her injury had resolved.



In August 2015 Ms. Hale moved back to British Columbia. She completed an internship at the Teck Highland Valley Copper Mine, near Merritt, in the Mine’s Health and Safety Department, working as a safety coordinator intern. In May 2016 Ms. Hale commenced a second internship. Her supervisor, Ms. Purfield, described her performance as “excellent”. She encouraged Ms. Hale to apply for an entry-level position at the Mine and Ms. Purfield recommended her to the Human Resources Department.

With respect to Ms. Hale’s pre-accident state, Madam Justice McDonald commented:

[24] After considering all of the evidence, I find that, prior to the accidents, Ms. Hale was in good physical and mental health. Ms. Hale had an active social life that involved many outdoor physical pursuits. She completed studies and started working in the area of heavy equipment operations. Ms. Hale gained experience working in industrial settings operating backhoes, forklifts, loaders and mulching machinery.

[25] I believed Ms. Hale when she testified that she fully recovered from the December 2014 workplace injury to her lower back. Ms. Hale’s testimony is supported by the fact that by mid-January 2015 she was cleared to return to her regular work duties. Ms. Hale carried on with her regular work duties until she decided to move back to Merritt in the summer of 2015.

## THE ACCIDENTS

**APRIL 19, 2016** – Ms. Hale was driving her Chevy Cavalier through an intersection when she was struck on the driver’s side by a van driven by the Defendant Hill, who had failed to stop at a stop sign. Immediately after the accident Ms. Hale felt “shaky” and her neck, back and shoulders were sore. She decided against going to the hospital and drove home. She felt stiff and sore that evening and took Advil. She had difficulty sleeping and experienced nightmares about the accident. A few days later she experienced an episode where her legs suddenly gave way, which prompted her to seek medical attention at the hospital. Ms. Hale testified that after the first accident she tried to hide her pain from her family as she did not want them to worry. However, she described feeling anxious and tearful following both of the accidents. In an effort to keep her feelings concealed she began withdrawing from her usual social activities. Nevertheless, despite her difficulties, she commenced her second internship at the Mine on May 3, 2016, as scheduled.

**MAY 27, 2016** – Ms. Hale was the front passenger in a Kia Sedona, when the driver of her vehicle rear-ended a Chrysler Intrepid. Ms. Hale anticipated the collision and braced for impact. In the immediate aftermath Ms. Hale reported feeling dizzy, weak and having “wobbly” legs. She also felt increased pain in her neck, shoulders and back. She was transported to hospital where she was examined, underwent x-rays and was released. Over the weekend, Ms. Hale reported feeling sore, shaken up and tearful. She continued to have nightmares and difficulty sleeping. Again, she tried to be strong and hid her negative



emotions from family and friends. She was able to return to her position as an intern.

Ms. Hale testified that she also developed recurrent headaches after the first accident, worsened by the second. She complained to her family physician, Dr. Ross, of lower back pain, neck pain and tingling in her legs. He referred her for physiotherapy and massage therapy. To attend these treatments Ms. Hale had to travel out of the Merritt area.

Ms. Hale had applied for an entry-level position at the Mine and on May 11, 2016 she was granted an interview. Madam Justice McDonald notes “Ms. Hale recalled the details of this interview vividly and her excitement about having that opportunity was evident from her testimony. Ms. Hale told the interviewers that her dream job was to drive a haul-truck.” In December 2016, about two weeks before she completed her second internship, she received an offer of employment from the Mine to work as a haul-truck driver. She was elated. Not only would the pay raise be substantial, but she was about to start work in her “dream job”, driving a vehicle that was about the size of a two-story house. She worked full-time, 12 hour shifts, four days on and four days off.

Ms. Hale kept her symptoms bearable by taking ibuprofen regularly. However, by the end of the day she described having to use her hands to help lift her legs out of her vehicle seat. She suffered “pins and needles” in her legs in addition to ongoing headaches, neck, back and shoulder pain. From 2016 – 2018 she had several episodes where her legs would suddenly give out. In one episode she fell to the floor and lost bladder control. Physiotherapy and massage provided temporary relief, but it was hard to find therapists in Merritt. Another obstacle to her access to care for her injuries was a lack of provincial medical insurance. When she returned from Alberta she neglected to enroll in the Medical Services Plan of British Columbia. As a result, she did not have coverage for approximately the first eight months after the accident and had to pay cash for medical visits. Her lack of funds would sometimes cause her to delay or avoid seeking treatment.

