

AWARD FOR MILD TRAUMATIC BRAIN INJURY, PSYCHOLOGICAL AND SOFT TISSUE INJURIES EXCEEDS \$1.1 MILLION.

K.V.C
021 BCSC 1585

The Reasons for Judgment of The Honourable Madam Justice W.A. Baker were given on August 13, 2021 at Vancouver, British Columbia.

On October 25, 2016, the plaintiff, MK, was a passenger that was rear-ended by the defendant, GC. The defendant has admitted liability. Mr. K suffered soft tissue injuries and a concussion in the accident. He alleges these injuries have resulted in ongoing chronic pain and associated psychological injuries.

At the time of the accident Mr. K was 35 years old. He was married to MM and had two sons aged 8 and 4. Mr. K enjoyed good health and had an active life including camping with his family, regular cross country road trips, riding his bike, walking and going to the gym. He was very family oriented and hard working. He helped his father with house renovations. He enjoyed time with his children and had a loving relationship with his wife. Ms. M testified that Mr. K had no serious physical or emotional problems before the accident and that he was “happy, had many projects and ideas and was always up to something”. At the time of the accident, Mr. K worked as a computer consultant through his own company, Cyber Node Tech Computers (“Cyber Node”) and worked for a company called CIH doing online car rental bookings. CIH was also the biggest client of Cyber Node. CIH provides car rental bookings in the travel field, primarily Hawaii. Mr. K developed a close friendship with one of the owners, Mr. R and it was Mr. R who encouraged Mr. K to start his own company. In January 2009 Cyber Node began. Mr. K was one of twelve employees of CIH when he started there. Both Mr. R and Mr. K’s manager, KS, gave high praise to the plaintiff and his abilities as a customer service representative and computer technician.



He was described as hard working and fast, able to multitask taking care of numerous customers at the same time. Ms. S testified that, through his Cyber Node business, Mr. K built the computers used by the employees, installed them in employees' homes, tested systems, installed upgrades, and remotely dealt with computer issues for the users.

When the accident occurred, Mr. K was in the process of purchasing a used cargo trailer from Mr. S. He was a passenger in Mr. S's SUV and the two men were driving to an ICBC office to complete the transfer. They were struck from behind while stopped, waiting to enter traffic from an alleyway. Mr. K's glasses flew off his face due to the impact. The SUV was pushed forward about one car length. Mr. K felt in shock immediately after the accident. He testified that he "felt discombobulated, and his vision was off – he had a hard time filling in a form with information like his address and phone number." He felt able to drive the trailer home, but part way home he felt his vision failing. He started to look around for his glasses only to discover he was wearing them. He pulled over for 30 – 40 minutes to get his bearings and then completed the drive home. When he got home he was extremely tired and achy and he slept for three to four hours. He awoke with a massive headache and tightness all over his body. His wife drove him to the hospital. He was diagnosed with whiplash and concussion, given pain medication and told to follow up with his doctor in a few days, which he did. On that visit he reported a stiff neck, overall pain, headaches, migraines and twitching in his hand and foot. His doctor arranged for an MRI and sent him to Back in Motion for phys-iotherapy.

In the days following the accident Mr. K was extremely light sensitive. He turned the brightness down on his computer monitor and wore sunglasses. He was not clear on how much time he had off work as he used some vacation time – but he testified that he did not take more than a week of work.

Mr. K attended physiotherapy until May 2017. Initially he had some improvement with the sensory problems in his hand and foot, but his neck pain and headaches remained constant, fluctuating up and down depending on his level of activity. He attended an independent medical examination with Dr. Cameron, neurologist in September 2017. Dr. Cameron recommended Botox to address Mr. K's headaches, neck pain and shoulder pain. He was treated with Botox by Dr. Nagaria three to four times in 2018 and 2019. Each session involved more than 24 needles which he found very painful. He found that his pain returned approximately four weeks after treatment. While the headaches and migraines were muted, they did not disappear. When he experiences migraines, his eyesight goes fuzzy, his head pounds like someone is crushing his skull, he becomes nauseous, and he becomes sensitive to light.



In October 2017, Mr. K attended an independent medical examination with Dr. Anton, Psychiatrist, at the request of his counsel. Dr. Anton diagnosed him with injuries to the soft tissue structures in his neck, shoulder girdle and upper back. In addition he was of the opinion that Mr. K probably sustained a mild traumatic brain injury. Mr. K recalls reading Dr. Anton's recommendations related to therapies for depression, pain and cognitive symptoms. He was quite concerned about these and raised them with his doctor. Dr. Donald Cameron, Neurologist, testified for the Plaintiff:

[37] In 2017, Dr. Cameron diagnosed Mr. K with a mild traumatic brain injury as a result of the accident. This injury then developed into post traumatic brain injury syndrome. Dr. Cameron diagnosed Mr. K with post traumatic headaches, resulting from both the musculoskeletal, cervicogenic headaches associated with neck pain, and the mild traumatic brain injury he suffered in and from the accident.

