

JUDGE FINDS PLAINTIFF’S PRE-EXISTING CONDITION WAS STABLE AND APPLIED THE “THIN SKULL” PRINCIPLE

B vs. X

2021 BCSC 1324

The Reasons for Judgment of the Honourable Mr. Justice G.C. Weatherill were given on July 7, 2021 at Vancouver, BC.

On May 31, 2015 the plaintiff, now 36 years of age, was a front seat passenger in a Honda Civic that was rear-ended by the defendant’s vehicle. The Honda Civic was stopped at the time of the collision and the impact propelled it into the vehicle that was stopped in front of it. The plaintiff, Ms. B, claims that she has suffered both physical and psychological injuries as a result of the collision. The defendant has admitted liability but disputes the extent of the plaintiff’s injuries attributable to the collision.

In June 2001, at the end of grade 11, Ms. B suffered an arteriovenous malformation (“AVM”) bleed in her brain. This resulted in her becoming completely paralyzed on the left side of her body. She also lost field of vision in her left eye. After intensive embolization and radiation therapy as well as rehabilitation, almost all of her mobilization and functionality returned. Her field of vision did not. In March 2003, she suffered a recurrence of her AVM bleed. Once again, she became paralyzed on her left side and was unable to continue with her nursing program at the University of British Columbia. Once again, she underwent intensive treatment and rehabilitation but was left with foot “drop” and “hammertoes” in her left foot and had very little functionality in her left hand and arm. She subsequently began to receive Persons With Disabilities Benefits.

In 2007 Ms. B graduated with honours from British Columbia Institute of Technology’s Medical Office Assistant Program. She obtained a full-time casual administrative position with the Provincial Health Services Authority. In 2008, she began working part-time, 20 hours a week as a receptionist in a physiotherapy clinic, “PT Health”. She was able to perform all duties required of her in both of these positions. In 2011 the plaintiff underwent surgery to repair the drop foot and hammertoes. The surgery was successful. She was able to walk with a normal gait and without pain. Ms. B testified that in the



three years prior to the collision she was happy and doing well both physically and emotionally. Her physiotherapy had ended. She did not suffer from headaches or other bodily pain symptoms. She was sleeping well. Although she had lost most of the function in her left arm and hand she still had the use of it as a “helper hand”, for example to grip objects such as a jar to enable her to remove the cap with her right hand. She was moving forward with her life and was thinking about finding a full-time career.

The plaintiff testified that the impact of the collision was forceful. The left side of her body immediately tensed up, including her foot, and she went into shock. She felt pain in her neck, shoulders and back. She was taken to hospital by ambulance and a CT scan confirmed that she had not suffered an additional AVM bleed. During the six years since the collision the plaintiff’s drop foot and toe curl have returned. She has had two additional surgeries to correct these conditions but has been left with tightness and constant numbness and tingling. She finds some relief with massage and Botox injections. Following one of the surgeries in February 2017 Ms. Basri fainted in her bathroom and suffered a cut around her left eye. As a result, she has suffered some blurred vision and headaches as well as causing her left eye lid to droop. Her left arm has become clenched with a constant intense tightness as well as numbness with “pins and needles”. She underwent surgery in May 2018 resulting in a modest loosening of her clawed hand and release of her arm so that it was not as tight to her chest, however the surgery did not restore the limited functionality of her left arm and hand that she had prior to the collision. The plaintiff is experiencing neck, shoulder and low back pain as well as headaches and difficulty sleeping.

Ms. B started a full-time temporary position as a receptionist in the corporate offices at Vancouver International Airport. This opportunity was provided through BC Center for Ability. Although she enjoyed the work immensely, after a few months she was told that the job required someone capable of more physical work than she was able to perform, and she was terminated. In November 2016 the plaintiff returned to her job at PT Health where she has continued to work 20 hours a week as a receptionist. She is able to perform all tasks required of her without accommodations, however it takes her longer to do them and she requires more frequent breaks.

The Court heard and accepted testimony from the plaintiff’s father, Mr. B, and a close friend and neighbour, Susanne Nordin.

EXPERT MEDICAL EVIDENCE - PLAINTIFF

DR. MARGARET KRAWCHUK has been Ms. B’s family physician since 2003. She diagnosed the plaintiff with a grade three cervical whiplash injury; grade two lumbar whiplash injury; increased spasticity (abnormal muscle tightness due to prolonged muscle contraction) and deformity in her left foot; and emotional trauma with anxiety and depressed mood.



DR. REHAN DOST is a neurologist who qualified without debate as an expert in that field. Dr. Dost acknowledged that the “persistent deficit in the plaintiff’s functionality due to her AVM bleeds was unlikely to improve, but opined that it was also unlikely to worsen other than slowly over time as the plaintiff aged.”

[34] Dr. Dost testified that patients who have a neurological injury such an AVM bleed have a “decreased cerebral reserve” (a redundancy that allows the nervous system to tolerate stressors) and will experience a worsening of their baseline neurological deficit if they are exposed to additional stressors, the most common of which are:

- a) the onset of acute pain followed by the development of chronic pain;
- b) non-restorative sleep; and
- c) psychological stressors (depression and anxiety).

[35] Dr. Dost opined that, absent the Collision, the plaintiff’s left-side neurological deficits would likely have remained stable (other than by virtue of the aging process). However, based upon his review of the plaintiff’s medical records, his examination of the plaintiff, her self-report of the sudden onset of acute pain and emotion at the time of the Collision, and the immediate worsening of her pre-existing neurological state together with her concomitant sleep issues, the Collision was the cause of the worsening of her previously stable condition. He further opined that these changes to her baseline have persisted because these stressors have not resolved.