By January 2018, her pain and stiffness had increased to the point where she had difficulty moving. She was placed on modified work duties at the Mine from February to June 2018. She started a graduated return to work and resumed her regular duties as a haul-truck driver. In April 2019, she once again found it necessary to go off work. She returned to modified duties in May 2019. However, shortly after returning, she concluded she could no longer manage the physical demands of a haul-truck driver. She applied for and secured a position to work as a janitor at the Mine. Though she was giving up a job she loved, she was trying to be realistic and stay employed. She hoped that this position would be less physically taxing. By December 2019, after suffering a flare-up of her low back pain, it became clear that she was unable to continue her duties as a janitor. She has not returned to work since.



## MEDICAL EVIDENCE

Expert opinions regarding Ms. Hale's injuries and her functional capacity were provided by Dr. Tony Giantomaso, Physiatrist, Dr. Paul Latimer, Psychiatrist as well as Ms. Webber and Mr. Winter, both occupational therapists. Testimony was also heard from the Plaintiff's treating physiotherapist and massage therapist and her family physician, Dr. Duncan Ross.

[80] Dr. Giantomaso conducted an independent medical assessment of Ms. Hale on January 23, 2020. According to Dr. Giantomaso, Ms. Hale reported that her most significant areas of pain were localized in her lower back and that she occasionally experienced pain radiating down her legs.

[81] Dr. Giantomaso diagnosed Ms. Hale with cervical and thoracic sprains that had now resolved; posttraumatic headaches that had now resolved; a chronic posttraumatic lumbar sprain/strain injury, grade 1-2; and chronic sacroiliac dysfunction. He opined that all of these injuries were caused by the motor-vehicle accidents and he concluded that, given the passage of time, Ms. Hale would continue to experience chronic pain to some degree into the future. Assuming Ms. Hale followed his pain management recommendations, Dr. Giantomaso opined that her pain might decrease and her function could increase.

[82] On March 30, 2020, Dr. Latimer, a psychiatrist, performed an independent medical examination of Ms. Hale. He noted that Ms. Hale had, at various times in her past, met the criteria for Major Depressive Disorder. Dr. Latimer also noted that Ms. Hale experienced periods without depression even after the accidents.

[83] Dr. Latimer diagnosed Ms. Hale with recurrent Major Depressive Disorder, with one episode following the accidents as having been triggered by the motor-vehicle accidents. He also diagnosed her as having "some anxiety about driving and about her future ... due to the motor-vehicle accident". Dr. Latimer was optimistic that with appropriate treatment, including anti-depressant medication, Ms. Hale would overcome her current depression.

Ms. Webber, Occupational Therapist, provided a functional capacity evaluation and cost of future care recommendations. She concluded that Ms. Hale is not suited to work as a haul-truck driver nor a janitor.

Mr. Winter, Occupational Therapist, provided a responding report to Ms. Webber's opinion. He agreed that Ms. Hale is not well suited to the physical demands of either of these positions. They both agreed that she was capable of full-time work as long as the physical demands of the job did not exceed her capabilities and limitations.



Ms. Hale did not constantly attend appointments with Dr. Ross. The defendants are critical of the lack of documentation of the Plaintiff's injuries. Madame Justice McDonald found that although the defendants are correct to point out that there are differences between the evidence that Ms. Hale gave and the entries in the medical records, or the testimony of her caregivers, in her view, "those discrepancies are relatively minor".

[93] In cross-examination, Dr. Giantomaso was asked about the impact of Ms. Hale's 2014 workplace injury and the incident in November 2019 when Ms. Hale strained her lower back while working as a janitor. He concluded that Ms. Hale had recovered from the 2014 workplace injury since she successfully returned to regular full-time duties. Regarding the strain that Ms. Hale encountered in November 2019, he explained that a person suffering from chronic lower back pain could have an event that would cause a "flare-up", or an acute episode, of lower back pain. He disagreed that the November 2019 event was a new injury unrelated to the injuries she sustained in the accidents.

[94] Dr. Giantomaso was also cross-examined about the clinical records that he relied on in forming his opinion, including Dr. Ross' clinical records. Dr. Giantomaso agreed the clinical records regarding Ms. Hale's injuries were sparse and that there were periods when no records existed. However, he would not agree that an absence of records meant that Ms. Hale lacked a believable history of chronic lower back pain.

[95] As Dr. Giantomaso put it, there could be many reasons for gaps in a patient's medical records and there is no need for a patient to continually update a doctor with reports of ongoing back pain. He also stressed that he generally takes a patient at their word and he did not notice any exaggeration features when he examined Ms. Hale. In his testimony, Dr. Ross said that he did not require Ms. Hale to continually check in with him if there were no significant changes in her condition.