[38] Under cross examination, Dr. Cameron was questioned as to whether he would defer to the opinion of Dr. Anderson that Mr. K's cognitive symptoms were now predominantly related to pain and psychological issues. Dr. Cameron agreed that pain and psychological issues were significant contributors to Mr. K's cognitive symptoms, but emphasized that the original brain injury which Mr. K suffered in the accident was also a continuing contributor. Dr. Cameron stated that Mr. K's cognitive problems are multifactorial in genesis, resulting from his chronic pain and psychological issues, and his residual brain injury.

In February 2018 Mr. K and his family moved back to Ontario, where housing prices were more affordable, and he and his wife could be closer to their families. Mr. K was able to continue working for CIH remotely. He tried to continue working at the same pace for CIH but found himself getting frustrated with the customers and having difficulty completing his shift without taking long breaks. Because his employer valued him so highly, he was accommodated. He was eventually permitted to reduce his hours to 30 hours per week but was continued to be paid for a full 36-hour week. Ms. M confirmed that she witnessed Mr. K becoming upset at his work, putting the clients on mute, swearing and exhibiting signs of frustration. She heard him having to repeatedly ask customers for their confirmation numbers or having to play back conversations to obtain the information he had forgotten. Mr. K also arranged to continue providing remote computer assistance to CIH through Cyber Node and would travel to B.C. several times a year to assist with computer technology issues. Mr. R observed his struggles with headaches and his reduced capacity for multi-tasking.



Mr. K attempted to start a computer business in Ontario through Cyber Node, similar to his B.C. business. This was not successful however. Mr. K found that he was not reliable, and was unable to think on his feet when he was on site with a customer. He had days when he could not get out of bed, and so could not schedule appointments with clients as he did not know if he would be able to make them. By 2019 he stopped doing any work through Cyber Node.

In February 2020 Mr. K started to decline mentally. He also started to lose feeling in his hand, arm and leg. He experienced a series of events which began when he was in B.C. for work. He lost all strength in his arms and hands. His manager took him to Hospital Emergency. He was prescribed muscle relaxants every six hours. Shortly after this event Mr. K felt well enough to start his drive back to Ontario but by the time he got to Iowa, he felt his body start to go numb. He was able to make it to a hospital where he collapsed into a wheelchair. Doctors said the symptoms resulted from the muscle relaxants he was prescribed. He was released after four hours and continued home to Ontario. As he entered Sarnia, Ontario his symptoms returned. He went to several hospitals in Ontario to address his worsening symptoms. Although he went through a battery of tests, the doctors were unable to diagnose the reason for his symptoms.

At the time of trial, Mr. K continued to have tingling and weakness in his hands, feet and leg. His complaints included ongoing headaches, periodic migraines, neck pain, numbness, weakness, stiffness in his neck with restricted mobility, and interrupted sleep. He continues to take over the counter pain medications, and Tramadol.

The doctors in Ontario recommended a mental examination following the incident in February 2020. In the spring of 2020 Mr. K began having suicidal thoughts. In April 2020 he attended an independent medical examination with Dr. Anderson, Psychiatrist. In December 2020 he began sessions with a psychiatrist in Ontario over the telephone. His relationship with that treating psychiatrist is very recent and at the time of trial they had not settled on a course of treatment. Towards the end of 2020 Mr. K felt unable to drive, reporting loss of feeling in his legs, so unless his wife was able to drive him, he would be unable to attend his chiropractic and massage treatments in Brampton.

In 2020 Dr. Anderson diagnosed Mr. K with somatic symptom disorder (“SSD”) with predominant pain, moderate to severe major depressive disorder, and mild to moderate generalized anxiety disorder (“GAD”). He confirmed that SSD is a condition with a psychiatric cause, rather than a medical one, but it is a condition driven by Mr. K’s cervicogenic pain.



He also opined that Mr. K's cognitive functioning had been affected due to pain, insomnia, fatigue, anxiety and depression. He noted that SSD is the new term for what previously was called chronic pain disorder. Patients with SSD are at high risk of developing anxiety and/or depressive illnesses. Mr. K's depressive symptoms have worsened over time.

Mr. K attended independent medical examinations with Dr. Wong, Psychiatrist and Dr. Gladstone, neurologist and headache specialist, at the request of the defence. Dr. Wong was of the opinion that Mr. K suffered a myofascial injury of the cervical spine, which resulted in pain in his neck and head. Dr. Wong noted that he could not detect symptoms during his examination, but that this injury could still cause pain. Dr. Wong also confirmed that he would defer to a neurologist and psychiatrist in relation to the neurological and psycho-logical impacts reported by Mr. K.

Dr. Gladstone was of the opinion that Mr. K suffered a mild traumatic brain injury. He was unable to identify a neurological basis for Mr. K's worsening symptoms including his loss of feeling in parts of his body or body shaking.

Mr. K stopped work in late February or early March 2020, but certainly before any Covid-19 restrictions or layoffs began. He could no longer cope and needed some time off. He is now concerned that because he is not able to focus, he will no longer be able to work for CIH. In his work with CIH, he has to be able to multi-task and deal with many clients at once, on multiple screens and the phone. He says he is no longer able to manage such a situation. He is no longer able to work repairing computers, as he feels the dexterity in his fingers is gone, and he gets overwhelmed.