Dr. Dost also testified that the plaintiff’s chronic headaches are likely a result of the whiplash injuries she sustained in the collision. Further, Dr. Dost is of the opinion that as long as the plaintiff’s chronic pain, sleep disruption and psychological issues remain, she will require ongoing Botox injections every three months to alleviate the spasticity on her left side. He testified under cross-examination that a drooping eye lid is a common occurrence after a blow to the eye.

DR. ALASTAIR YOUNGER is the orthopaedic surgeon who performed three operations on the plaintiff’s left foot and ankle. Dr. Younger opined that despite the fact that no objective pathological changes were found, because the plaintiff was stable between the 2011 surgery and the time of the collision, and the reported increased spasticity on her left side shortly after the collision, her increased spasticity and deformity in her toes was likely caused by the collision.



EXPERT MEDICAL EVIDENCE - DEFENDANT

DR. RICHARD GROSCH is a neurologist who provided a responding report to Dr. Dost's report. He opined that the plaintiff's neurological condition remained stable after the collision. He disagrees with Dr. Dost's opinion because, according to Dr. Keyes, treating neurologist, there were no noticeable neurological changes following the collision or with the fall in the bathroom. There were no changes observed on the CT head scan or MRI head scan following the MVA and concussion. Further, there was no reported concussion/MTBI as a result of the collision and Dr. Dost is relying solely on Ms. B's recollection of events in that the tone in her left limbs has been increasing, despite the fact this was not revealed on neurological examination.

DR. ADAM SIDKY is an orthopaedic surgeon who assessed the plaintiff in August 2020. He opined that the plaintiff's soft tissue injuries with persisting symptoms of myofascial pain, including headaches, are a result of the collision. He agreed on cross-examination that symptoms are now chronic and likely to persist indefinitely. He also agreed that trauma from the collision could have been a secondary cause of the plaintiff's increased spasticity and decreased function.

The Court found,

[59] Dr. Krawchuk, Dr. Dost, Dr. Younger, and Dr. Sidky were impressive witnesses who gave their respective evidence in an entirely objective and helpful manner. I accept their opinion evidence, as supplemented by their oral testimony, without qualification.

[60] Dr. Grosch was equally impressive. He too gave his evidence in an entirely objective fashion. He readily conceded that the limitation of his retainer to merely a critique of Dr. Dost's opinion put him at a disadvantage. He also conceded that he was not provided with a complete medical history of the plaintiff and had no knowledge of her neurological condition between December 2007 and December 2015. Dr. Grosch was a credible witness. However, to the extent his opinions differ from those of Dr. Dost, I accept the opinions of Dr. Dost because he had the benefit of the plaintiff's full health history as well as the opportunity to conduct an examination of her, whereas Dr. Grosch did not. Moreover, Dr. Grosch was not asked to address Dr. Dost's evidence that the mere fact that no objective change was detected by the plaintiff's attending neurologist (Dr. Keyes) in her baseline condition between December 2007 and December 2015 does not mean that no change in her condition occurred.

Mr. Justice Weatherill found the plaintiff to be a very good witness. "She was articulate, forthright, sincere, careful, and steadfast in her evidence... She did not attempt to embellish or exaggerate her symptoms or limitations... She was an undeniably authentic and sympathetic witness whose evidence I have no hesitation accepting in its entirety as credible and reliable."



CAUSATION

Counsel for the defendant concedes that the plaintiff suffered a soft tissue injury to her neck and upper back as a result of the collision, and that she suffers ongoing symptoms. The head injury Ms. B sustained when she fell in her bathroom on March 1st, 2017 was a significant intervening event but the defendant submits that she has now returned to her pre-collision physical and psychological position.

The Court found that,

[68] There is no question that the plaintiff had a pre-existing AVM condition, but it had stabilized after her 2011 operation. She was doing well. The weight of the medical evidence supports a causal connection between the Collision and the increase in her spasticity and decrease in function due to the trauma from the Collision.

Counsel for the defendant submits that this case is an example of a “crumbling skull” plaintiff in that there is a measurable risk that her pre-existing condition would have affected her regardless of the collision. The Court found that the applicable principle to be applied in this case is that of the “thin skull”, making the defendant liable for the plaintiff’s injuries even if the injuries are unexpectedly severe owing to a pre-existing yet stable condition. Further, the court found that the plaintiff’s chronic headaches, chronic pain, exacerbation of her pre-existing neurological deficit resulting in diminished functionality and sleep disruption were caused as a result of the collision, as were the subsequent surgeries and the fainting episode of March 1, 2017.

In discussing the award for non-pecuniary damages Mr. Justice Weatherill noted that “Despite all that she has been through, the plaintiff continues to strive to make the best of the cards she has been dealt. She is truly an inspiration. Nevertheless, she has suffered a profound loss as a result of the collision.”



CONCLUSION:

The plaintiff is entitled to judgment against the defendant as follows:

Non-pecuniary damages	\$150,000.00
Past loss of earning capacity	\$20,000.00
Future loss of earning capacity	\$45,000.00
Cost of future care	\$10,500.00
Special damages	\$11,015.00
TOTAL	\$236,515.00

The full Reasons for Judgment of The Honourable Mr. Justice G. C. Weatherill [CAN BE FOUND HERE](#)

WRITTEN BY STELLA GOWANS, PARALEGAL

**IF YOU WOULD LIKE TO BOOK AN ASSESSMENT WITH DR. REHAN DOST,
PLEASE CONTACT US AT INTEGRA**