Madam Justice McDonald found Ms. Hale to be a credible witness. She states "In my view, Ms. Hale did not exaggerate her symptoms or her pain and she did her best to describe, in her own words, her experiences." She goes on to say:

[104] I find it particularly significant that Ms. Hale proactively tried to extend her capacity to work by switching jobs. Despite the fact that she took great pride and enjoyment from driving a haul truck, she acted pragmatically by seeking out different work. In effect, she gave up her dream job to work as a janitor, cleaning toilets, mopping floors and emptying trash cans, in the hopes that she could physically manage those duties and stay employed. I further find that in November 2019, Ms. Hale experienced a flare-up, or acute episode, of the chronic lower back strain that was originally caused by the motor-vehicle accidents.



[105] I find that Ms. Hale’s conduct after the accidents reflects that of someone who genuinely hoped her injuries would resolve, or at least remain bearable. In my view, Ms. Hale did everything reasonably possible to carry on despite her injuries.

Madam Justice McDonald agreed with the evidence of Dr. Giantomaso and Dr. Latimer.

[106] Dr. Giantomaso opined that Ms. Hale’s other injuries, such as her headaches and neck pain, had resolved. After considering all of the evidence, I find that Ms. Hale has ongoing symptoms from injuries that she sustained in the accidents, namely, chronic pain from lower back strain and depression.

...

[109] After considering all of the evidence, I have concluded that the First Accident and Second Accident caused injuries to Ms. Hale. She specifically experienced neck pain, headaches, shoulder pain and lower back pain with tingling sensations radiating down her legs. I find that Ms. Hale suffers from the aftermath of some of these injuries, which I have described above, on an ongoing basis. These injuries have caused Ms. Hale’s functional limitations that Ms. Webber noted and Ms. Hale described during her testimony.

[110] I find it likely that Ms. Hale will experience some pain and discomfort from chronic lower back strain into the future, although I find that with appropriate treatment, Ms. Hale’s episode of depression is likely to resolve, and she is likely to better manage her lower back pain and increase her function.

### WAGE LOSS/COST OF FUTURE CARE

Madam Justice McDonald went on to discuss loss of past earnings and future earning capacity. She found that Ms. Hale would have continued working as a haul-truck driver, and likely advanced to a dozer-loader-grader operator “DLG operator”, but for the accidents.

With respect to Cost of Future Care, Dr. Giantomaso and Dr. Latimer made a number of recommendations for Ms. Hale’s future care, including medication, active rehabilitation, cognitive behavioural therapy and access to treatment modalities such as massage therapy. The defendants did not dispute Ms. Webber’s cost estimates for those recommendations. They did however, object to amounts claimed for an ergonomic assessment and ergonomic equipment, help with heavy yard work and snow removal, a vocational assessment and vocational rehabilitation. An award was made in the amount of \$66,319.00.

### NON-PECUNIARY DAMAGES

In discussing non-pecuniary damages, Madam Justice McDonald states:



[153] Perhaps the most significant aspect of the loss of enjoyment of life that Ms. Hale has suffered is the loss of the ability to work at her dream job, driving a haul truck. Ms. Hale’s testimony regarding her pride and enjoyment working as a haul-truck driver was persuasive and, in my view, highly credible. Ms. Hale described vividly how she liked her co-workers and enjoyed being part of a team and the whole experience of going to work every day.

[154] Ms. Hale took great pride in securing a job driving a haul truck in a highly competitive environment, despite her age and gender. After Ms. Hale applied to work as a janitor, she testified poignantly about asking a co-worker to take photos of her standing on the haul truck to keep as a memento of her time driving a haul truck. I find the loss of Ms. Hale’s identity as a haul-truck driver to be a significant factor in the assessment of non-pecuniary damages.

[155] As a result of the injuries sustained in the accidents, I find that Ms. Hale withdrew from many aspects of her social life and, as her physical condition deteriorated, she eventually fell into an episode of depression. Ms. Hale was also less able to play with her grandchildren and spend time with Karen doing the type of things they had done together in the past.

## CONCLUSION

The following is a summary of the amounts awarded to Ms. Hale:

- a) Non-pecuniary damages – \$110,000;
- b) Past loss of earning capacity – \$61,000;
- c) Loss of future earning capacity – \$295,000;
- d) Cost of future care – \$66,319 [consisting of: \$22,378 (snow removal/yard work); \$29,961 (massage therapy); \$13,758 (medication); and \$222 (adaptive aids); and
- e) Special damages – \$4,268;

**TOTAL: \$536,587**

The full Reasons for Judgment of The Honourable Madam Justice E. McDonald [CAN BE FOUND HERE](#)

**IF YOU WOULD LIKE TO BOOK ASSESSMENTS WITH DR. GIANTOMASO, PHYSIATRIST OR DR. LATIMER, PSYCHIATRIST, PLEASE CONTACT US AT INTEGRA**