Mr. K's interaction with his wife and children started to decline by 2018. His wife has had to assume almost all of the responsibilities in and out of the house. He is unable to ride his bike, go bowling or fishing. He used to enjoy working on cars and now he feels he can no longer even do simple maintenance. Mr. K feels that he is no longer a participant in raising his children. He has anxiety attacks in the basement where the computers are located, and in his bedroom where he experienced the symptoms feeling like he cannot move his body. He doesn't change his clothes for up to three days at a time, doesn't eat with his family at the table but rather eats standing at a counter, and paces back and forth while eating. His wife sometimes must remind him to bathe. His depression has reached such depths that he has considered suicide.



The Court found that the accident on October 26, 2016 caused Mr. K’s myofascial injuries as well as a mild traumatic brain injury and that the findings are supported by the opinions of all the medical professionals at trial. Further, Madam Justice Baker went on to say “There is no evidence which suggests a reason for Mr. K’s current psychological problems other than his pain complaints resulting from the accident. The evidence was clear... that very shortly after the accident... he became angry, short tempered and impatient. He became forgetful, unreliable, and began making mistakes at work. He lost patience with his children, and became emotionally detached from his family.”

[74] I accept the opinions of Dr. Cameron and Dr. Anderson. I find that Mr. K has established on the balance of probabilities that he does suffer from somatic symptom disorder which developed as a result of his ongoing pain from the injuries he sustained in the accident. In addition, Mr. K has established that he suffers from depression and generalized anxiety disorder, both of which also result from his injuries sustained in the accident.

...

[77] Dr. Cameron, in his report dated November 25, 2017, stated his opinion that Mr. K would continue to improve through the fall and winter of 2018. Dr. Cameron recommended further assessment at that time to obtain an updated opinion and long term prognosis with respect to cognitive complaints and pain and discomfort. He indicated that Mr. K was a candidate for prophylactic headache medication, such as gabapentin, amitriptyline and nortriptyline, which could be prescribed by Mr. K’s general physician or a neurologist. Dr. Cameron also suggested Mr. K was a good candidate for Botox treatments. Dr. Cameron suggested assessment by a psychologist or psychiatrist to address any anxiety or depressive symptoms.

[78] In testimony, Dr. Cameron stated that Botox benefits some, but not all people. 65% of patients with severe headaches are likely to improve, and 70% of patients with muscular skeletal symptoms are likely to improve. Dr. Cameron stated that if a patient has headaches and pain two years after the accident, the prognosis is less optimistic. He also noted that recovery is not guaranteed; a patient could try a variety of therapies and medicines and still not recover. He also noted that patients rely on their family doctors for referrals and, if those referrals do not happen, the patient may not be able to access therapies. Under cross



examination, the proposition was put to Dr. Cameron that a neurologist could recommend treatment which would be effective in resolving Mr. K's symptoms. Dr. Cameron disagreed and stated that if the patient had the same symptoms after four years, there was not a treatment likely to fully resolve Mr. K's symptoms. Dr. Cameron agreed he would defer to Dr. Anderson on his prognosis of Mr. K's psychological complaints.

When discussing prognosis, Madam Justice Baker found:

[85] On the evidence before me, I am satisfied that with continued treatment for his myofascial pain and his psychological disorders Mr. K will improve beyond his present state. However, I am also satisfied that he will not return to his pre-accident state. His myofascial complaints have moved to a chronic state, given that more than four years have passed since the accident. As such, it is unlikely that his physical pain complaints will fully resolve. As his pain complaints are directly linked to his psychological disorders, it is unlikely those will fully resolve. Rather, it is likely that Mr. K will find ways to manage his complaints in a way that is less debilitating than his present state. But it is probable that Mr. K will continue to have pain and suffer from psychological disorders for the rest of his life.

NON-PECUNIARY DAMAGES

The Court found that Mr. K's injuries have had a significant impact on his life, the results of which have devastated him. His psychological injuries have changed him from an optimistic go-getter, enthusiastic and social family man, to an angry, withdrawn, anxious, loner who can barely be around his family. He has daily pain and is unable to work. He has had bouts of suicidal ideation. While there is a likelihood that the plaintiff's conditions will improve with treatment, he will never be the man he was before the accident. He will have a diminished life because of the accident. Damages were awarded under this heading in the amount of \$150,000.00.



CONCLUSION

Mr. K is awarded damages in the total amount of \$1,175,569.00 as follows:

Non-pecuniary damages	\$150,000
Past loss of earning capacity	\$62,171, subject to adjustments
Loss of future earning capacity	\$885,000
Cost of future care	\$62,518
Special damages	\$15,880

WRITTEN BY STELLA GOWANS, PARALEGAL

The Full Reasons for Judgment of The Honourable Madam Justice W.A. Baker
CAN BE FOUND HERE:

For further analysis and reporting of the decision please download the linked PDF

If you would like to book an assessment with Dr. Donald Cameron, Neurologist, please contact us at [Integra](#)